

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

**Penalty Relating to Non-Compliance with
the Orders made under the Bill**

Purpose

This paper briefs Members on the penalty relating to non-compliance with the orders made by the Director of Food and Environmental Hygiene (DFEH) under the Public Health and Municipal Services (Amendment) Bill 2008.

Orders made by DFEH

2. The new section 78B in the Amendment Bill provides that DFEH may make an order (section 78B order) if he 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. A section 78B order may 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.

3. Section 78D provides that a person bound by a section 78B order who contravenes a term of the order commits an offence. The level of penalty is at a fine of level 6 (\$100,000) and imprisonment for 12 months.

Level of penalty in similar provisions

4. The table below sets out the penalty level in similar legal provisions of the Public Health and Municipal Services Ordinance (Cap. 132) and other legislation. It shows that the proposed level of penalty of a fine at level 6 (\$100,000) and imprisonment for 12 months under the Amendment Bill is generally in line with the penalty level of similar offences.

Legislation	Offence	Maximum Penalty
Public Health and Municipal Services Ordinance (Cap. 132) [section 128(3), section 128C(12)(c) and Schedule 9]	Contravention of an order prohibiting the use of premises or vessel/ closing premises posing immediate public health	Fine at level 6 (\$100,000) and imprisonment for 12 months Continuing offence : daily fine of \$1,750
Public Health (Animals and Birds) (Chemical Residues) Regulation (Cap. 139N) [sections 9, 10, 14, 15 and 17]	Contravention of an order to suspend the supply or recall food animals/fodder	Fine at level 6 (\$100,000)
Toys and Children's Products Safety Ordinance (Cap. 424), [sections 11, 12 and 31]	Failure or refusal to comply with a prohibition or recall notice	First conviction : fine of \$100,000 and imprisonment for 1 year Subsequent conviction : fine of \$500,000 and imprisonment for 2 years Continuing offence : daily fine of \$1,000
Consumer Goods Safety Ordinance (Cap. 456) [sections 8, 9, 22 and 28]	Failure and refusal to comply with a prohibition or recall notice	First conviction : fine at level 6 (\$100,000) and imprisonment for 1 year Subsequent conviction : fine of \$500,000 and imprisonment for 2 years Continuing offence : daily fine of \$1,000

Legislation	Offence	Maximum Penalty
Electricity Ordinance (Cap. 406) [sections 25, 29 and 56A]	Failure to comply with a prohibition notice on the supply of electrical products	First conviction : fine at level 6 (\$100,000) and imprisonment for 1 year Subsequent conviction : fine of \$500,000 and imprisonment for 2 years

Penalties imposed by the court in actual cases

5. In imposing any sentence, a list of factors is taken into account by the court, e.g. the aggravating factors (e.g. repeated offenders), the mitigating factors (e.g. assistance to prosecution), level of harm, whether defendant pleads guilty and at what stage, etc. The maximum penalties are imposed for cases which are worst of its kind and would generally be imposed on repeated offenders only (and not first offenders). The actual penalties imposed in relation to food and food animals under the following statutory provisions are summarized below as an illustration –

- (a) Section 52 of Cap. 132: provides that if any person sells to the prejudice of a purchaser any food which is not of the nature, or not of the substance, or not of the quality, of the food demanded by the purchaser, he shall be guilty of an offence.

2006-2008	Fine at level 3 (\$10,000) and imprisonment for 3 months
No. of convicted cases	546
Range of actual penalty	\$200 - \$9,000 ¹
Average actual penalty	\$2,782
Imprisonment	Nil

- (b) Section 54 of Cap. 132: provides that any person who sells any food intended for, but unfit for human consumption, shall be guilty of an offence.

¹ 514 cases convicted under section 52 of Cap. 132 from 2006 to 2008 were imposed with a fine at \$5,000 or below (i.e. half the maximum penalty).

2006-2008	Fine at level 5 (\$50,000) and imprisonment for 6 months
No. of convicted cases	4
Range of actual penalty	\$2,500 - \$4,000
Average actual penalty	\$3,375
Imprisonment	Nil

- (c) Regulations 3 and 3A of the Harmful Substances in Food Regulations (Cap. 132AF): provide that no person shall import, consign, deliver, manufacture or sell, for human consumption, any food which contains any substance in greater concentration than is specified in the First Schedule to Cap. 132AF, or any prohibited substance specified in the Second Schedule.

2006-2008	Fine at level 5 (\$50,000) and imprisonment for 6 months
No. of convicted cases	21
Range of actual penalty	\$500 - \$10,000
Average actual penalty	\$3,800
Imprisonment	Nil

- (d) Sections 3, 8 and 11 of the Public Health (Animals and Birds) (Chemical Residues) Regulation (Cap. 139N): provide that a food farmer who keeps any food animal which contains any prohibited chemical commits an offence, no person shall bring or cause to be brought into Hong Kong any food animal unless it is accompanied by a valid certificate, and that a food farmer who has in his possession any prohibited chemical commits an offence.

2006-2008	Fine at level 6 (\$100,000)
Number of convicted cases	23
Range of actual penalty	\$200-\$10,000
Average actual penalty	\$1,987
Imprisonment	Nil

6. As seen from the above, despite the maximum penalty set, the actual fines imposed are at a considerably lower level.

Food and Health Bureau
December 2008