

立法會
Legislative Council

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Administration)

Panel on Food Safety and Environmental Hygiene

**Minutes of special meeting
held on Thursday, 23 October 2008, at 11:30 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon Fred LI Wah-ming, JP (Chairman)
Hon WONG Yung-kan, SBS, JP (Deputy Chairman)
Hon Andrew CHENG Kar-foo
Hon Tommy CHEUNG Yu-yan, SBS, 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 KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Dr Hon LEUNG Ka-lau
Hon WONG Yuk-man
- Members attending** : Hon LEE Cheuk-yan
Hon CHEUNG Man-kwong
- Member absent** : Hon TAM Yiu-chung, GBS, JP
- Public Officers attending** : Food and Health Bureau

Dr York CHOW Yat-ngok, SBS, JP
Secretary for Food and Health

Prof Gabriel M LEUNG, JP
Under Secretary for Food and Health

Ms Olivia NIP Sai-lan, JP
Deputy Secretary for Food and Health (Food)

Food and Environmental Hygiene Department

Mr CHEUK Wing-hing, JP
Director of Food and Environmental Hygiene

Dr Constance CHAN Hon-ye, JP
Controller, Centre for Food Safety

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

Ms Sandy HAU
Legislative Assistant (2) 5

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I. Briefing by the Secretary for Food and Health on Public Health and Municipal Services (Amendment) Bill 2008

Secretary for Food and Health (SFH) briefed members on the Public Health and Municipal Services (Amendment) Bill 2008 (the Bill), details of which were set out in the Legislative Council (LegCo) Brief on the Bill issued by the Food and Health Bureau (FHB) on 21 October 2008 (File ref : FH CR 1/3231/07).

Prohibition of import and supply of problem food and recall of problem food

2. Mr Tommy CHEUNG said that the Liberal Party supported the early enactment of the Bill to empower the Director of Food and Environmental Hygiene (DFEH) under the Public Health and Municipal Services Ordinance (Cap. 132) to make orders administratively to prohibit the import and supply of any food and direct that any food supplied be recalled in the manner specified in the order, if DFEH had reasonable grounds to believe, at the time of making the order, that the making of the order was necessary to prevent or reduce the possibility of a danger to public health or to mitigate any adverse consequence of a danger to public health. Although safeguarding public health was of paramount importance, the concerns of the trade over the implementation of the

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new measures proposed in the Bill needed to be addressed to ensure the smooth implementation of the Bill. In the light of this, Mr CHEUNG requested the Administration to provide information in writing on the concerns expressed by the trade on the Bill and how these concerns would be addressed, if not, why not.

3. SFH responded that the Administration had taken into account the concerns of the trade in the formulation of the Bill where warranted and practicable. In exercising his power to make orders administratively to prohibit the import and supply of problem food, and direct that food supplied be recalled, DFEH would take into consideration the factors outlined in paragraph 7 of LegCo Brief on the Bill. SFH further said that in response to the concerns expressed by some members of the trade, any person aggrieved by the orders made by DFEH under new section 78B (section 78B orders) might appeal to the Municipal Services Appeals Board (MSAB) within 14 days from becoming bound by it. If MSAB set aside or varied DFEH's orders and the court agreed that DFEH did not have reasonable grounds to make the order at the time of making the order, the person who had suffered loss as a result of the order or as a result of the exercise of a power by a public officer in relation to the order, i.e. seizing or destroying the food in question, might apply to the court for compensation not exceeding the market value of the food at the time of making the order.

4. Mr Andrew CHENG said that in view of the wide range of factors that DFEH would take into consideration in making the prohibition of import and supply orders and recall order of problem food, it was necessary for the Administration to draw up a code of practice (CoP) in this regard. Mr Alan LEONG echoed similar view. SFH agreed to provide the CoP for consideration by the bills committee that would be set up to scrutinise the Bill.

5. Ms Cyd HO expressed concern about the absence of oversight by FHB over the making of section 78B orders by DFEH in the Bill.

6. SFH responded that DFEH would closely communicate with FHB in the making of section 78B orders. Moreover, DFEH would be required under the Bill to state clearly the particulars of the food, the reason for making the order, the prohibition or action required of the traders, and the period within which the relevant act was prohibited or required.

7. Dr LEUNG Ka-lau said that the Administration should come up with the basis to be adopted by DFEH in determining the prohibition or recall period, when introducing the Bill into the Council.

8. Ms Cyd HO pointed out that as some live and fresh food, such as live fish, had a very short saleable period, separate prohibition and recall orders and compensation for this type of food should be devised.

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9. SFH responded that the existing Bill was able to cater for food which had short saleable period. SFH further said that overseas legislation also did not have separate legal provisions targeting at problem food which had short saleable period. Ms Cyd HO disagreed, as many overseas places did not consume such a large volume and vast varieties of fresh food as Hong Kong.

10. Ms Cyd HO urged the Administration to enhance the capability of the Government Laboratory (GL) to speed up the time required for conducting the food test, so that food being seized for testing would not turn stale or perish after testing.

11. SFH responded that the operation of GL was highly efficient and its expertise and facilities were well recognised internationally. SFH further said that the time required for conducting the food test could be within a day if the test was a routine and well-established one. 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 yet to be developed, or if the testing involved detection of bacteria/viruses in food.

12. Mr WONG Yung-kan said that the Democratic Alliance for the Betterment and Progress of Hong Kong was supportive of the Bill. Mr WONG then asked the following questions -

- (a) what actions would be taken by the Administration to ensure that fresh food, such as live fish, would not turn bad and become unmarketable after being seized for examination to test their fitness for human consumption;
- (b) what actions would be taken by the Administration to ensure that importers/suppliers would not divert food, ordered by DFEH to destroy or dispose of, to places outside Hong Kong; and
- (c) whether the Centre for Food Safety (CFS) of the Food and Environmental Hygiene Department and the Agriculture, Fisheries and Conservation Department (AFCD) had adequate manpower to carry out the work arising from the implementation of the Bill.

13. DFEH responded that he was empowered under section 59 of Cap. 132 to seize food suspected to be unfit for human consumption to undergo examination. Every effort would be made to ensure that the food seized for examination would not perish or become not saleable as a result. Generally speaking, no great difficulties had been encountered in keeping live and fresh food, such as live poultry and meat, saleable after examination. For instance,

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in the case of a batch of raw oysters being seized for examination, discussion would be made with the importer concerned to keep these oysters in a cold storage for the duration of the examination. DFEH further said that under section 59(5) of Cap. 132, if any person considered himself/herself aggrieved by the seizure of food for examination, he/she might, within 72 hours after the doing of such act, complain to the court and the court might confirm or disallow the act, or order the Authority to pay by way of compensation such sum of money not exceeding the market value of such food at the time of doing such act.

14. Regarding Mr WONG's second question, SFH said that it was the established practice of the Administration to notify overseas places concerned about the food which had been declared to be prohibited for supply in Hong Kong.

15. As to Mr WONG's last question, SFH said that CFS and AFCD had adequate staff and expertise to carry out the duties arising from the implementation of the Bill. Should there be a need to recruit additional staff, resources were available within FHB to do so.

16. The Chairman opined that compensation should also be provided to persons whose food products had become less fresh, albeit still saleable but at a reduced market value, as a result of the seizure by the Administration for testing of fitness for human consumption.

17. DFEH responded that there was a need to strike a right balance between safeguarding public health at a reasonable price and safeguarding the interests of food importers/suppliers at all costs, as to provide compensation for all food products adversely affected by the order could significantly increase the financial burden on Government.

18. The Chairman asked about the actions which would be taken by the Administration in handling a food product already entered Hong Kong but was tested to be problematic overseas.

19. SFH responded that CFS would first find out whether certain food products found to be problematic by an overseas jurisdiction had entered Hong Kong; if so, CFS would contact the importers or distributors concerned to trace the whereabouts of the food products. At the same time, CFS would request the overseas jurisdiction concerned to provide more information on the problem food, such as its source and batch number(s). If the food concerned was found to be widely available at retail outlets in Hong Kong, a food alert might be issued by DFEH in the first instance before taking samples for testing. If the food concerned did not come from the same production line and did not have the same batch number(s) as the food found to be problematic overseas and the results of the food tests were satisfactory, no further action might be

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taken. However, if no relevant information on the food found to be problematic outside Hong Kong could be obtained, the time required for conducting the food test might take some time and public concern over the food concerned was great, the suppliers concerned might be asked to take the food concerned off the shelves for the time being. DFEH supplemented that upon the enactment of the Bill, a prohibition order might apply to those food products available in Hong Kong but were tested to be problematic by overseas authorities.

20. Mr Vincent FANG said that he did not object to the approach of taking the food concerned off the shelves before conducting the food test. Mr FANG, however, pointed out that the Administration should not issue a food alert based on mere information announced by overseas authorities without conducting any food test, as this would give rise to numerous lawsuits if the food alert turned out to be unfounded and great financial losses had been suffered by the food traders concerned. SFH assured members that CFS would follow the steps as already outlined in paragraph 19 above.

21. Whilst welcoming the introduction of the Bill into LegCo on 5 November 2008, Mr WONG Kwok-hing criticised the long time taken by the Administration to do so to protect public health. Mr WONG then asked about the measures which would be taken by the Administration to handle food incidents prior to the enactment of Bill.

22. SFH responded that the food trade was generally cooperative in withdrawing problem food which did not comply with legal requirements from the market. That said, the implementation of the Bill was aimed at providing legal backing to DFEH to better enable him to swiftly prohibit the import and supply of problem food and recall of problem food.

Appeals to Municipal Services Appeals Board

23. Mr Tommy CHEUNG pointed out that although persons bound by DFEH's orders made under new section 78B might appeal to MSAB, some members of the trade did not have resources to hire lawyer to defend their cases.

24. DFEH responded that it was not uncommon for hawkers and small food businesses to make appeal to MSAB and legal cost, if any was to be incurred, had not been a problem.

25. Mr Andrew CHENG queried whether MSAB had adequate powers, expertise and manpower to take on appeals from persons bound by DFEH's orders made under new section 78B.

26. SFH responded that DFEH would exercise his additional powers provided under the Bill in a prudent manner. Hence, it was envisaged that the

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number of appeals made by persons bound by section 78B orders should not be high.

27. Mr KAM Nai-wai said that although the Bill provided a mechanism for persons to appeal against the orders made by DFEH under new section 78B and that DFEH would take into consideration the factors outlined in paragraph 7 of LegCo Brief on the Bill in making the orders, there remained a need to ensure the prudent exercising of such powers by DFEH by, say, setting up a standing committee to endorse the making of orders by DFEH before implementation.

28. SFH responded that he did not see a need for Mr KAM's suggestion as this would invariably delay any action that needed to be taken to protect public health. SFH pointed out that before making the orders under new section 78B, DFEH would first obtain all necessary data, including expert advice from CFS and where necessary, from outside experts, such as those serving on the Expert Committee on Food Safety.

Liability of employees

29. Mr KAM Nai-wai asked whether employees who, under the instructions given by their employers, sold food prohibited by DFEH would not be charged for contravening the prohibition order.

30. SFH replied that no charge would be laid in the circumstances. New Section 78D(3) provided that "It is a defence for an offence under subsection (1) to show that : (a) any act done or omission made by the employee in contravention of a term of a section 78B order was done or made in the course of the employee's employment and under instructions given by the employer in the course of that employment; and (b) the employee did not exercise managerial functions at the relevant time."

31. Mr WONG Kwok-hing opined that employees holding managerial position should also not be charged for contravening a section 78B order if they acted on the instructions of their employers to sell/supply food subject to a section 78B order.

32. SFH responded that all prosecutions for contravening a section 78B would be based on evidence.

Penalty level

33. Mr Andrew CHENG considered that setting the fine at level 6, i.e. \$100,000, and imprisonment of 12 months for contravening an order made under new section 78B lacked deterrent effect for large food importers and suppliers.

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34. SFH responded that the proposed penalty level for contravening a section 78B order was on par with that for other offences in Cap. 132. Nevertheless, the Administration was open-minded on raising the penalty level for contravening a section 78B order. This, however, should best be discussed during the scrutiny of the full Food Safety Bill which was planned for introduction into LegCo in the second quarter of 2009. Deputy Secretary for Food and Health (Food) supplemented that the proposed penalty level for the Bill was also on par with that for contravening the recall orders in other legislation, such as the Public Health (Animals and Birds) Ordinance (Cap. 139) and the Toys and Children's Products Safety Ordinance (Cap. 424).

Compensation

35. Mr Alan LEONG said that compensation under the Bill should also include anticipated profits and any costs incurred for recalling food from the market, albeit a ceiling could be set on the amount that could be recovered from the Government. Mr Vincent FANG echoed similar views.

36. SFH responded that the compensation provision under the Bill was similar to other compensation provisions under Cap. 132. Nevertheless, the Administration stood ready to hear more views on the compensation provision under the Bill before finalisation.

Conclusion

37. In closing, the Chairman said that members were generally supportive of the Bill which would be introduced into the Council on 5 November 2008. It was envisaged that a bills committee would be set up by the House Committee on 7 November 2008 and the scrutiny of the Bill could commence in mid-November 2008.

II. Any other business

38. As the Administration had briefed members on the proposed food recall bill at this meeting, members agreed not to discuss the issue of food safety at the next regular meeting scheduled for 11 November 2008.

39. There being no other business, the meeting ended at 12:50 pm.