

**立法會**  
**Legislative Council**

Ref : CB2/BC/1/08

LC Paper No. CB(2)1186/08-09

(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, 12 March 2009, at 8:30 am  
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 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 Alan LEONG Kah-kit, SC  
Hon WONG Ting-kwong, BBS  
Dr Hon LEUNG Ka-lau
- Members absent** : Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP
- 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 No. CB(2)1040/08-09]

The minutes of meeting held on 25 February 2009 were confirmed.

**II. Meeting with the Administration**

[LC Paper Nos. CB(2)1039/08-09(01), 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 members' discussion at the meeting on 25 February 2009 with regard to the effective time of a section 78B order which was addressed to a class of persons or all persons, as stipulated under section 78C(6), details of which were set out in LC Paper No. CB(2)1039/08-09(01).

4. Members agreed to the Administration's plan to amend section 78C(6) to provide that the section 78B order would take effect at the time specified in the order.

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Clause-by-clause examination of the Bill  
[LC Paper No. CB(2) 723/08-09(01)]

*New section 78H - Compensation*

5. Assistant Legal Adviser 4 (ALA4) advised that under the proposed revised appeal and compensation mechanism, an aggrieved person might appeal to the Municipal Services Appeals Board (MSAB) against a section 78B order under the new section 78G and seek compensation from the District Court or the Small Claims Tribunal under the new section 78H alternatively or concurrently. There would be an anomaly if MSAB determined that the decision of the Director of Food and Environmental Hygiene (DFEH) in making a section 78B order was reasonable, whereas the District Court or Small Claims Tribunal determined that DFEH did not have reasonable grounds to do so and awarded compensation accordingly.

6. The Administration responded that the scenario of the decision of MSAB being different from that of the court was not unique in Hong Kong's legal system. For instance, an aggrieved patient might appeal to the Medical Council of Hong Kong and make civil claim to the court separately. Under the proposed revised appeal and compensation mechanism, any aggrieved person might choose to seek a ruling from the MSAB first, with minimal cost and less waiting time. If the aggrieved person was not satisfied with MSAB's decision, he might apply for judicial review of MSAB's decision. Alternatively, he might seek compensation from the court direct without seeking a ruling from MSAB first.

7. Ms Audrey EU opined that some judges might refuse to hear a claim for compensation from a person bound by a section 78B order if that person's appeal to MSAB had not yet finalised, such as still awaiting MSAB's decision or result of judicial review of MSAB's decision, to prevent abuse of court procedures. The Administration pointed out that the chance where the decision of MSAB and that of the court were made on the same day was extremely low, as the waiting time for the court to hear a case was generally much longer than that of MSAB.

8. Ms EU further opined that the court might also refuse to hear a claim for compensation by person bound by a section 78B order, based on the legal principle of issue estoppel, if the person had already obtained MSAB's decision on the same order. The Administration agreed to revert in writing after further research.

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9. To prevent the anomaly that might occur under the proposed revised appeal and compensation mechanism, Mr Alan LEONG suggested only allowing persons bound by section 78B orders to seek compensation from the

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court after their appeals to MSAB, including judicial review of MSAB's decisions, had been finalised; or stipulating in the Bill that the court should not take into consideration MSAB's decisions. Mr WONG Ting-kwong expressed support for stipulating in the Bill that the court should not take into consideration MSAB's decisions, whereas Mr WONG Kwok-hing and Ms Audrey EU expressed reservation on doing so. ALA4 advised that section 15(4) of the Municipal Services Appeals Board Ordinance (Cap. 220) provided that a copy of a decision or order of the MSAB certified by the Secretary of MSAB to be a true copy of the decision or order was admissible in any proceedings as evidence of the decision or order. Any person who had obtained a decision or order of MSAB might submit it to the court as evidence for his case.

10. After deliberations, members affirmed the proposal to retain the MSAB appeal mechanism in the Bill.

11. ALA4 confirmed with the Administration that the proposed appeal and compensation mechanism would not restrict or eliminate persons bound by section 78B orders to seek judicial review or other civil claims against the Authority for breach of common law duties.

12. Mr WONG Yung-kan and Mr Vincent FANG urged the Administration to expedite its food testing work to mitigate the adverse effect on persons bound by section 78B orders.

13. The Administration responded that the time required for conducting the food tests varied, depending on the type and nature of the test. It could be as short as 24 hours, as in the case of testing of melamine. This would, however, not be the case if the testing involved detection of chemical substances in food which had never been carried out and/or where no international testing standards had been or had yet to be developed, or if the testing involved detection of bacteria/viruses in food. The Administration further said that FEHD would immediately withdraw a section 78B order after result of food tests confirmed that there was no hazard in the food which would cause public health concern, regardless of whether person(s) bound by the order had made appeal to MSAB.

14. Mr WONG Yung-kan suggested that the Administration appoint a dedicated committee to hear appeals against section 78B orders so as to expedite the whole appeal process. The Administration responded that it did not see the need to do so as how fast MSAB could commence hearing and complete work would largely depend on how fast both the respondents and the appellants could produce the necessary documents, rather than the waiting time for the Board to convene as each Board was presided by a Chairman, or in his absence, the Deputy Chairman, and two persons appointed from a panel of some 20 to 30

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persons. The Administration assured members that it would not unnecessarily delay providing the requisite documents to MSAB.

15. Mr Vincent FANG proposed to move Committee Stage amendments (CSAs) to the new section 78H, to require the Government to pay compensation to persons subject to section 78B orders should results of the relevant food test prove that the food concerned was not problematic, either by himself or by the Bills Committee if this was so supported by members. The Chairman requested and Mr FANG agreed to provide the draft CSAs, in both English and Chinese versions, to the Secretariat prior to the next meeting for issuance to other members of the Bills Committee and the Administration.

16. Members completed clause-by-clause examination of the Bill.

**III. Date of next meeting**

17. Members agreed to hold the next meeting on 31 March 2009 at 8:30 am.

18. There being no other business, the meeting adjourned at 10:35 am.

Council Business Division 2  
Legislative Council Secretariat  
27 March 2009

**Proceedings of the meeting of the  
Bills Committee on  
Public Health and Municipal Services (Amendment) Bill 2008  
on Thursday, 12 March 2009, at 8:30 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000207	Chairman	Opening remarks	
000208 - 000323	Admin Chairman	Administration's response to issues raised at the meeting on 25 February 2009 [LC Paper No. CB(2)1039/08-09(01)]	
000324- 001151	Chairman ALA4 Admin	<u>Clause-by-clause examination of the Bill</u>  <u>Clause 2 - Part VA added</u>  <i>New section 78H - Compensation</i>  Possibility that the decision of the Municipal Services Appeal Board (MSAB) being different than that of the court	
001152 - 002602	Mr WONG Kwok-hing ALA4 Chairman Admin	Mr WONG Kwok-hing's concern about the anomaly that might occur under the proposed revised appeal and compensation mechanism	
002603 - 005327	Ms Audrey EU Mr WONG Ting-kwong Admin Chairman ALA4	Ms Audrey EU's concern that based on the legal principle of issue estoppel the court might also refuse to hear a claim for compensation by person bound to a section 78B order, if the person had already obtained MSAB's decision on the same order  Composition of MSAB	
005328 - 010932	Mr Vincent FANG Mr WONG Yung-kan Admin Chairman	Mr Vincent FANG and Mr WONG Yung-kan's view that the Administration should expedite its food testing work to mitigate the adverse effect on persons bound by section 78B orders	
010933 - 013604	Mr Alan LEONG Admin ALA4 Chairman Mr WONG Kwok-hing Mr Vincent FANG Mr WONG Ting-kwong Ms Audrey EU	Mr Alan LEONG's suggestions on only allowing persons bound by section 78B orders to seek compensation from the court after their appeals to MSAB, including judicial review of MSAB's decisions, had been finalised; or stipulating in the Bill that the court should not take into consideration MSAB's decision	
013605 - 013824	Mr Vincent FANG Chairman Admin	Mr Vincent FANG undertook to provide the draft Committee Stage amendments to new section 78H before the next meeting	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject</b>	<b>Action required</b>
013825 - 014738	Mr Vincent FANG Mr WONG Yung-kan Admin Chairman	<i>New section 78I - Seizure, marking or destruction of food</i>	
014739 - 014859	Admin	<i>New section 78J - Liability of employers and principals</i>	
014900 - 015003	Admin	<i>New section 78K - Codes of practice</i>  <i>New section 78L - Use of codes of practice in legal proceedings</i>	
015004 - 015311	Ms Audrey EU Admin	<i>New section 78J - Liability of employers and principals</i>	
015312 - 015947	Admin Chairman Mr WONG Ting-kwong ALA4	<u>Clause 3 - Designated Authorities</u>  Clause 4 - Names in which proceedings for offences may be brought under section 131(1) <hr/> <u>Clause 5 - Penalties</u>	
015948 - 020516	Ms Audrey EU Admin Mr Alan LEONG	The Administration was requested to revert in writing on issue estoppel	<b>Admin to follow up</b> (para 8 of the minutes)
020517 - 020716	Chairman	Date of next meeting  Confirmation of minutes of meeting on 25 February 2009	

Council Business Division 2  
Legislative Council Secretariat  
 27 March 2009