

**For discussion
on 18 December 2003**

LegCo Panel on Food Safety and Environmental Hygiene

Provisional Food Business Licences

PURPOSE

This paper sets out the Administration's proposed measures to improve regulatory control over food premises issued with provisional food business licences.

BACKGROUND

2. Any person who wishes to operate a food business is required by law to obtain a licence from the Food and Environmental Hygiene Department (FEHD) and to comply with licensing requirements and conditions imposed by FEHD. To facilitate early start-up of business, FEHD allows a food business licence applicant to operate on a "provisional" basis provided that the applicant complies with some basic requirements on health, ventilation, building safety and fire safety. These requirements are less stringent than those for a full licence.

3. As long as a recognised professional (for example, an authorised person or a structural engineer registered under the Buildings Ordinance (Cap. 123)) certifies compliance with the essential requirements, a provisional licence will be issued, allowing the operator more time to complete the works for meeting the full set of licensing requirements. A provisional licence is valid for six months and may be renewed for another six months in exceptional circumstances.

Problems with the Existing Regime

Non-compliance with Provisional Licensing Requirements

4. The provisional licence system is intended to be a business-facilitation measure. Unfortunately, some licensees have abused the system by -

- (a) securing the professional certification necessary to meet the basic licensing requirements without any intention to comply with the full set of requirements for the eventual issue of a full licence; or
- (b) making unauthorised alteration to the premises after professional certification is obtained. This problem is commonly found with takeaway food businesses operating under a food factory licence, where the licensees often dismantle glazed panel installed at shop front and expose food to open air. Another example is the reconfiguration of food room to a size below statutory minimum to expand the seating area.

5. At present, FEHD issues warnings to provisional food business licensees for breaches of licensing requirements. For serious breaches (such as unauthorised reduction in food room size), FEHD may suspend the licence until rectification work is done. However, these measures have not been effective in dealing with the problem stated in paragraph 4 above.

Breaches of Food Hygiene Law

6. In addition to imposing licensing requirements and conditions, FEHD operates a Demerit Points System (DPS) to sanction food business licensees (for both full licences and provisional licences) who repeatedly contravene food hygiene law.

7. At present, demerit points registered against a provisional licence are not carried forward to the full licence granted subsequently.

The issue of a full licence will in effect absolve the licensee from the responsibility for hygiene offences committed during the provisional licence period. The distinction between demerit points registered before and after the issue of a full licence is unnecessary for, and indeed goes against, the protection of public health. The current arrangement has undermined the effectiveness of the DPS in curbing breaches of food hygiene law.

THE ADMINISTRATION'S PROPOSAL

8. In view of the above, we have made the following proposals to implement Team Clean's recommendations.

Breach of Licensing Requirements

9. To prevent further abuse of the provisional licence system by unscrupulous applicants, we propose that a provisional licence be cancelled should there be non-compliance with *any* of the provisional licensing requirements. This is justified on the grounds that the basic requirements for the issue of a provisional licence are the bare minimum for the protection of public health.

10. It should be noted that the application for a full licence in respect of a food premises will not be affected by cancellation of the provisional licence for that premises. Provided that the applicant eventually complies with all the relevant licensing requirements, a full licence will be issued.

Demerit Points System

11. To enhance the effectiveness of the DPS in deterring violations of hygiene and food safety regulations, we propose that demerit points and consequential penalties in the form of suspension or cancellation of licence incurred during the provisional licence period be borne by the food premises concerned after a full licence has been issued.

CONSULTATION

12. We have consulted the Advisory Council on Food and Environmental Hygiene on the above proposals at its meeting in October 2003. Members were supportive of the proposals.

13. We also consulted the public and the trade on the above proposals thereafter. An opinion survey on a number of Team Clean proposals was conducted in early November 2003, in which a total of 1 210 respondents were successfully interviewed. 79.3% of the respondents either supported or strongly supported the proposal to cancel a provisional licence if a licensee breached any of the basic hygiene requirements. In addition, 81.9% of the respondents agreed that demerit points accrued during the provisional licence period should continue to be borne by the licensee after issue of a full licence. On the other hand, when asked whether a licensee should be given a chance to rectify a breach before cancellation of a provisional licence, 93.8% of the respondents supported the idea.

14. We also forwarded the above proposals and those in relation to unauthorised building works (to be discussed in a separate paper) to food trade organisations and all licensees of food premises in end October 2003. As of end November 2003, we have received a total of 14 submissions from trade associations and individual licensees. Of these submissions, seven objected to the proposal while two were in support. The major contention of those who objected to the proposal was that the provisional licence system was meant to be a trade-facilitation measure. The proposed measures would defeat the purpose of establishing the system.

THE ADMINISTRATION'S CONSIDERATION

15. We do not agree with the objectors' view that the above proposals will undermine the provisional licence system's effectiveness as a trade-facilitation measure, since our proposals merely seek to prevent abuse by unscrupulous operators and will not affect compliant licensees. Our view is also shared by the public, as shown in the high level of

support given to the proposals in the opinion survey.

16. To avoid undue hardship to licensees who inadvertently breach our provisional licensing requirements, however, we agree that a final warning should be given to the licensee to rectify a breach. Failure to comply with the warning, or a subsequent breach of the same requirement, will lead to cancellation of the provisional licence.

WAY FORWARD

17. Members are invited to comment on our proposals set out in paragraphs 9-11 and 16 above. Subject to Members' views, we will implement the new measures in April 2004.

Health, Welfare and Food Bureau
Food and Environmental Hygiene Department
December 2003