

**立法會**  
**Legislative Council**

Ref : CB2/BC/1/08

LC Paper No. CB(2)934/08-09

(These minutes have been  
seen by the Administration)

**Bills Committee on  
Public Health and Municipal Services (Amendment) Bill 2008**

**Minutes of meeting  
held on Thursday, 5 February 2009, at 2:30 pm  
in the Chamber of the Legislative Council Building**

- Members present** : Hon Fred LI Wah-ming, JP (Chairman)  
Hon Andrew CHENG Kar-foo  
Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Vincent FANG Kang, SBS, JP  
Hon WONG Kwok-hing, MH  
Dr Hon Joseph LEE Kok-long, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP  
Hon WONG Ting-kwong, BBS  
Dr Hon LEUNG Ka-lau
- Members absent** : Hon WONG Yung-kan, SBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon Cyd HO Sau-lan
- Public Officers attending** : Item I  
Prof Gabriel M LEUNG, JP  
Under Secretary for Food & Health  
  
Mrs Angelina CHEUNG FUNG Wing-ping  
Principal Assistant Secretary for Food & Health (Food) 1  
  
Dr Constance CHAN Hon-ye, JP  
Controller, Centre for Food Safety  
Food and Environmental Hygiene Department

Dr LEE Siu-yuen  
Assistant Director (Food Surveillance & Control)  
Food and Environmental Hygiene Department

Ms Leonora IP Wan-yok  
Senior Government Counsel  
Law Drafting Division  
Department of Justice

Miss Mandy NG Wing-man  
Government Counsel  
Law Drafting Division  
Department of Justice

**Attendance by  
invitation** : Item I

The Hong Kong Food Council Ltd

Mr Simon WONG Ka-wo  
Chairman

Pizza Hut

Mr Ivan NG  
Quality Assurance Manager

Federation of Hong Kong Industries

Mr George TSANG  
Member

Mr Roger TAM  
Manager

Hong Kong Suppliers Association Ltd.

Mr Albert TANG  
Chairman, Government Policy Committee

Ms Frenda WONG  
Committee Member

Hong Kong Federation of Restaurants & Related Trades

Mr Samson CHU

Hong Kong Medical Association

Dr TSE Hung-hing  
President

Consumer Council

Ms Rosa WONG  
Head, Research & Trade Practices Division

The Hong Kong Chinese Importers' & Exporters' Association

Mr Rock CHEN Chung-nin

Hong Kong Retail Management Association

Mr Peter JOHNSTON  
Representative

Chinese Cuisine Management Association

Mr LEUNG Chun-wah

The Association for Hong Kong Catering Services Management

Mr LAU Kwong-choi  
Vice Chairman

**Clerk in attendance** : Miss Mary SO  
Chief Council Secretary (2) 5

**Staff in attendance** : Mr Stephen LAM  
Assistant Legal Adviser 4

Ms Alice LEUNG  
Senior Council Secretary (2) 6

Mr David LOO  
Senior Council Secretary (2) 6 (Designate)

Ms Sandy HAU  
Legislative Assistant (2) 5

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**I. Meeting with deputations and the Administration**

[LC Paper Nos. CB(2)754/08-09(01), CB(2)781/08-09(01) & (02)]

The Bills Committee deliberated (index of proceedings attached at **Annex I**).

Views of deputations

2. The Bills Committee received views from the following organisations on the Public Health and Municipal Services (Amendment) Bill 2008 (the Bill) and the draft Code of Practice (CoP) on section 78B orders -

- (a) Hong Kong Food Council Ltd
- (b) Pizza Hut
- (c) Federation of Hong Kong Industries  
[LC Paper No. CB(2)781/08-09(03)]
- (d) Hong Kong Suppliers Association Ltd
- (e) Hong Kong Federation of Restaurants & Related Trades
- (f) Hong Kong Medical Association
- (g) Consumer Council  
[LC Paper No. CB(2)781/08-09(04)]
- (h) Hong Kong Chinese Importers' & Exporters' Association
- (i) Hong Kong Retail Management Association  
[LC Paper No. CB(2)781/08-09(05)]
- (j) Chinese Cuisine Management Association
- (k) Association for Hong Kong Catering Services Management  
[LC Paper No. CB(2)799/08-09(01)]

Major views expressed by deputations are summarised in **Annex II**.

3. The Bills Committee also noted the submissions received from the following organisations -

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- (a) Hong Kong College of Community Medicine  
[LC Paper No. CB(2)754/08-09(02)]
- (b) Hong Kong Doctors Union  
[LC Paper No. CB(2)754/08-09(03)]
- (c) Hong Kong Bar Association  
[LC Paper No. CB(2)754/08-09(04)]
- (d) Hong Kong Catering Industry Association  
[LC Paper No. CB(2)799/08-09(02)]

The Administration's response

4. The Administration said that -

- (a) consideration would be given to revising any part of the CoP, taking into account specific comment from the trade, which small food traders found difficult to comply, on the condition that to do so would not compromise public health;
- (b) there was no cause for concern that the Director of Food and Environmental Hygiene (DFEH) would not contact the food trader concerned prior to the making of a section 78B order. The Food and Environmental Hygiene Department (FEHD) had all along maintained close liaison with the food trade to ensure that the food the trade supplied was safe and fit for human consumption. For instance, upon obtaining results of food tests conducted by food safety authorities of other countries, FEHD officers would immediately notify the food traders concerned who would then voluntarily withdraw the food concerned from the shelves;
- (c) DFEH might not need to make a section 78B order if the voluntary course of action to withdraw the food concerned from the shelves or recall the food concerned from the market had been carried out. The Administration remained of the view that food safety could only be ensured through goodwill and cooperation/collaboration between the Government, the trade and the public;
- (d) requiring persons bound by section 78B orders to make public announcement on the food products that needed to be recalled was to protect the interests of consumers. There were similar practices under the Toys and Children's Products Safety Ordinance (Cap. 424) and the Consumer Goods Safety Ordinance (Cap. 456). Depending on the extent of the food incident, recall announcement

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could take various forms, such as issuing a press release, holding a press conference and publishing in one of the Chinese newspapers and one of the English newspapers with wide circulation in Hong Kong for at least a specified period. The reason for specifying that one of the days for publishing in the newspapers should be on a Sunday was because more people read newspapers on a Sunday;

- (e) the market value of the food at the time of making a section 78B order would depend on the circumstances. For instance, if the person concerned was a retailer, the market value of the food concerned would be the retail price of the food;
- (f) it was not necessary to set up an independent committee to make section 78B orders, as DFEH would consult the views of experts within and outside FEHD and other parties, where appropriate, before making the orders;
- (g) paragraph 2.2 of the draft CoP provided that DFEH might consult stakeholders, if possible, before revising the whole or any part of the CoP or revoking the CoP; and
- (h) no local legislation with recall provisions had required traders to provide refund to consumers during recall. As purchasing of goods was a commercial transaction between buyers and sellers, it was entirely up to individual traders to decide how they should compensate their customers for the goods recalled.

Discussion

*Revisions to CoP*

5. Mr Tommy CHEUNG said that the Administration should, apart from consulting the trade, also consult the views of the Panel on Food Safety and Environmental Hygiene of the Legislative Council (FSEH Panel) before revising the whole or any part of the CoP or revoking the CoP.

6. The Administration responded that as some revisions to the CoP might only be technical and/or minor in nature, it would not be necessary for the Administration to first consult the views of stakeholders and the FSEH Panel every time before revising the CoP. The Administration, however, agreed to inform the FSEH Panel in advance of making any revision to the CoP and publication in the Gazette. Should the FSEH Panel wish to discuss such revision at a meeting, the Administration would be happy to oblige.

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*Making of section 78B orders*

7. Mr WONG Ting-kwong shared the views of the Federation of Hong Kong Industries about the need of appointing an independent committee comprising trade representatives, amongst others, to make section 78B orders.

8. The Administration responded that to create another tier in making section 78B orders would be against the legislative intent of the Bill to empower DFEH with the necessary powers to take timely and swift action to protect public health. Furthermore, it would be difficult for any committee to meet quickly at all times to make the orders.

9. The Administration further said that having considered members' views, amendments would be made to the Bill to include the hosts of factors which DFEH would take into account in making section 78B orders. A statutory compensation mechanism was also provided under the new section 78H if there were no reasonable grounds for DFEH to make a section 78B order and the person bound by the order had suffered loss as a result of the order. The Administration pointed out that among all overseas legislation of developed countries such as Australia, New Zealand, European Community, United Kingdom, only the Australian legislation had compensation provisions.

10. Mr Tommy CHEUNG said that protecting public health should not be made a justification by the Administration and by some quarters in the community, such as the Democratic Party, to provide DFEH with wide powers to make section 78B orders without regard to the fact that it would be very difficult, if not impossible, for persons bound by the orders to seek compensation from the Government. The Chairman pointed out that the Democratic Party, including himself, had never indiscriminately supported all government policies/proposals in the name of safeguarding public interests, and would never do so.

11. Ms Audrey EU said that although the host of factors which DFEH would take into account in making section 78B orders would be spelt out in the Public Health and Municipal Services Ordinance (Cap. 132), the threshold of the objective of making the orders was very low, i.e. "to prevent or reduce a possibility of danger to public health or to mitigate any adverse consequence of a danger to public health". The trade might wish to come up with suggestion to raise the threshold objective to allay its concern about the wide powers provided to DFEH under the new section 78B without compromising public health and safety.

12. Dr LEUNG Ka-lau asked whether, and if so, what responsibility would be held by the Government and FEHD if, say, 50% of the section 78B orders

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turned out to be not necessary, i.e. the food concerned turned out to be not problematic, one year after the implementation of the Bill.

13. The Administration responded that it was not appropriate to assess the justification of making section 78B orders according to whether the food concerned turned out to be problematic or otherwise. In deciding whether to make a section 78B order, DFEH would take into account the host of factors under the new section 78B(2A). The Administration further said that FEHD would review the whole process after the conclusion of the making of a section 78B order to identify room for improvement, if any.

14. The Chairman drew members' attention to the reply from the Hong Kong Federation of Insurers [LC Paper No. CB(2)781/08-09(02)] advising that there was at present no insurance product tailor-made to protect local food traders for the loss they had suffered in relation to food incidents. The insurance industry would, however, be happy to contribute to further deliberation on the feasibility of introducing such an insurance product should there be a genuine market demand for it.

*Consumer redress in relation to food recall*

15. At the request of Ms Audrey EU, Ms Rosa WONG of the Consumer Council undertook to provide information on consumer redress in relation to food recall in overseas jurisdictions.

**II. Dates of next meetings**

16. Members agreed to hold the next two meetings on the following dates to continue clause-by-clause examination of the Bill -

(a) 17 February 2009 at 5:00 pm; and

(b) 25 February 2009 at 2:30 pm.

17. There being no other business, the meeting adjourned at 4:30 pm.

**Proceedings of the meeting of the  
Bills Committee on  
Public Health and Municipal Services (Amendment) Bill 2008  
on Thursday, 5 February 2009, at 2:30 pm  
in the Chamber of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject</b>	<b>Action required</b>
000000 - 000639	Chairman	Date of next meeting and Welcoming remarks	
000640 - 001129	The Hong Kong Food Council Ltd	Presentation of views	
001130 - 001322	Pizza Hut	Presentation of views	
001323 - 001644	Federation of Hong Kong Industries	Presentation of views [LC Paper No. CB(2)781/08-09(03)]	
001645 - 002007	Hong Kong Suppliers Association Ltd.	Presentation of views	
002008 - 002152	Hong Kong Federation of Restaurants & Related Trades	Presentation of views	
002153 - 002418	Hong Kong Medical Association	Presentation of views	
002419 - 002854	Consumer Council	Presentation of views [LC Paper No. CB(2)781/08-09(04)]	
002855 - 003131	The Hong Kong Chinese Importers' & Exporters' Association	Presentation of views	
003132 - 003602	Hong Kong Retail Management Association	Presentation of views [LC Paper No. CB(2)781/08-09(05)]	
003603 - 003716	Chinese Cuisine Management Association	Presentation of views	
003717 - 004023	The Association for Hong Kong Catering Services Management	Presentation of views [LC Paper No. CB(2)799/08-09(01)]	
004024 - 004941	Chairman Admin	The Administration's response to the views from various deputations include -  (a) Consideration would be given to revising any part of the Code of Practice (CoP), taking into account specific comment from the trade, which small food traders found difficult to comply, on the condition that to do so would not compromise public health;	

Time marker	Speaker	Subject	Action required
		<p>(b) Before making the section 78B orders, the Authority would contact the food trader concerned;</p> <p>(c) Requiring persons bound by section 78B orders to make public announcement on the food products that needed to be recalled was to protect the interests of consumers;</p> <p>(d) It was not necessary to set up an independent committee to make section 78B orders, as the Director of Food and Environment Hygiene (DFEH) would consult the views of experts within and outside The Food and Environmental Hygiene Department (FEHD) and other parties, where appropriate, before making the orders;</p> <p>(e) The market value of the food at the time of making a section 78B order would depend on the circumstances;</p> <p>(f) If compensation was granted by the court, the court would decide who should shoulder the cost of the legal proceedings; and</p> <p>(g) The Administration remained of the view that food safety could only be ensured through goodwill and cooperation/collaboration between the Government, the trade and the public.</p>	
004942 - 005114	Chairman Admin	<p>The Administration's response to the Chairman's questions include -</p> <p>(a) The Administration would consult the trade before making any amendments in the CoP; and</p> <p>(b) No local legislation with recall provisions had required traders to provide refund to consumers during recall. As purchasing of goods was a commercial transaction between buyers and sellers, it was entirely up to individual traders to decide how they should compensate their customers for the goods recalled.</p>	
005115 - 005219	Chairman	<p>According to the written reply from the Hong Kong Federation of Insurers, there was no insurance product to protect local food traders for the loss resulted from food incidents. [LC Paper No. CB(2)781/08-09(02)]</p>	

Time marker	Speaker	Subject	Action required
005220 - 010543	<p>Ms Audrey EU Consumer Council Hong Kong Suppliers Association Ltd. The Hong Kong Food Council Ltd Hong Kong Retail Management Association</p>	<p>Ms Audrey EU's view that -</p> <p>(a) It was not feasible for the Administration to seek compensation on behalf of the consumers; and</p> <p>(b) The trade might wish to come up with suggestion to raise the threshold objective to allay its concern about the wide powers provided to DFEH under the new section 78B without compromising public health and safety.</p> <p>At the request of Ms Audrey EU, the Consumer Council undertook to provide information on consumer redress in relation to food recall in overseas jurisdictions.</p> <p>The trade associations reiterated that the context of "reasonable grounds" to make a section 78B order was too vague and Administration should compensate persons bound by the order if it was eventually found that the food concerned was not problematic.</p>	
010544 - 012010	<p>Mr Tommy CHEUNG Admin Chairman</p>	<p>Mr Tommy CHEUNG said the Administration should, apart from consulting the trade, also consult the views of the Panel on Food Safety and Environmental Hygiene of the Legislative Council (FSEH Panel) before revising the whole or any part of the CoP or revoking the CoP.</p> <p>The Administration agreed to inform the FSEH Panel in advance of making any revision to the CoP and publication in the Gazette.</p>	
012011 - 012826	<p>Mr Vincent FANG Admin</p>	<p>Mr Vincent FANG said the context of "reasonable grounds" was too vague and thus, it was impossible for the trade to claim compensation.</p> <p>The Administration stressed it would not compensate food traders who voluntarily removed food from the shelves/recalled food from the market because of a food alert issued by the Administration. Thus, it was not justifiable for the Administration to automatically compensate persons bound by section 78B orders even the food concerned was found not problematic eventually. It also pointed out that if prohibited substances were found in the food concerned, no matter how small the amount, compensation was not applicable.</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject</b>	<b>Action required</b>
012827 - 013718	Mr WONG Ting-kwong Federation of Hong Kong Industries Admin	Mr WONG Ting-kwong requested the Federation of Hong Kong Industries to elaborate further on the idea of establishing an independent committee to make the section 78B orders.  The Administration responded that to create another tier in making section 78B orders would be against the legislative intent of the Bill to empower DFEH with the necessary powers to take timely and swift action to protect public health.	
013719 - 014249	Chairman The Hong Kong Food Council Ltd Hong Kong Suppliers Association Ltd. Hong Kong Retail Management Association	In response to the Chairman's enquiry about the present arrangement of voluntary food recall in Hong Kong, the associations revealed that due to the media's pressure, the retailers would usually recall the food and compensate the consumers; the wholesalers would also accept the returns from the retailers.	
014250 - 014845	Mr Tommy CHEUNG Chairman	Mr Tommy CHEUNG reiterated that the Administration should compensate automatically in case the food concerned was found to be not problematic at the end and the thresholds to claim compensation were too high.	
014846 - 015648	Dr LEUNG Ka-lau Admin	Dr LEUNG Ka-lau asked whether, and if so, what responsibility would be held by the Government and FEHD if, say, 50% of the section 78B orders turned out to be not necessary, i.e. the food concerned turned out to be not problematic, one year after the implementation of the Bill.  The Administration responded that it was not appropriate to assess the justification of making section 78B orders according to whether the food concerned turned out to be problematic or otherwise.	
015649 - 015900	Chairman Ms Audrey EU	Ms Audrey EU welcomed the trade to give further opinions regarding the wordings of the Ordinance and the CoP. However, the establishment of an independent committee was not feasible as it was the responsibility of the Administration to protect public health.	
015901 - 015952	Chairman	Date of next meeting	

**Bills Committee on Public Health and Municipal Services (Amendment) Bill 2008**

**Summary of views expressed by deputations**

Name of deputation [LC Paper No. of Submission]	Major Views
The Hong Kong Food Council Ltd	The Administration should communicate with the trade before it made a section 78B order. The small food traders might have operational difficulties to comply with the requirements of the Code of Practice (CoP). Regarding compensation, the Administration should clarify how to ascertain the market value of the food at the time of making a section 78B order.
Pizza Hut	Supported the implementation of the Bill. The Administration should communicate with the concerned companies prior to making of a section 78B order if a recall action was required so that the companies would be better prepared for the action.
Federation of Hong Kong Industries [LC Paper No. CB(2)781/08-09(03)]	<p>Worried about the wide powers provided to the Director of Food and Environment Hygiene (DFEH) to make section 78B orders purely based on his personal judgment. Thus, the Administration should set up an independent committee which comprised of representatives from the trade, various professionals and the Administration to make the orders.</p> <p>Although the deadline to propose an appeal was extended to 28 days after the order was made, the thresholds to claim compensation were too high.</p>
Hong Kong Suppliers Association Ltd	DFEH should have sufficient authority to make section 78B orders to protect public health. However, in case the food concerned was found to be not problematic, the Administration should compensate the trade for the lost resulted from the order. This was particularly important for the small food traders.

<b>Name of deputation [LC Paper No. of Submission]</b>	<b>Major Views</b>
Hong Kong Federation of Restaurants & Related Trades	Welcomed the deadline to propose an appeal was extended to 28 days. The Administration should clarify how to calculate the market value of the food at the time of making a section 78B order. Worried about DFEH would abuse his powers under the new section 78B and the small food traders would have difficulties to comply with the CoP.
Hong Kong Medical Association	Strongly supported the CoP as it already provided clear guidelines to DFEH in exercising his authority. The Association did not agree that DFEH was over empowered. Thus, the establishment of an independent committee to make the 78B orders was not necessary. It urged early implementation of the Bill.
Consumer Council [LC Paper No. CB(2)781/08-09(04)]	Supported the CoP to be in place. The Administration should consider including a mechanism for consumer redress in the CoP.
The Hong Kong Chinese Importers' & Exporters' Association	Supported the implementation of the Bill but the wide powers of DFEH should be checked. The thresholds to claim compensation were too high. The Administration should also clarify who should shoulder the costs of legal proceedings if compensation was granted by the court.
Hong Kong Retail Management Association [LC Paper No. CB(2)781/08-09(05)]	Any changes in the CoP should consult the trade beforehand. DFEH should only make a section 78B order when there was a public health threat. DFEH should also communicate with the trade before the order was made. The Administration should allow the current practice of voluntary food recall. The thresholds to claim compensation were too high.
Chinese Cuisine Management Association	The Administration should be light-handed in publicising a section 78B order before the food test result was confirmed as the order would have adverse effect on a brand name. The Administration should provide more details about under what conditions a compensation would be granted and the possible amount of damages.

<b>Name of deputation [LC Paper No. of Submission]</b>	<b>Major Views</b>
Association for Hong Kong Catering Services Management Ltd [LC Paper No. CB(2)799/08-09(01)]	Supported the implementation of the Bill but worried about DFEH would abuse his powers under the section 78B. When the food concerned was found to be not problematic, the compensation responsibility was not clearly stated in the CoP.

Council Business Division 2  
Legislative Council Secretariat  
23 February 2009