

**For discussion
on 26 September 2003**

LegCo Panel on Food Safety and Environmental Hygiene

**Outcome of Consultation on
the Proposed Changes to the Enforcement Regime for FEHD's
Licensing Requirements/Conditions and Tenancy Conditions**

PURPOSE

This paper reports the outcome of the briefings for food business licensees and market tenants on the proposed new enforcement regime for the Food and Environmental Hygiene Department (FEHD)'s licensing requirements and conditions as well as market tenancy conditions.

BACKGROUND

2. At the Panel meeting held in February 2003, the Administration proposed a new enforcement regime as follows -

- (a) A verbal warning will be given to a licensee or market tenant for breach of licensing requirement and condition or breach of tenancy condition. A warning letter will be issued immediately if the same breach is detected within a six-month period. The accumulation of three warning letters within six months will lead to cancellation of licence or termination of tenancy.
- (b) To address public concern about the sale of imported frozen and chilled meat or chicken as fresh meat or chicken, the Director of Food and Environmental Hygiene will cancel a licence or terminate a market tenancy immediately on detection of such a breach.

The new measure described in (b) above was supported by Members and subsequently introduced in June 2003. On the other hand, Members would like the Administration to brief licensees and market tenants on the new enforcement procedures set out in (a) above and report the outcome

of the briefings to the Panel before its implementation.

RESPONSES FROM THE TRADE

3. In June 2003, FEHD briefed the representatives of market tenants on the new enforcement procedures through the Market Management Consultative Committees. A similar briefing was also organised for food business licensees. Market tenants in general did not object to the new enforcement procedures whereas representatives of the food trade made the following comments about the new procedures.

Stringency of the regime

4. Some representatives expressed concern that food businesses were already operating in highly competitive environment under the current economic climate. The introduction of a more stringent enforcement policy against breach of licensing requirements and conditions would add to their already heavy burden.

Time allowed for compliance with warning

5. Under both the existing and proposed arrangements, licensees and market tenants will be allowed a certain period of time to rectify a breach when a verbal or written warning is given. Failure to rectify a breach within the prescribed period will lead to further warnings. Some licensees were worried that they might be subject to repeated warnings and even licence cancellation simply because the rectification (e.g. substantial repair works for food room) took longer than that allowed by FEHD.

Education for licensees

6. Some representatives were of the view that licensees were willing to comply with FEHD's licensing requirements and conditions, but might not fully understand the hygiene standards expected by FEHD. They were worried that their licences might be cancelled by FEHD as a result of inadvertent breaches of licensing requirements and conditions. They suggested that FEHD should provide more education and guidance to licensees.

THE ADMINISTRATION'S POSITION

Stringency of the proposed regime

7. We have carefully weighed the concerns of the trade against the rationale for a more stringent regime. We consider that an improved regime is necessary to (a) improve the effectiveness of our enforcement action; and (b) address the issue of inequity in the treatment of licensees and market tenants who operate the same kind of business. We do not agree that keen competition itself justifies tolerance of unhygienic practices. Besides, it will be unfair to observant licensees and market tenants if effective measures are not in place to deal with recalcitrant operators. A more effective enforcement regime is also in line with public aspiration for a sustainable approach to improve environmental hygiene in Hong Kong.

Time allowed for compliance

8. FEHD's existing policy is to allow licensees 4 days to rectify a breach where a verbal warning is given, and 12 days where a written warning is issued. If a licensee considers the time allowed for rectification to be insufficient, he may make a written request for an extension of time, setting out in detail the reasons for the request. Standard forms are available for this purpose. FEHD will consider each request on its own merit.

Training for food business operators

9. We agree that higher food hygiene awareness is essential to improving the hygiene standard of the food trade. It is already a licensing requirement for a food premises to be supervised by a person who has attended food hygiene course. In view of the SARS outbreak earlier this year, FEHD issued advisory letters with updated hygiene and anti-SARS guidelines to all food business licensees and market tenants. To further promote good hygiene practices among food business operators, FEHD issued a Food Hygiene Code to all licensees in end-August 2003. The Code offers practical guidelines on essential hygiene practices and will facilitate licensees' compliance with relevant legislation and licensing requirements and conditions. A similar publication has also been issued to market stall tenants that sell food-related items.

TRANSITIONAL ARRANGEMENT

10. The records of some licensees and market tenants may still carry verbal or written warnings issued under the current enforcement regime by the time the new enforcement procedures are introduced. In view of the change in the mechanism for suspension and cancellation of licences and termination of tenancy, we consider it fair to cancel verbal and written warnings registered against a licensee and a market tenant under the existing regime, when the new enforcement procedures come into operation.

NEW MEASURES TO IMPROVE ENFORCEMENT REGIME

11. As part of the initiatives to improve community hygiene, Team Clean recommended additional measures to further improve the effectiveness of FEHD's enforcement regime in dealing with irregularities committed by food business licensees and market tenants. We will consult the trade on these proposals.

WAY FORWARD

12. Subject to the views of the Panel, we plan to implement the new enforcement procedures with effect from November 2003.

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