



中華人民共和國香港特別行政區政府總部食物及衛生局
Food and Health Bureau, Government Secretariat
The Government of the Hong Kong Special Administrative Region
The People's Republic of China

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Mr Stephen Lam
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Legislative Council Building
8 Jackson Road
Hong Kong
(Fax : 2877 5029)

Dear Mr Lam,

Public Health and Municipal Services (Amendment) Bill 2008

Thank you for your letter of 21 January 2009. Please find below our response to the questions raised.

(a) If a section 78B order made by the Director of Food and Environmental Hygiene (DFEH) has been varied subsequently by DFEH, and there are appeals against the original order as well as the variation, the Municipal Services Appeals Board (MSAB) may deal with the appeal against the original order alongside the subsequent appeal on the varied order. We do not think that the first appeal would lapse automatically procedurally. The MSAB may list more than one case together and seek the parties' express agreement to treat the evidence adduced and representations made in one appeal to be taken as adopted for consideration in the other appeal(s).

(b) Section 78G and section 78H would operate independently under the revised proposal. It means that an aggrieved person may appeal to the MSAB and apply to the court for compensation one after another or concurrently. The scenario that you mentioned, i.e. the decision of MSAB being different from that of the court, may occur. Such a scenario is not unique in our legal system. We note some Members' view that the MSAB appeal mechanism is simpler, faster, and less costly than the court. We therefore propose to retain the MSAB appeal mechanism in the Amendment Bill to provide for an alternative channel for any person bound by a section 78B order. Your proposal of giving the function to confirm, vary or set aside a section 78B order to the court (i.e. deleting the whole section 78G) would mean that all appeals and compensation claims have to go to the court. This is not our policy intent and neither do we think this is what the Bills Committee Members had requested. Under our revised proposal, any aggrieved person may choose to seek a ruling from the MSAB first, with minimal cost and less waiting time. The chance for compensation for the aggrieved person should, generally speaking (although not absolutely), be higher if the MSAB has varied or set aside the section 78B order. If the aggrieved person is not satisfied with the MSAB's decision, he may apply for judicial review of MSAB's decision. Alternatively, he may also seek compensation from the court direct under the revised section 78H of the Amendment Bill.

(c) We consider it appropriate for the court to determine whether DFEH has reasonable grounds to make the section 78B order at the time of making the order and the amount of compensation (if any). As such, we do not agree to delete section 78H(1)(b)(i) from the Amendment Bill (or section 78H(1A)(a) as proposed in the draft Committee Stage Amendments). Taking into account the views of Members at the Bills Committee, we have allowed any person bound by a section 78B order to apply to the court for compensation direct without the need to seek a decision from the MSAB first. Section 15(4) of the Municipal Services Appeals Board Ordinance provides that a decision or order of the MSAB and to be certified by the Secretary of the MSAB to be a true copy of the decision or order is admissible in any proceedings as evidence of the decision or order. Any person who has obtained a decision or order of the MSAB may submit it to the court as evidence for his case.

Please let us know if you have further questions.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a vertical line that curves slightly to the right at the bottom.

(Mrs Angelina Cheung)
for Secretary for Food and Health