

**For discussion
on 25 February 2003**

LegCo Panel on Food Safety and Environmental Hygiene

**Review of Enforcement Regime for FEHD Licensing
Requirements/Conditions and Tenancy Conditions**

PURPOSE

This paper proposes changes to the enforcement regime for licensing requirements/conditions of FEHD licensed food premises and tenancy conditions of FEHD market stalls.

BACKGROUND

2. Members discussed a paper entitled “Import Control and New Licensing Requirements for Chilled Meat” at a meeting held in October 2001. Members observed that enforcement of licensing conditions of a Fresh Provision Shop (FPS) licensee was less stringent than that of tenancy conditions of FEHD market tenants selling chilled meat. Some Members expressed concern over the many warnings that FEHD had to give before revoking or suspending a licence. FEHD was requested to review the relevant enforcement procedures.

EXISTING ENFORCEMENT REGIME

3. At present, licensed food premises (e.g. restaurants, food factories and fresh provision shops) and market stalls are subject to different enforcement procedures.

Breach of Licensing Requirements/Conditions of Food Premises

4. FEHD currently deals with a breach of the licensing requirement/condition as follows -

- (a) Verbal warning will be given to a licensee for a breach of the licensing requirement/condition. A written warning will be

issued for non-compliance at the next follow-up inspection.

- (b) The written warning will count towards suspension/cancellation of licence if the breach is not rectified within a specified time.
- (c) After the breach is rectified, each recurrence of the same breach within the next 12 months will attract one written warning.
- (d) The licence will be suspended for two days (the first suspension), if three written warnings are accumulated within 12 months.
- (e) The licence will be suspended for four days (the second suspension), if three written warnings are accumulated within 12 months from the date of the last breach leading to the first suspension.
- (f) The licence will be cancelled, if another three written warnings are accumulated within 12 months from the date of the last breach leading to the second suspension.

Breach of Tenancy Conditions of FEHD Market Stalls

5. As for a breach of market tenancy conditions, FEHD will administer a verbal warning to the tenant concerned. A written warning will be issued for failure to comply with the verbal warning. Non-compliance with the written warning or recurrence of the same breach within 12 months will be regarded as a breach of tenancy agreement. The tenancy agreement will be terminated, if three breaches of tenancy agreement are accumulated within a period of 12 months.

THE PROBLEMS

6. The current enforcement regime is observed to have the following problems -

- (a) Ineffective

Under the existing practice, if licensees/market tenants take heed of a verbal warning but subsequently breach the same licensing/tenancy condition, a fresh verbal warning (instead of a written warning) will need to be given by FEHD enforcement

officers. It is therefore possible for licensees/market tenants to commit the same breach repeatedly but still manage to avoid severe sanctions such as suspension/cancellation of licence or termination of tenancy. For a breach of licensing requirement/condition, even if a written warning is issued, it would require the issue of nine further written warnings as described in paragraph 4 above to cancel the licence of a recalcitrant licensee.

The situation is most worrying where non-compliance involves an essential licensing/tenancy condition and which is difficult to detect. An example is the prohibition against display of chilled meat for sale as fresh meat. Detection of a breach of this condition is difficult and resources-consuming. The existing enforcement procedure, which requires repeated detections and written warnings for suspension/cancellation of licences and termination of tenancy, is hardly an effective way to tackle such breaches.

In 2002, FEHD issued 335 warning letters for breach of the licensing requirements/conditions and 207 written warnings for breaches of tenancy conditions. Only eight licences were eventually suspended.

(b) Inequitable

Under the existing regime, licensees and market tenants who operate the same kind of business could be subject to different enforcement actions for breaching the same licensing/tenancy condition. For example, a market tenant operating a cooked food stall will have his tenancy terminated if he accumulates three breaches of tenancy agreement within 12 months for, say, not providing sufficient containers for the storage of open food or causing nuisances for discharging fumes improperly. On the other hand, a restaurant licensee in like circumstances will only have his licence suspended for two days. His licence will not be cancelled until he has accumulated nine written warnings. This inconsistency needs to be addressed.

PROPOSED CHANGES

7. In view of the above, we consider that the existing enforcement

regime should be improved. The new regime should meet the following criteria -

- (a) it should carry sufficient deterrence to ensure compliance, but should not be too stringent as to result in the cancellation of licence or termination of tenancy for minor/inadvertent breaches;
- (b) it should be able to deal adequately with serious, hard-to-detect breaches of licensing/tenancy conditions; and
- (c) it should be equitable to licensees and market tenants who operate the same kind of business.

8. Specifically, we propose to make the following improvements -

(a) Enhancement of effectiveness

To enhance the effectiveness of our control regime, a verbal warning for a breach of a licensing requirement/condition administered to a licensee will be valid for six months. When a breach of the same licensing requirement/condition is detected again within the six-month period, a warning letter (instead of a fresh verbal warning) will be issued. In addition, we propose to streamline the procedure for cancellation of licence by requiring only the accumulation of three written warnings within six months (as opposed to the accumulation of nine written warnings over a much longer period). The proposed change would be much more effective in tackling recalcitrant licensees.

(b) Alignment of enforcement procedures

To achieve parity of treatment, we propose to align the enforcement procedure in respect of a breach of the licensing requirements/conditions of licensed food premises with that for a breach of the tenancy conditions of market stalls. Similar to the procedure described in paragraph 8(a) above, any verbal warning for a breach of a tenancy condition administered to a market tenant will be valid for six months from the date of its issue. A warning letter will be issued immediately if a breach of the same tenancy condition is detected again within the six-month period. The accumulation of three warning letters will

lead to termination of tenancy agreement.

- (c) Breach of conditions governing the sale of frozen/chilled meat or chicken

To address public concern on such matters as selling imported frozen/chilled meat or chicken as fresh meat or chicken, we propose that DFEH may cancel a licence or terminate a market tenancy agreement immediately on detection of the breach (instead of going through the procedure as set out in paragraph 8(b) above).

9. Licensees/market tenants can seek a review of a decision to cancel their licence or terminate their tenancy, by making a written representation to DFEH. Licensees/market tenants who feel aggrieved by DFEH's decision can further appeal to the Licensing Appeals Board and/or the Municipal Services Appeals Board, as the case may be.

IMPLEMENTATION

10. Subject to the views of Members, we shall brief licensees and market tenants of the new arrangements, with a view to implementing the new procedures in the second half of 2003.

**Health, Welfare and Food Bureau
Food and Environmental Hygiene Department
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