

立法會
Legislative Council

Ref : CB2/BC/1/08

LC Paper No. CB(2)1040/08-09
(These minutes have been
seen by the Administration)

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

**Minutes of meeting
held on Wednesday, 25 February 2009, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Fred LI Wah-ming, JP (Chairman)
Hon WONG Yung-kan, SBS, JP
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 Alan LEONG Kah-kit, SC
Hon WONG Ting-kwong, BBS
Dr Hon LEUNG Ka-lau

Public Officers attending : Item II

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

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

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr David LOO
Senior Council Secretary (2) 6

Ms Sandy HAU
Legislative Assistant (2) 5

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I. Confirmation of minutes

[LC Paper Nos. CB(2)934/08-09 and CB(2)951/08-09]

The minutes of the meetings held on 5 February 2009 and 17 February 2009 were confirmed.

II. Meeting with the Administration

[LC Paper Nos. CB(2)953/08-09(01)&(02), CB(3)85/08-09, CB(2)297/08-09(02) and CB(2)723/08-09(01)]

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

3. The Administration briefed members on its response to issues raised at the meeting on 17 February 2009 [LC Paper No. CB(2)953/08-09(01)].

Effective date of section 78B order published by Gazette

4. To address the concern that persons subject to the section 78B order might unknowingly contravene the order if the start of the required prohibition action specified in the order fell on the same day on which the order was published in the Gazette, the Administration proposed to stipulate that the

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section 78B order would take effect at a specified time, say 12 noon, on the day on which it was published in the Gazette. As Gazette would normally be published in the morning, specifying 12 noon as the effective time of the section 78B order would solve the problem in most circumstances. Another option would be to keep section 78C(6) as proposed under the Bill. The Administration would work with the Government Printer to publish the Gazette by uploading it onto the Government's website of Gazette notice at the earliest possible time.

5. Ms Audrey EU said that the modified option to specify the effective time of the section 78B order published by Gazette still could not address the problem that persons subject to the order might unknowingly contravene the order, as the Gazette could be published in the evening of the day. Ms EU proposed that the effective time of the section 78B order published by Gazette be determined by the Director of Food and Environmental Hygiene (DFEH) on a case by case basis.

6. The Administration responded that to do so would render the making of the section 78B order published by Gazette less certain to the trade, as the effective time would be determined by DFEH and not fixed. Nevertheless, the Administration was willing to consider Ms EU's suggestion if this was supported by the Bills Committee.

7. Dr LEUNG Ka-lau said that one way to allay members' concern about the effective time of the section 78B order published by Gazette was to stipulate in the Public Health and Municipal Services Ordinance (Cap.132) that persons subject to the order might use the grounds that they could not reasonably know the publication of the order in the Gazette as a defence for failing to carry out the act(s) specified in the order at the start time of the order. Mr Alan LEONG expressed similar views.

8. Mr Vincent FANG requested the Administration to stipulate in Cap. 132 that the start time of the actions required to be done in a section 78B order must be later than the effective time of the order, say, six hours, in order to allow sufficient time for persons bound by the order to comply with the order. Mr WONG Ting-kwong expressed similar views.

9. The Administration responded that although the effective time of the section 78B order published by Gazette could be the same as the start time of the order, public announcements through the media and electronics means would be made to notify the public and the trade of the order before it was formally published in the Gazette. The Administration further said that DFEH would exercise discretion in enforcing the compliance of the section 78B order,

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if circumstances so justified, as had been done in the enforcement of other orders made under Cap. 132.

10. In closing, the Chairman requested the Administration to respond in writing to the suggestion made by Ms Audrey EU in paragraph 5 above, and other views expressed by members before the next meeting.

III. Date of next meeting

11. Members agreed to hold the next meeting on 12 March 2009 at 8:30 am.

12. There being no other business, the meeting adjourned at 4:43 pm.

Council Business Division 2
Legislative Council Secretariat
11 March 2009

**Proceedings of the meeting of the
Bills Committee on
Public Health and Municipal Services (Amendment) Bill 2008
on Wednesday, 25 February 2009, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000359	Chairman	Confirmation of minutes of meetings on 5 and 17 February 2009.	
000400 - 001046	Chairman Admin	Administration's response to issues raised at the meeting on 17 February 2009 [LC Paper No. CB(2)953/08-09(01)]	
001047 - 003608	Ms Audrey EU Mr WONG Ting-kwong Mr WONG Yung-kan Dr Joseph LEE Admin	<i>Effective date of section 78B order published by Gazette</i> Ms Audrey EU's views that the modified option to specify the effective time of the section 78B order published by Gazette still could not address the problem that persons subject to the order might unknowingly contravene the order, as the Gazette could be published in the evening of the day. Ms EU proposed that the effective time of the section 78B order published by Gazette be determined by the Director of Food and Environmental Hygiene on a case by case basis.	
003609 - 005924	Mr Vincent FANG Mr Tommy CHEUNG Mr WONG Ting-kwong Chairman Admin	Mr Vincent FANG's views that the Administration should exercise flexibility in enforcing the compliance of section 78B order, having regard to the possible time gap between the effective date of the order and start time of the actions required in the order. As small food traders seldom read Gazette, Mr Tommy CHEUNG suggested publishing the section 78 order in the Gazette later in the evening, say, at 2359 hours. The Administration considered Mr Tommy CHEUNG's suggestion not preferable. There was already a time lag between preparation of the Gazette and actual publication during which the Government would publicise widely the food incidents and the section 78B order to the public through various means.	

Time marker	Speaker	Subject	Action required
005925 - 012028	Dr LEUNG Ka-lau Mr WONG Yung-kan Mr Tommy CHEUNG Mr Vincent FANG Mr Alan LEONG Ms Audrey EU Chairman Admin ALA4	Dr LEUNG Ka-lau suggested stipulating in the Public Health and Municipal Services Ordinance (Cap.132) that persons subject to the order might use the grounds that they could not reasonably know the publication of the order in the Gazette as a defence for failing to carry out the act(s) specified in the order at the start time of the order.	
012029 - 020935	Mr Tommy CHEUNG Ms Audrey EU Mr WONG Ting-kwong Mr Vincent FANG Mr WONG Yung-kan Chairman Admin ALA4	Mr Vincent FANG's views that the start time of the actions required to be done in a section 78B order must be later than the effective time of the order, say, six hours, in order to allow sufficient time for persons bound by the order to comply with the order.	
020936 - 021415	Mr WONG Ting-kwong Mr Tommy CHEUNG Mr Vincent FANG Chairman Admin ALA4	The Administration was requested to respond in writing to the suggestion made by Ms Audrey EU and other views expressed by members before the next meeting.	Admin to follow up (para. 10 of the minutes)
021416 - 021531	Chairman	Date of next meeting	