

**For discussion
on 14 December 2004**

LegCo Panel on Food Safety and Environmental Hygiene

**PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE
(CHAPTER 132)**

CONTROL OF MOSQUITO BREEDING

PURPOSE

This paper briefs members on the proposed amendments to the Public Health and Municipal Services Ordinance (Cap. 132) to allow more effective control over the mosquito-breeding problem.

BACKGROUND

2. Mosquito-borne diseases, such as Japanese encephalitis (JE) and dengue fever, have given rise to grave public health concerns in recent years. This is especially so in 2004 as there were five local JE cases which resulted in two fatalities and the monthly ovitrap index, which measures the extensiveness of Aedes mosquitoes in the territory, reached a very high level in May 2004. To tackle the serious mosquito problem, the Anti-mosquito Steering Committee established under the Health, Welfare and Food Bureau requested various departments to intensify their anti-mosquito efforts with special anti-mosquito operations mounted in key areas, including more frequent inspection at housing estates, commercial properties and construction sites, as well as thematic operations targeted at village houses, tenement buildings, and other problematic spots. All 18 districts have set up their own District Anti-Mosquito Task Force chaired by District Officers to strengthen the coordination of anti-mosquito operations of different departments and to encourage community participation in combating the mosquito problem. Under the concerted efforts of all parties concerned, the overall situation on mosquito control has improved. The latest ovitrap index in October is 5.2%. In carrying out the anti-mosquito operation, the Food and

Environmental Hygiene Department (FEHD) has encountered some difficulties as a result of the constraint of the existing legislation. It is considered necessary to amend the legislation so as to allow FEHD to take more effective anti-mosquito operation in the next rainy season.

EXISTING PROVISIONS AND LIMITATIONS

3. Section 27 of the Public Health and Municipal Services Ordinance (the Ordinance) empowers FEHD to deal with potential mosquito breeding places and to take enforcement action against mosquito breeding. Under section 27(1), where there is or is likely to be an accumulation of water in any premises with the risk of mosquito breeding, FEHD may issue a notice requiring the occupier, owner (where the occupier cannot be found or ascertained) or contractor (where the premises concerned are a construction site) of any premises to-

- (a) remove the accumulated water;
- (b) take steps to prevent such accumulation of water; or
- (c) take other steps to prevent mosquito breeding.

Failure to comply with the notice is an offence. FEHD may take action to remove the accumulated water and may recover the costs from the owner, occupier or contractor.

4. FEHD has encountered the following difficulties in carrying out mosquito control operations in accordance with the existing provisions:

(a) Time-consuming procedures

5. Under the existing law, even if there is an imminent risk of mosquito breeding in private premises, FEHD has to rely on the occupier or owner of the premises to take mosquito control measures by issuing a notice. FEHD could take clearance action only if the occupier or owner fails to comply with the notice. The process of identifying the occupier/owner for serving the notice is lengthy and often fruitless, particularly in dealing with New Territories private agricultural land and abandoned huts which the owner is not in Hong Kong or does not care to

manage. Unfortunately, these are the places highly susceptible to mosquito breeding. Hence, the current provisions of the Ordinance restrain FEHD from taking timely mosquito removal actions in places where prompt action is most needed.

(b) Common parts in multi-storey buildings

6. Experience shows that the common parts of a building have a high risk of mosquito breeding. As they are under the care of all the occupiers/owners of the building, FEHD has to go through the lengthy process of identifying all the occupiers/owners for the purpose of issuing a notice to each of them in order to conduct mosquito removal action. It is not possible for FEHD to take action against the body of persons engaged by the occupiers/owners of the building for management of the property, since section 27 of the Ordinance only imposes legal liability upon the occupiers, or in their absence, the owners of the premises concerned. As the body of persons engaged for property management is not held liable, FEHD can only remind the body of persons to take precautionary measures to prevent mosquito breeding. This is considered not effective enough to control the mosquito problem.

(c) Breeding grounds for mosquitoes

7. Under the existing Ordinance, FEHD may take anti-mosquito action only when there is accumulation of water. Other media that may possibly be mosquito breeding grounds such as abandoned huts, dilapidated building structures, litter or waste and used tyres are not covered by the Ordinance. When mosquitoes are found breeding in these media, FEHD could not require the occupier or owner or, in respect of a building site or building under construction, the appointed contractor to remove such media.

(d) Placing of ovitrap

8. As part of the dengue vector surveillance programme, FEHD has been placing ovitraps at selected locations to detect the larval breeding rate of mosquitoes. However, FEHD has no statutory power and often encounters difficulties in placing ovitraps in common areas of private

premises. This has undermined the effectiveness of the surveillance programme.

(e) Difficulties in recovering costs

9. FEHD may only recover the cost of mosquito control work from the occupier or owner of the premises if a notice has been served before the clearance action. Recent legal advice suggested that a notice affixed on the abandoned huts could not be deemed to have been served on the registered owners who are residing in other places. It is also uncertain whether the court can draw an irresistible inference that the owners of the huts have failed to maintain the land properly can be held to become the owner of the litter or waste. This renders much difficulty to FEHD to recover the cost of mosquito control work performed in emergency situation.

PROPOSED AMENDMENTS

10. We propose that section 27 of the Ordinance be amended as follows to strengthen the effectiveness in the prevention of mosquito breeding:-

- (a) where FEHD has reasonable cause to believe that any accumulation of water or any other potential mosquito breeding ground found in any premises including building sites or buildings under construction poses an imminent health hazard, FEHD may take action (including immediate actions) to remove such accumulation of water or potential breeding ground and to take other measures to prevent the breeding of mosquito larvae or pupae, with or without a notice issued to the occupier or owner of the premises or body of persons responsible for the management of the premises, or the appointed contractor of a building site or building under construction. FEHD may recover the costs of taking the above measures from such occupier or owner or body of persons responsible for the management of the premises, or the appointed contractor of the building site or building under construction;

- (b) apart from the occupier or owner, or in respect of a building site or building under construction, the appointed contractor, FEHD may hold the body of persons engaged by the occupier or owner for the management of the premises responsible for mosquito problem found. The body of persons may be required to remove any accumulation of water or any structure, article or material that is a breeding ground for mosquitoes or may be a potential breeding ground for mosquitoes, properly maintain or manage any structure that could be mosquito breeding grounds and to take other steps to prevent mosquito breeding. Failure for the body of persons to comply with the notice shall be an offence. Furthermore, the body of persons responsible for management of the premises shall be guilty of an offence if mosquito larvae or pupae are found on the premises; and
- (c) FEHD may place, install, inspect and collect mosquito surveillance devices, such as ovitraps, in the common areas of private premises. It will be an offence to refuse FEHD's entry into the common areas of the premises for placing such devices, to remove intentionally or to destroy or tamper with the devices.

We aim to introduce the above measures before the next rainy season begins.

ADVICE SOUGHT

11. Members are invited to comment on our proposed amendments to the Ordinance as set out in the paragraphs above.

Health, Welfare and Food Bureau
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