

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

Bills Committee on Food Safety Bill

Minutes of meeting
held on Tuesday, 11 January 2011, at 8:30 am
in Conference Room B of the Legislative Council Building

Members present : Hon Fred LI Wah-ming, SBS, JP (Chairman)
Hon WONG Yung-kan, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHAN Kin-por, JP
Hon CHEUNG Kwok-che
Hon Alan LEONG Kah-kit, SC

Members absent : Hon Vincent FANG Kang, SBS, JP
Hon Cyd HO Sau-lan
Hon WONG Yuk-man

Public Officers attending : Item I
Mr Philip CHAN Kwan-ye, JP
Deputy Secretary for Food and Health (Food) 2

Mr Kevin YEUNG Yun-hung
Principal Assistant Secretary for Food and Health (Food) 1

Dr Constance CHAN, JP
Controller, Centre for Food Safety
Food and Environmental Hygiene Department

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

Mr Paul John O'BRIEN
Senior Assistant Law Draftsman
Department of Justice

Ms Angie LI Sau-lee
Senior Government Counsel
Department of Justice

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

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Ms Maisie LAM
Senior Council Secretary (2) 6

Ms Sandy HAU
Legislative Assistant (2) 5

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I. Meeting with the Administration

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

Clause-by-clause examination of the Bill

Clause 30 - Food safety orders

2. The Administration said that Part 4 of the Bill was substantially a transplant of Part VA of the Public Health and Municipal Services Ordinance (Cap. 132) which was enacted by the Public Health and Municipal Services (Amendment) Ordinance 2009 to provide for the making and enforcement of food safety orders. A number of the provisions in Part VA of Cap. 132 had also been transferred to Part 5 of the Bill as they would apply more generally.

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3. The Administration drew members' attention to the definition of "supply" under the Bill, which was different from the definition of "supply" in Cap. 132 in that the former did not include "to transmit, convey or deliver the food in pursuance of a sale or an exchange or disposal for consideration". This was because the policy intent was not to regulate food transport operators under the Bill. But the difference in the definition of "supply" would not have actual impact on the power of the Director of Food and Environmental Hygiene ("DFEH") in making the food safety order, as clause 30(1)(e) of the Bill provided that DFEH might make a food safety order to prohibit the carrying on of an activity in relation to any food, or permit the carrying on of any such activity in accordance with conditions specified in the order, for the period specified in the order. The Administration also pointed out that in Part VA of Cap. 132, the definition of "food" included live poultry, live reptiles and live fish while, the definition of "food" in the Bill included live aquatic products but did not include live poultry and live reptiles. This was because the Director of Agriculture, Fisheries and Conservation already had the power of suspension of sale and recall of live food animals (including poultry and reptiles) in relation to chemical or veterinary drug residues under the relevant legislation. Hence there was no practical need for DFEH to have the power to recall live poultry and live reptiles.

4. Ms Audrey EU asked whether, say, a rug trader, who gave away food as a prize for commercial purposes would fall within the definition of "supply" under the Bill.

5. The Administration responded that as the principal activity of the rug trader was not the supply of food in Hong Kong by wholesale, he/she would not be required to register under clause 5 of the Bill. However, DFEH could issue a food safety order under clause 30(1)(b) of the Bill to prohibit the rug trader to give away the said food intended for human consumption, regardless of the quantity, in the event of a food incident.

6. Ms EU further asked whether the disposal of food for consideration, referred to in the definition of "supply" under clause 2(1)(c) of the Bill, included transporting the food from one place to another for consideration.

7. The Administration responded that the Bill would not apply to food transporters if they transported food under a contract of carriage but at no time had any proprietary interest in the food.

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8. Mr WONG Ting-kwong was of the view that the Bill should require a food trader who supplied recalled food to consumers to refund the price of the recalled food to the consumers, so as to encourage consumers to return the recalled food.

9. The Administration responded that as explained during the scrutiny of the Public Health and Municipal Services (Amendment) Bill 2008, the primary aim of food recall was to ensure the safety of food and to protect public health - its principal objective did not concern commercial considerations, such as transactions between sellers and buyers at any or all levels of the food chain. The provision of refund was a commercial issue between the seller and the buyer (in this case, the consumer). The Administration understood that reputable traders generally provided refund to consumers for recalled food.

Clause 39 - Authorization of public officers

10. Mr Tommy CHEUNG noted that clause 39 empowered DFEH to authorise any public officer to be an authorised officer for the purposes of the Bill. Mr CHEUNG expressed concern about DFEH delegating important powers under the Bill, such as making of a food safety order, to other public officer of a lower rank.

11. The Administration responded that an authorised officer would not have the power to make food safety orders as it was specified under clause 30(1) that DFEH, instead of an authorised officer, could make a food safety order. An authorised officer was only authorised to carry out functions and/or exercise powers in relation to the specified provisions, such as clause 37, or in relation to the Bill generally.

Clause 41 - Confidentiality

Clause 42 - Protection of public officers

12. Assistant Legal Adviser 8 ("ALA8") sought clarification from the Administration on whether clause 42 would protect a public officer from liability for failing to observe in good faith his duty of confidentiality under clause 41 while exercising powers or performing functions under the Bill.

13. The Administration replied in the negative, as violation of clause 41 was a criminal offence whereas protection conferred by clause 42 was a civil one. However, clause 41(5) provided a defence for a public officer

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charged with the offence for disclosing or giving information to another person in the circumstances not referred to in clause 41(2).

Clause 43 - Codes of Practice

14. The Administration advised that it had consulted the views of the trade on the draft code of practice on keeping records relating to food. The trade was generally supportive of the draft code of practice. Similar to the code of practice on section 78B order under Cap. 132, the code of practice on keeping records relating to food would be published by general notice in the Gazette as a code of practice did not have legal effect.

Clause 46 - General power of entry

Clause 47 - Entry under warrant

15. ALA8 noted that clauses 46 and 47 only covered premises and vessel used for business purposes. ALA8 asked about the reason for not applying these clauses to vehicles used for business purposes, such as mobile food trailers.

16. The Administration responded that clauses 46 and 47 were considered adequate in light of their enforcement experience.

Clause 48 - Assistance for authorized officers on entry

17. Mr WONG Yung-kan asked whether a person would commit an offence for refusing to accompany an authorised officer on entering premises or vessel under clause 46 or 47.

18. The Administration replied in the negative. However, under clause 54, a person would commit an offence if he/she wilfully obstructed, resisted or used abusive language to a person who was performing functions under the Bill with a maximum penalty of a fine at level 4 (\$25,000) and imprisonment for six months.

Clause 51 - Offences committed by bodies corporate

19. Mr Tommy CHEUNG expressed concern that independent non-executive director of a company, who did not participate in the day-to-day operation of the company, might be charged for connivance under clause 51.

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20. The Administration responded that the meaning of connivance in the context of clause 51 involved active participation in the operation of the company. Hence, if it was not the normal duty of an independent non-executive director to take an active part in the operation and/or decision-making of the company, he/she should not be caught for conniving under clause 51.

Clause 54 - Obstruction of persons performing official functions etc.

21. Members noted that clause 54 created an offence for a person to wilfully obstruct, resist or use abusive language to a person who was performing functions under the Bill, with a maximum penalty of a fine at level 4 (\$25,000) and imprisonment for six months. Mr WONG Yung-kan asked what recourse was available to a member of the public against a public officer using abusive language to him/her in the course of performing functions under the Bill. The Administration responded that members of the public could lodge a complaint with the departments concerned as there was established mechanism within the Administration to deal with such matters. The Administration further said that clause 54 was modelled on section 139 of Cap. 132.

22. Mr Tommy CHEUNG said that the Chinese rendition of "abusive language", i.e. "粗言穢語", referred to in clause 54 should be amended to accurately reflect the meaning of its English version as a person may have used "粗言穢語" but it might not be directed to the public officer and thus not abusive. Members also noted that language may be abusive even if no foul language is involved. The Chairman and Dr Joseph LEE expressed similar view. The Administration undertook to consider and revert in writing.

II. Date of next meeting

23. Members agreed to hold the next meeting on 21 January 2011 at 8:30 am.

24. There being no other business, the meeting ended at 10:30 am.

**Proceedings of the meeting of the
Bills Committee on Food Safety Bill
on Tuesday, 11 January 2011, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000733	Chairman	Opening remarks	
000734 - 002849	Admin Ms Audrey EU Mr WONG Ting-kwong	<p data-bbox="643 465 826 495"><u>Part 4 of the Bill</u></p> <p data-bbox="643 524 1265 763">Part 4 of the Bill substantially re-enacted Part VA of the Public Health and Municipal Services Ordinance (Cap. 132) which was enacted by the Public Health and Municipal Services (Amendment) Ordinance 2009 to provide for the making and enforcement of food safety orders. A number of the provisions in Part VA of Cap. 132 had also been transferred to Part 5 of the Bill as they would apply more generally.</p> <p data-bbox="643 792 1265 853"><i>Clause 30 - Food safety orders</i> (re-enacted section 78B of Cap. 132)</p> <p data-bbox="643 882 1265 943"><i>Clause 31 - Manner of making food safety orders, service and publication</i> (re-enacted section 78C of Cap. 132)</p> <p data-bbox="643 972 1265 1032"><i>Clause 32 - Contravention of food safety orders</i> (re-enacted section 78D of Cap. 132)</p> <p data-bbox="643 1061 1265 1155"><i>Clause 33 - Actions taken in relation to food safety orders and provision of samples</i> (re-enacted section 78E of Cap. 132)</p> <p data-bbox="643 1184 1265 1245"><i>Clause 34 - Power to obtain information or copies of documents</i> (re-enacted section 78F of Cap. 132)</p> <p data-bbox="643 1274 1265 1335"><i>Clause 35 - Appeals to Municipal Services Appeals Board</i> (re-enacted section 78G of Cap. 132)</p> <p data-bbox="643 1364 1265 1424"><i>Clause 36 - Compensation</i> (re-enacted section 78H of Cap. 132)</p> <p data-bbox="643 1453 1265 1514"><i>Clause 37 - Seizure, marking or destruction of food</i> (re-enacted section 78I (except 78I(3)) of Cap. 132)</p> <p data-bbox="643 1543 1265 1603"><i>Clause 38 - Offence to tamper with mark, seal or other designation</i> (re-enacted section 78I(3) of Cap. 132)</p> <p data-bbox="643 1632 1265 1693"><i>Clause 52 - Liability of employers and principals</i> (re-enacted section 78J of Cap. 132)</p> <p data-bbox="643 1722 1265 1783"><i>Clause 43 - Codes of practice</i> (re-enacted section 78K of Cap. 132)</p> <p data-bbox="643 1812 1265 1872"><i>Clause 44 - Use of codes of practice in legal proceedings</i> (re-enacted section 78L of Cap. 132)</p> <p data-bbox="643 1901 1265 2063"><i>Clauses 70, 71 and 72</i> amended the Third, Sixth and Ninth Schedules to Cap. 132 to remove references to sections of Cap. 132 that were repealed as a consequence of the re-enactment of Part VA of Cap. 132 in Part 4 of the Bill.</p>	

Time marker	Speaker	Subject	Action required
002850 - 002937	Chairman Admin	The Administration's reply that no food safety order had been issued by the Director of Food and Environmental Hygiene since the Public Health and Municipal Services (Amendment) Ordinance 2009 came into force.	
002938 - 004707	Admin Mr Tommy CHEUNG Chairman ALA8	<u>Part 5 of the Bill</u> <i>Clause 39 - Authorization of public officers</i>	
004708 - 004756	Admin	<i>Clause 40 - Delegation by Director</i>	
004757 - 010051	Admin Mr WONG Yung-kan Chairman ALA8	<i>Clause 41 - Confidentiality</i> <i>Clause 42 - Protection of public officers</i>	
010052 - 010426	Admin Chairman ALA8	<i>Clause 43 - Codes of Practice</i> <i>Clause 44 - Use of codes of practice in legal proceedings</i>	
010427 - 011038	Admin	<i>Clause 45 - Power to obtain information</i> <i>Clause 46 - General power of entry</i>	
011039 - 011413	Admin ALA8	<i>Clause 47 - Entry under warrant</i>	
011414 - 012000	Admin Mr WONG Yung-kan ALA8 Chairman	<i>Clause 48 - Assistance for authorized officers on entry</i>	
012001 - 012530	Admin	<i>Clause 49 - Power of arrest in certain cases</i> <i>Clause 50 - Disposal of certain property</i>	
012531 - 013324	Admin Mr Tommy CHEUNG	<i>Clause 51 - Offences committed by bodies corporate</i>	
013325 - 013455	Admin Chairman	<i>Clause 52 - Liability of employers and principals</i> <i>Clause 53 - Defence for employees</i>	
013456 - 014918	Admin Mr WONG Yung-kan Chairman Mr Tommy CHEUNG Dr Joseph LEE	<i>Clause 54 - Obstruction of persons performing official functions etc.</i> The Administration undertook to consider to amend the Chinese rendition of "abusive language" to better match with the English text.	Admin (para. 22 of the minutes refers)
014919 - 014951	Chairman Admin	<i>Clause 55 - Proceedings against several persons</i>	
014952 - 015052	Chairman Mr Tommy CHEUNG	Date of next meeting	
015053 - 015551	Admin Chairman	<i>Clause 56 - Time limit for prosecutions</i>	