

PUBLIC HEALTH AND MUNICIPAL SERVICES (AMENDMENT) BILL 2008

COMMITTEE STAGE

Amendments to be moved by the Secretary for Food and Health

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>(a) In the proposed section 78A, in the definition of “food”, by deleting “by the definition of “food” in” and substituting “to it by”.</p> <p>(b) In the proposed section 78A, in the definition of “section 78B order”, by adding “and, as the context requires, includes such an order as varied from time to time under section 78B(4)” after “section 78B(1)”.</p> <p>(c) In the proposed section 78A, by adding – ““hazard” (危害) means a biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse health effect;”.</p> <p>(d) In the proposed section 78B(2), in the Chinese text, by deleting everything after “防止對公眾衛生” and substituting “造成危險，或減少對公眾衛生造成危險的可能性，或緩解任何對公眾衛生造成危險的不良後果，該命令方可作出。”.</p> <p>(e) In the proposed section 78B, by adding – “(2A) In determining whether there are reasonable grounds under subsection (2), the Authority may, in so far as is practicable and reasonable, take into account all factors</p>

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relevant to the circumstances of the case that the Authority considers appropriate, including but not limited to the following –

- (a) information obtained from any importer or supplier of the food;
- (b) information, reports or testing results obtained from a public analyst;
- (c) information (including reports, alerts, warnings and advisories) obtained from any international food or health authority or the food or health authority of any place;
- (d) the time required for obtaining reports or testing results from a public analyst;
- (e) characteristics of any hazard in the food, the level of the hazard in the food, consumption pattern of the food and the exposure of the general public and vulnerable groups to the food;
- (f) any statutory requirement relating to the food;
- (g) information on the source and extent of the hazard, in particular on whether the hazard exists throughout or in any part of the manufacture or supply chain or is limited to a

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particular batch of food.”.

- (f) In the proposed section 78B(3)(c), by adding “and the principal factors that led to the making of the order” after “order”.
- (g) By deleting the proposed section 78C(3) and substituting –
  - “(3) A section 78B order addressed as referred to in subsection (1)(b) or (c) must be published in the Gazette.”.
- (h) By deleting the proposed section 78C(6) and substituting –
  - “(6) A section 78B order addressed as referred to in subsection (1)(b) or (c) takes effect at the time specified in it.”.
- (i) In the proposed section 78D(3)(a), by deleting “any act” and substituting “the act”.
- (j) By deleting the proposed section 78D(3)(b) and substituting –
  - “(b) the employee was not, at the relevant time, in a position to make or influence a decision regarding that act or omission.”.
- (k) In the proposed section 78G(1), by deleting everything after “within” and substituting “28 days from becoming bound by the order, appeal to the Municipal Services Appeals Board against the order as originally made.”.
- (l) In the proposed section 78G, by adding –
  - “(1A) A person bound by a section 78B order who is aggrieved by a variation of the order under section 78B(4) may, within 28 days from becoming bound by the variation, appeal to the Municipal Services Appeals Board against the order as so varied.”.

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(m) In the proposed section 78G(3), by deleting “subsection (1)” and substituting “this section”.

(n) By deleting the proposed section 78H(1) and substituting –

“(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, that is just and equitable in all the circumstances of the case, for any loss of a kind set out in subsection (1B).

(1A) The person is entitled to compensation only if the person proves that –

- (a) the Authority did not have reasonable grounds to make the order at the time of making the order or to vary the order at the time of a variation of the order; and
- (b) the person has suffered the relevant loss.

(1B) The losses referred to in subsection (1) are the following losses arising as a direct result of compliance with the section 78B order or as a direct result of the exercise of a power under section 78I(1) in relation to the section 78B order –

- (a) total or partial loss of the food that is the subject of the order and that –
  - (i) has been destroyed or otherwise disposed of;
  - (ii) is no longer fit for human consumption; or

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- (iii) is depreciated in value;
- (b) costs or expenditure actually and directly incurred.
- (1C) The amount of compensation recoverable –
  - (a) in relation to a loss of a kind set out in subsection (1B)(a), must not exceed the market value of the food immediately before the time of making the section 78B order or immediately before the time of the variation, as the case may be; and
  - (b) in relation to a loss of a kind set out in subsection (1B)(b), must not exceed the actual amount of the costs or expenditure incurred.”.
- (o) In the heading of the proposed section 78J, by adding “**and principals**” after “**employers**”.
- (p) By deleting the proposed section 78J(2) and (3) and substituting –
  - “(2) An act done or omission made by an agent of another person with the authority (whether express or implied and whether precedent or subsequent) of that other person is treated for the purposes of this Part as done or made by that other person, as well as by the agent.
  - (3) In any proceedings for an offence under this Part brought against a person in respect of an act or omission alleged to have been done or made by an employee or agent of the person, the person is liable to be convicted of and be

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punished for that offence unless the person establishes the defence described in subsection (4).

(4) If any proceedings are brought against a person by virtue of this section, it is a defence for the person to show that the person exercised all due diligence to prevent the employee or agent from –

- (a) doing the act or making the omission; or
- (b) doing an act or making an omission of that description in the course of the employee's employment or the agent's authority.”.

(q) By adding –

**“78K. Codes of practice**

(1) The Authority may issue any code of practice that in the Authority's opinion is suitable for providing practical guidance in respect of this Part.

(2) If a code of practice is issued under subsection (1), the Authority must, by notice published in the Gazette –

- (a) identify the code;
- (b) specify the date on which the code is to take effect; and
- (c) specify for which of the provisions of this Part the code is so issued.

(3) The Authority may from time to time revise the whole or any part of a code of practice issued under subsection (1).

**ALL PASSED**

(4) Subsection (2) applies, with the necessary modifications, in relation to any revision made under subsection (3) as it applies in relation to the issue of a code of practice.

(5) The Authority may at any time revoke a code of practice issued under subsection (1).

(6) If a code of practice is revoked under subsection (5), the Authority must, by notice published in the Gazette –

- (a) identify the code; and
- (b) specify the date on which the revocation is to take effect.

**78L. Use of codes of practice in legal proceedings**

(1) A failure on the part of any person to observe any provision of a code of practice does not of itself render the person liable to any civil or criminal proceedings.

(2) However, if in any legal proceedings the court is satisfied that a provision of a code of practice is relevant to determining a matter that is in issue in the proceedings –

- (a) the code of practice is admissible in evidence in the proceedings; and
- (b) proof that the person contravened, or did not contravene, the provision may be relied on by any party to the proceedings as tending to establish or negate that matter.

**ALL PASSED**

(3) In any legal proceedings, a code of practice which appears to the court to be the subject of a notice under section 78K is taken to be the subject of that notice in the absence of evidence to the contrary.

(4) In this section –  
 “code of practice” (實務守則) means a code of practice issued under section 78K(1) as revised from time to time under section 78K(3);

“court” (法院) has the meaning given to it by section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) and includes a magistrate and the Municipal Services Appeals Board;

“legal proceedings” (法律程序) includes proceedings of the Municipal Services Appeals Board for an appeal under section 78G.”.

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By adding –

“78K Director of Food and Environmental Hygiene”.

ALL PASSED