

立法會
Legislative Council

Ref : CB2/SS/3/08

LC Paper No. CB(2)256/08-09
(These minutes have been seen by
the Administration)

**Subcommittee on
Harmful Substances in Food (Amendment) Regulation 2008**

**Minutes of meeting
held on Monday, 20 October 2008, at 5:30 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 Tommy CHEUNG Yu-yan, SBS, JP
Hon Albert CHAN Wai-yip
Hon Frederick FUNG Kin-kee, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, SBS, JP
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
Hon Cyd HO Sau-lan
Hon Tanya CHAN
Dr Hon Priscilla LEUNG Mei-fun
Dr Hon LEUNG Ka-lau
Dr Hon PAN Pey-chyou

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 Liza TO May-kei
Principal Medical & Health Officer (Food & Health) Special
Duties

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

Dr Philip HO Yuk-yin
Consultant (Community Medicine) (Risk Assessment and
Communication)
Food and Environmental Hygiene Department

Dr TING Tai-lun, JP
Government Chemist
Government Laboratory

Miss Selina LAU Suet-ching
Senior Government Counsel
Department of Justice

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

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Ms Alice LEUNG
Senior Council Secretary (2) 6

Ms Sandy HAU
Legislative Assistant (2) 5

Action

I. Election of Chairman

Mr Fred LI was elected Chairman of the Subcommittee.

II. Meeting with the Administration

[Legislative Council Brief: File Ref: FH CR 1/1886/08, LC Paper No. LS2/08-09, CB(2)79/08-09(02) and FS07/08-09]

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

3. Members noted that to reflect the policy intention clearly in the law over the meaning of milk referred to in the Amendment Regulation and to facilitate compliance by the trade, the Administration would move an amendment to

Action

introduce definitions for "milk" and "milk beverage" to the Amendment Regulation.

4. Members further noted that the Centre for Food Safety (CFS) would expand the scope of testing to cover Mainland raw materials commonly used in manufacturing local food products. To this end, CFS had sought the support of food trade associations in providing relevant information.

5. Whilst welcoming the Amendment Regulation, Mr WONG Yung-kan, Mr Alan LEONG and Mr WONG Ting-kwong asked why the Administration did not adopt a "zero tolerance" standard for melamine in milk and other food.

6. The Administration explained that the standards were set with reference to the Tolerable Daily Intake then promulgated by the US Food and Drug Administration and were in line with the standards promulgated by most places that had subsequently set standards for melamine in food, e.g. Canada and New Zealand. The CFS would closely monitor international developments in the setting of standards for melamine in food and review the current melamine standards accordingly.

7. Mr Tommy CHEUNG and Mr WONG Ting-kwong pointed out that it was not realistic to expect every one in the food chain could ensure that the food they supplied for human consumption did not contain melamine exceeding the legal requirements under the Amendment Regulation.

8. The Administration advised that defence for persons charged with committing an offence under Cap. 132AF was provided under section 71 of the Public Health and Municipal Services Ordinance (Cap. 132). It shall be a defence for the defendant to prove that he purchased the food as being an article which could be lawfully sold and with a written warranty to that effect; that he had no reason to believe that it was otherwise; and that the food was then in the same state as when he purchased it. Traders should keep proper records of transaction in order that they may plead warranty.

9. Dr Priscilla LEUNG considered that it would be useful if the Administration could formulate guidelines on steps to take to avoid infringing Cap. 132AF.

10. The Administration responded that CFS had been and would continue to maintain close liaison with the food trade on the steps that needed to be taken to ensure that the food they supplied was fit for human consumption. Efforts in this regard would be stepped up to protect public health.

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11. Mr Albert CHAN was of the view that the Administration should first give a verbal warning to food traders for supplying food containing melamine or other harmful substances exceeding the legal levels, instead of prosecuting these traders in the first instance, as had been done for contravention of the licensing conditions and requirements for food premises.

Admin

12. Ms Cyd HO and Mr Alan LEONG expressed concern that innocent people might be caught by section 3 of Cap 132AF which stipulated that "any person who imports, consigns, delivers, manufactures or sells for human consumption any food containing substances in greater concentration than that stipulated in the First Schedule to Cap 132AF commits an offence.". For instance, a waiter bringing a cup of coffee containing melamine-tainted milk to a customer unknowingly might commit an offence. The Administration was requested to provide information on the enforcement of Cap. 132AF to prevent innocent people from being caught by the provision.

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13. At the request of Ms Cyd HO, Assistant Legal Adviser 1 undertook to provide a paper setting out -

- (a) statutory defence in a prosecution under Cap. 132AF; and
- (b) application of the legal principle of "innocent agent" in criminal prosecution.

14. The Chairman asked whether any prosecution action had been initiated under the Amendment Regulation since its coming into force on 23 September 2008. The Administration responded that as at 19 October 2008, CFS had conducted tests on over 2 692 food samples. 32 were found to contain melamine exceeding the legal limits. CFS was conducting investigation on the suppliers of some of these implicated food products. Subject to the availability of sufficient evidence, prosecution action would be initiated against the offenders.

15. The Chairman requested the following information -

- (a) examples illustrating the enforcement of Cap. 132AF; and
- (b) details of the 32 food samples found to contain melamine above the legal limits, including how many of them were collected before and after 14 September 2008 and the concentration of melamine detected in each of these samples.

Admin

The Administration undertook to provide the information in writing after the meeting.

Action

II. Any other business

Extension of scrutiny period

16. To allow more time for the Subcommittee to study the Amendment Regulation, members agreed that the Chairman would give notice to move a motion at the Council meeting on 29 October 2008 to extend the scrutiny period of the Amendment Regulation from 5 to 26 November 2008.

Date of next meeting

17. Members agreed to hold another meeting on 3 November 2008 at 4:30 pm, subject to the Administration's responses to the views expressed by members at the meeting.

18. There being no other business, the meeting ended at 7:35 pm.

Council Business Division 2
Legislative Council Secretariat
11 November 2008

**Proceedings of the meeting of the
Subcommittee on Harmful Substances in Food (Amendment) Regulation 2008
on Monday, 20 October 2008, at 5:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000319	Mr Fred LI Mr Tommy CHEUNG Dr Joseph LEE	Election of Chairman	
000320 - 001040	Chairman Admin	Opening remarks Briefing by the Administration on the Amendment Regulation [Legislative Council Brief (File Ref: FH CR 1/1886/08)] and the Administration's proposed amendment to add definitions for the terms "milk" and "milk beverage".	
001041 - 001142	Chairman Admin	The Administration's explanation on the meaning of "milk" under the Public Health and Municipal Services Ordinance (Cap. 132).	
001143 - 002049	Mr Tommy CHEUNG Admin The Chairman	Discussion on the concern about the legal responsibility on small-sized individual retailers, and the Administration's advice that defence had already been provided in the existing section 71 of Cap. 132.	
002050 - 002735	Mr WONG Ting- kwong Admin	Discussion on the defence for the food trade and the legal limit for melamine in food in Hong Kong.	
002736 - 003551	Dr Priscilla LEUNG Admin	Dr Priscilla LEUNG's view that it would be useful if the Administration could formulate guidelines on steps to take to avoid infringing Cap. 132AF.	
003552 - 004502	Mr Albert CHAN Admin Chairman	Discussion on the concern that small-sized individual retailers might be liable to offence unknowingly. The Chairman's request for the Administration to provide examples illustrating the enforcement of Cap. 132AF.	Admin to provide information (para. 15(a) of the minutes)
004503 - 005206	Mr WONG Yung-kan Admin	The Administration's advice that CFS had been testing each consignment of raw milk and pasteurised milk imported from the Mainland for melamine since 25 September 2008.	

Time marker	Speaker	Subject	Action required
005207 - 010405	Ms Cyd HO Admin Chairman ALAI	Ms Cyd HO's concern on the enforcement of Cap 132AF and that innocent people might be caught by section 3 of Cap 132AF. Ms Cyd HO's request for the legal adviser to provide information on defence provisions provided under Cap. 132, and application of the legal principle of "innocent agent" in criminal prosecution.	Admin to provide a response (para. 12 of the minutes) ALAI to provide information (para. 13 of the minutes)
010406 - 011641	Mr Alan LEONG Admin	Mr Alan LEONG's concurrence of Ms Cyd HO's view and his questions about the format of warranty and the statutory limit set by the Administration for melamine in food.	
011642 - 013156	Mr Vincent FONG Admin	Discussion on the time required for melamine testing and the testing capability of local private laboratories.	
013457 - 014021	Dr PAN Pey-chyou Admin	Discussion on the measures that the Administration had taken to safeguard food safety in Hong Kong and the adequacy of existing resources in CFS in monitoring food safety in Hong Kong.	
014022 - 014847	Chairman Admin	Discussion on the issues about the surveillance strategy as recommended by the Expert Group on Melamine Incident. The Chairman's request for the Administration to provide information on the 32 food samples found to contain melamine above the legal limits.	Admin to provide a response (para. 15(b) of the minutes)
014848 - 015232	Mr WONG Ting-kwong Admin	Mr WONG Ting-kwong's enquiries about the penalty for an offence involving the detection of Sudan Red, malachite green or melamine in food which exceeded the legal limits, and the format of a warranty.	
015233 - 015715	Ms Cyd HO Admin	Discussion on the concern as to whether there was any requirement for issuing a warranty (say, any prescribed method of melamine testing).	
015716 - 015942	Mr Vincent FANG Admin	On Mr Vincent FANG's concern on the safety of milk, the Administration's response that, given the relatively higher risk associated with infant formula and food for pregnant/lactating women, testing of the relevant products would continue in the second round (for two weeks from late October to early November 2008). The measure of testing every consignment of raw milk and pasteurized/UHT milk from the Mainland (which started on 25 September 2008) would also continue.	

Time marker	Speaker	Subject	Action required
015943 - 020736	Chairman Mr WONG Yung-kan Ms Cyd HO Mr WONG Ting- kwong	Members' agreement to extend the scrutiny period of the Amendment Regulation. Members' further agreement to hold another meeting on 3 November 2008, subject to the Administration's responses to the views expressed by members at the meeting.	

Council Business Division 2
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11 November 2008