

**PUBLIC HEALTH AND MUNICIPAL SERVICES  
(AMENDMENT) BILL 2008**

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# A BILL

## To

Amend the Public Health and Municipal Services Ordinance to—

- (a) empower the Director of Food and Environmental Hygiene to make orders in relation to food for the protection of public health; and
- (b) provide for incidental and connected matters.

Enacted by the Legislative Council.

### 1. Short title

This Ordinance may be cited as the Public Health and Municipal Services (Amendment) Ordinance 2008.

### 2. Part VA added

The Public Health and Municipal Services Ordinance (Cap. 132) is amended by adding—

#### “PART VA

#### ADDITIONAL POWERS IN RELATION TO FOOD

#### 78A. Interpretation of Part VA

In this Part—  
“food” (食物) has the meaning given by the definition of “food” in section 2(1) but includes live poultry, live reptiles and live fish;  
“section 78B order” (第 78B 條命令) means an order made under section 78B(1);

“supply” (供應), in relation to food, means—

- (a) to sell the food;
- (b) to offer, keep or exhibit the food for sale;
- (c) to exchange or dispose of the food for consideration;
- (d) to transmit, convey or deliver the food in pursuance of—
  - (i) a sale; or
  - (ii) an exchange or disposal for consideration; or
- (e) for commercial purposes, to give the food as a prize or to make a gift of the food.

**78B. Additional powers in relation to food**

(1) The Authority may make an 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;
- (d) direct that any food be impounded, isolated, destroyed or otherwise disposed of and specify the manner in which, and the period within which, the impounding, isolation, destruction or disposal is to be conducted;
- (e) prohibit the carrying on of an activity in relation to any food, or permit the carrying on of such activity in accordance with conditions specified in the order, for the period specified in the order.

(2) The Authority may only make a section 78B order if the Authority has reasonable grounds at the time of making the order to believe that the making of the order is necessary to prevent or reduce a possibility of danger to public health or to mitigate any adverse consequence of a danger to public health.

(3) A section 78B order must specify—

- (a) the person, persons or class of persons intended to be bound by the order;
- (b) particulars of the food that is the subject of the order;
- (c) the reason for making the order;
- (d) the prohibition or action required, as the case may be, and conditions (if any) under the order;

- (e) the period referred to in subsection (1)(a), (b), (c), (d) or (e), as the case may be; and
- (f) the provision under which the order is made and the consequences of a contravention of any term of the order.

(4) The Authority may, in the same manner as a section 78B order was made, vary or revoke the order, and section 78C applies, with the necessary modifications, in relation to the variation or revocation of a section 78B order under this subsection as it applies in relation to a section 78B order.

(5) A section 78B order is not subsidiary legislation.

### **78C. Manner of making section 78B orders, service and publication**

(1) A section 78B order must be in writing and may be addressed to—

- (a) a particular person or particular persons;
- (b) a class of persons; or
- (c) all persons.

(2) A section 78B order addressed as referred to in subsection (1)(a) must be served on the person, or each of the persons, to whom it is addressed.

(3) Notice of a section 78B order addressed as referred to in subsection (1)(b) or (c) setting out the terms of the order and who is bound by the order must be published in the Gazette.

(4) A section 78B order, when it takes effect, is binding on the person or persons to whom it is addressed.

(5) A section 78B order that is served on a person takes effect in relation to the person when it is served on the person.

(6) A section 78B order, notice of which is published under subsection (3), takes effect at the beginning of the day on which the notice is published in the Gazette.

### **78D. Contravention of section 78B orders**

(1) A person bound by a section 78B order who contravenes a term of the order commits an offence.

(2) It is not a defence for the person to show that the food concerned is the subject of a licence, permit or any other form of authorization issued or granted under this or any other Ordinance.

(3) It is a defence for an employee charged with an offence under subsection (1) to show that—

- (a) any act done or omission made by the employee in contravention of a term of a section 78B order was done or made in the course of the employee's employment and under instructions given by the employer in the course of that employment; and
- (b) the employee did not exercise managerial functions at the relevant time.

**78E. Actions taken in relation to section 78B orders and provision of samples**

(1) The Authority may serve on a person bound by a section 78B order a notice requiring the person (at the time or times, or within the period, specified in the notice) to—

- (a) inform the Authority of the actions taken by the person in relation to the order; or
- (b) provide to the Authority samples of the food that is the subject of the order, in the quantity specified in the notice, for analysis, or for bacteriological or other examination.

(2) If any sample of food is provided to the Authority in compliance with a notice under subsection (1)(b), the Authority must pay to the person appearing to have the lawful custody of the food the market price of the sample, or if the market price is unknown or not readily ascertainable, a reasonable price.

(3) A person who, having been served with a notice under subsection (1)—

- (a) fails to comply with the notice; or
- (b) in purported compliance with the notice—
  - (i) provides information that the person knows is false in a material particular; or
  - (ii) recklessly provides information that is false in a material particular,

commits an offence.

**78F. Power to obtain information or copies of documents**

(1) If the Authority has reasonable grounds to believe that a person possesses any information or document that may assist the Authority in deciding whether to make, vary or revoke a section 78B order, the Authority may serve on the person a notice requiring the person to—

- (a) provide the information specified in the notice within the period so specified; or

- (b) produce the document specified in the notice at the time and place so specified and permit a public officer, authorized in writing in that behalf by the Authority, to take copies of the document at that time and place.
- (2) A person who, having been served with a notice under subsection (1)—
  - (a) fails to comply with the notice; or
  - (b) in purported compliance with the notice—
    - (i) provides information or produces any document that the person knows is false in a material particular; or
    - (ii) recklessly provides information or produces any document that is false in a material particular,commits an offence.

### **78G. Appeals to Municipal Services Appeals Board**

(1) A person bound by a section 78B order who is aggrieved by the order may, within 14 days from becoming bound by it, appeal to the Municipal Services Appeals Board.

(2) In the case of an appeal against a section 78B order addressed as referred to in section 78C(1)(b) or (c), if the Municipal Services Appeals Board Ordinance (Cap. 220) authorizes or requires any document to be served or any notice to be given to the persons bound by the order, the document may be served or the notice may be given by—

- (a) publication in the Gazette; or
- (b) any other means specified by the Chairman of the Municipal Services Appeals Board by notice in writing signed by the Chairman.

(3) An appeal under subsection (1) does not suspend the section 78B order unless the Authority decides otherwise.

### **78H. Compensation**

(1) A person bound by a section 78B order may apply for an amount of compensation recoverable as a civil debt due from the Government (not exceeding the market value of the food at the time of making the order) that is just and equitable in all the circumstances of the case, taking into account all factors relevant to the circumstances, if—

- (a) an appeal has been made under section 78G(1) and the Municipal Services Appeals Board has varied or set aside the order; and

- (b) the person proves that—
  - (i) the Authority did not have reasonable grounds to make the order at the time of making the order; and
  - (ii) the person has suffered loss as a result of the order or as a result of the exercise of a power under section 78I(1) in relation to the order.
- (2) An application under subsection (1) may be made—
  - (a) to the Small Claims Tribunal, for claims up to the maximum jurisdiction of the Tribunal; or
  - (b) to the District Court, irrespective of the amount claimed.

### **78I. Seizure, marking or destruction of food**

(1) If it appears to a public officer, authorized in writing in that behalf by the Authority, that a term of a section 78B order has been contravened by a person bound by the order in respect of any food, the public officer may—

- (a) seize and remove from the person any such food or any package in which it is contained;
- (b) affix to any such food that is in the person's possession a mark, seal or other designation; or
- (c) destroy or otherwise dispose of any such food that is in the person's possession or cause it to be destroyed or otherwise disposed of.

(2) The Authority may, in a court of competent jurisdiction, recover from the person referred to in subsection (1) any reasonable costs incurred under subsection (1)(a), (b) or (c) as if those costs were a debt due to the Authority from that person.

(3) If a person removes, alters or obliterates any mark, seal or other designation affixed under subsection (1)(b), with intent to deceive any other person, the person commits an offence.

(4) Before a public officer destroys or otherwise disposes of any food or causes any food to be destroyed or otherwise disposed of under subsection (1)(c), the public officer must record a description and other details that are sufficient to identify the food, and the Authority must keep the record in the Authority's custody for a period of not less than 12 months.

(5) In the case of any conviction for an offence under this Part, the court may order that any food to which the conviction relates, and any similar food found on the defendant's premises or in the defendant's possession at the time of the commission of the offence or of the seizure of the food in question, is to be forfeited, together with all packages in which the food is contained.

(6) Any food, and any package in which it is contained, forfeited under subsection (5) may be disposed of in the manner specified by the Authority.

### **78J. Liability of employers**

(1) An act done or omission made by an employee in the course of the employee's employment is treated for the purposes of this Part as done or made by the employer, as well as by the employee.

(2) In any proceedings for an offence under this Part brought against an employer in respect of an act or omission of an employee of the employer, the employer is liable to be convicted of and be punished for that offence unless the employer establishes the defence described in subsection (3).

(3) If any proceedings are brought against an employer by virtue of this section, it is a defence for the employer to show that the employer exercised all due diligence to prevent the employee from doing the act or making the omission, or doing an act or making an omission of that description, in the course of the employee's employment."

### **3. Designated Authorities**

The Third Schedule is amended by adding—

“78B	Director of Food and Environmental Hygiene
78E	Director of Food and Environmental Hygiene
78F	Director of Food and Environmental Hygiene
78G	Director of Food and Environmental Hygiene
78H	Director of Food and Environmental Hygiene
78I	Director of Food and Environmental Hygiene”.

### **4. Names in which proceedings for offences may be brought under section 131(1)**

The Sixth Schedule is amended by adding—

“78D	Director of Food and Environmental Hygiene
78E	Director of Food and Environmental Hygiene
78F	Director of Food and Environmental Hygiene
78I	Director of Food and Environmental Hygiene”.

## 5. Penalties

The Ninth Schedule is amended by adding—

“78D(1)	level 6 and 12 months imprisonment	—
78E(3)	level 3 and 3 months imprisonment	—
78F(2)	level 3 and 3 months imprisonment	—
78I(3)	level 5 and 6 months imprisonment	—”.

### Explanatory Memorandum

The object of this Bill is to amend the Public Health and Municipal Services Ordinance (Cap. 132) (“the Ordinance”) to provide for the additional powers of the Director of Food and Environmental Hygiene (“the Director”) in relation to food for the protection of public health.

2. Clause 2 adds a new Part VA to the Ordinance. In particular—

- (a) new section 78B empowers the Director to make orders (“section 78B orders”) if it is necessary to prevent or reduce a possibility of danger to public health or to mitigate any adverse consequence of a danger to public health, and the orders may—
  - (i) prohibit the import of any food;
  - (ii) prohibit the supply of any food;
  - (iii) direct that any food be recalled;
  - (iv) direct that any food be impounded, isolated, destroyed or otherwise disposed of; or
  - (v) prohibit the carrying on of an activity in relation to any food or permit the carrying on of such activity in accordance with conditions;
- (b) new section 78C provides for the service of section 78B orders addressed to particular persons and publication of notices of section 78B orders addressed to a class of persons or to all persons;
- (c) new section 78D creates an offence for the contravention of section 78B orders;
- (d) new section 78E empowers the Director to require a person bound by a section 78B order to inform the Director of the actions taken in relation to the order or provide samples;
- (e) new section 78F empowers the Director to obtain information or copies of documents before making, varying or revoking section 78B orders;

- (f) new section 78G provides that appeals against section 78B orders lie with the Municipal Services Appeals Board;
- (g) new section 78H provides for compensation;
- (h) new section 78I provides for the seizure, marking or destruction of food that is the subject of a section 78B order if a term of the order has been contravened; and
- (i) new section 78J provides for liability of employers for acts and omissions of their employees.

3. Clause 4 adds the offences under new Part VA to the Sixth Schedule to the Ordinance so that prosecutions for those offences may be brought in the name of the Director.