

LEGISLATIVE COUNCIL BRIEF

PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE (CHAPTER 132)

CONTROL OF MOSQUITO PROBLEM

INTRODUCTION

At the meeting of the Executive Council on 12 April 2005, the Council ADVISED and the Acting Chief Executive ORDERED that the Public Health and Municipal Services (Amendment) Bill 2005 should be introduced into the Legislative Council to confer additional powers on Government to deal with the problem of mosquito.

JUSTIFICATIONS

2. Section 27 of the Public Health and Municipal Services Ordinance (the Ordinance) empowers the Food and Environmental Hygiene Department (FEHD) to deal with potential mosquito breeding places and to take enforcement action against mosquito breeding. Under section 27(1), where there is or is likely to be an accumulation of water in any premises with the risk of mosquito breeding, FEHD may issue a notice requiring the occupier, owner (where the occupier cannot be found or ascertained) or contractor (where the premises concerned are a construction site) of any premises to-

- (a) remove the accumulated water, if any;

- (b) take steps to prevent any accumulation of water; or
- (c) take other steps to prevent mosquito breeding.

Failure to comply with the notice is an offence. FEHD may take action to remove the accumulated water and may recover the costs from the owner, occupier or contractor.

3. FEHD has encountered the following constraints in its mosquito control operations in accordance with the existing provisions-

- (a) Time-consuming procedures

4. Under the existing law, if there is an imminent risk of mosquito breeding in private premises, FEHD normally has to serve a notice on the occupier or owner of the premises requiring him/her to take mosquito control measures. FEHD could take clearance action only if the occupier or owner fails to comply with the notice. To identify the occupier/owner for serving the notice when dealing with private agricultural land and abandoned huts of which the owner is not in Hong Kong or does not care to manage is often a lengthy and fruitless process. Unfortunately, these are the places highly susceptible to mosquito breeding. Hence, the current provisions of the Ordinance constrain FEHD from taking timely anti-mosquito actions in places where prompt action is most needed.

- (b) Common parts in multi-storey buildings

5. Experience shows that the common parts of a building have a higher risk of mosquito breeding. In the absence of an owners' corporation, common parts of a building will be under the joint care of all occupiers/owners of the building or body of persons engaged by the occupiers/owners of the building for managing the property (management body). FEHD has to go through the lengthy process of

identifying all the occupiers/owners for the purpose of issuing a notice to each of them, which requires them to carry out anti-mosquito actions. In a scenario where the housing estate is managed by an independent management body, it is presently not possible for FEHD to take enforcement action against the management body, since section 27 of the Ordinance only imposes legal liability upon the occupiers, or in their absence, the owners of the premises concerned. FEHD can only seek the co-operation of the management body to take remedial actions to prevent mosquito breeding. To impose a legal duty upon the management body will make it act responsibly.

(c) Breeding grounds for mosquitoes

6. Under the existing Ordinance, FEHD may take action to remove any accumulation of water or to take other steps as may be necessary when there is or is likely to be any accumulation of water. Media that may possibly become conduits for mosquito breeding such as containers, pots or articles in abandoned/dilapidated huts and used tyres are not explicitly covered by the Ordinance. When mosquito breeding or potential breeding grounds are found in these media, there is legal uncertainty on whether FEHD is fully empowered to remove such identified media.

(d) Difficulties in recovering costs

7. FEHD may only recover the cost of mosquito control work from the occupier or owner of the premises if a notice has been served before the clearance action. In other words, it is necessary to go through the time-consuming process of ascertaining the occupancy/ownership of the premises and to serve prior notice upon the occupier or landlord. However, it is undesirable for the Administration not to take immediate anti-mosquito action but to spend time in going through the process of identifying occupiers/owners, which may take days. In the circumstances, the department concerned will have no alternative but to carry out the clearance work first. Given the existing provisions in the Ordinance, it will not be possible for the department to recover the

costs from the occupiers/owners afterwards and such a situation encourages some selfish occupiers/owners to shed their responsibility and rely on the Administration to do the work for them.

PROPOSED AMENDMENTS

8. We propose that section 27 of the Ordinance be amended as follows to strengthen the effectiveness in the prevention of mosquito breeding-

- (a) where FEHD has reasonable cause to believe that any accumulation of water or any other media that may become potential mosquito breeding grounds found in any premises poses a mosquito-related health hazard, FEHD may take immediate actions to remove such accumulation of water or potential breeding grounds and to take other measures to prevent the breeding of mosquito larvae or pupae, with or without a notice issued to the occupier or owner of the premises or management body, or the appointed contractor of a building site. FEHD may recover the costs of taking the above measures from such occupier or owner or management body, or the appointed contractor of the building site; and
- (b) apart from the occupier or owner, or in respect of a building site, the appointed contractor, FEHD may hold the management body legally liable for mosquito breeding. The management body may also be required to remove any accumulation of water or any article that is a breeding ground for mosquitoes or may be a potential breeding ground for mosquitoes, properly maintain or manage the premises to prevent the formation of mosquito breeding grounds and to take other steps to prevent mosquito breeding. Failure for the management body to comply with the notice shall be an offence.

We aim to introduce the above measures in summer 2005.

THE BILL

9. The main provisions are to empower the Government-
- (a) to deal with the mosquito breeding problems arising from the presence of articles capable of causing accumulation of water which allows the breeding of mosquitoes and create a related offence;
 - (b) to issue notice to the persons responsible for management of premises to do certain acts for preventing the breeding of mosquitoes. They should also be held liable for failure to comply with any of the requirements of the notice and causing mosquito breeding; and
 - (c) to take necessary action for preventing the breeding of mosquitoes without notice where there is mosquito-related health hazard and to recover the associated costs.

A The existing provisions being amended are at Annex A.

LEGISLATIVE TIMETABLE

10. The legislative timetable is as follows -

| | |
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| Publication in the Gazette | 22 April 2005 |
| First Reading and commencement of Second Reading Debate | 4 May 2005 |
| Resumption of Second Reading debate, committee stage and Third Reading | To be notified |

IMPLICATIONS OF THE PROPOSAL

- B 11. The proposal has economic, financial and sustainability implications as set out at Annex B.

12. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Bill will not affect the binding effect of the existing Ordinance. It has no civil service, productivity or environmental implications.

PUBLIC CONSULTATION

13. We consulted the LegCo Panel on Food Safety and Environmental Hygiene and the Advisory Committee on Food and Environmental Hygiene on 14 December 2004 and 13 January 2005 respectively. Members supported the proposal in general.

PUBLICITY

14. Subject to the passage of the Bill by the LegCo, we will publicize the proposal through press release and information leaflets. "Anti-mosquito" APIs will also be produced to promulgate the new measures. A spokesperson will be available to handle media enquiries.

ENQUIRY

15. For enquiry, please contact the following officers:

Miss Wendy Au Tel : 2973 8139
Assistant Secretary for Health, Welfare and Food

Ms Rhonda Lo Tel : 2867 5288
Assistant Director (Operation) 3, Food and Environmental Hygiene
Department

20 April 2005
Health, Welfare and Food Bureau

A BILL

To

Amend the Public Health and Municipal Services Ordinance to confer additional powers on the Government to deal with the problem of mosquito.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Public Health and Municipal Services (Amendment) Ordinance 2005.

2. Control of water and article likely to cause mosquito breeding

Section 27 of the Public Health and Municipal Services Ordinance (Cap. 132) is amended –

(a) by adding before subsection (1) –

“(1AA) For the purposes of this section –

“the appointed contractor” (獲委任承建商), in

relation to any site, means –

(a) the person who is the registered contractor appointed in respect of the site in accordance with the Buildings Ordinance (Cap. 123); or

- (b) where the site is owned by the Government, the person who has been appointed the contractor in respect of the site, if he has entered on the site at the relevant time;

“mosquito-related health hazard” (蚊致健康危害)

means any circumstances that –

- (a) create favourable condition for the transmission of mosquito-borne diseases which constitute a danger to human health; or
- (b) are likely to create such a condition if immediate remedial action is not taken;

“the person responsible for the premises” (有關處所的負責人), in relation to any premises, means –

- (a) any one or more of the following persons –
 - (i) the occupier of the premises;
 - (ii) the owner of the premises;

(iii) the person responsible
for the management of
the premises; or

(b) where the premises consist of a
building site, the appointed
contractor of the site.”;

(b) in subsection (1) –

(i) by repealing “cause a notice to be served upon the occupier, or, where the occupier is absent from Hong Kong or cannot be readily found or ascertained by the Authority or is under disability, upon the owner, of such premises, or, where the premises consist of a building site or a building under construction, upon the appointed contractor in respect of the site, requiring” and substituting “by a notice served on the person responsible for the premises, require”;

(ii) in paragraph (b), by repealing “or any further such accumulation of water upon premises” and substituting “accumulation of water upon the premises”;

(iii) in paragraph (c), by repealing “such premises” and substituting “the premises”;

(c) by adding –

“(1A) Where it appears to the Authority that there is upon any premises any article capable

of causing accumulation of water which allows the breeding of mosquitoes, the Authority may, by a notice served on the person responsible for the premises, require him to take such steps within such time as may be specified in the notice to prevent the breeding of mosquitoes upon the premises.

(1B) If the Authority has reasonable cause to believe that upon any premises any accumulation of water or any article poses a mosquito-related health hazard, the Authority may –

- (a) take such action as he considers necessary to –
 - (i) remove such accumulation of water or the article; or
 - (ii) prevent the breeding of mosquitoes upon the premises; and
- (b) where such hazard is attributable to any act, default or sufferance of any person, recover from the person any costs incurred by the Authority in the taking of such action.”;
- (d) by repealing subsection (2) and substituting –

“(2) Any person who without reasonable excuse –

(a) fails to comply with the requirements of a notice served on him under subsection (1);
or

(b) fails to comply with the requirements of a notice served on him under subsection (1A),

shall be guilty of an offence.

(2A) If a person is charged with an offence under subsection (2) for failure to comply with a notice served on him under subsection (1) in relation to a requirement referred to in subsection (1)(a), it shall be a defence for him to prove that he has taken all reasonable steps to comply with the requirement.

(2B) If, in relation to any premises –

(a) any requirement of a notice served under subsection (1) on a person is not complied with, the Authority may –

(i) remove any accumulation of water upon the premises;

- (ii) take such other action as he considers necessary to prevent any accumulation of water upon the premises; and
 - (iii) recover from the person any costs incurred by the Authority in the taking of the action under subparagraph (i) or (ii); or
- (b) any requirement of a notice served under subsection (1A) on a person is not complied with, the Authority may –
 - (i) take such action as he considers necessary to prevent the breeding of mosquitoes upon the premises; and
 - (ii) recover from the person any costs incurred by the Authority in the taking of the action

under subparagraph

(i).”;

(e) by repealing subsection (3) and substituting –

“(3) If -

(a) any larvae or pupae of mosquitoes are found on any premises; and

(b) the existence of such larvae or pupae on the premises is attributable to any act, default or sufferance of any person,

such person shall be guilty of an offence.

(3A) Without prejudice to subsection (3), if any larvae or pupae of mosquitoes are found on any premises which consists of a building site, the appointed contractor of the site shall be guilty of an offence.”;

(f) in subsection (4), by repealing “subsections (1) and (2)” and substituting “this section”;

(g) by repealing subsection (5);

(h) in subsection (6), by repealing “subsection (1) or (3)” and substituting “this section”.

3. Penalties

The Ninth Schedule is amended by repealing “27(2)(a) or (3)” and substituting “27(2), (3) or (3A)”.

Explanatory Memorandum

This Bill amends the Public Health and Municipal Services Ordinance (Cap. 132) to –

- (a) empower the Government to deal with the mosquito breeding problems arising from the presence of articles capable of causing accumulation of water which allows the breeding of mosquitoes and create a related offence;
- (b) empower the Government to issue notice to the persons responsible for management of premises to do certain acts for preventing the breeding of mosquitoes; and
- (c) empower the Government to take necessary action for preventing the breeding of mosquitoes without notice where there is mosquito-related health hazard and to recover the associated costs.

Financial, Economic and Sustainability Implications

Financial Implications

The proposal empowers the Government to recover the full cost of mosquito-control measures from the occupier or owner of private premises or management bodies where such has been undertaken by Government with or without their prior consent. If contested, the cases will be settled in court. FEHD will implement the new initiatives within its existing resources and staff.

Economic Implications

2. The proposal will reduce the risk of recurrence of dengue fever and Japanese encephalitis and therefore will bring about positive economic benefits in terms of enhanced public health. Removing the potential threat of mosquito-borne diseases will also be conducive to enhancing the international image of Hong Kong as a safe place to do business. The management bodies would urge their frontline staff to pay more attention on the prevention of mosquito breeding, the burden for compliance would however be limited.

Sustainability Implications

3. The proposal would contribute positively to the sustainability principle of providing a living and working environment and pursuing policies which promote and protect the physical health and safety of the people of Hong Kong.