

## 3. 加入條文

現加入——

## “128A. 本條及第 128B、128C 與 128D 條的應用及釋義

(1) 本條及第 128B、128C 及 128D 條適用於——

- (a) 用作根據《食物業規例》(第 132 章, 附屬法例) 須領牌照的食物業處所的處所;
- (b) 任何有——
  - (i) 《食物業規例》(第 132 章, 附屬法例) 附表 2 所指明的限制出售的食物售賣、要約出售或展示以供出售的處所; 或
  - (ii) 任何該等食物被管有以供出售或以供配製成供出售用的食品的處所;
- (c) 用作根據《屠房規例》(第 132 章, 附屬法例) 須領牌照的屠房的處所;
- (d) 任何有《奶業規例》(第 132 章, 附屬法例) 第 14(2) 條所述奶品廠業務在經營的處所;
- (e) 任何有《冰凍甜點規例》(第 132 章, 附屬法例) 第 3 條所界定的冰凍甜點在製造的處所。

(2) 就本條及第 128B、128C 及 128D 條而言, 除文意另有所指外——

“已封處所”(closed premises) 指第 (1) 款所述的任何處所, 並已有一項封閉令就其生效及仍然有效者;

“上訴委員會”(Appeal Board) 指根據第 128D 條設立的封閉令(對健康的即時危害)上訴委員會;

“用”、“使用”(use) 就第 (1)(c) 款所提述的處所而言, 包括佔用;

“主席”(Chairman) 指根據第 128D(3) 條委任的上訴委員會主席;

“封閉令”(closure order) 指根據第 128B(1) 或 128C(1) 條(視屬何情況而定) 作出的命令;

## 3. Sections added

The following are added—

立法會 CB(2) 772/02-03(04)號文件

LC Paper No. CB(2) 772/02-03(04)

## “128A. Application and interpretation of this section and sections 128B, 128C and 128D

(1) This section and sections 128B, 128C and 128D apply to—

- (a) any premises used as food premises that are required to be licensed under the Food Business Regulation (Cap. 132 sub. leg.);
- (b) any premises—
  - (i) on or from which any restricted food specified in Schedule 2 to the Food Business Regulation (Cap. 132 sub. leg.) is sold or offered or exposed for sale; or
  - (ii) on which any such food is possessed for sale or for use in the preparation of any article of food for sale;
- (c) any premises used as a slaughterhouse that is required to be licensed under the Slaughterhouses Regulation (Cap. 132 sub. leg.);
- (d) any premises on which there is carried on a business as a milk factory as mentioned in section 14(2) of the Milk Regulation (Cap. 132 sub. leg.);
- (e) any premises on which any frozen confection as defined in section 3 of the Frozen Confections Regulation (Cap. 132 sub. leg.) is manufactured.

(2) For the purposes of this section and sections 128B, 128C and 128D, unless the context otherwise requires—

“Appeal Board”(上訴委員會) means the Appeal Board on Closure Orders (Immediate Health Hazard) established under section 128D;

“Chairman”(主席) means the Chairman of the Appeal Board appointed under section 128D(3);

“closed premises”(已封處所) means any premises mentioned in subsection (1) in respect of which a closure order has come into force and remains in force;

“closure order”(封閉令) means an order made under section 128B(1) or 128C(1), as the case may be;

“Deputy Chairman”(副主席) means the First Deputy Chairman or the Second Deputy Chairman of the Appeal Board appointed under section 128D(3);

“副主席”(Deputy Chairman)指根據第128D(3)條委任的上訴委員會第一副主席或第二副主席；

“處所”(premises)包括任何地方、船隻及地方或船隻的一部分；

“對健康的即時危害”(immediate health hazard)指導致或相當可能導致任何處所所供應、或在任何處所內供應、處理或被管有的食物是或成為食物感染、污染、中毒或疾病傳播的根源的情況。

(3) “對健康的即時危害”的定義所提述的情況，包括下述各種情況——

- (a) 任何處所因為其位置、結構或狀況，以致該處所的情況使該處所所供應、或在該處所內供應、處理或被管有的食物遭污染或弄髒，以致不適合供人食用；
- (b) 製備食物或洗滌器皿所用的水來自未獲批准的來源，或來自經檢查結果、流行病學研究所得數據或其他化驗證據顯示為遭病原體、生物毒素、化學物品或其他物質污染的來源，以致處所所供應、或在該處所內供應、處理或被管有的食物不適合供人食用；
- (c) 檢查結果、流行病學研究所得數據或其他化驗證據顯示，處所所供應、或在該處所內供應、處理或被管有的食物，遭病原體、生物毒素、化學物品或其他物質污染，以致不適合供人食用；及
- (d) 該處所受蟲鼠所侵擾的程度，已至於使該處所所供應、或在該處所內供應、處理或被管有的食物遭污染或弄髒，以致不適合供人食用。

(4) 在第(2)及(3)款中——

- (a) 凡提述處所所供應、或在處所內供應的食物，即包括該處所所售賣、要約出售或展示以供出售的食物，或在該處所內售賣、要約出售或展示以供出售的食物；
- (b) 凡提述在處所內處理的食物，即包括在該處所內製造的食物；及
- (c) 凡提述在處所內被管有的食物，即指在該處所內被管有以供出售或以供配製成供出售用的食品的食物。

“immediate health hazard” (對健康的即時危害) means any circumstances that cause or are likely to cause any food supplied on or from, or handled or possessed on, any premises to be or to become a source of food-borne infection, contamination, intoxication or disease transmission;

“premises” (處所) includes any place, vessel and any part of a place or vessel;

“use” (用、使用), in relation to any premises referred to in subsection (1)(c), includes occupy.

(3) The circumstances referred to in the definition of “immediate health hazard” include the following—

- (a) because of the location, construction or state of the premises, the condition of the premises is such that it renders any food supplied on or from, or handled or possessed on, the premises to be so contaminated or tainted that it is unfit for human consumption;
- (b) the water used in preparing food or in washing utensils comes from an unapproved source or from a source that, as shown from inspection findings, data from epidemiological investigation or other laboratory evidence, is contaminated with pathogens, biotoxins, chemicals or other substances, rendering any food supplied on or from, or handled or possessed on, the premises to be unfit for human consumption;
- (c) as shown from inspection findings, data from epidemiological investigation or other laboratory evidence, any food supplied on or from, or handled or possessed on, the premises is contaminated with pathogens, biotoxins, chemicals or other substances rendering the food unfit for human consumption; and
- (d) the premises are infested with vermin to such extent that any food supplied on or from, or handled or possessed on, the premises is contaminated or tainted, and becomes unfit for human consumption.

(4) In subsections (2) and (3)—

- (a) a reference to food supplied on or from any premises includes food sold, or offered or exposed for sale, on or from the premises;
- (b) a reference to food handled on any premises includes food manufactured on the premises; and
- (c) a reference to food possessed on any premises means food possessed on the premises for sale or for use in the preparation of any article of food for sale.

### 128B. 封閉無牌或不獲准許或許可而使用的處所的權力

(1) 凡根據《食物業規例》(第132章, 附屬法例)、《冰凍甜點規例》(第132章, 附屬法例)、《奶業規例》(第132章, 附屬法例)或《屠房規例》(第132章, 附屬法例)——

- (a) 使用本條適用的處所; 或
- (b) 進行第128A(1)條所述的任何活動,

是須領牌照或須獲准許或許可的, 則在主管當局提出申請並證明該處所並無所需牌照、准許或許可而如此使用, 或該種活動並無所需牌照、准許或許可而在任何處所進行(視屬何情況而定)時, 在符合第(2)及(3)款的規定下, 法庭須使用附表7表格H作出封閉令。

(2) 在符合以下條件的情況下, 第(1)款不適用——

- (a) 根據《食物業規例》(第132章, 附屬法例)第30(1)條有關的使用或有關的活動是須獲准許的;
- (b) 該規例所指的食物業在有關處所內或從該處所內經營; 及
- (c) 該食物業根據該規例是須領牌照的並根據該規例領有牌照。

(3) 法庭除非信納有下述情況, 否則不得作出封閉令——

- (a) 在就有關申請訂定的聆訊日期之前7天或更早的時間, 一份關於申請封閉令的意向的中英文通知的文本——
  - (i) 已張貼於有關處所的顯眼處; 及
  - (ii) 已送達有關處所的擁有人, 而送達的方式是以掛號郵遞方式將該文本寄往該擁有人最後為人所知的營業或居住地點;
- (b) 該通知述明就該項申請訂定的聆訊時間及地點, 並指出任何人如有合理理由就該項申請獲聆聽, 則有權出席聆訊並要求獲聆聽; 及
- (c) 每名有合理理由就該項申請獲聆聽並已提出要求的人, 均已有機會獲聆聽。

(4) 在就根據第(1)款提出的申請訂定的聆訊地點及時間, 或於切實可行範圍內的最早的其後時間, 法庭須聆聽申請人, 亦須聆聽每個符合下述全部條件的人——

- (a) 正出席聆訊;
- (b) 有合理理由獲聆聽; 及

### 128B. Power to close premises used without licence, permit or permission

(1) Where under the Food Business Regulation (Cap. 132 sub. leg.), the Frozen Confections Regulation (Cap. 132 sub. leg.), the Milk Regulation (Cap. 132 sub. leg.) or the Slaughterhouses Regulation (Cap. 132 sub. leg.)—

- (a) the use of any premises to which this section applies; or
- (b) any activity mentioned in section 128A(1),

is required to be licensed or permitted, a court on application by the Authority and on proof that the premises are so used or the activity is conducted on any premises (as the case may be) without the requisite licence, permit or permission shall, subject to subsections (2) and (3), make a closure order in Form H in the Seventh Schedule.

(2) Subsection (1) does not apply if—

- (a) the use or the activity is required under section 30(1) of the Food Business Regulation (Cap. 132 sub. leg.) to be permitted;
- (b) a food business within the meaning of that Regulation is carried on on or from the premises; and
- (c) the food business is required under that Regulation to be licensed and is licensed under that Regulation.

(3) The court shall not make a closure order unless it is satisfied that—

- (a) at least 7 days before the date fixed for the hearing of the application, a copy of the notice of intention to apply for the closure order, in both English and Chinese—
  - (i) was affixed at a conspicuous place on the premises; and
  - (ii) was served on the owner of the premises by sending the copy by registered post addressed to that owner's last known place of business or residence;
- (b) the notice stated the time and place set for the hearing of the application and advised that any person having a reasonable cause to be heard on the application was entitled to appear at the hearing and request to be heard; and
- (c) every person having a reasonable cause to be heard on the application and requesting to be heard has had an opportunity to be heard.

(4) At the place and time set for the hearing of an application made under subsection (1) or such other time as soon as practicable thereafter, the court shall hear the applicant and every person who—

- (a) is present at the hearing;
- (b) has a reasonable cause to be heard; and

- (c) 希望獲聆聽，  
之後法庭須作出決定。
- (5) 封閉令的實施——
- (a) (如在申請該命令當日、有關處所是用作供人居住的) 不得阻止上述居住；或
- (b) 不得影響任何建築物內的任何公用地方或任何公眾地方的使用而致於阻塞公眾通道或走火通道。
- (6) 封閉令在一份該命令的文本張貼於該命令所關乎的處所的顯眼處當日之後的第 8 天開始時開始生效。
- (7) 封閉令一直有效，直至法庭應主管當局或對該命令所關乎的處所有權益的人的申請而予以撤銷為止。
- (8) 法庭如信納有下述情況，須撤銷封閉令——
- (a) 有關的封閉令所關乎的處所的使用或擬在處所內進行的活動，已根據第 (1) 款所述的任何附屬法例獲發牌照或獲得准許或許可；或
- (b) 該處所不會用作第 128A(1) 條所述的任何用途，而第 (1) 款所述的任何活動均不會在違反第 (1) 款所述的任何附屬法例的情況下在該處所內進行。
- (9) 在符合第 (5) 款的規定下，關乎某處所的封閉令開始生效時，主管當局須將或安排他人將該處所的任何或所有出入口上鎖或加封，並可將或安排他人將該處所的燃氣及水電供應截斷。
- (10) 除第 (11) 款另有規定外，任何人不得進入或停留在任何已封處所中，但正在執行其職務的公職人員不在此限。
- (11) 主管當局——
- (a) 可藉書面准許任何人為准許書所指明的目的而進入及停留在某已封處所內；
- (b) 可就該項准許施加其認為適合的條件；
- (c) 如認為准許書所指明的目的不再存在或任何根據 (b) 段就某項准許施加的條件已遭違反，則可撤銷該項准許；

- (c) wishes to be heard,  
and then proceed to make a decision.
- (5) A closure order shall not operate—
- (a) if, at the date of application for the order, the premises are used for human habitation, to prevent such habitation on the premises; or
- (b) to affect the use of any common area in any building or public place so as to cause obstruction to public passage or fire escape.
- (6) A closure order comes into force on the beginning of the 8th day after the day on which a copy of it is affixed at a conspicuous place on the premises in respect of which it is made.
- (7) A closure order shall remain in force until the court rescinds it on application by the Authority or any person having an interest in the premises in respect of which the order is made.
- (8) The court shall rescind a closure order if it is satisfied that—
- (a) the use of, or the activity to be conducted on, the premises in respect of which the order has been made has been licensed or permitted under any of the subsidiary legislation mentioned in subsection (1); or
- (b) the premises will not be used for any purpose mentioned in section 128A(1) and no activity mentioned in subsection (1) will be conducted on the premises in contravention of any of the subsidiary legislation mentioned in subsection (1).
- (9) Subject to subsection (5), when a closure order in respect of any premises comes into force, the Authority shall lock or seal, or cause to be locked or sealed, all or any of the entrances to or exits from the premises and may disconnect or cause to be disconnected all gas, water and electricity supplies to those premises.
- (10) Subject to subsection (11), no person, other than a public officer in the course of his duty, may enter or remain on any closed premises.
- (11) The Authority may—
- (a) permit in writing any person to enter and remain on any closed premises for such purpose as is specified in the permission;
- (b) impose such conditions on the permission as he thinks fit;
- (c) revoke the permission if he thinks that the purpose for which the permission was granted no longer exists or any condition imposed under paragraph (b) has been breached;

(d) 要求任何被發現處身於任何已封處所的人離開該處所，如該人拒絕離開，則主管當局可在有警務人員或無警務人員的協助下將該人從該處所移走，並可為此而使用合理所需的武力。

(12) 任何人無合法權限亦無合理辯解——

- (a) 移去或污損任何根據第(6)款張貼的封閉令文本；
- (b) 破開或干擾根據第(9)款加上的鎖或封條；或
- (c) 違反第(10)款，

即屬犯罪。

(13) 主管當局可——

(a) 按其認為適合的方式處置——

- (i) 在任何已封處所內發現並須立即處置的任何物品、東西或易毀消食物；
- (ii) 在該處所內發現的任何活生的禽鳥、魚或動物；

(b) 移走——

- (i) 在任何已封處所內發現而留在該處所內則相當可能會引起火警危險或危害生命或健康的任何物品、東西或食物；
- (ii) 在該處所內發現的任何活生的禽鳥、魚或動物；

(c) 就根據(b)段移走的活生的禽鳥、魚或動物作出其認為適合的安排；

(d) 在有關的已封處所的顯眼處，張貼一份中英文告示——

- (i) 列出他認為可予退還的根據(b)段移走的物品、東西、食物、活生的禽鳥、魚或動物的詳情；及
- (ii) 呼籲在該告示張貼當日之後的7天內向他提出退還該等物品、東西、食物、活生的禽鳥、魚或動物的申索。

(14) 如有第(13)(d)(ii)款所述的申索提出，主管當局——

- (a) 如不信納申索人有權管有有關物品、東西、食物、活生的禽鳥、魚或動物，亦不信納申索人是其擁有人，或該禽鳥、魚或動物已死亡，則須拒絕將其退還申索人；或

(d) request any person found on any closed premises to leave the premises, and if the person refuses to leave, remove the person from the premises with or without the assistance of police officers and use such force as is reasonably necessary.

(12) Any person who, without lawful authority or reasonable excuse—

- (a) removes or defaces any copy of a closure order affixed under subsection (6);
- (b) breaks or interferes with any lock or seal made under subsection (9); or
- (c) contravenes subsection (10),

commits an offence.

(13) The Authority may—

(a) dispose of—

- (i) any article or thing or any perishable food found on any closed premises that requires to be immediately disposed of as he thinks fit;
- (ii) any live bird, fish or animal that is found on the premises as he thinks fit;

(b) remove—

- (i) any article, thing or food found on any closed premises that is likely to create a fire hazard or constitute a danger to life or health if left on the premises;
- (ii) any live bird, fish or animal found on the premises;

(c) make such arrangements with regard to any live bird, fish or animal removed under paragraph (b) as he thinks fit;

(d) affix a notice in both English and Chinese at a conspicuous place on the closed premises—

- (i) setting out the details of any article, thing, food, live bird, fish or animal removed under paragraph (b) that he thinks can be returned; and
- (ii) calling for the submission to him of any claim for the return of such article, thing, food, live bird, fish or animal within 7 days of the affixing of the notice.

(14) Where a claim mentioned in subsection (13)(d)(ii) is made, the Authority—

- (a) shall refuse to return the article, thing, food, live bird, fish or animal if he is not satisfied that the claimant is either the owner or a person entitled to the possession of it or the live bird, fish or animal is dead; or

(b) 可應申索而將該物品、東西、食物、活生的禽鳥、魚或動物退還申索人，並將將之移走和貯存或為之作出安排而招致的開支，作為民事債項向該申索人追討。

(15) 凡主管當局根據第(13)(b)款移走任何物品、東西、食物、活生的禽鳥、魚或動物，而在第(13)(d)(ii)款所指明的限期內並沒有任何申索提出，或主管當局按照第(14)(a)款拒絕將其退還，則可藉公開拍賣方式將該物品、東西、食物、活生的禽鳥、魚或動物出售，或按法庭命令以法庭所指示的其他方式出售或處置；出售所得的收益，則由主管當局保留，並用以支付與強制執行封閉令相關而招致的開支，餘款(如有的話)則須按在出售當日之後 90 天內提出的要求而付給該物品、東西、食物、活生的禽鳥、魚或動物的擁有人。

(16) 如無人按照第(15)款提出要求，則餘款須付入政府一般收入。

(17) 如根據第(15)款出售所得的收益不敷支付主管當局——

(a) 根據第(9)款在任何已封處所進行的工程的費用；

(b) 根據第(13)(b)款將任何物品、東西、食物、活生的禽鳥、魚或動物從該已封處所移走的費用；及

(c) 根據第(13)(c)款作出安排的費用，

則主管當局可將該不敷之數，作為民事債項向緊接在有關的封閉令開始生效之前管理或控制該處所的人(如該處所為船隻或船隻的一部分則向該船隻的船長)追討。

#### 128C. 封閉構成對健康的即時危害的處所的權力

(1) 如主管當局有合理理由相信本條適用的某處所的使用或在該處所內進行的任何活動構成對健康的即時危害，主管當局可使用附表 7 表格 I 作出封閉令，立即封閉該處所。

(2) 封閉令的實施——

(a) (如在作出該命令當日，有關處所是用作供人居住的)不得阻止上述居住；或

(b) may return the article, thing, food, live bird, fish or animal as claimed and recover as a civil debt from a claimant to whom it is returned any expenses incurred in the removal and storage of it or in any arrangement made in respect of it.

(15) Any article, thing, food, live bird, fish or animal removed by the Authority under subsection (13)(b) and not claimed within the time specified in subsection (13)(d)(ii), or which the Authority refuses to return in accordance with subsection (14)(a), may be sold by public auction or, upon the order of a court, otherwise sold or disposed of as the court directs, and any proceeds arising from the sale shall be retained by the Authority and applied in payment of any expenses incurred in connection with the enforcement of the closure order and the surplus (if any) paid, on demand made within 90 days of the sale, to the owner of the article, thing, food, live bird, fish or animal.

(16) Any surplus not demanded in accordance with subsection (15) shall be paid into the general revenue.

(17) The Authority may recover as a civil debt from the person having the management or control of any premises (or the master of the vessel if the premises are a vessel or any part of a vessel) immediately before the closure order in respect of the premises came into force the cost of—

(a) any work carried out on the premises under subsection (9);

(b) removing any article, thing, food, live bird, fish or animal from the closed premises under subsection (13)(b); and

(c) any arrangements made under subsection (13)(c),

which is not met out of the proceeds of any sale under subsection (15).

#### 128C. Power to close premises posing immediate health hazard

(1) If the Authority has reasonable cause to believe that the use of any premises to which this section applies or any activity conducted on those premises poses an immediate health hazard, he may make a closure order in Form I in the Seventh Schedule to close the premises immediately.

(2) A closure order shall not operate—

(a) if, at the date of making of the order, the premises are used for human habitation, to prevent such habitation on the premises; or

(b) 不得影響任何建築物內的任何公用地方或任何公眾地方的使用而致於阻塞公眾通道或走火通道。

(3) 封閉令的一份文本一經——

(a) 張貼於該命令所關乎的處所的顯眼處；及

(b) 送達該處所的擁有人，而送達的方式是以掛號郵遞方式將該文本寄往該擁有人最後為人所知的營業或居住地點，

封閉令即開始生效。

(4) 封閉令一直有效，直至主管當局根據第(6)款發出通知為止。

(5) 如有封閉令就任何處所作出，任何對該處所有權益的人可向主管當局申請撤銷該命令。

(6) 不論是否已有申請根據第(5)款提出，如主管當局信納有下述情況，須使用附表 7 表格 J 格式發出通知，即時撤銷封閉令——

(a) 就有關的封閉令所關乎的處所而言，有關的對健康的即時危害已消除，而該處所的使用或擬在該處所內進行的活動，已根據第 128B(1) 條所述的任何附屬法例獲發牌照、獲得准許或許可；或

(b) 該處所不會用作第 128A(1) 條所述的任何用途，而第 128A(1) 條所述的任何活動均不會在違反第 128A(1) 條所述的任何附屬法例的情況下在該處所內進行。

(7) 主管當局如拒絕申請根據第(6)款發出通知，則須向申請人送達關於該項拒絕的通知；而申請人可在該關於該項拒絕的通知送達當日之後的 7 天內或主席所容許的較長期間內，針對主管當局的決定向上訴委員會提出上訴。

(8) 除非主席另有命令，否則根據第(7)款提出的上訴，並不具有暫緩執行封閉令的效力。

(9) 在符合第(2)款的規定下，關乎某處所的封閉令開始生效時，主管當局須將或安排他人將該已封處所的任何或所有出入口上鎖或加封，並可將或安排他人將該處所的燃氣及水電供應截斷。

(b) to affect the use of any common area in any building or public place so as to cause obstruction to public passage or fire escape.

(3) A closure order comes into force immediately after a copy of it—

(a) is affixed at a conspicuous place on the premises in respect of which the order is made; and

(b) is served on the owner of those premises by sending the copy by registered post addressed to that owner's last known place of business or residence.

(4) A closure order shall remain in force until a notice is issued by the Authority made under subsection (6).

(5) Any person having an interest in any premises in respect of which a closure order has been made may apply in writing to the Authority to rescind the order.

(6) Whether or not an application has been made under subsection (5), if the Authority is satisfied that—

(a) in respect of any premises in respect of which a closure order has been made, the immediate health hazard has been eliminated and the use of the premises or the activity to be conducted on the premises has been licensed or permitted under any of the subsidiary legislation mentioned in section 128B(1); or

(b) the premises will not be used for any purpose mentioned in section 128A(1) and no activity mentioned in section 128A(1) will be conducted on the premises in contravention of any of the subsidiary legislation mentioned in section 128A(1),

the Authority shall issue a notice in Form J in the Seventh Schedule to rescind the closure order with immediate effect.

(7) If the Authority refuses to issue a notice under subsection (6) as applied, he shall serve a notice of his refusal on the applicant and the applicant may, within 7 days of such service or such longer time as the Chairman may allow, appeal to the Appeal Board against the Authority's decision.

(8) The making of an appeal under subsection (7) does not operate as a stay of execution of a closure order unless the Chairman otherwise orders.

(9) Subject to subsection (2), when a closure order in respect of any premises comes into force, the Authority shall lock or seal, or cause to be locked or sealed, all or any of the entrances to or exits from the closed premises and may disconnect or cause to be disconnected all gas, water and electricity supplies to those premises.

(10) 除第(11)款另有規定外，任何人不得進入或停留在任何已封處所中，但正在執行其職務的公職人員不在此限。

(11) 主管當局——

- (a) 可藉書面准許任何人為准許書所指明的目的而進入及停留在某已封處所內；
- (b) 可就該項准許施加其認為適合的條件；
- (c) 如認為准許書所指明的目的不再存在或任何根據(b)段就某項准許施加的條件已遭違反，則可撤銷該項准許；
- (d) 要求任何被發現處身於任何已封處所的人離開該處所，如該人拒絕離開，則主管當局可在有警務人員或無警務人員的協助下將該人從該處所移走，並可為此而使用合理所需的武力。

(12) 任何人無合法權限亦無合理辯解——

- (a) 移去或污損任何根據第(3)(a)款張貼的封閉令文本；
- (b) 破開或干擾根據第(9)款加上的鎖或封條；或
- (c) 違反第(10)款；

即屬犯罪。

(13) 主管當局可——

- (a) 按其認為適合的方式處置——
  - (i) 在任何已封處所內發現並須立即處置的任何物品、東西或易毀消食物；
  - (ii) 在該處所內發現的任何活生的禽鳥、魚或動物；
- (b) 移走——
  - (i) 在任何已封處所內發現而留在該處所內則相當可能會引起火警危險或危害生命或健康的任何物品、東西或食物；
  - (ii) 在該處所內發現的任何活生的禽鳥、魚或動物；
- (c) 就根據(b)段移走的活生的禽鳥、魚或動物作出其認為適合的安排；
- (d) 在有關的已封處所的顯眼處，張貼一份中英文告示——
  - (i) 列出他認為可予退還的根據(b)段移走的物品、東西、食物、活生的禽鳥、魚或動物的詳情；及

(10) Subject to subsection (11), no person, other than a public officer in the course of his duty, may enter or remain on any closed premises.

(11) The Authority may—

- (a) permit in writing any person to enter and remain on any closed premises for such purpose as is specified in the permission;
- (b) impose such conditions on the permission as he thinks fit;
- (c) revoke the permission if he thinks that the purpose for which the permission was granted no longer exists or any condition imposed under paragraph (b) has been breached;
- (d) request any person found on any closed premises to leave the premises, and if the person refuses to leave, remove the person from the premises with or without the assistance of police officers and use such force as is reasonably necessary.

(12) Any person who, without lawful authority or reasonable excuse—

- (a) removes or defaces any copy of a closure order affixed under subsection (3)(a);
- (b) breaks or interferes with any lock or seal made under subsection (9); or
- (c) contravenes subsection (10),

commits an offence.

(13) The Authority may—

- (a) dispose of—
  - (i) any article or thing or any perishable food found on any closed premises that requires to be immediately disposed of as he thinks fit;
  - (ii) any live bird, fish or animal found on the premises as he thinks fit;
- (b) remove—
  - (i) any article, thing or food, found on any closed premises that is likely to create a fire hazard or constitute a danger to life or health if left on them;
  - (ii) any live bird, fish or animal found on the premises;
- (c) make such arrangements with regard to any live bird, fish or animal removed under paragraph (b) as he thinks fit;
- (d) affix a notice in both English and Chinese at a conspicuous place on the closed premises—
  - (i) setting out the details of any article, thing, food, live bird, fish or animal removed under paragraph (b) that he thinks can be returned; and



(ii) 呼籲在該告示張貼當日之後的 7 天內向他提出退還該等物品、東西、食物、活生的禽鳥、魚或動物的申索。

(14) 如有第 (13)(d)(ii) 款所述的申索提出，主管當局——

- (a) 如不信納申索人有權管有有關物品、東西、食物、活生的禽鳥、魚或動物，亦不信納申索人是其擁有人，或該禽鳥、魚或動物已死亡，則須拒絕將其退還申索人；或
- (b) 可應申索而將該物品、東西、食物、活生的禽鳥、魚或動物退還申索人，並將將之移走和貯存或為之作出安排而招致的開支，作為民事債項向該申索人追討。

(15) 凡主管當局根據第 (13)(b) 款移走任何物品、東西、食物、活生的禽鳥、魚或動物，而在第 (13)(d)(ii) 款所指明的限期內並沒有任何申索提出，或主管當局按照第 (14)(a) 款拒絕將其退還，則可藉公開拍賣方式將該物品、東西、食物、活生的禽鳥、魚或動物出售，或按法庭命令以法庭所指示的其他方式出售或處置；出售所得的收益，則由主管當局保留，並用以支付與強制執行封閉令相關而招致的開支，餘款 (如有的話) 則須按在出售當日之後 90 天內提出的要求而付給該物品、東西、食物、活生的禽鳥、魚或動物的擁有人。

(16) 如無人按照第 (15) 款提出要求，則餘款須付入政府一般收入。

(17) 如根據第 (15) 款出售所得的收益不敷支付主管當局——

- (a) 根據第 (9) 款在任何已封處所進行的工程的費用；
- (b) 根據第 (13)(b) 款將任何物品、東西、食物、活生的禽鳥、魚或動物從該已封處所移走的費用；及
- (c) 根據第 (13)(c) 款作出安排的費用，

則主管當局可將該不敷之數，作為民事債項向緊接在有關的封閉令開始生效之前管理或控制該處所的人 (如該處所為船隻或船隻的一部分則向該船隻的船長) 追討。

(18) 任何人因任何根據第 (1) 款作出的封閉令而感到受屈，可在該命令作出當日之後的 7 天內或主席所容許的較長期間內，針對該命令向上訴委員會提出上訴。

(19) 除非主席另有命令，否則根據第 (18) 款提出的上訴，並不具有暫緩執行封閉令的效力。

(ii) calling for the submission to him of any claim for the return of such article, thing, food, live bird, fish or animal within 7 days of the affixing of the notice.

(14) Where a claim mentioned in subsection (13)(d)(ii) is made, the Authority—

- (a) shall refuse to return the article, thing, food, live bird, fish or animal if he is not satisfied that the claimant is either the owner or a person entitled to the possession of it or the live bird, fish or animal is dead; or
- (b) may return the article, thing, food, live bird, fish or animal as claimed and recover as a civil debt from a claimant to whom it is returned any expenses incurred in the removal or storage of it or in any arrangement.

(15) Any article, thing, food, live bird, fish or animal removed by the Authority under subsection (13)(b) and not claimed within the time specified in subsection (13)(d)(ii), or which the Authority refuses to return in accordance with subsection (14)(a), may be sold by public auction or, upon the order of a court, otherwise sold or disposed of as the court directs, and any proceeds arising from the sale shall be retained by the Authority and applied in payment of any expenses incurred in connection with the enforcement of the closure order and the surplus (if any) paid, on demand made within 90 days of the sale, to the owner of the article, thing, food, live bird, fish or animal.

(16) Any surplus not demanded in accordance with subsection (15) shall be paid into the general revenue.

(17) The Authority may recover as a civil debt from the person having the management or control of any premises (or the master of the vessel if the premises are a vessel or any part of a vessel) immediately before the closure order in respect of the premises came into force the cost of—

- (a) any work carried out on the premises under subsection (9);
- (b) removing any article, thing, food, live bird, fish or animal from the closed premises under subsection (13)(b); and
- (c) any arrangements made under subsection (13)(c),

which is not met out of the proceeds of any sale under subsection (15).

(18) A person who is aggrieved by an order made under subsection (1) may, within 7 days after the day on which the order was made or such longer time as the Chairman may allow, appeal to the Appeal Board against the order.

(19) The making of an appeal under subsection (18) does not operate as a stay of execution of a closure order unless the Chairman otherwise orders.

**128D. 向封閉令(對健康的即時危害)****上訴委員會提出上訴**

(1) 現設立一個名為“封閉令(對健康的即時危害)上訴委員會”的上訴委員會。

(2) 上訴委員會的職能是就任何根據第 128C(7) 或 (18) 條向上訴委員會提出的上訴，進行聆訊並作出裁定。

(3) 行政長官須從根據《區域法院條例》(第 336 章) 第 5 條有資格獲委任為區域法院法官的人中委任——

- (a) 一名上訴委員會主席；
- (b) 一名上訴委員會第一副主席；及
- (c) 一名上訴委員會第二副主席。

(4) 行政長官須委任一個由不少於 18 名並非公職人員的人組成的小組，他們均須是行政長官認為適合根據第 (8)(b) 款被任命為上訴委員會的成員以聆訊上訴的。

(5) 第 (3) 或 (4) 款所指的委任須在憲報公布，任期均不得超過 3 年。任何根據第 (3) 或 (4) 款獲委任的人，可再獲委任，並可藉向行政長官發出書面通知而辭職。

(6) 環境食物局局長可委任——

- (a) 一名上訴委員會秘書；及
- (b) 該局長認為需要的其他職員以協助該秘書。

(7) 向上訴委員會提出的上訴的各方當事人是上訴人及主管當局。上訴當事人可出席上訴聆訊，並可——

- (a) 親自陳詞；或
- (b) 由大律師或律師代表，如獲得主席的批准，亦可由該當事人以書面授權的任何其他人代表。

主管當局亦可由《律政人員條例》(第 87 章) 所指的律政人員代表。

(8) 為聆訊上訴的目的，上訴委員會的成員是——

- (a) 主席或副主席，負責主持聆訊；及
- (b) 2 名從第 (4) 款所提述的小組中輪流挑選、並由主席任命以聆訊上訴的其他人。

**128D. Appeals to Appeal Board on Closure Orders  
(Immediate Health Hazard)**

(1) There is established an appeal board to be known as the Appeal Board on Closure Orders (Immediate Health Hazard).

(2) The functions of the Appeal Board are to hear and determine any appeal made to the Appeal Board under section 128C(7) or (18).

(3) The Chief Executive shall appoint from among persons who are qualified for appointment as District Judges under section 5 of the District Court Ordinance (Cap. 336)—

- (a) a Chairman of the Appeal Board;
- (b) a First Deputy Chairman of the Appeal Board; and
- (c) a Second Deputy Chairman of the Appeal Board.

(4) The Chief Executive shall appoint a panel of not less than 18 persons, not being public officers, whom he considers suitable for appointment under subsection (8)(b) as members of the Appeal Board to hear an appeal.

(5) An appointment under subsection (3) or (4) shall be notified in the Gazette and shall be for a term of not more than 3 years. A person appointed under subsection (3) or (4) may be re-appointed, and may resign by notice in writing to the Chief Executive.

(6) The Secretary for the Environment and Food may appoint—

- (a) a secretary to the Appeal Board; and
- (b) such other staff to assist the secretary as the Secretary considers necessary.

(7) The parties to an appeal to the Appeal Board are the appellant and the Authority. A party to an appeal may be present at the hearing of the appeal and may—

- (a) make representations in person; or
- (b) be represented by counsel or solicitor or, with the approval of the Chairman, by any other person authorized by the party in writing.

The Authority may also be represented by a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87).

(8) For the purposes of hearing an appeal, the members of the Appeal Board are—

- (a) the Chairman or a Deputy Chairman, who shall preside; and
- (b) 2 other persons, selected in rotation from the panel referred to in subsection (4), who are appointed by the Chairman to hear the appeal.

(9) 如主席在任何期間內因生病、不在香港或任何其他因由而不能執行其職能，上訴委員會第一副主席須在該段期間內署理主席一職，並以署理主席身分執行主席的所有職能。

(10) 如副主席在任何期間內因生病、不在香港或任何其他因由而不能執行其職能，另一名副主席須在該段期間內暫代該不能執行職能的副主席，並在暫代該副主席期間執行該副主席的所有職能(包括根據第(9)款該副主席本須執行的職能)。

(11) 如根據第(8)(b)款或本款獲任命以聆訊上訴的人，在任何期間內因生病、不在香港或任何其他因由而不能執行其職能，主席可任命從第(4)款所提述的小組中輪流挑選的另一人，在該段期間內暫代該不能執行職能的人，並在暫代該人期間執行該人的所有職能。

(12) 儘管上訴委員會的成員有所變動，上訴聆訊在上訴的各方當事人的同意下仍可繼續進行。

(13) 為上訴的目的，上訴委員會——

(a) 可接受和考慮任何資料，不論是口頭證據、書面陳述、文件或其他形式的資料，亦不論該等資料可否在民事或刑事訴訟中接納為證據；及

(b) 可應——

(i) 根據第128C(7)條提出的上訴，確認主管當局的決定或命令主管當局根據第128C(6)條發出通知；或

(ii) 根據第128C(18)條提出的上訴，確認、暫緩執行或推翻有關封閉令。

(14) 上訴委員會就上訴作出的決定，須是過半數聆訊上訴的成員的決定。

(15) 上訴委員會須以書面說明作出決定的理由。上訴委員會秘書須將上訴委員會的決定及作出該項決定的理由的文本送達上訴的各方當事人。

(9) If, for any period, the Chairman is precluded by illness, absence from Hong Kong or any other cause from performing his functions, the First Deputy Chairman of the Appeal Board shall act as Chairman and as such perform all the functions of the Chairman during that period.

(10) If, for any period, a Deputy Chairman is precluded by illness, absence from Hong Kong or any other cause from performing his functions, the other Deputy Chairman shall act in the place of the Deputy Chairman precluded from performing his functions and in so acting perform all the functions of that Deputy Chairman, including any functions that Deputy Chairman would have been required to perform under subsection (9), during that period.

(11) If, for any period, a person appointed under subsection (8)(b) or this subsection to hear an appeal is precluded by illness, absence from Hong Kong or any other cause from performing his functions, the Chairman may appoint another person, selected in rotation from the panel referred to in subsection (4), to act in the place of the person precluded from performing his functions and in so acting, to perform all the functions of that person during that period.

(12) The hearing of an appeal may, with the consent of the parties to the appeal, continue notwithstanding a change in the membership of the Appeal Board.

(13) For the purposes of an appeal, the Appeal Board—

(a) may receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, and whether or not it would be admissible in evidence in civil or criminal proceedings; and

(b) may—

(i) on an appeal under section 128C(7), confirm the Authority's decision or order the Authority to issue a notice under section 128C(6); or

(ii) on an appeal under section 128C(18), confirm, suspend or disallow the closure order.

(14) The decision of the Appeal Board on an appeal shall be that of the majority of the members hearing the appeal.

(15) The Appeal Board shall give reasons in writing for its decisions. The secretary to the Appeal Board shall serve a copy of the Appeal Board's decision and of the reasons for the decision on the parties to an appeal.

(16) 任何向上訴委員會上訴的人如不滿上訴委員會的決定，可於收到該項決定及作出該項決定的理由的文本後 14 天內，向原訟法庭上訴。原訟法庭可確認或推翻上訴所針對的決定。原訟法庭作出的決定是最終決定。

(17) 除非原訟法庭另有命令，否則根據第(16)款提出的上訴，並不具有暫緩執行封閉令的效力。

(18) 在不抵觸本條及根據第(20)款訂立的規則的規定下，主持聆訊的人可決定聆訊向上訴委員會提出的上訴的程序。

(19) 如有人以書面提出申請，而主席信納該人有充分理由提出該項申請，則主席可——

- (a) 將該人可根據第 128C(7) 或 (18) 條向上訴委員會上訴的時限延長；及
- (b) 命令該人根據第 128C(7) 或 (18) 條提出的上訴所關乎的封閉令在上訴等候裁定期間暫緩執行。

(20) 主席於諮詢環境食物局局長後，可訂立規則——

- (a) 規管向上訴委員會提出上訴的事宜；
- (b) 指明須就上訴提交或送達的文件；及
- (c) 就聆訊該等上訴及予以裁定以及強制執行上訴委員會的決定作出規定。

如此訂立的規則是附屬法例。”。

#### 4. 指定主管當局

附表 3 現予修訂，加入——

“128B	食物環境衛生署署長
128C	食物環境衛生署署長
128D	食物環境衛生署署長”。

#### 5. 根據第 131(1) 條就罪行提出法律程序時可用的名義

附表 6 現予修訂，加入——

“128B	食物環境衛生署署長
128C	食物環境衛生署署長”。

(16) A person who appeals to the Appeal Board, if dissatisfied with the decision of the Appeal Board, may appeal to the Court of First Instance within 14 days after receiving a copy of the decision and the reasons for the decision. The Court of First Instance may confirm or reverse the decision appealed against. The decision of the Court of First Instance is final.

(17) The making of an appeal under subsection (16) does not operate as a stay of execution of a closure order unless the Court of First Instance otherwise orders.

(18) Subject to this section and to rules made under subsection (20), the person presiding may determine the procedure at the hearing of an appeal made to the Appeal Board.

(19) The Chairman may, on application in writing by a person and if satisfied that there is good reason for doing so——

- (a) extend the time within which that person may appeal to the Appeal Board under section 128C(7) or (18); and
- (b) order a stay of execution of the closure order to which an appeal made by that person under section 128C(7) or (18) relates, pending the determination of the appeal.

(20) The Chairman may, in consultation with the Secretary for the Environment and Food, make rules——

- (a) regulating the making of appeals to the Appeal Board;
- (b) specifying the documents to be lodged or served in relation to appeals; and
- (c) providing for the hearing and determining of those appeals and the enforcement of the decisions of the Appeal Board.

The rules so made are subsidiary legislation.”。

#### 4. Designated Authorities

The Third Schedule is amended by adding——

“128B	Director of Food and Environmental Hygiene
128C	Director of Food and Environmental Hygiene
128D	Director of Food and Environmental Hygiene”。

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

The Sixth Schedule is amended by adding——

“128B	Director of Food and Environmental Hygiene
128C	Director of Food and Environmental Hygiene”。