

Information Note

LegCo Panel on Food Safety and Environmental Hygiene

Closure Orders Against Unlicensed Food Premises

At the meeting of the LegCo Panel on Food Safety and Environmental Hygiene held on 8 March 2005, the Administration was asked to provide information on the time taken for the Food and Environmental Hygiene Department (FEHD) to successfully apply for closure orders from the court on unlicensed food premises.

2. Under section 128B of the Public Health and Municipal Services Ordinance (Cap. 132) (PHMSO), the Director of Food and Environmental Hygiene is empowered to make application to the court for a closure order against unlicensed food premises (the relevant section is at the Annex). FEHD will apply to the court for closing food premises which are not under application for licences or are unlicensable. Based on successful prosecution results or when there is sufficient evidence to prove that an unlicensed food business is in operation, FEHD will make an affirmation to the court and request the court to grant a closure order. After the court has granted the closure order, FEHD will affix a copy of the order on the unlicensed food premises concerned. A closure order will come into force on the eighth day after the day on which a copy of it is affixed on the premises.

3. The number of closure orders granted by the court under section 128B of PHMSO from 2005 to October 2010 is as follows:

Year	Number of closure orders
2005	3
2006	1
2007	1
2008	0
2009	1
2010 (Up to October)	0

Generally speaking, the average processing time for applying and granting closure orders of the above closure cases was about seven weeks.

**Food and Health Bureau
Food and Environmental Hygiene Department
December 2010**

Chapter:	132	Title:	PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE	Gazette Number:	L.N. 193 of 2002
Section:	128B	Heading:	Power to close premises used without licence, permit or permission	Version Date:	14/02/2003

(1) Where under the Food Business Regulation (Cap 132 sub. leg. X), the Frozen Confections Regulation (Cap 132 sub. leg. AC), the Milk Regulation (Cap 132 sub. leg. AQ) or the Slaughterhouses Regulation (Cap 132 sub. leg. BU)-

- (a) the use of any premises to which this section applies; or
- (b) any activity mentioned in section 128A(1),

is required to be licensed or permitted, a court on application by the Authority and on proof that the premises are so used or the activity is conducted on any premises (as the case may be) without the requisite licence, permit or permission shall, subject to subsections (2) and (3), make a closure order in Form H in the Seventh Schedule.

(2) Subsection (1) does not apply if-

- (a) the use or the activity is required under section 30(1) of the Food Business Regulation (Cap 132 sub. leg. X) to be permitted;
- (b) a food business within the meaning of that Regulation is carried on on or from the premises; and
- (c) the food business is required under that Regulation to be licensed and is licensed under that Regulation.

(3) The court shall not make a closure order unless it is satisfied that-

- (a) at least 7 days before the date fixed for the hearing of the application, a copy of the notice of intention to apply for the closure order, in both English and Chinese-
 - (i) was affixed at a conspicuous place on the premises; and
 - (ii) was served on the owner of the premises by sending the copy by registered post addressed to that owner's last known place of business or residence;
- (b) the notice stated the time and place set for the hearing of the application and advised that any person having a reasonable cause to be heard on the application was entitled to appear at the hearing and request to be heard; and
- (c) every person having a reasonable cause to be heard on the application and requesting to be heard has had an opportunity to be heard.

(4) At the place and time set for the hearing of an application made under subsection (1) or such other time as soon as practicable thereafter, the court shall hear the applicant and every person who-

- (a) is present at the hearing;
- (b) has a reasonable cause to be heard; and
- (c) wishes to be heard,

and then proceed to make a decision.

(5) A closure order shall not operate-

- (a) if, at the date of application for the order, the premises are used for human habitation, to prevent such habitation on the premises; or
- (b) to affect the use of any common area in any building or public place so as to cause obstruction to public passage or fire escape.

(6) A closure order comes into force on the beginning of the 8th day after the day on which a copy of it is affixed at a conspicuous place on the premises in respect of which it is made.

(7) A closure order shall remain in force until the court rescinds it on application by the Authority or any person having an interest in the premises in respect of which the order is made.

(8) The court shall rescind a closure order if it is satisfied that-

- (a) the use of, or the activity to be conducted on, the premises in respect of which the order has been made has been licensed or permitted under any of the subsidiary legislation mentioned in subsection (1); or
- (b) the premises will not be used for any purpose mentioned in section 128A(1) and no activity mentioned in subsection (1) will be conducted on the premises in contravention of any of the subsidiary legislation mentioned in subsection (1).

(9) Subject to subsection (5), when a closure order in respect of any premises comes into force, the Authority shall lock or seal, or cause to be locked or sealed, all or any of the entrances to or exits from the premises and may disconnect or cause to be disconnected all gas, water and electricity supplies to those premises.

(10) Subject to subsection (11), no person, other than a public officer in the course of his duty, may enter or remain on any closed premises.

(11) The Authority may-

- (a) permit in writing any person to enter and remain on any closed premises for such purpose as is specified in the permission;
- (b) impose such conditions on the permission as he thinks fit;
- (c) revoke the permission if he thinks that the purpose for which the permission was granted no longer exists or any condition imposed under paragraph (b) has been breached;
- (d) request any person found on any closed premises to leave the premises, and if the

person refuses to leave, remove the person from the premises with or without the assistance of police officers and use such force as is reasonably necessary.

(12) Any person who, without lawful authority or reasonable excuse-

- (a) removes or defaces any copy of a closure order affixed under subsection (6);
- (b) breaks or interferes with any lock or seal made under subsection (9) ; or
- (c) contravenes subsection (10),

commits an offence.

(13) The Authority may-

(a) dispose of-

- (i) any article or thing or any perishable food found on any closed premises that requires to be immediately disposed of as he thinks fit;
- (ii) any live bird, fish or animal that is found on the premises as he thinks fit;

(b) remove-

- (i) any article, thing or food found on any closed premises that is likely to create a fire hazard or constitute a danger to life or health if left on the premises;
- (ii) any live bird, fish or animal found on the premises;

(c) make such arrangements with regard to any live bird, fish or animal removed under paragraph (b) as he thinks fit;

(d) affix a notice in both English and Chinese at a conspicuous place on the closed premises-

- (i) setting out the details of any article, thing, food, live bird, fish or animal removed under paragraph (b) that he thinks can be returned; and
- (ii) calling for the submission to him of any claim for the return of such article, thing, food, live bird, fish or animal within 7 days of the affixing of the notice.

(14) Where a claim mentioned in subsection (13)(d)(ii) is made, the Authority-

- (a) shall refuse to return the article, thing, food, live bird, fish or animal if he is not satisfied that the claimant is either the owner or a person entitled to the possession of it or the live bird, fish or animal is dead; or
- (b) may return the article, thing, food, live bird, fish or animal as claimed and recover as a civil debt from a claimant to whom it is returned any expenses incurred in the removal and storage of it or in any arrangement made in respect of it.

(15) Any article, thing, food, live bird, fish or animal removed by the Authority under subsection (13)(b) and not claimed within the time specified in subsection (13)(d)(ii), or which the Authority refuses to return in accordance with subsection (14)(a), may be sold by public auction or, upon the order of a court, otherwise sold or disposed of as the court directs, and any proceeds arising from the sale shall be retained by the Authority and applied in payment of any expenses incurred in connection with the enforcement of the closure order and the surplus (if any) paid, on demand made within 90 days of the sale, to the owner of the

article, thing, food, live bird, fish or animal.

(16) Any surplus not demanded in accordance with subsection (15) shall be paid into the general revenue.

(17) The Authority may recover as a civil debt from the person having the management or control of any premises (or the master of the vessel if the premises are a vessel or any part of a vessel) immediately before the closure order in respect of the premises came into force the cost of-

(a) any work carried out on the premises under subsection (9);

(b) removing any article, thing, food, live bird, fish or animal from the closed premises under subsection (13)(b); and

(c) any arrangements made under subsection (13)(c),

which is not met out of the proceeds of any sale under subsection (15).

(Added 1 of 2002 s. 3)