

立法會
Legislative Council

Ref : CB2/BC/1/08

LC Paper No. CB(2)951/08-09

(These minutes have been
seen by the Administration)

**Bills Committee on
Public Health and Municipal Services (Amendment) Bill 2008**

**Minutes of meeting
held on Tuesday, 17 February 2009, at 5:00 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Fred LI Wah-ming, JP (Chairman)
Hon WONG Yung-kan, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon WONG Ting-kwong, BBS
Dr Hon LEUNG Ka-lau
- Members absent** : Hon Andrew CHENG Kar-foo
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Vincent FANG Kang, SBS, JP
Dr Hon Joseph LEE Kok-long, JP
- Public Officers attending** : Item II
Prof Gabriel M LEUNG, JP
Under Secretary for Food & Health

Mrs Angelina CHEUNG FUNG Wing-ping
Principal Assistant Secretary for Food & Health (Food) 1

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

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

Ms Leonora IP Wan-yok
Senior Government Counsel
Law Drafting Division
Department of Justice

Miss Mandy NG Wing-man
Government Counsel
Law Drafting Division
Department of Justice

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

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr David LOO
Senior Council Secretary (2) 6

Ms Sandy HAU
Legislative Assistant (2) 5

Action

I. Confirmation of minutes

[LC Paper No. CB(2)886/08-09]

The minutes of the meeting held on 22 January 2009 were confirmed.

II. Meeting with the Administration

[LC Paper Nos. CB(2)891/08-09(01) & (02), CB(3)85/08-09, CB(2)297/08-09(02) and CB(2)723/08-09(01)]

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

Withdrawal of membership

3. Members noted that Ms Cyd HO had withdrawn her membership from the Bills Committee with effect from 17 February 2009.

Administration's response to issues raised at the meeting on 22 January 2009

4. The Administration briefed members on its response to issues raised at the meeting on 22 January 2009 [LC Paper No. CB(2)891/08-09(01)].

Action

Admin 5. Assistant Legal Adviser 4 advised that it would be useful if some examples on the application of the new section 78B(1)(e) could be provided under paragraph 5.4 of the Code of Practice on section 78B orders. The Administration undertook to do so.

Consumer redress during recall

6. Members noted the information provided by the Consumer Council on consumer redress during recall requested by Ms Audrey EU at the meeting on 5 February 2009 [LC Paper No. CB(2)916/08-09(01)] (English version only) tabled at the meeting.

7. Ms Audrey EU noted that section 65F(1)(f) of the Trade Practices Act 1974 of Australia required the supplier of recalled goods to inform the public that it would undertake to repair, replace or refund the price of the recalled goods as appropriate. Ms EU asked the Administration whether it would consider incorporating such compulsory consumer redress during recall under the new section 78B.

8. The Administration responded that it was not appropriate to apply compulsory consumer redress during recall along the lines of section 65F(1)(f) of the Trade Practices Act 1974 of Australia to the Bill, as the Trade Practices Act 1974 of Australia was a piece of legislation on fair trade and consumer protection and applied to consumer goods. The Administration further said that local legislation with recall provision, i.e. the Toys and Children's Products Safety Ordinance (Cap. 424) and the Consumer Goods Safety Ordinance (Cap. 456), had not required traders to provide refund to consumers during recall. As purchasing of goods was a commercial transaction between buyers and sellers, it was entirely up to individual traders to decide how they should compensate their customers for the goods recalled. Although there was no compulsory compensation redress for consumers during food recall in Hong Kong, it was the practice of, say, supermarkets, to provide refund to consumers.

9. Ms EU remarked that if the trade had all along been providing refund to consumers during recall, she could not see great difficulty in making such act compulsory during recall in the Public Health and Municipal Services Ordinance (Cap. 132).

10. Mr WONG Yung-kan pointed out that to require persons bound by section 78B orders to provide refund to consumers during recall would impact adversely on small traders as unlike larger traders, small traders did not have leverage to obtain redress from their food suppliers. Mr WONG Ting-kwong expressed similar views.

Action

11. The Chairman said that as members representing the trade were not able to attend this meeting, requiring compensation redress during recall in Cap. 132 should be further discussed at the next meeting.

Admin

12. At the request of Ms Audrey EU, the Administration agreed to set out in writing its reasons for not requiring compensation redress during recall in Cap. 132 and forward the same to the Consumer Council.

Clause-by-clause examination of the Bill

[LC Paper No. CB(2) 723/08-09(01)]

New section 78B(2)

Admin

13. Members noted that to improve accuracy and consistency, the term "danger" in the new section 78B(2) would be changed from "危害" to "危險".

Amended new section 78B(2A)

14. Mr Alan LEONG said that persons bound by section 78B orders had the right to know why the orders were made to them. Mr LEONG suggested stipulating in Cap. 132 that the Director of Food and Environmental Hygiene (DFEH) must provide all relevant information to a section 78B order to the person bound by the order upon request. Non-disclosure of any or the whole of the relevant information must be subject to the approval of either the Municipal Services Appeals Board or the court.

New section 78B(3)(c)

15. Ms Audrey EU suggested stipulating in the new section 78B(3)(c) that the factors, referred to in the new section 78B(2A), which DFEH had taken into account in making a section 78B order must be specified in the order.

Admin

16. The Administration agreed to consider both Mr Alan LEONG and Ms Audrey EU's suggestions in paragraphs 14 and 15 above.

Amended new section 78C(6)

Admin

17. Ms Audrey EU pointed out that persons referred to in the new section 78C(1)(b) or (c) might unknowingly contravene a section 78B order if the start of the required prohibition action specified in the order fell on the same day on which the order was published in the Gazette, as the publication of the Gazette often occurred at a later time of the day. Mr WONG Yung-kan also pointed out that as the start of the required prohibition action specified in the order could be later than the date of gazettal of the order, it could give rise to some persons

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bound by the order to make use of the time gap to quickly sell the food concerned in the market before the start of the required prohibition action specified in the order. The Administration agreed to revert in writing on how these problems could be resolved.

Others

Admin

18. At the request of Mr WONG Yung-kan, the Administration undertook to provide in writing the amount of fine at the penalty levels of 3, 5 and 6 respectively.

III. Date of next meeting

19. The Chairman reminded members that the next meeting had been scheduled for 25 February 2009 at 2:30 pm.

20. There being no other business, the meeting ended at 6:45 pm.

Council Business Division 2
Legislative Council Secretariat
24 February 2009

**Proceedings of the meeting of the
Bills Committee on
Public Health and Municipal Services (Amendment) Bill 2008
on Tuesday, 17 February 2009, at 5:00 pm
in Conference Room A of the Legislative Council Building**

| Time marker | Speaker | Subject | Action required |
|-----------------|---|---|---|
| 000000 - 000252 | Chairman | Withdrawal of membership from Ms Cyd HO | |
| 000253 - 002449 | Chairman Ms Audrey EU Admin Mr WONG Yung-kan Mr WONG Ting-kwong | Information provided by the Consumer Council on consumer redress during recall in Australia The Administration was requested to set out in writing its reasons for not requiring compensation redress during recall in the Public Health and Municipal Services Ordinance (Cap. 132) and forward the same to the Consumer Council. | Admin to follow up (para. 12 of the minutes) |
| 002450 - 002502 | Chairman | Confirmation of minutes of meeting on 22 January 2009 | |
| 002503 - 003952 | Chairman ALA4 Admin Ms Audrey EU | Administration's response to issues raised at the meeting on 22 January 2009 [LC Paper No. CB(2)891/08-09(01)] The Administration undertook to provide some examples on the application of the new section 78B(1)(e) under paragraph 5.4 of the Code of Practice on section 78B orders. | Admin to follow up (para. 5 of the minutes) |
| 003953 - 004611 | Admin Ms Audrey EU Chairman ALA4 | <u>Clause-by-clause examination of the Bill from amended new section 78B(2)</u> | |
| 004612 - 010726 | Admin Chairman Mr Alan LEONG Ms Audrey EU | <u>Amended new section 78B(2A)</u> The Administration was requested to consider stipulating in Cap. 132 that the Director of Food and Environmental Hygiene (DFEH) must provide all relevant information to a section 78B order to the person bound by the order upon request. Non-disclosure of any or whole of the relevant information must be subject to the approval of either the Municipal Services Appeals Board or the court. <u>New section 78B(3)</u> The Administration was requested to consider stipulating in the new section 78B(3)(c) that the factors, referred to in the new section 78B(2A), which DFEH had taken into account in making a section 78B order must be specified in the order. | Admin to consider (para. 16 of the minutes) Admin to follow up (para. 16 of the minutes) |

| Time marker | Speaker | Subject | Action required |
|--------------------|---|--|--|
| 010727 - 010957 | Admin Chairman ALA4 | <u>New section 78B(4) and (5)</u> | |
| 010958 - 013250 | Admin ALA4 Mr WONG Yung-kan Chairman Ms Audrey EU | <u>Amended new section 78C</u> Ms Audrey EU's views that persons referred to in the new section 78C(1)(b) or (c) might unknowingly contravene a section 78B order if the start of the required prohibition action specified in the order fell on the same day on which the order was published in the Gazette, as the publication of the Gazette often occurred at a later time of the day. Mr WONG Yung-kan's views that as the start of the required prohibition action specified in the order could be later than the date of gazettal of the order, it could give rise to some persons bound by the order to make use of the time gap to quickly sell the food concerned in the market before the start of the required prohibition action specified in the order. | Admin to follow up (para. 17 of the minutes) |
| 013251 - 013521 | Admin Chairman | <u>New section 78D</u> | |
| 013522 - 013855 | Admin Chairman Mr WONG Yung-kan Dr LEUNG Ka-lau | <u>New sections 78E and 78F</u> The Administration undertook to provide in writing the amount of fine at the penalty levels of 3, 5 and 6 respectively. | Admin to follow up (para. 18 of the minutes) |
| 013856 - 014344 | Chairman Admin Mr WONG Ting-kwong | <u>Amended new section 78G</u> | |
| 014345 - 014424 | Chairman | Date of next meeting | |