

立法會
Legislative Council

Ref : CB2/BC/1/09

LC Paper No. CB(2)213/10-11
(These minutes have been seen
by the Administration)

Bills Committee on Food Safety Bill

Minutes of meeting
held on Wednesday, 29 September 2010, at 10:45 am
in Conference Room A 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
Hon WONG Ting-kwong, BBS, JP
Hon CHAN Kin-por, JP
Hon CHEUNG Kwok-che
Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
- Members absent** : Hon Vincent FANG Kang, SBS, JP
Dr Hon Joseph LEE Kok-long, SBS, JP
Hon Cyd HO Sau-lan
- 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
Government Counsel
Department of Justice

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

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Ms Maisie LAM
Senior Council Secretary (2) 6

Ms Sandy HAU
Legislative Assistant (2) 5

Action

I. Meeting with the Administration
[LC Paper Nos. CB(2)2297/09-10(01) to (03)]

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

2. Whilst welcoming the pilot scheme conducted by the Centre for Food Safety of the Food and Environmental Hygiene Department from 29 July to 10 September 2010 to assist fishermen in complying with the record-keeping requirement proposed under the Food Safety Bill ("the Bill"), Mr WONG Yung-kan urged the Administration to delay enforcement of the penalty provisions for failing to comply with the record-keeping requirement against fishermen from six months to one year after the commencement of the Food Safety Ordinance, having regard to the large number of fishermen involved and that some fishermen who operated outside Hong Kong waters were often away from Hong Kong for a stretch of up to six months. In the meantime, the Administration should use the coming annual fishing moratorium in the South China Sea from mid-May to August to provide training to fishermen to comply with the record-keeping requirement. Mr Tommy CHEUNG also urged the Administration to consider extending the grace period to help fishermen as well as owners of small stalls to help them comply with the requirements under the Bill.

Admin

3. The Administration responded that it would consider members' suggestion in determining the commencement date of the Bill and the grace period. In the months to come, the Administration would continue to provide assistance and training for fishermen and owners of small stalls to assist them

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in getting prepared. The Administration further said that the Bill provided a defence against failure to comply with the registration and record-keeping requirements in that only a person who, without reasonable excuse for not complying with the requirements, would commit an offence.

4. Mr WONG Kwok-hing asked how the Bill could ensure that fish caught outside Hong Kong waters were fit for human consumption, as some types of fish caught outside Hong Kong waters were more likely to carry a higher level of toxin such as ciguatoxin.

5. The Administration responded that the Bill would further help to ensure that live aquatic products were fit for human consumption. Under the Bill, any person who carried on a food importation or distribution business was required to register with the Director of Food and Environmental Hygiene ("DFEH"). The registration scheme would assist DFEH in identifying and contacting a more defined group of food traders speedily in a food incident. Hence, fishermen who distributed their catches would fit the definition of "food distributors" and if not exempted would be required to register with DFEH if they supplied their catches by wholesale to other person(s), including selling to local seafood traders, fish collecting vessels and Fish Marketing Organisation. If fishermen of fish collecting vessels supplied aquatic products to other person(s), they also had to register with DFEH. However, the Bill provided that those food importers or distributors who had already registered or had obtained a licence/permission under other Ordinances as set out in Schedule 1 of the Bill would be exempted from the registration requirement as a trade facilitation measure since the Government already possessed their information. For instance, fishermen who were owners of Class III vessels and had already obtained relevant licence with the Marine Department would be exempted from registering with DFEH. Furthermore, the Bill required any person, who, in the course of business, imported, acquired or supplied by wholesale food in Hong Kong to keep transaction records of the business from which the food was obtained and to which it was supplied. In the case of fishermen who distributed their catches, they would be required to maintain capture records covering the date/period of the capture, the common name of the capture, the total quantity and the catch area for a period of three months.

6. The Administration further said that the Bill would empower the Secretary for Food and Health to make regulations for the import control of specific food types. It was proposed that there should be two sets of regulations under the Bill, namely, (a) Imported Game, Meat, Poultry and Poultry Eggs Regulation and (b) Imported Aquatic Products Regulation, to cover food with a high potential health risk. The proposals were set out in Annex B to the Legislative Council Brief on the Bill. The Administration was consulting the trade on the proposals. Following the enactment of the Bill, the Administration would introduce the two regulations.

Action

7. Ms Audrey EU noted that Clause 6 of the Bill provided that DFEH might in writing exempt a person from the requirement to be registered under Part 2 of the Bill in respect of a business while Clause 6(4) provided that DFEH might, by notice published in the Gazette, exempt a class of persons from the requirement to be registered under Part 2 of the Bill in respect of a class of businesses. Ms EU asked about the criteria that would be used by DFEH to exempt a person or a class of persons from the registration and record-keeping requirements and the types of persons or class of persons DFEH would exempt from these requirements. Ms EU further expressed concern about whether Clause 8 of the Bill could catch a person from using different companies to circumvent DFEH's power to refuse his registration due to previous offences under the Bill.

8. Mr Tommy CHEUNG noted that Clause 6(4) of the Bill provided that DFEH might, by notice published in the Gazette, exempt a class of persons from the requirement to be registered under Part 2 of the Bill in respect of a class of businesses. Mr CHEUNG hoped that DFEH would not use this clause to exempt statutory bodies engaged in the food supply chain as a food importer or distributor from the registration and record-keeping requirements under Part 2 and Part 3 of the Bill.

Admin

9. The Administration undertook to provide its responses in writing to the issues raised by Ms EU and Mr CHEUNG in paragraphs 7 and 8 above.

10. Mr WONG Yuk-man said that the Chinese term "期間" failed to fully reflect the meaning of "period of the capture" under Clause 23(1)(a) of the Bill. Ms Audrey EU was also of the view that a specific duration should be specified for the "period of the capture" under Clause 23(1)(a) of the Bill. The Administration agreed to consider and provide a response in writing after the meeting.

Admin

11. Mr WONG Kwok-hing noted from paragraph 4 of the Administration's reply dated 10 September 2010 to the Assistant Legal Adviser's letter dated 27 July 2010 (LC Paper No. CB(2)2297/09-10(03)) that DFEH might consider exempting exhibitors in major food exhibitions in Hong Kong from registration as food importers or distributors under Clause 6(1) of the Bill. Mr WONG also noted from paragraph 12 of the same that DFEH might consider exempting some charitable food banks from the requirement to keep records under Clauses 29(1) and 29(4) of the Bill. Mr WONG expressed concern about how the Administration could ensure that food sold at exhibitions and food supplied by food banks to the needy were fit for human consumption.

12. The Administration responded that although exhibitors in major food exhibitions might not be required to register as food importers or distributors, they would commit an offence under the Public Health and Municipal Services

Action

Ordinance (Cap. 132) if the food they supplied were not fit for human consumption. The Administration assured members that DFEH would exercise caution and take into account the possible impact of such exemption on public health in considering whether to grant an exemption. Moreover, pursuant to Clauses 6(2) and 6(3) of the Bill, DFEH might impose conditions on the exemptions and withdraw the exemption should the conditions have not been complied with. As regards exempting some charitable food banks from the requirement to keep records, the Administration said that DFEH might do so if these food banks had mechanisms in place to ensure that the food they supplied was safe. This was due to the difficulty of keeping records of food donated by the public as some donors might wish to remain anonymous. In many cases, the food donated was in pre-packaged form with manufacturing details provided, which posed less of a problem for source tracing should this be necessary.

II. Date of next meeting

13. The Bills Committee would next meet on Monday, 18 October 2010 at 10:45 am to begin clause-by-clause examination of the Bill.

14. There being no other business, the meeting ended at 12:43 pm.

Council Business Division 2
Legislative Council Secretariat
5 November 2010

**Proceedings of the meeting of the
Bills Committee on Food Safety Bill
on Wednesday, 29 September 2010, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000250	Chairman	Opening remarks	
000251 - 001109	Admin	Briefing by the Administration on the pilot scheme on record keeping by fishermen ("the pilot scheme") [LC Paper No. CB(2)2297/09-10(01)]	
001110 - 001234	Chairman Admin	The guidance provided by the Centre for Food Safety to fishermen participated in the pilot scheme The respective capture area of the participating fishermen whose mode of operation was coastal fishing/fish collecting and offshore fish collecting	
001235 - 002049	Mr WONG Yung-kan Admin	The Administration was requested to consider members' suggestion of - (a) adjusting the grace period after the Bill came into operation; and (b) using the coming annual fishing moratorium in the South China Sea from mid-May to August to provide training to fishermen to comply with the record-keeping requirement	Admin (para. 3 of the minutes refers)
002050 - 003420	Mr WONG Kwok-hing Chairman Admin	The health implications associated with the use of nanotechnology in food The effectiveness of the Bill in preventing ciguatera fish poisoning arising from the consumption of coral reef fish caught outside Hong Kong waters	
003421 - 004523	Mr Tommy CHEUNG Admin	The grace period for commencement of the penalty provisions for failing to meet the record-keeping requirements The two sets of regulations on import control of specific food types to be introduced after the enactment of the Bill	
004524 - 010529	Ms Audrey EU Chairman Admin	The Administration was requested to provide a response in writing on - (a) the criteria that would be used by the Director of Food and Environmental Hygiene ("DFEH") to exempt a person or a class of persons from the registration and record-keeping requirements and the types of persons or class of persons DFEH would exempt from these requirements; and (b) whether Clause 8 of the Bill could catch a person from using different companies to circumvent DFEH's power to refuse his registration due to previous offences under the Bill	Admin (para. 9 of the minutes refers)

Time marker	Speaker	Subject	Action required
010530 - 011210	Mr WONG Yuk-man Admin Ms Audrey EU Chairman	The Administration agreed to review the meaning of "period of the capture" in Clause 23(1)(a) of the Bill and the Chinese rendition of the word "period" ("期間") in that Clause.	Admin (para. 10 of the minutes refers)
011211 - 012059	Mr WONG Ting-kwong Admin	The difficulties for small and medium food retailers to distinguish between business customers and ultimate consumers	
012100 - 012556	Chairman Admin	The applicability of the registration requirement to fishermen who sold their wild catch to the ultimate consumers directly The need to ensure that small food/market stalls were fully aware of the registration and record-keeping requirements under the Bill	
012557 - 013242	Mr Tommy CHEUNG Admin Chairman	The Administration was requested to provide a written response to the concern that DFEH would use Clause 6(4) to exempt statutory bodies engaged in the food supply chain as a food importer or distributor from the registration and record-keeping requirements under Part 2 and Part 3 of the Bill	Admin (para. 9 of the minutes refers)
013243 - 014503	Mr WONG Ying-kan Admin	The fish species included in the pictorial guide of aquatic products	
014504 - 015556	Mr WONG Kwok-hing Chairman Admin	How food supplied by exhibitors in major food exhibitions and by charitable food banks were fit for human consumption	
015557 - 015713	Chairman Mr WONG Yung-kan Mr WONG Ting-kwong Mr WONG Kwok-hing	Date of next meeting	