

立法會
Legislative Council

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(These minutes have been seen by
the Administration)

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

**Minutes of meeting
held on Monday, 17 September 2001 at 2:30 pm
in Conference Room A 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
Hon Michael MAK Kwok-fung
Dr Hon LO Wing-lok
Hon Audrey EU Yuet-mee, SC, JP

Members Absent : Hon Andrew CHENG Kar-foo
Hon WONG Sing-chi

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

Ms Winnie SO
Assistant Director (Headquarters)
Food and Environmental Hygiene Department

Mr YIP Wing-sang
Senior Assistant Law Officer (Civil)
Department of Justice

Mr Lawrence PENG
Senior Government Counsel
Department of Justice

Clerk in Attendance : Miss Betty MA
Senior Assistant Secretary (2)1

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Miss Irene MAN
Senior Assistant Secretary (2)9

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I. The Administration's response to issues raised at the meeting on 13 July 2001

(LC Paper Nos. CB(2) 2271/00-01(01) and CB(2) 2027/00-01(02))

At the invitation of the Chairman, Principal Assistant Secretary for the Environment and Food (A) 2 (PAS(EF)(A)2) briefed members on the latest recommendations regarding the proposed Appeal Board:

- (a) As the Judiciary had advised that the number of magistrates or ex-magistrates with 10 years' experience was very few, the qualification of the Chairman of the Appeal Board was relaxed to ensure availability of a sufficient pool of candidates for appointment. It was suggested that a person who was qualified for appointment as a District Judge under section 5 of the District Court Ordinance could be appointed as the Chairman of the Appeal Board;
- (b) A sitting of the Appeal Board would consist of a Chairman or a Deputy Chairman plus two other members selected by rotation from the panel of members to ensure a hearing to be arranged within a short period of time. A three-person composition could also avoid having an equally divided opinion which would pose problem in making the final decision.
- (c) If a person was dissatisfied with the decision of the Appeal Board, he could appeal to the Court of First Instance within 14 days after being served a copy of the decision and the reasons for the decision.

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2. Regarding the period required to obtain a repossession order by the owner concerned, PAS(EF)(A)2 advised that it took about four to five months to issue a repossession order in an undisputed case and a longer period for a disputed one. As for the recovery of cost as a civil debt, similar provisions were provided in other legislation such as the Buildings Ordinance. However, he said that the Administration did not hold a strong view on the subject and would consider any further suggestions made by members.

Appeal Board

3. Noting that the Administration proposed that the Appeal Board should hear cases of appeal within 10 working days of receiving such appeals, Mr Tommy CHEUNG considered that 10 working days was too long. He said that the Director of Food and Environmental Hygiene (DFEH) should have possessed all the evidence and documents before issuing the closure order, and it should not take him much additional time in preparing and submitting the relevant information to the Appeal Board.

4. PAS(EF)(A)2 explained that 10 working days would already be a tight schedule for conducting a hearing as the appellant might also need time to prepare for his appeal. However, Mr Tommy CHEUNG pointed out that under the proposed arrangement, even if the aggrieved did not need so much preparation time, he could not have his case heard earlier. Mr CHEUNG urged that the Administration should shorten the minimum time for preparation for a hearing to two or three days. The aggrieved might apply for an extension if he needed more time for preparation.

5. Mr WONG Yung-kan shared Mr Tommy CHEUNG's views. Mr WONG said that based on the experience of the recent outbreak of cholera which had led to the issue of closure orders on a few food premises, the orders were rescinded in two to three days shortly after the contaminated fish tanks were disinfected. He considered that the operator should be given a chance to have his appeal heard early so that the closed premises could be re-opened as soon as possible. He further said that delays in rescinding a closure order would also affect the employees. Mr CHEUNG and Mr WONG requested the Administration to critically review the minimum time allowed for preparation of a hearing.

6. PAS(EF)(A)2 advised that a certain degree of flexibility was already allowed in the proposed section 128D(15)(b) which provided that the Chairman of the Appeal Board might order a stay of execution of the closure order. Ten working days would be a reasonable timeframe to arrange for the hearing.

7. Ms Audrey EU pointed out that the requirement for hearing an appeal case within 10 working days was not specified in the legislation. She said that the Administration should consider whether it was procedurally feasible to hear an appeal case within 10 working days.

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8. Ms Cyd HO believed that the Administration would not need much time to provide a response to the appellant. She supported shortening the minimum time for preparation for a hearing while the Chairman of the Appeal Board could have the discretion to defer a hearing. She said that the Administration could work out the minimum time to prepare for a hearing having regard to the notice period for a meeting and the capacity of the Appeal Board.

9. PAS(EF)(A)2 explained that from the operational point of view, 10 working days was already the minimum period as the Secretary to the Appeal Board would need two to three days to fix a meeting date with the Chairman and panel members, and the appellant and the Administration also had to provide information for the Appeal Board. He reiterated that the 10-day period was reasonable. Nevertheless, the period might be reviewed having regard to the operational experience of the Appeal Board. He did not envisage any problems for the Appeal Board to hear several cases concurrently.

10. Responding to Ms Audrey EU, Senior Government Counsel (SGC) advised that the proposed section 128D was modelled on sections 125A to I of the principal Ordinance in respect of the Licensing Appeal Board (LIAB). Senior Assistant Law Officer (Civil) (SALO) said that the provisions of the proposed section 128D was modelled largely on the LIAB procedures, and DFEH was required, among other things, to submit written representations. Therefore, 10 working days would be the minimum period for completing the requisite proceedings.

11. The Chairman considered that the submission of written representations to the Appeal Board would not create much additional work for the Administration, as it should have all the relevant evidence and documents before issuing a closure order. He stressed that members were concerned that the aggrieved party should be allowed to be heard by the Appeal Board as soon as practicable.

12. Mr Tommy CHEUNG said that he envisaged that there would be very few appeal cases, and that hearings should be arranged at the shortest possible time. Mr CHEUNG suggested that another option was to have a pre-hearing to allow time for parties to proceedings to prepare for the appeal case. A hearing would be conducted to examine the case further when the parties concerned were ready. Mr CHEUNG further said that DFEH should provide the operators concerned with the reasons for issuing the closure order in writing, together with improvement suggestions and the appeal channels available.

13. SALO said that DFEH would serve the operator concerned a written notice on closing the food premises in accordance with the proposed section 128C. As regards the suggestion of a pre-hearing, SALO pointed out that a pre-hearing did not necessarily simplify the procedures as both the appellant and DFEH had to serve their

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statements or representations on the other side prior to the appeal hearing, so as to allow the other side to respond at the hearing.

14. Assistant Legal Adviser 4 (ALA4) said that under the proposed section 128D(15), the Chairman of the Appeal Board might order a stay of execution of the closure order if the appellant applied in writing with good reasons. However, section 128D(15) did not provide a mechanism for making an oral application. He said that members might wish to consider whether the provision would need improvement in this respect. Mr Tommy CHEUNG shared ALA4's view.

15. PAS(EF)(A)2 pointed out that the proposed new section 128D(15)(b) provided for the application for ordering a stay of execution of the closure order to which an appeal was made. As the procedure was simple, he did not see the need to establish a pre-hearing.

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16. In view of members' concerns, the Chairman requested the Administration to consider and respond to the following suggestions -

- (a) To re-examine the minimum time required to prepare for a hearing of an appeal; and
- (b) To consider introducing a pre-hearing to allow the making of written and oral applications for a stay of execution of the closure order.

PAS(EF)(A)2 stressed that there might not be much room for further shortening the 10-day period. Nevertheless, he agreed to consider Members' views.

17. Ms Cyd HO enquired about the arrangement if both the Chairman and Deputy Chairman of the Appeal Board were out of town. PAS(EF)(A)2 responded that in line with the practice for other appeal boards, there would be more than one Deputy Chairman available to deal with such situations. Ms Cyd HO commented that any delay in holding the hearing might result in substantial financial loss for the operator concerned as the closure order would stay in force. She suggested that the Administration might make reference to the arrangements in other legislation, such as the Human Organ Transplant Ordinance in which time was also of the essence.

18. The Chairman pointed out that there might be a more serious problem in summer because there was a higher risk of food contamination and more panel members would be out of town.

19. ALA4 said that under the proposed new section 128D(17), the two Deputy Chairmen of the Appeal Board should take turn to act as Chairman if the Chairman was not available. By taking turn to act as Chairman, as presently drafted in the Bill, meant that a Deputy Chairman could not act as Chairman consecutively. Dr LO

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Wing-lok was of the view that in the absence of the Chairman, any one of the two Deputy Chairmen should take turn to act as Chairman. Whenever only one Deputy Chairman was available, he/she would automatically be appointed as Chairman. PAS(EF)(A)2 agreed to consider Members' concern.

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20. Mr Tommy CHEUNG asked whether consideration would be given to empowering the Appeal Board to impose a partial closure order.

21. SALO advised that under the proposed section 128D(16), the Appeal Board might make suggestions or counter-proposals to DFEH relating to its decision of an appeal. The Administration would draw up rules, which would be in the form of subsidiary legislation, to provide for the operational framework of the Appeal Board.

22. Dr LO Wing-lok was of the view that the suggestion of a partial closure order had been discussed at length at previous meetings, and members were fully aware of the enforcement difficulties. He did not consider it necessary to re-open the issue for discussion.

23. The Chairman advised that the Bills Committee had to discuss the operation of the proposed Appeal Board. He requested the Administration to consider members' views and revert to the Bills Committee.

II. Clause-by-clause examination
(LC Paper No. CB(2)2291/00-01(01))

Revised Committee Stage amendments

24. The Chairman invited the Administration to explain the revised Committee Stage amendments (CSAs).

Sections 128(1A), 128A and 128B

25. SGC made the following points -

- (a) Section 128(1A) of Cap.132 was repealed to ensure consistency with sections 128B and 128C concerning human habitation on the premises which were subject to the closure order;
- (b) The new CSAs to section 128A(1) and (2) were consequential amendments to the proposed addition of the new section 128D; and

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- (c) The proposed section 128B(2)(a) was amended so that the notice of intention to apply for the closure order would be affixed on the premises as well as served on the owner of the premises by registered post.

26. ALA4 said that the purpose of the revised section 128B(2)(a) was to notify the owner of the premises that a closure order had been issued. However, the provision as presently drafted required the notification to be sent by registered post only and did not require any proof of acceptance. The owner concerned might be unaware of the closure order due to various reasons.

27. SGC said that the proposed section 128B(2)(a) sought to provide for the owner concerned an opportunity to be notified of the application for the closure order at least seven days before the hearing of an appeal. The court could hear the owner at such other time as soon as practicable after the hearing of the application.

28. Ms Cyd HO asked under what circumstances the premises owner was required to attend or be represented at a hearing, as the licensee would have direct interest in the case. PAS(EF)(A)2 said that the purpose of the proposed section 128B(2)(a) was to provide the premises owner concerned with the information about the closure of the premises in case he wished to take action.

29. Members noted that the CSAs proposed to section 128B(8) for greater clarity.

Section 128C(7)

30. ALA4 pointed out that section 128C(7) provided for the aggrieved, including the premises owner, to appeal within seven days after the notice of refusal to rescind the closure order was served.

31. Mr Tommy CHEUNG expressed concern that the premises owner might not be able to lodge an appeal within the seven-day period. It was possible that it might only come to the notice of the owner concerned several months after the incident, and the operator might have ceased business and could not be contacted. In the circumstances, the premises owner would not be able to take over the premises and lease it to other tenants because he had already missed the seven-day limit for making an appeal and could not apply for rescinding the order.

32. SALO clarified that under the proposed section 128C(7), the aggrieved might apply within seven days for an appeal to be heard. As for the premises owner, he could in his own interest apply for rescinding the order at any time if the hazard had been eliminated. Mr Tommy CHEUNG considered that since the owner could apply for rescinding the closure order at any time, the provision of the seven-day period would be misleading.

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33. Responding to the Chairman, SALO advised that the closure order issued by DFEH was an administrative order which could be withdrawn at any time if the conditions laid down in section 128C(6) were satisfied.

34. Mr Tommy CHEUNG asked whether the closure order had to be rescinded before the owner could lease the premises to another tenant. SALO advised that if the former operator could not be contacted after the issue of the closure order, the business would likely be suspended and the health hazard concerned would no longer exist. Thus, if the operator was lost contact, it would be the premises owner's responsibility to apply for rescinding the closure order.

35. Mr Tommy CHEUNG asked whether the owner's right to apply for rescinding the closure order was stipulated in the proposed legislation. SGC advised that any party who had an interest in the closed premises could apply to the Authority under the proposed section 128C(5) to rescind the closure order, and that if the Authority refused the application, the party concerned could then lodge an appeal under the proposed section 128C(7) to the Appeal Board within seven days of the service of the Authority's refusal.

36. ALA4 pointed out that apart from section 128C(7), section 128C(20) also provided for another appeal channel under which the aggrieved should make an appeal within seven days after the issue of the closure order.

37. Responding to Mr Tommy CHEUNG, SGC said that the premises owner could apply for rescinding the closure order under section 128C(5) and might lodge an appeal within seven days in accordance with section 128C(7). Alternatively, the owner concerned might make an appeal in accordance with section 128C(20). The seven-day limit under section 128(C) 7 and (20) could be extended on application to the Appeal Board.

Section 128C(8)

38. ALA4 advised that the proposed deletion of the sub-section was a consequential amendment to the proposal of the Appeal Board.

Section 128C(13)

39. Ms Cyd HO referred to section 128C(13) and expressed concern that any persons residing in the premises which were subject to the closure order would be removed with force if they refused to leave. She enquired whether an exemption provision should be spelt out clearly in section 128C(13)(d) so that the existence of human habitation on the premises would not be subject to the closure order. Deputy Director (Environmental Hygiene) of the Food and Environmental Hygiene

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Department advised that if the premises were used for human habitation, the premises would not be subject to the closure order.

40. Responding to Mr Tommy CHEUNG, PAS(EF)(A)2 said that section 128C(13)(a) provided that the Authority might permit any person on application to enter the premises to eliminate the hazard. SALO supplemented that similar provision was laid down in the Prevention of Spread of Infectious Disease Regulation under which the licensee's staff could enter the premises to eliminate the hazard concerned.

41. Mr Tommy CHEUNG enquired about the procedures for submitting the application for re-entering the closed premises, such as whether the personal particulars of individual employees had to be provided together with the application and whether a cleaning agent would also be permitted to enter the premises.

42. PAS(EF)(A)2 advised that the Authority would not reject any applications in relation to enter the closed premises for the purpose of eliminating hazard without reasons. SALO supplemented that with reference to the experience of enforcing the Prevention of the Spread of Infectious Disease Regulation, the Director of Health would, when taking a decision to close the food premises, provide the operators with guidelines and give approval for the employees of the food premises concerned to eliminate the hazard therein. SALO said that section 128C(13)(a) stipulated that DFEH might permit, on application, any person to remain on any closed premises. Therefore, a licensee could apply to DFEH for allowing any person, including the cleaning agent, to enter the closed premises to eliminate the hazard therein. He believed that DFEH would give approval for re-entry to the closed premises in these cases. He said that it was impossible to spell out all possible scenarios in the legislation. Mr WONG Yung-kan considered that section 128C(13) as presently drafted had adequately reflected the legislative intent.

43. ALA4 said that under the proposed section 128C(13)(a), any person was allowed to enter the closed premises and thereby it would be an operational arrangement of FEHD as to who would be allowed to enter the closed premises.

44. Mr Tommy CHEUNG remained of the view that section 128C(13) could not reflect the intention that human habitation on the premises would not be subject to the closure order. He requested the Administration to improve the drafting of section 128C(13)(c) and (d) so that the employees' right to re-enter the premises to eliminate the hazard could be explicitly spelt out. PAS(EF)(A)2 agreed to consider.

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Section 128D

45. In response to Mr WONG Yung-kan and Mr Tommy CHEUNG, PAS(EF)(A)2 advised that the number of panel members on the Appeal Board could be adjusted, as the rules of the Appeal Board were yet to be made by the Chairman of the Appeal Board in consultation with the Secretary for the Environment and Food (SEF).

46. Mr Tommy CHEUNG considered that the rules of the Appeal Board should be made before the appointment of the Chairman. He requested the Administration to provide the Bills Committee with the draft rules. Ms Cyd HO said that the Administration should provide a set of draft rules for members' information upon the enactment of the Bill.

47. SALO advised that according to the proposed section 128D(16), the Chairman of the Appeal Board would make rules of the Appeal Board in consultation with SEF. As such, the Chairman should be appointed before making the rules. PAS(EF)(A)2 added that the Administration did not want to pre-empt the Chairman's decision by making the rules before he took up the post.

48. The Chairman said that the Bills Committee would continue clause-by-clause examination of the Bill (starting from section 128D) at the next meeting.

49. Members agreed that the next meeting would be held on 16 October 2001 at 10:45 am. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 2
Legislative Council Secretariat
19 December 2001