

立法會 *Legislative Council*

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**Paper for the House Committee meeting on
3 March 2006**

**Report of the Bills Committee on
Public Health and Municipal Services (Amendment) Bill 2005**

Purpose

The paper reports on the deliberations of the Bills Committee on Public Health and Municipal Services (Amendment) Bill 2005.

Background

2. Section 27 of the Public Health and Municipal Services Ordinance (Cap. 132) empowers the Authority, i.e. the Director of Food and Environmental Hygiene, to deal with potential mosquito breeding places and to take enforcement action against mosquito breeding. Under section 27(1) of Cap. 132, where there is or is likely to be an accumulation of water in any premises with the risk of mosquito breeding, the Authority may issue a notice requiring the occupier, owner (where the occupier cannot be found or ascertained), or the appointed contractor (where the premises concerned are a construction site) of any premises requiring him to take remedial actions.
3. The remedial actions required under section 27 (1) of Cap. 132 include –
 - (a) removing the accumulated water, if any;
 - (b) taking steps to prevent any accumulation of water; or
 - (c) taking other steps to prevent mosquito breeding.

4. Under section 27(2) of Cap. 132, failure to comply with the notice is an offence, and the Authority may remove the accumulated water and recover the costs from the owner, occupier or appointed contractor.

5. According to the Administration, it has encountered constraints in its mosquito control operations, especially when dealing with private agricultural land and abandoned huts of which the owner is not in Hong Kong or does not care to manage the land or hut. There is also legal uncertainty whether the Authority is empowered to remove containers or articles (such as used tyres) which are media of mosquito breeding. Moreover, it is presently not possible for the Authority to take enforcement action against the management body of multi-storey buildings, as section 27 of Cap. 132 only imposes legal liability upon the occupiers, or in their absence, the owners of the premises concerned.

6. When discussing the Administration's anti-mosquito campaigns in 2004, the Panel on Food Safety and Environmental Hygiene pointed out that prompt action should be taken to eliminate potential mosquito breeding places especially in vacant government land, hillsides and illegal cultivation sites, private farmland and septic tanks of village houses, rear lanes and private streets, and construction sites. The Administration subsequently informed the Panel that a legislative proposal would be introduced to strengthen the effectiveness of prevention of mosquito breeding.

The Bill

7. The Public Health and Municipal Services (Amendment) Bill 2005 was introduced into the Legislative Council (LegCo) on 4 May 2005. The Bill seeks to amend section 27 of Cap. 132 in order to empower the Authority to –

- (a) deal with the mosquito breeding problems arising from the presence of articles capable of causing accumulation of water which allows the breeding of mosquitoes, and create a related offence;
- (b) issue notice to the person responsible for management of premises to do certain acts for preventing the breeding of mosquitoes, so that they are also liable for failure to comply with any of the requirements of the notice and causing mosquito breeding; and
- (c) take necessary action for preventing the breeding of mosquitoes without notice where there is mosquito-related health hazard, and recover the associated costs.

The Bills Committee

8. At the House Committee meeting on 6 May 2005, Members agreed that a Bills Committee be formed to examine the Bill. Chaired by Hon Fred LI, the Bills Committee has held four meetings. The membership list of the Bills Committee is in **Appendix I**.

9. At the first meeting of the Bills Committee on 24 May 2005, members considered that, in view of the implications of the Bill on abandoned land and huts in the New Territories and on the large number of multi-storey buildings over the territory, the Administration should first consult Heung Yee Kuk (HYK) and the 18 District Councils. The Bills Committee decided to hold the scrutiny work of the Bill in abeyance to allow time for the Administration to conduct consultation. The Bills Committee reported its decision to the House Committee on 27 May 2005.

10. On 9 December 2005, the Administration informed LegCo Secretariat that it had consulted HYK and the 18 District Councils on the Bill, and requested the Bills Committee to resume consideration of the Bill. The House Committee agreed at its meeting on 16 December 2005 that the Bills Committee be re-activated.

Deliberations of the Bills Committee

Scope of the Bill and definition of “mosquito-related health hazard”

11. Hon Tommy CHEUNG and Hon WONG Yung-kan have expressed concern about the wide scope of the Bill, and the definition of “mosquito-related health hazard” in the Bill. They consider that if the legislative intent of the Bill is to strengthen anti-mosquito work in areas which pose problems (e.g. abandoned private farmland and huts, and common parts in multi-storey buildings), the additional powers to be conferred by the Bill should only be applicable to these problem areas instead of all private land and premises.

12. The Administration has advised that the powers to carry out anti-mosquito actions and the powers of entry into any premises are already provided under existing section 27 and section 126 respectively of Cap. 132. Under existing section 27(1), the Authority may serve a notice to the occupier or owner or appointed contractor of the premises concerned, requiring him to remove accumulation of water and to take actions to prevent mosquito breeding. In clause 2(c) of the Bill, a new section 27(1B) is proposed to provide that if the Authority has reasonable cause to believe that upon any premises any accumulation of water or any article poses a “mosquito-related health hazard”, the Authority may take such action as it considers necessary to remove such accumulation of water or the article, or prevent the breeding of mosquitoes

upon the premises. The new section is to empower the Authority to take necessary action for preventing the breeding of mosquitoes without notice, where there is mosquito-related health hazard. Where such hazard is attributable to any act, default or sufferance of any person, the Authority may recover from the person any costs incurred by the Authority in the taking of such action.

13. The Administration has advised that as section 126 of Cap. 132 deals with general powers of entry, it is not appropriate to make express provisions to restrict the powers of entry of Cap. 132 for the purpose of carrying out the functions under section 27 to certain problem areas only.

14. The Administration has explained that the expression of “mosquito-related health hazard” is defined under the new section 27(1AA) in clause 2 of the Bill to mean any circumstances that –

- (a) create favourable condition for the transmission of mosquito-borne diseases which constitute a danger to human health; or
- (b) are likely to create such a condition if immediate remedial action is not taken.

15. Hon Tommy CHEUNG has asked whether it is possible to specify in the definition the types of mosquito-related diseases. The Administration has advised that it is necessary to provide some flexibility in the definition to cater for new types of mosquito-related hazards in future. Nevertheless, the Administration has agreed to specify in the internal guidelines that “mosquito-related health hazard” refer to the following scenarios –

- (a) any potential mosquito breeding grounds found within 500m radius of a recent local or imported case of dengue fever;
- (b) any potential mosquito breeding grounds found within 2km radius of a recent local case of Japanese encephalitis; and
- (c) any areas where the area ovitrap indices are above 40%.

16. The Administration has further advised that FEHD staff will inspect all places with potential mosquito breeding grounds within the scenarios described in paragraph 15 above. These include government land, public thoroughfare, lanes and footpaths, private land and common parts of buildings, irrespective of whether these premises are occupied or vacant.

Persons responsible for the premises and their legal liabilities

17. The Bills Committee has noted that clause 2 of the Bill amends section 27(1) of Cap. 132 to empower the Authority to issue notices to persons “responsible for the premises” requiring them to do certain acts for preventing the breeding of mosquitoes. The expression “the person responsible for the premises” is defined under the new section 27(1AA) to include the occupier, the owner, the person responsible for the management of the premises, or the appointed contractor of a building site.

18. Hon WONG Yung-kan, Hon Daniel LAM and Hon CHEUNG Hok-ming have expressed concern that appointed managers of tso/t’ongs in the New Territories will be regarded as persons responsible for the premises and held liable for the mosquito problems of the abandoned land or hut within the respective areas of their tso/t’ongs. These members have pointed out that many owners/occupiers of abandoned land or huts are not in Hong Kong, and they may not be aware of the mosquito-breeding problem in their land or premises and the notice requiring them to take remedial actions. Moreover, appointed managers of tso/t’ongs only act on behalf of the villagers, and they do not actually own the land/premises or have power to dispose of such land/premises. They should not be held liable for failure to comply with the notice to take remedial actions on these premises, or to pay the costs for the anti-mosquito actions taken by the Government.

19. The Administration has informed the Bills Committee that HYK has raised similar concerns when consulted on the Bill on 20 September 2005. While HYK supports stepping up anti-mosquito measures to safeguard public health, it has reservations about the possible impact of the Bill in relation to the cost recovery system and the effect of the Government’s power of entry into private premises. HYK considers that the Government should recover the cost for anti-mosquito action only on land with economic activities. HYK also points out that some land is prone to accumulation of water, either because of the distinct geographical feature such as wetland, or because there are government works in the vicinity. It is difficult to clear water accumulation in these areas and it will be unfair to hold the owners, occupiers or managers of tso/t’ongs responsible for the problem.

20. According to the Administration, it has explained to HYK that the cost recovery mechanism is already provided for in the existing Ordinance and the Bill has not proposed any change. It is also a well-established principle that owners/occupiers of private land should manage the land themselves. According to the New Territories Ordinance (Cap. 97), the manager appointed under section 15 to manage the land in the New Territories on behalf of a clan, family or t’ong has full power to deal with the land concerned as if the manager is the sole owner. The Administration has assured HYK that it does not intend to request land owners to clear water accumulation on land without taking into consideration of the geographical features of the area, e.g. wetland.

21. The Administration has pointed out that the duties and responsibilities of appointed managers of tso/t'ongs will remain unchanged even if the Bill is not passed. The Administration has also pointed out that the implication of the proposed section 27(3) in the Bill is that a person will not commit any offence if the mosquito problem is not attributable to the act, default or sufferance of the person. The land owner or manager of the land will not be liable if the mosquito problem is caused by factors beyond his control.

22. The Administration has invited HYK to come up with a list of land which they consider impossible to take effective anti-mosquito actions due to the distinct geographical features or the impact of government works. The Administration has agreed to reflect to the relevant government departments the concerns of HYK about the impact of government works on the relevant land on the list. FEHD will provide advice to the land owners on what anti-mosquito actions can be taken. If nothing can be done, FEHD will not take action against the land owners should there be mosquito problem.

23. On the expression of "persons responsible for the management of the premises" proposed in the Bill, the Administration has explained that the management body of multi-storey buildings is currently not held liable for mosquito breeding problems in common parts of such buildings. Cap. 132 currently only imposes legal liability on owner or occupiers, and the Administration can only seek the cooperation of the management body to take remedial actions to prevent mosquito breeding. To impose a legal duty on the management body will make it act more responsibly.

24. The Administration has assured the Bills Committee that FEHD will endeavour to identify the occupier or owner or the person responsible for the premises, and will advise him to take remedial actions to prevent mosquito breeding before taking enforcement actions. In the case of abandoned land or huts in the New Territories, FEHD will seek the assistance of the village representatives concerned in identifying the owner/occupier or person responsible. As regards common parts of multi-storey buildings without an owners' corporation or management body, FEHD will contact the occupiers in the buildings and check with the Lands Registry in order to find out the person responsible for the premises.

25. The Administration has explained that the Authority may decide on whom a notice is to be served under section 27(1) of Cap. 132 to require remedial actions to be taken to prevent mosquito breeding in the premises. Where the premises are occupied, it is most efficient to serve the notice to the occupier. Whenever the premises are unoccupied or the occupier is not in Hong Kong, the owner should still be taken to have a duty of care over the buildings.

26. The Administration has further explained that if the premises concerned is a building site, there will be a registered contractor for private land, or an appointed contractor if the premises are government land. If there is no contractor registered in respect of the private premises concerned, the notice will be served to the occupier, the owner and/or the person responsible for the management of the premises.

Powers of and procedures for entering private premises

27. Hon Tommy CHEUNG has expressed concern that the Bill will confer additional powers on the Authority to enter private premises under Cap. 132. He considers that there should be sufficient safeguards against the Authority abusing its powers to enter private premises, particularly if these involve residential premises.

28. The Administration has explained that the powers of and procedures for entry into any premises by authorised officers are already provided for under section 126 of Cap. 132. The exercise of the power of entry is subject to the conditions set out in section 126, and section 27 as amended by the Bill. Under section 126(1) of Cap. 132, any authorised officer has a right to enter any premises, vehicle, vessel or aircraft at any time between 7:00 am and 7:00 pm and, in the case of any workplace or any premises or vessel used for business purposes, at any time during which work or business is carried on, for specified purposes. Moreover, in the case of private premises, certain conditions are also to be met before an entry could be effected.

29. The Bills Committee has requested the Administration to elaborate on the procedures for entering private premises under the present and proposed legislation, in order to ensure that the power of entry will be exercised only when strictly necessary and with due care. Hon Tommy CHEUNG has also requested the Administration to consider stipulating the procedures in the Bill.

30. The Administration has assured the Bills Committee that the power of entry will continue to be exercised with care and only when strictly necessary. Under the existing and proposed procedures, the staff of Food and Environmental Hygiene Department (FEHD) will first try to identify the occupier or owner concerned to enlist his cooperation in clearing any accumulation of water or eliminate mosquito-breeding grounds. Under section 126(1) of Cap. 132, admission to any premises not for business purposes is subject to the serving of the Notice of Intended Entry to the occupier or person in charge of such premises, and such Notice has to be served for at least two hours before demand of admission.

31. The Administration has advised that under section 126(2) of Cap. 132, if the premises are unoccupied or if entry is still refused after serving the Notice of Intended Entry for more than two hours, FEHD may apply for a warrant from the court for an authorised officer to enter the premises concerned. In the past, FEHD has applied for such warrants to gain entry into private premises which are suspected to be illegal slaughterhouses or have caused water seeping problems. The Administration has stressed that the Bill has not sought to change the requirement under section 126(2), i.e. FEHD will still have to apply for a court warrant to enter private premises which are not for commercial purposes, even after the Bill is enacted.

32. The Administration has further advised that it is not necessary to specify in the Bill the procedures for serving Notice of Intended Entry and Notice of Intention to apply for Warrant of Entry, as they are provided for in section 126 of Cap. 132. Nevertheless, the Administration has undertaken to provide clear guidelines to FEHD staff on the procedures for carrying out anti-mosquito actions and gaining entry into private premises. A copy of the guidelines (**Appendix II**) has been provided to the Bills Committee for reference.

Amendments to section 27(3) and the new section 27(3A)

33. The original version of the Bill¹ also amends the existing section 27(3) and adds a new section 27(3A) in Cap. 132. Under the proposed section 27(3) in the Bill, if the existence of larvae or pupae on the premises is attributable to the act, default or sufferance of any person (who can be the owner, occupier or any other person), that person will be held responsible for the mosquito breeding problem, and is liable to an offence. This provision will apply to land, buildings and also building sites. The new section 27(3A) in the Bill is proposed to hold also the appointed contractor of a building site responsible for the existence of larvae or pupae. This section is expressly made to be without prejudice to the proposed section 27(3) in the Bill.

34. Following discussion with the Bills Committee, the Administration has reviewed the policy and has advised that it will maintain the current arrangement that only the appointed contractor of the building site will be held responsible for any mosquito breeding problem on the site, as the appointed contractor has ultimate responsibility for the management of the building site. The Administration has agreed to move Committee Stage amendments (CSAs) to the relevant clauses in the Bill to make it clear that the proposed section 27(3) in the Bill will be applicable only to premises which do not consist of a building site, and the new section 27(3A) in the Bill is not subject to section 27(3). The proposed sections 27(3) and (3A) in the Bill are re-numbered as proposed sections 27(3A) and (3) respectively.

¹ The original version of the Bill before Committee Stage amendments are proposed by the Administration.

35. The Administration has also clarified that section 27(3)(b) proposed in the Bill is not a strict liability offence and the prosecution has to provide proof of the various elements in the offence.

Penalties and defence

36. Under the proposed section 27(2) of the Bill, it will be an offence, subject to the defence provided in the proposed section 27(2A), for failure to comply with any requirement of a notice served under the amended section 27(1) or the new section 27(1A) proposed in the Bill. Under the proposed section 27(3)², it is an offence for the appointed contractor of a building site if any larvae or pupae of mosquitoes are found therein. Under the proposed section 27(3A)², a person whose act, default or sufferance has caused the existence of any larvae or pupae of mosquitoes on any premises is guilty of an offence. The maximum penalty for these offences is a fine at level 4 (\$25,000) and a daily fine of \$450.

37. The Administration has emphasized that the Bill does not seek to make prosecution easier but rather to shorten the lead time required for taking anti-mosquito actions at times of emergency. The proposed section 27(3) in the Bill (to be re-numbered as section 27(3A) under the CSAs) expressly provides that the person will be guilty of an offence only if mosquito-related health hazard is “attributable to any act, default or sufferance” of that person.

Committee Stage amendments

38. The Bills Committee supports the CSAs proposed by the Administration (paragraph 34 refers). A copy of the CSAs is in **Appendix III**.

Resumption of Second Reading debate

39. The Bills Committee supports the resumption of the Second Reading debate on the Bill at a future Council meeting.

Advice sought

40. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
2 March 2006

² The re-numbered version of the bill with CSAs proposed refers. Details see paragraph 34.

**Bills Committee on
Public Health and Municipal Services (Amendment) Bill 2005**

Membership list

Chairman	Hon Fred LI Wah-ming, JP
Members	Hon WONG Yung-kan, JP Hon Andrew CHENG Kar-foo (since 17.1.2006) Hon Tommy CHEUNG Yu-yan, JP Hon Daniel LAM Wai-keung, BBS, JP (since 17.1.2006) Dr Hon KWOK Ka-ki (since 17.1.2006) Hon CHEUNG Hok-ming, SBS, JP (since 17.1.2006) (Total : 7 Members)
Clerk	Mrs Constance LI
Legal adviser	Mr Stephen LAM
Date	17 January 2006

**Guidelines on anti-mosquito actions taken
under the circumstances of mosquito-related health hazard**

- (1) Under section 27(1AA) of the amendment legislation, “mosquito-related health hazard” means any circumstances that –
 - (i) create favourable condition for the transmission of mosquito-borne diseases which constitute a danger to human health; or
 - (ii) are likely to create such a condition if immediate remedial action is not taken.
- (2) The scenarios where “mosquito-related health hazard” will refer to are –
 - (i) Any potential mosquito breeding grounds found within 500 m radius of a recent local or imported case of dengue fever;
 - (ii) Any potential mosquito breeding grounds found within 2 Km radius of a recent local case of Japanese encephalitis; and
 - (iii) Any areas where the area ovitrap indices are above 40%.
- (3) When any one of the scenarios under paragraph (2) above is found to exist, FEHD staff will inspect all places with potential mosquito breeding grounds within the area. These include government land, public thoroughfare, lanes and footpaths, private land and common parts of buildings, both occupied and vacant.
- (4) FEHD staff will try to locate the occupier/owner/management body/manager of the land (司理) concerned as appropriate by making enquiries to the neighbouring households, the village representatives or the management office, etc. If the concerned occupier/owner/management body/manager of the land (司理) can be readily identified, FEHD staff will seek his/her cooperation to clear the accumulation of water/eliminate the mosquito breeding ground at once or within a short period (say not more than 2 hours).

- (5) If the concerned occupier/owner/management body/manager of the land (司理) cannot be readily identified e.g. premises occupied but locked up or entry is refused, FEHD staff will post up a “Notice of Intended Entry” at the conspicuous location of the premises/places demanding entry thereto say after 2 hours.
- (i) For premises occupied but locked up, if entry is still unsuccessful after the specified period of 2 hours, FEHD staff will post up the “Notice of Intention to Apply for Warrant of Entry” at the conspicuous location of the concerned premises. If nothing is heard from the occupier/owner, FEHD staff will proceed to apply to the Magistrate for a warrant of entry. If there is doubt on the address or land status of the premises, FEHD staff will verify the land status of the premises before making application to the Magistrate for a warrant of entry.
- (ii) For unoccupied premises such as abandoned huts or vacant land, FEHD staff will verify the land status of the premises or vacant land. If it is confirmed that the premises or vacant land rests on private lot, FEHD staff will proceed to apply to the Magistrate for a warrant of entry.
- (6) Upon the grant of warrant of entry, FEHD staff will arrange for the attendance of the Police to execute the warrant (if necessary). Prior to the execution of the warrant, FEHD staff will make a final attempt to contact the occupier/owner/management body/manager of the land (司理) to take anti-mosquito actions. If the attempt fails, FEHD staff will execute the warrant and complete anti-mosquito actions and/or enforcement actions. FEHD staff will recover from the owner the cost incurred in taking anti-mosquito actions.

PUBLIC HEALTH AND MUNICIPAL SERVICES (AMENDMENT) BILL 2005

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Health, Welfare and Food

<u>Clause</u>	<u>Amendment Proposed</u>
2(a)	In the Chinese text, in the definition of “有關處所的負責人”, by deleting “包括任何建築地盤” and substituting “由任何建築地盤組成”.
2(d)	In the proposed subsection (2B)(a) - (a) in subparagraph (ii), by deleting “and”; (b) by adding - “(iia) take such other action as he considers necessary to prevent the existence of larvae or pupae of mosquitoes on the premises; and”; (c) in subparagraph (iii), by deleting “or (ii)” and substituting “, (ii) or (iia)”.

2(e)

- (a) By renumbering the proposed subsections (3) and (3A) as proposed subsections (3A) and (3) respectively.
- (b) In the proposed subsection (3), by deleting everything before ", the appointed contractor" and substituting -
 - "(3) If any larvae or pupae of mosquitoes are found on any premises consisting of a building site of which there is the appointed contractor".
- (c) In the proposed subsection (3A)(a), by adding "other than those mentioned in subsection (3)" after "premises".