

立法會
Legislative Council

LC Paper No. CB(2) 796/01-02
(These minutes have been seen by the
Administration)

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**Bills Committee on
Public Health and Municipal Services
(Amendment) Bill 2001**

**Minutes of meeting
held on Friday, 15 June 2001 at 4:20 pm
in the Chamber of the Legislative Council Building**

Members Present : Hon Fred LI Wah-ming, JP (Chairman)
Hon Cyd HO Sau-lan
Hon WONG Yung-kan
Hon Tommy CHEUNG Yu-yan, JP
Dr Hon LO Wing-lok
Hon WONG Sing-chi
Hon Audrey EU Yuet-mee, SC, JP

Members Absent : Hon Andrew CHENG Kar-foo
Hon Michael MAK Kwok-fung

Public Officers Attending : Mr David LAU
Principal Assistant Secretary for the Environment and Food (A) 2

Mr W H CHEUK
Deputy Director (Environmental Hygiene)
Food and Environmental Hygiene Department

Mr Lawrence PENG
Senior Government Counsel
Department of Justice

Mr W S YIP
Senior Assistant Law Officer
Department of Justice

Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2)5

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Miss Irene MAN
Senior Assistant Secretary (2)9

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I. Confirmation of minutes of meeting
(LC Paper No. CB(2) 1814/00-01)

The minutes of the meeting on 27 March 2001 were confirmed, with paragraph 35 amended as requested by Ms Audrey EU.

II. The Administration's response to issues raised at the meeting on 1 June 2001
(LC Paper Nos. CB(2) 1819/00-01(01), (02) & (03))

2. Principal Assistant Secretary for the Environment and Food (A)2 (PAS(EF)(A)2) briefed members on the Administration's paper regarding members' proposal of a temporary closure order subject to confirmation by the Magistrate's Court. He said that there might be two possible ways to put the proposal into effect -

- (a) To provide that Director of Food Environmental Hygiene (DFEH) should bring the case before a magistrate for a preliminary hearing within three or seven days from the making of a closure order, so that the aggrieved could have a chance to state his case without having to initiate the proceedings;
- (b) To provide that an immediate closure order made under section 128C be a temporary order valid for three or seven days, subject to

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the confirmation by a magistrate. The order would lapse if it was not confirmed by the 3rd or 7th day.

3. For the first proposal, PAS(EF)(A)2 advised that it would require stipulation in the Bill a time limit for the court to hear a case, and this might unduly interfere with the work of the Judiciary in managing the cases that came before it. As for the second proposal, the Administration might run into the risk of allowing unhygienic food premises to re-open after the 3rd or 7th day if the court could not hear the case in time. This would create a big loophole as unscrupulous operators might resume business without taking any steps to eliminate the immediate health hazard posed to the public. This went against the intention of the proposed legislation which was to ensure that the public was sufficiently safeguarded from any immediate health hazard.

4. PAS(EF)(A)2 emphasized that DFEH would exercise his power of making a closure order very carefully after due consideration of scientific evidence and other factors. The Administration would continue to explore other means to accommodate members' suggestions in a manner which was consistent with the objectives of the Bill.

5. Mr Tommy CHEUNG clarified that members did not request DFEH to apply to the court for a closure order. He said that members had requested a temporary closure order or an order nisi so that the aggrieved could state his case in court within a short period of time, and for the Authority to provide reasons for making the closure order. If the court accepted the reasons put forward by the Authority, the order nisi would become absolute; otherwise, the court could rescind the order. On the other hand, if the operator concerned did not turn up at the hearing, the order would stay in force.

6. Ms Audrey EU supplemented that her suggestion was similar to that proposed in paragraph 2(b). The important point was to allow the aggrieved an early opportunity to state his case, and the time limit for conducting the preliminary hearing could be further discussed. She said that she had no strong views on providing different mechanisms to deal with licensed and unlicensed food establishments. For example, operators of unlicensed premises might have to initiate the proceedings themselves while the licensed ones could be subject to the proposed fast-track mechanism. She said that for a temporary order, the Authority might be required to seek confirmation from a magistrate within a specified period. Should the operator request a further hearing, it would be for the court to decide. Whether or not a temporary order should be confirmed by the court would depend on the reasons put forward by both parties.

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7. Mr WONG Yung-kan said that if the operator could eliminate the health hazard within a short time, it would not be necessary to state his case in the preliminary hearing. He noted that the aggrieved could still seek remedies or lodge an appeal under other provisions in the legislation.

8. PAS(EF)(A)2 sought clarification as to whether members wanted to provide a simple appeal mechanism for the aggrieved rather than an early hearing to confirm a temporary order. Mr Tommy CHEUNG said that what he had in mind was that the operator should have the earliest opportunity to state his case in court without having to initiate the proceedings. He was concerned that if the operator needed to apply for a hearing, it would take much longer time and a lot of expenses to engage lawyers and prepare for the documents. The proposed mechanism was to enable the operator to understand the causes for the making of a closure order, and to state his case or the rectification works already done by him. It would be for the court to decide whether a closure order should stay.

9. PAS(EF)(A)2 pointed out that if a temporary order was allowed to lapse after seven days, then the operator would not need to do anything to eliminate the hazard during the seven days, and it would pose a threat to public health. If the Authority had to issue another temporary closure order every seven days, it would involve a substantial amount of resources.

10. The Chairman commented that seven days should be sufficient for the operator to eliminate the hazard. Deputy Director (Environmental Hygiene) of Food and Environmental Hygiene Department (DD(EH)) advised that on making a closure order, the operator would be informed of the nature and source of the hazard (if located), and the operator would be allowed, on application, to re-enter the premises to carry out rectification works.

11. Dr LO Wing-lok said that members wanted a speedy appeal mechanism which could be activated automatically without costs on the part of the aggrieved. It did not really matter whether the closure order was a temporary one or not. However, he did not consider seven days sufficient for the operator to complete the rectification work and re-open the premises because it would need time to perform laboratory tests to ensure that the premises were cleared of the hazard. He did not consider it appropriate to set a period of seven days for the duration of a closure order. He suggested that the Administration should put in place an administrative mechanism to handle appeals on closure orders rather than going through court procedures. He suggested providing an independent mechanism which was easy and speedy to activate at no cost to the aggrieved parties.

12. PAS(EF)2 advised that the Administration would be prepared to consider the proposal of Dr LO Wing-lok subject to members' views.

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13. The Chairman invited members' views on Dr LO's suggestion. Ms Audrey EU said that she would prefer the court to deal with appeals on closure orders instead of establishing a separate administrative mechanism for the purpose. She was of the view that the Bill should specify the period within which the Authority had to seek the court's confirmation of a temporary closure order. She was generally in favour of the proposal in paragraph 2(b).

14. PAS(EF)2 asked whether Ms EU would accept a mechanism which could easily be activated by the appellant by means such as submitting an application form. Ms EU said that the question remained to be how the Administration could ensure an early hearing of the case upon receipt of the application, since the Bill did not specify a time limit for that purpose.

15. Ms Audrey EU further commented that there would be resource implications for providing secretariat support to an appeal board which would only need to be activated on ad-hoc basis. She said that it might not be cost-effective to provide for such an establishment, since it was also necessary to formulate rules to govern its operation. Moreover, if the appeal board comprised members who served on a part-time basis, there might also be problems in fixing an early hearing if the members were not available.

16. Mr WONG Yung-kan suggested that a small board comprising three or more members was sufficient to deal with such appeals as very few closure orders would need to be issued. He said that the appeal board could be required to conduct hearings within a specified period.

17. Dr LO Wing-lok agreed that not many closure orders would have to be issued and that a permanent appeal board might not be necessary. He suggested that the board could be formed as and when an appeal was received.

18. Mr Tommy CHEUNG preferred taking the appeals to the court if the court could arrange urgent hearings of the case in view of the urgency. Ms Cyd HO agreed that there should be a speedy mechanism to ensure that the appellant's case would be heard at the earliest possible time. She said that she was in favour of the court dealing with such appeals. Mr WONG Shing-chi shared similar views.

19. PAS(EF)(A)2 stressed that the court procedures would not be a speedy mechanism because of operational constraints in the present system. He said that the Administration could consider other options to provide an appeal mechanism that was fast, cost-effective and easy to activate.

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20. The Chairman requested the Administration to consider providing an independent, fast and cheap appeal mechanism which was easy for the aggrieved to initiate.
 21. The Chairman proposed that representatives of the Judiciary should be invited to the next meeting. Members agreed.
 22. Members agreed to hold the next meeting on Friday, 6 July 2001 at 8:30a.m.

III. Any other business

23. The meeting ended at 5:16 p.m.

Council Business Division 2
Legislative Council Secretariat
3 January 2002