

**Consumer Council Submission to the Bills Committee
on the proposed Draft Code of Practice on Section 78B orders
under Part VA of Public Health and Municipal Services
Ordinance (Cap. 132)**

Introduction

- 1 The Consumer Council (“CC”) is pleased to provide views on the proposed Draft Code of Practice on Section 78B orders under Part VA of Public Health and Municipal Services Ordinance (Cap. 132) (the “Code”).
- 2 Since section 78B orders would have great impact on the society, the trade and consumers, it is important for the Code to provide clear guidelines on the actions that the trade should take for compliance with section 78B orders made for the purpose of protecting the health and interest of the consumers.

Statutory Powers

- 3 Paragraph 4.2 of the Code states that:
“The Authority may make a section 78B order to do any one or more of the following –
 - (a) prohibit the import of any food for the period specified in the order;
 - (b) prohibit the supply of any food for the period specified in the order;
 - (c) direct that any food supplied be recalled and specify the manner in which, and the period within which, the recall is to be conducted;...”
- 4 CC notes that the Authority, under the proposed Public Health and Municipal Services (Amendment) Ordinance 2008, may make a section 78B order in different forms, that is, the orders to prohibit import, supply and/or direct any food supplied be recalled may be made at the same time or separately. However, the Amendment Ordinance does not provide for a consumer redress mechanism. The Code similarly does not deal with the issue.
- 5 CC is concerned that as the actions required from traders vary under

different forms of a section 78B order depending on the extent of a problem, confusion may be caused to and by the public which may not have a proper understanding of the extent of the problem triggering a section 78B order. For instance, where it is found necessary to prohibit the supply (but not direct a recall) of a food that has been widely distributed, an order served on every single trader by way of publication in the Gazette may cause panicky reaction from the consuming public. CC believes that if there is in place a consumer redress mechanism which assures consumers at large that they will be compensated in due course in the event food in their possession is subsequently found to be unfit for consumption, undue interruption to traders can be avoided. CC therefore urges the Authority to consider providing for a consumer redress mechanism.

Role of Government

- 6 CC notes that the Code provides under paragraph 6.8 for the Food and Environmental Hygiene Department (“FEHD”) to assess in different aspects the adequacy of the traders’ action after a section 78B order is made.
- 7 In the event of a recall, CC considers it important that consumers should have noticed as soon as possible after a section 78B order is made and details concerning the recall arrangement.
- 8 CC is pleased to note that the following criteria: prompt announcement of recall / prohibition of supply or import through the media, setting up of customer hotlines to answer enquiries, and arrangement of convenient and adequate locations for return of the food concerned are included in paragraph 6.8.
- 9 However, it is not clear whether consumer feedback will be taken into account. CC invites the Authority to consider providing means for consumer complaints. In the event that the Authority receives a lot of consumer complaints about the inadequacy of the traders’ action, for example, inadequate locations for return of the food concerned, the Authority should promptly order the traders to improve.
- 10 CC also believes it is important for the trade to tackle the issue of consumer redress in arranging a recall since consumers will expect to be

compensated for their loss in the event of a food incident.

- 11 CC therefore further invites the Authority to consider, in the case that a **section 78B order is made to direct any food supplied be recalled**, the issue of consumer redress in its assessment of the adequacy of the traders' action.

Role of Food Industry

- 12 CC is pleased to note that the actions generally required from a trader in a section 78B order for prohibition of import are elaborated in paragraph 7.4 and 7.5; and for prohibition of supply in paragraph 7.6.
- 13 CC also notes that details on action required from a trader in a section 78B order for a recall are explained in paragraph 7.13.
- 14 However, CC is disappointed to find that the issue of consumer redress in arranging a recall is not covered in paragraph 7.13.
- 15 CC strongly suggests that the issue of consumer redress in the case of a recall should be included in the Code to protect the interest of consumers.
- 16 CC has the following recommendations regarding the issue of consumer redress:
 - (a) refund should be provided by the importer / local manufacturer concerned;
 - (b) it should be made to consumers at the locations for return of the food concerned;
 - (c) since consumers may not be keeping the receipts, refund should be made upon return of the food concerned whether consumers can also produce the receipts or not;
 - (d) the amount of the refund should not be less than the original purchase price (not the discounted price) of the food before it is recalled;
 - (e) the refund should be made in cash and not coupons or in the form of an offer to exchange for other foods supplied by the importer / local manufacturer concerned.

Role of Consumer

- 17 CC considers that consumers also have a role to play in the event of a

food incident.

- 18 Consumers can help detection of problematic food by reporting to the manufacturer / importer or the Centre for Food Safety (“CFS”) if they find any unusual change in the food or if they feel any discomfort after consuming the food.
- 19 On the other hand, they should pay attention to food alert announced by the CFS and details of action required under a section 78B order made by the Authority to acquire a proper understanding of the situation and whether the food in their possession is affected.
- 20 Where a section 78B order does not involve a recall, traders’ orderly handling of the food in question can be facilitated if consumers withhold from returning the food until clarification of the situation is made by the Authority.
- 21 In the event that a section 78B order is made directing that any food supplied be recalled, consumers should pay attention to the recall arrangement announced by the trader concerned and return the food concerned to specified locations as directed.
- 22 CC believes that consumers are willing to play their role if they are assured of redress as appropriate in the circumstances.

Conclusion

- 23 CC supports putting the Code in place.
- 24 For reasons given above, for better protection of the interest of consumers, CC strongly requests the Authority to include the issue of consumer redress in the Code.

Consumer Council
30 January 2009