

**Bills Committee on
the Public Health and Municipal Services (Amendment) Bill 2008**

Arrangement for Seizure of Food

Purpose

This paper briefs Members on the arrangement for seizure of food, in particular fresh and perishable food with short shelf-life.

Existing Legal Provision

2. Section 59(1) of the Public Health and Municipal Services Ordinance (Cap 132) provides that any authorized public officer may seize and remove any food if it appears to him that the food is unfit for human consumption or that any regulations made under sections 55 or 56 of Cap 132 have been contravened in respect of the food. Section 59(2) of Cap 132 further provides that if it appears to any authorized public officer that any food, whether seized or not, is unfit for human consumption, or that any relevant regulations have been contravened in respect of the food, he may affix to such food a mark, seal or other designation; or destroy or otherwise dispose of such food or cause the same to be destroyed or otherwise disposed of.

Arrangement for Seizure of Food

3. During discussion at the Bills Committee meeting on 18 November 2008, concern was raised on the seizure of perishable food with short shelf-life. There are many varieties of food with different shelf-life and also different/specific storage methods. The Centre for Food Safety (CFS) under the Food and Environmental Hygiene Department (FEHD) will, under most circumstances, invoke the provision empowering the authorities to affix to the food a mark, seal or other designation such that the food concerned would continue to be held at the traders' premises but the traders would not be allowed to sell the food or remove, alter or obliterate the mark, seal or designation affixed by the authorities. Examples of such arrangement include the holding of frozen meat at the trader's own cold store pending the testing results on veterinary drug residues and the holding of raw milk imported from the Mainland at the trader's processing plant pending the testing result on melamine.

Such arrangement would also facilitate the processing of food by the traders once the CFS decides to release the food to the traders. However, where the traders do not have the suitable storage facilities to hold the food products or if the traders refuse to cooperate with the authorities (which is uncommon), the CFS will need to invoke the power to seize the food. In such cases, the food products will be properly handled and stored by the CFS to ensure that they remain, as far as possible, as the same conditions at the time when they are seized.

Release of Food that has been Seized or Affixed with a Mark

4. If CFS subsequently has information to confirm that the food concerned is fit for human consumption, the food that has been seized will be released and returned to the traders. As for those food which has been affixed with a mark, seal or other designation (but not seized), the CFS will remove such mark, seal or designation.

5. As provided under section 59(5) of Cap 132, if any person considers himself aggrieved by the seizure and removal, or by the marking, sealing or otherwise designating, or by the destruction or other disposal, of any food, he may, within 72 hours, complain to the court and the court may confirm or disallow the act, either wholly or in part, and shall, in the case of any act disallowed, or disallowed in part, order the removal of such mark, seal or other designation or the restoration of the food seized and removed, either as to the whole or as to such part in respect of which the act was disallowed, or, if the food in question has been destroyed or otherwise disposed of, or is no longer fit for human consumption, or is depreciated in value at the time of making such order by reason of such act, order the Authority, to pay by way of compensation such sum of money, not exceeding the market value of such food at the time of the doing of such act, as the court may, having regard to the circumstances of the case, consider just.

Seizure of Food under the Public Health and Municipal Services (Amendment) Bill 2008

6. The new section 78B of the Public Health and Municipal Services (Amendment) Bill 2008 provides that the Director of Food and Environmental Hygiene (DFEH) may make an order (section 78B order) to prohibit the import

and supply of any food, direct that any food supplied be recalled, direct that any food be impounded, isolated, destroyed, or otherwise disposed of, or prohibit or permit the carrying on of any activity in relation to any food.

7. The new section 78I proposed under the Amendment Bill stipulates that if it appears to an authorized public officer that a term of a section 78B order has been contravened in respect of any food, the public officer may –

- (a) seize and remove from the person any such food;
- (b) affix to any such food a mark, seal or other designation; or
- (c) destroy or otherwise dispose of any such food or cause it to be destroyed or otherwise disposed of.

It means that unless a person has contravened a term of a section 78B order, authorized public officers will not (and could not) exercise the power under section 78I to seize, mark or destroy his food. Only in the case where, for example, a food product, the supply of which has been prohibited under a section 78B order, was still found on a market shelf in a supermarket will an authorized public officer consider exercising the power under section 78I.

8. As in the case of the existing section 59 of Cap 132, if it is necessary to invoke section 78I, the CFS will consider whether there is suitable storage facilities for the food concerned. If there are such facilities available by the traders, the CFS will most likely affix a mark, seal or other designation on the food concerned.

**Food and Health Bureau
December 2008**