

LS/B/1/08-09
2869 9468
2877 5029

Mrs Angelina CHEUNG
Prin AS for Food & Health (Food) 1
Food and Health Bureau
20th floor,
Murray Building,
Garden Road,
Hong Kong

9 January 2009

BY FAX
Fax No.: 2136 3281

Dear

Public Health and Municipal Services (Amendment) Bill 2008

We have the following questions on the proposed CSAs to the Bill:-

The new section 78G(1A)

What would happen to the proceedings of the appeal against a section 78B order, if the Authority varies the order (but the person bound by the order is aggrieved by such variation and is lodging an appeal against the varied order) before the Municipal Services Appeals Board (MSAB) determines the appeal?

The new section 78G(1B)

The MSAB has the power to hear an appeal against a section 78B order under subsection(1). The MSAB also has the power to hear an appeal against a variation of a section 78B order under the new subsection (1A). Under the new subsection (1B), the Authority may vary a section 78B order that is the subject of an appeal and the MSAB may, before its determination of the appeal, determine that, but for the variation, it would have varied the order. Presumably, the new subsection (1B) will apply if the person bound by the section 78B order has not lodged an appeal against the variation. In such case, the MSAB has to wait for the expiry of the 28-day appeal period under the new subsection (1A). Would it prolong unduly the process of determination by the MSAB on the appeal? If the person bound by the section 78B order indicates to the MSAB that he would not appeal against the variation, the MSAB will proceed speedily to determine whether but for the variation, it would have varied the order. What would be the implication on the right of the person bound by

a section 78 order to appeal against the variation , if in the course of its consideration the MSAB comes to a view that it would have varied or set aside the variation had an appeal been lodged against it?

In the provision, there is a reference to "the section 78B order that is the subject of the appeal is ... further varied ... by the Authority under section 78B(4)". However, there is no reference to "further variation" in section 78B(4).

The new section 78G(1C)

The provision refers to a "declaration" made under the new subsection (1B). However, there is no mention about "declaration" in the new subsection (1B). Would it be more appropriate to use "determination"?

The new section 78H(1B)(a)

Since a section 78B order can also be revoked under the new section 78B(4), would it be necessary to add "revocation" after "variation"?

The new section 78J(4)(b)

Would it be necessary to add "or authority" after "employment"? It is because the act or omission may be done or made in the course of the agent's authority.

The new section 78K(6)(a)

Does it mean that the Code of Practice is simply identified as to where it could be found or does it mean that the content of the Code of Practice itself is published?

It is appreciated that your reply in both languages could reach us as soon as possible.

Yours sincerely,

(Stephen LAM)
Assistant Legal Adviser

cc. DoJ (Attn.: Ms. Leonora IP, SGC & Miss Mandy NG, GC) (By Fax: 2845 2215)
LA
SALA1
CCS(2)5