

**立法會**  
**Legislative Council**

Ref : CB2/BC/1/08

LC Paper No. CB(2)1366/08-09  
(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, 31 March 2009, at 8:30 am  
in the Chamber of the Legislative Council Building**

- Members present** : Hon Fred LI Wah-ming, JP (Chairman)  
Hon WONG Yung-kan, SBS, JP  
Hon Andrew CHENG Kar-foo  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Vincent FANG Kang, SBS, JP  
Hon WONG Kwok-hing, MH  
Dr Hon Joseph LEE Kok-long, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon WONG Ting-kwong, BBS
- Members absent** : Hon Tommy CHEUNG Yu-yan, SBS, JP  
Dr Hon LEUNG Ka-lau
- 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)1186/08-09]

The minutes of the meeting held on 12 March 2009 were confirmed.

**II. Meeting with the Administration**

[LC Paper Nos. CB(2)1188/08-09(01), CB(2)1136/08-09(01) and CB(2)1200/08-09(01)]

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

Appeal and compensation mechanism

3. Members noted the Administration's paper (LC Paper No. CB(2) 1188/08-09(01)) explaining the legal advice that the interface between the appeal and compensation mechanism under the Bill would not cause the legal problem of *estoppel* and *res judicata*. Section 78H provided a statutory basis for claiming compensation before the court which was separate from the appeal to the Municipal Services Appeals Board (MSAB) under new section 78G. While the issue of whether the Director of Food and Environmental Hygiene

Action

(DFEH) had reasonable grounds to make a section 78B order could be an issue common to the appeal under new section 78G and the compensation proceedings under new section 78H, there were no provisions under the Bill or the MSAB Ordinance (Cap. 220) to render the MSAB's decision conclusive on the said issue in the compensation proceedings. Neither were there provisions to restrict the evidence that the court might receive from the parties before it, which might include "fresh" evidence over and above the evidence adduced before MSAB, such that the court might, on such evidence before it, justifiably come to a decision from that of MSAB. The MSAB's decision should, therefore, not be treated as being conclusive on the issue for the purposes of the compensation proceedings.

4. Assistant Legal Adviser 4 (ALA4) said that although there were merits in the Administration's analysis, any argument based on statutory construction might be subject to different judicial interpretation. To put the matter beyond doubt, he had written to the Administration requesting them to consider adding provisions to new sections 78G and 78H to the effect that notwithstanding the decision of MSAB, the court might still determine the same issue under new section 78H; and that notwithstanding the decision of the court, MSAB might still proceed to determine the same issue under new 78G and under Cap. 220.

5. The Administration did not see the need to include such provisions as suggested by ALA4 as MSAB was not empowered to determine the issue of compensation under new section 78G and neither was the court legally bound by the decision of MSAB in determining the issue of compensation under new section 78H. Order 35 rule 3 of the Rules of the District Court (Cap. 336H) provided that the judge might, if he thought it expedient in the interest of justice, adjourn a trial for such time, and to such place, and upon such terms, if any, as he thought fit. Section 26 of the Small Claims Tribunal Ordinance (Cap. 338) also provided that the tribunal might at any time, either of its own motion or on the application of any party, adjourn the hearing of proceedings on a claim on such terms as it thought fit. Such power of adjournment of court/tribunal proceedings might be exercised judiciously on good grounds. The Administration also pointed out that it was not aware of any legal provision in the Hong Kong laws which had similar effect to the provisions suggested by ALA4.

6. Ms Audrey EU said that she had no problem with providing an aggrieved person the option to go to MSAB to seek a ruling under new section 78G and go to court to seek compensation under new section 78H either alternatively or concurrently, but she remained of the view that such arrangements would not be in the public interests in that a decided issue could still be re-litigated between the same parties at either MSAB or the court. That

Action

said, Ms EU said that she was not in favour of ALA4's suggestions as to do so would disrupt the established common law practice.

7. Other members present at the meeting did not raise any queries on the appeal and compensation mechanism under the Bill.

Committee Stage amendments (CSAs) proposed by Hon Vincent FANG

8. Mr Vincent FANG introduced his CSAs which sought to require the Government to pay compensation to persons subject to section 78B orders should results of food test conducted by the Government prove that the food concerned was not problematic, details of which were set out in LC Paper No. CB(2) 1136/08-09(01).

9. The Administration responded that adopting the criterion in Mr FANG's CSAs, i.e. food subject to section 78B orders was subsequently found to be not problematic, in making compensation, which was completely different from those used by DFEH when making section 78B orders, i.e. based on reasonable grounds according to factors set out in section 78B(2A), was neither fair nor appropriate.

10. Mr WONG Ting-kwong, Mr Alan LEONG and Mr WONG Yung-kan shared the Administration's views.

11. Mr WONG Kwok-hing said that he was not in favour of Mr FANG's CSAs.

12. Mr Vincent FANG asked whether the Administration could give an undertaking that it would complete testing of the food subject to section 78B orders, say, within one week to 10 days, immediately after the making of the orders so as to mitigate the adverse effect on persons bound by the orders.

13. The Administration responded that although most food tests could be completed within one week to 10 days, it could not be ruled out that more time would be needed if the testing involved detection of new chemical substances in food which had never been carried out and/or where no international testing methods had been or had yet to be developed. Nevertheless, the Administration assured members that testing of food in relation to the making of section 78B orders would be carried out in the first instance and expeditiously.

14. At the request of the Bills Committee, the Administration undertook to consider including in the speech to be given by the Secretary for Health and Food when the Second Reading debate on the Bill was resumed that -

Action

- (a) DFEH would exercise his power provided under new section 78B in a prudent manner; and
- (b) testing of food in relation to the making of section 78B orders would be carried out in the first instance and expeditiously, and the revocation of a section 78B order would be made in the same manner as the making of the order in the first place and soon as possible.

**III. Any other business**

15. The Chairman concluded that the Bills Committee had completed the scrutiny of the Bill, and a report recommending resumption of Second Reading debate on the Bill at the Council meeting on 29 April 2009 would be submitted to the House Committee for consideration on 17 April 2009.

16. There being no other business, the meeting ended at 9:38 am.

Council Business Division 2  
Legislative Council Secretariat  
17 April 2009

**Proceedings of the meeting of the  
Bills Committee on  
Public Health and Municipal Services (Amendment) Bill 2008  
on Tuesday, 31 March 2009, at 8:30 am  
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000133	Chairman	Opening remarks  Confirmation of minutes of meeting on 12 March 2009	
000134 - 001409	Admin Chairman ALA4 Ms Audrey EU	The Administration's paper (LC Paper No. CB(2) 1188/08-09(01)) explaining the legal advice that the interface between the appeal and compensation mechanism under the Bill would not cause the legal problem of <i>estoppel</i> and <i>res judicata</i>	
001410 - 005657	Mr Vincent FANG Ms Audrey EU Chairman ALA4 Admin Mr WONG Ting-kwong Mr WONG Kwok-hing Mr Alan LEONG Mr WONG Yung-kan	Committee Stage amendments proposed by Hon Vincent FANG (LC Paper No. CB(2) 1136/08-09(01))	
005658 - 010820	Chairman Mr Vincent FANG Admin	The Administration undertook to consider including in the speech to be given by the Secretary for Health and Food when the Second Reading debate on the Bill was resumed that -  (a) the Director of Food and Environmental Hygiene would exercise his power provided under new section 78B in a prudent manner; and  (b) testing of food in relation to the making of section 78B orders would be carried out in the first instance and expeditiously, and the revocation of a section 78B order would be made in the same manner as the making of the order in the first place and soon as possible.  The Chairman concluded that the Bills Committee had completed the scrutiny of the Bill, and a report recommending resumption of Second Reading debate on the Bill at the Council meeting on 29 April 2009 would be submitted to the House Committee for consideration on 17 April 2009.	