

For discussion
on 8 January 2001

LegCo Panel on Food Safety and Environmental Hygiene

A PROPOSAL TO STRENGTHEN THE CONTROL ON UNLICENSED AND UNHYGIENIC FOOD ESTABLISHMENTS

PURPOSE

This paper seeks Members' view on our proposal to amend the Public Health and Municipal Services Ordinance (the Ordinance) (Cap. 132) –

- (a) to empower the Director of Food and Environmental Hygiene (the Director) to apply for a Closure Order to close unlicensed food establishments¹, without first having to obtain a Prohibition Order and;
- (b) to empower the Director to close unhygienic food establishments that pose an immediate health hazard to the public.

BACKGROUND

2. To protect public health, all food establishments are required to operate with the appropriate licences or permits, such as licences for general restaurants, light refreshment restaurants, food factories, siu mei and lo mei shops and slaughterhouse, and permits for selling sushi and sashimi. Following the outbreak of several cholera and food poisoning cases in 1997 which involved unhygienic food premises, there have been increasing calls from the community for the exercise of tighter control on food premises, in

¹ Food Establishments include restaurants, food factories, fresh provision shops, bakeries, cold stores, factory canteens, frozen confections factories, milk factories, siu mei & lo mei shops, slaughterhouses and shops selling restricted food.

particular unlicensed food establishments, for the protection of public health.

PROBLEM

Unlicensed Food Establishments

3. The present closure process as provided for under the Ordinance is protracted and ineffective in dealing with unlicensed food establishments. As the licensing authority, the Food and Environmental Hygiene Department (the Department) has to first prosecute the operator of an unlicensed food establishment by summons and secure a conviction before applying to the court for a Prohibition Order. Only if the Prohibition Order has been breached and the operator convicted can the Department apply for a Closure Order. The whole process may take as long as nine months (see flow chart at Annex A).

4. Unscrupulous operators see this as a loophole and take advantage of the time in between to operate small-scale food businesses in unlicensable premises on short-term tenancies. When a closure order is finally served, many would simply wind up the business and move elsewhere to start again. Others delay the closure process by changing the operator/proprietor of the food establishment or the type of food business, to make it difficult for the Department to prove the breach of a Prohibition Order.

5. The gravity of the problem can be seen from the statistics recorded between January and September 2000. Out of the 299 Prohibition Orders, the Department only managed to apply successfully for one Closure Order. Relevant statistics, including the number of unlicensed food establishments and the number of prosecutions taken against such establishments, are given at Annex B.

Unhygienic Food Establishments

6. To prevent the spread of infectious diseases, the Director of Health is empowered under sections 19 and 24 of the Prevention of the Spread of Infectious Diseases Regulation (the Regulation) to isolate and disinfect any premises including food establishments. However, the Regulation cannot be

invoked to deal with food hygiene incidents caused by factors other than infectious diseases. Nor can it deal effectively with other cases where the hygiene conditions are so bad as to pose serious and/or immediate threat to public health and safety and immediate closure of such premises is called for.

7. While continuous operations are taken to crack down on these activities, the lack of power to close and prohibit the use of such premises has undermined the Department's ability to ensure public health and safety.

PROPOSALS

Closure of Unlicensed Food Establishments

8. To tackle the problem of unlicensed food establishments more effectively, we propose to add a new provision to the Ordinance to empower the Director to make a direct application to the court for a Closure Order. The application will be based on the fact that the premises are operating without a licence. Under the proposed arrangement, applications for a Closure Order will no longer have to rely on evidence of breaches of a Prohibition Order. The time required to close an unlicensed food establishment is expected to be significantly reduced from nine months to one and half months. Unlicensable premises including flimsy structures being used for illegal slaughtering and roasting activities will be our immediate targets. A flow chart illustrating the proposed new procedure is at [Annex C](#).

9. If the unlicensed food establishment ceases to operate or an application for a licence has been made and all licensing requirements having been complied with, the Closure Order on the premises could be lifted through application to the court by the Director, the owner or the occupier concerned.

Closure of Unhygienic Food Establishments

10. To tighten up the control on unhygienic food establishments, we propose to add a new provision to the Ordinance to empower the Director to close food establishments temporarily without recourse to court proceedings, on the ground of immediate health hazard relating to food safety. If the Director has sufficient cause to believe that public health is under serious

threat, she may order the immediate closure of the premises. The closure will enable all necessary investigations and the carrying out of cleansing, disinfestation, deratting, disinfection and other rectification measures to be taken immediately. The power will be exercised personally by the Director for the protection of food safety and public health. It will not be delegated. Any person who is aggrieved by the Closure Order imposed by the Director may within 7 days appeal to the court against the Director's decision.

11. The circumstances which may warrant immediate closure include the following -

- (a) as a result of construction and disrepair, any food in the premises may have been contaminated, or tainted or may have deteriorated thereby rendering it unfit for human consumption;
- (b) water used in food preparation or washing utensils coming from a contaminated or unapproved source which renders the food prepared in the premises unfit for human consumption;
- (c) inspection findings including data from epidemiological investigation or other laboratory evidence show that the food prepared/sourced in the premises is or is likely to be either contaminated with pathogens or chemical substances, and thus rendering it unfit for human consumption; and
- (d) infestation of vermin to the extent that the food prepared in the premises may have been contaminated or tainted and becomes unfit for human consumption.

12. The Closure Order will remain in force until the Director is satisfied that the health hazard in the premises has been eliminated and the use of the premises has been licensed; or it can be proved to the satisfaction of the Director that the premises would not be used as a food establishment. A flow chart illustrating the proposed new procedure is at Annex D.

IMPROVING LICENSING SERVICE

13. To address the trade's concern that some operators may be forced to operate without a licence because it takes a long time to get one, the Department will ensure licence applications are dealt with as expeditiously as possible. To this end, the Department has already implemented a number of measures to shorten the process for restaurant licensing. These include shortening the time for issuing letter of requirements for provisional licence from 26 working days to 20 working days, introducing a case manager scheme, shortening Building Department's retrieval time for building plans and setting up a Resource Centre which provides assistance and up-to-date licensing-related information to applicants.

14. With the implementation of these improvement measures, the Department is able to issue a provisional licence in about five weeks and a full licence in four to six months. To meet this time frame, applicants also have their part to play, particularly in the timely submission of the requisite certificates of compliance.

15. In conjunction with the Business and Services Promotion Unit of the Commerce and Industry Bureau, the Department has commissioned a consultancy study to explore ways to simplify the licensing procedures for other types of food establishments, such as fresh provision shops, food factories and siu mei and lo mei shops. Our aim is to put in place an open, business-friendly and streamlined licensing system without compromising a high standard of food and environmental hygiene.

CONSULTATION

16. We consulted the LegCo Subcommittee on matters relating to environmental hygiene in April 2000 on our preliminary proposals. Members supported the proposals but expressed concerns about the control over unlicensed food establishments before the enactment of the new legislation.

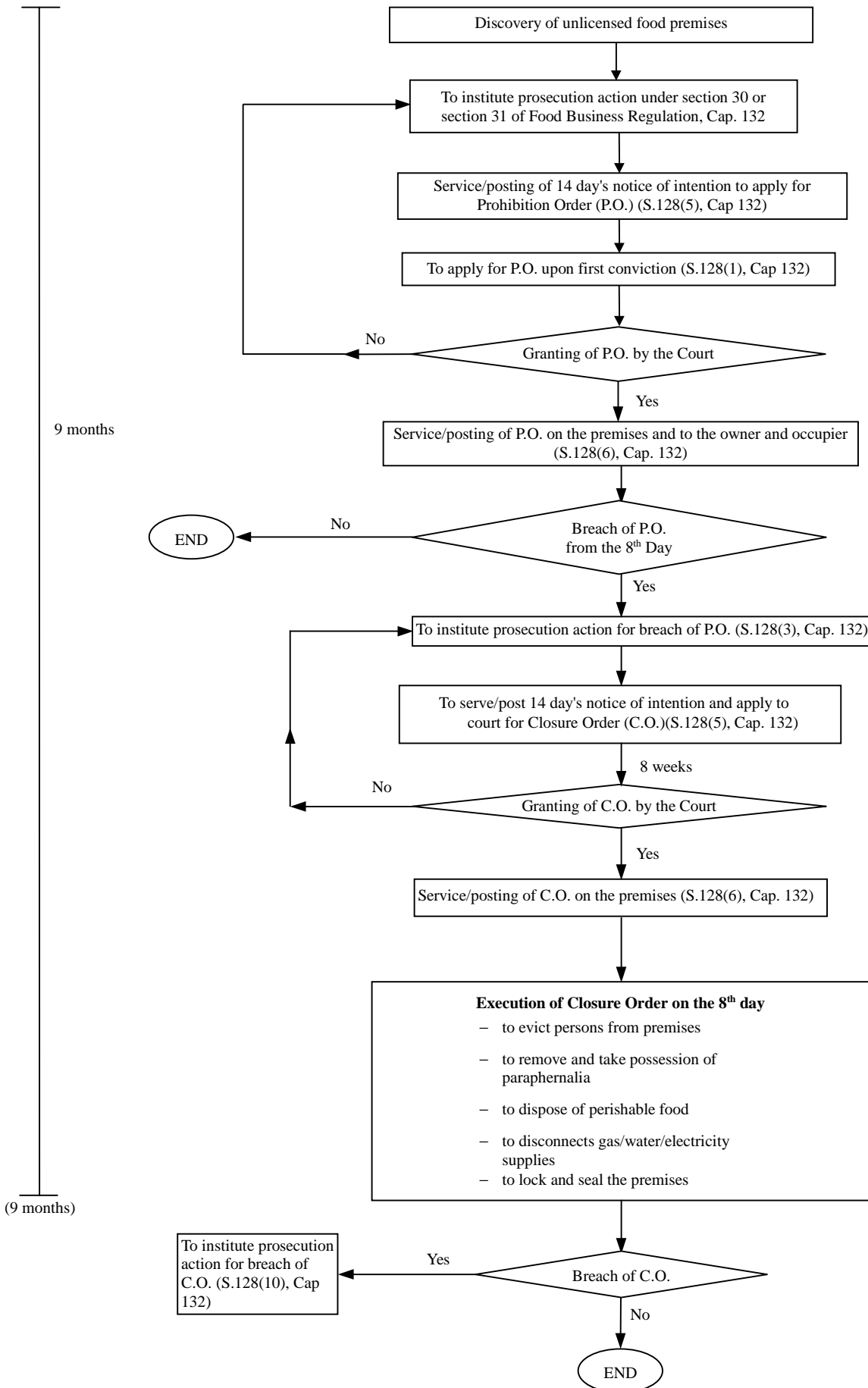
17. In December 2000, we consulted the Advisory Council on Food and Environmental Hygiene and the trade on our detail proposals. The response is generally positive. The trade has however reiterated that the use of the new power to close unlicensed food establishments must be supported by the efficient processing of licence applications.

ADVICE SOUGHT

18. Members are invited to give advice on the proposals set out in paragraphs 8-12 of this paper.

**Environment and Food Bureau/
Food and Environmental Hygiene Department
January 2001**

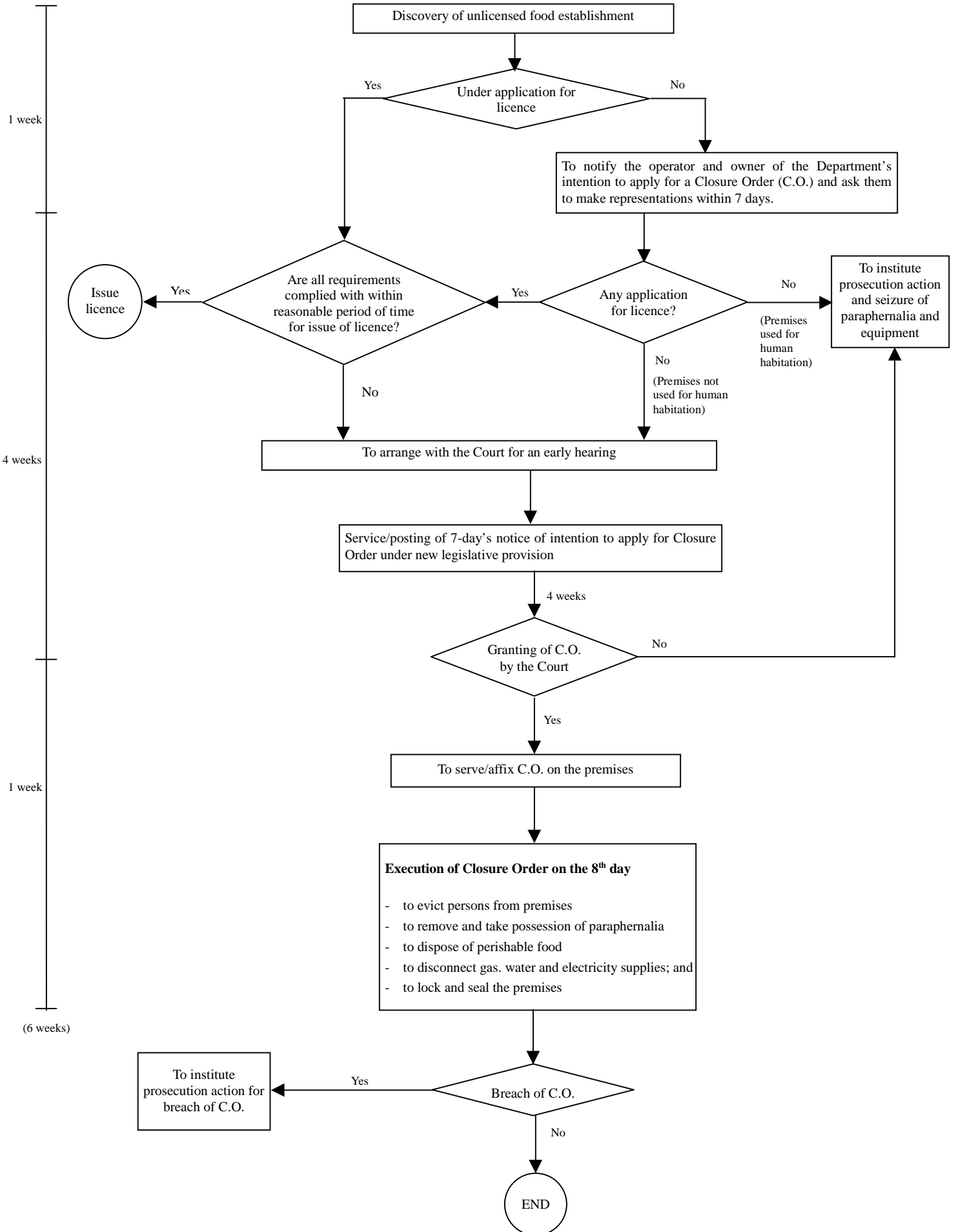
Existing Enforcement Action to Close Unlicensed Food Premises



**Figures on Unlicensed/Unpermitted Food Establishment
(1.1.2000 - 30.9.2000)**

(a)	Estimated number of unlicensed food establishments under application for licence	642
(b)	Estimated number of unpermitted food establishment under application for permit	8
(c)	Estimated number of unlicensed food establishments not under application for licence	142
(d)	Estimated number of unpermitted food establishments not under application for permit	2
(e)	Number of Prohibition Orders granted	299
(f)	Number of closure Orders granted	1
(g)	Number of prosecutions for breach of Food Business Regulation (carrying on a food business without a licence or permit)	3924
(h)	Number of applications to the Court for a Prohibition Order	408
(i)	Number of prosecutions for breach of Prohibition Order	410

Proposed Procedure for Applying Closure Order to Close Unlicensed Food Establishments



**Proposed Procedure for Closure of Food Establishments
posing immediate health hazard**

