

立法會
Legislative Council

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LC Paper No. CB(2) 564/04-05
(These minutes have been seen by
the Administration)

Panel on Food Safety and Environmental Hygiene

Minutes of Meeting
held on Tuesday, 14 December 2004 at 2 pm
in Conference Room A of the Legislative Council Building

Members Present : Hon Fred LI Wah-ming, JP (Chairman)
Hon WONG Yung-kan, JP (Deputy Chairman)
Hon Bernard CHAN, JP
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Dr Hon Joseph LEE Kok-long
Dr Hon KWOK Ka-ki

Public Officers Attending : Item IV

Mr Eddy CHAN
Deputy Secretary (Food & Environmental Hygiene)
Health, Welfare and Food Bureau

Mr Vincent LIU
Principal Assistant Secretary (Food & Environmental Hygiene)2
Health, Welfare and Food Bureau

Mr Gregory LEUNG
Director of Food and Environmental Hygiene

Ms Annette LEE
Deputy Director (Environmental Hygiene)
Food and Environmental Hygiene Department

Item V

Mr Eddy CHAN
Deputy Secretary (Food & Environmental Hygiene)
Health, Welfare and Food Bureau

Mr Vincent LIU
Principal Assistant Secretary (Food & Environmental Hygiene)2
Health, Welfare and Food Bureau

Mr Gregory LEUNG
Director of Food and Environmental Hygiene

Ms Annette LEE
Deputy Director (Environmental Hygiene)
Food and Environmental Hygiene Department

Ms Rhonda LO
Assistant Director (Operations)3
Food and Environmental Hygiene Department

Item VI

Mr Eddy CHAN
Deputy Secretary (Food & Environmental Hygiene)
Health, Welfare and Food Bureau

Mr Vincent LIU
Principal Assistant Secretary (Food & Environmental Hygiene)2
Health, Welfare and Food Bureau

Mr Gregory LEUNG
Director of Food and Environmental Hygiene

Dr Thomas CHUNG
Assistant Director (Food Surveillance and Control)
Food and Environmental Hygiene Department

Item VII

Mr Eddy CHAN
Deputy Secretary (Food & Environmental Hygiene)
Health, Welfare and Food Bureau

Miss Vivian KO
Principal Assistant Secretary
(Food & Environmental Hygiene) 1
Health, Welfare and Food Bureau

Mr Gregory LEUNG
Director of Food and Environmental Hygiene

Dr Thomas CHUNG
Assistant Director (Food Surveillance and Control)
Food and Environmental Hygiene Department

Item VIII

Mr Eddy CHAN
Deputy Secretary (Food & Environmental Hygiene)
Health, Welfare and Food Bureau

Mr Vincent LIU
Principal Assistant Secretary (Food & Environmental Hygiene)2
Health, Welfare and Food Bureau

Mr Gregory LEUNG
Director of Food and Environmental Hygiene

Ms Annette LEE
Deputy Director (Environmental Hygiene)
Food and Environmental Hygiene Department

Clerk in Attendance : Mrs Constance LI
Chief Council Secretary (2)5

Staff in Attendance : Miss Betty MA
Senior Council Secretary (2)1

Ms Anna CHEUNG
Legislative Assistant (2)5

I. Confirmation of minutes of meeting

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[LC Paper Nos. CB(2) 289 & 361/04-05]

The minutes of the meetings on 26 October and 9 November 2004 were confirmed.

II. Date of next meeting and items for discussion

[LC Paper Nos. CB(2) 362/04-05(01) and (02)]

Regular meeting in January 2005

2. Members agreed to discuss the following items proposed by the Administration at the next regular meeting on 11 January 2005 at 2:30 pm -

(a) Outcome of public consultation on long-term direction to minimise the risk of human infection of avian influenza; and

(b) Fisheries Protection (Amendment) Bill.

(Post-meeting note : At the request of the Administration, discussion of item (b) was postponed to the March meeting.)

3. Mr WONG Yung-kan said that according to press reports, the Administration had just reached agreement with the Mainland authorities concerning the arrangements for the importation of chilled pork from the Mainland to Hong Kong starting from early 2005. Mr WONG suggested that the Administration should be invited to brief the Panel at the next meeting on the surveillance and control measures in respect of chilled pork from the Mainland and the timetable for implementation. Members agreed.

4. The Chairman informed members that the Administration had also proposed to brief the Panel on the anti-rodent campaign in 2005 at the next meeting. However, as there were already three discussion items for the next meeting, he suggested that the item on anti-rodent campaign be deferred to the February meeting. Members agreed.

Re-scheduling of the regular meeting in February 2005

5. Members agreed that the regular meeting in February 2005, which was originally scheduled for 8 February 2005 (i.e. the Chinese New Year Eve), would be advanced to 1 February 2005.

III. Information paper(s) issued since last meeting

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[LC Paper No. CB(2) 401/04-05(01)]

6. Members noted that the Administration had provided an information paper on “Extension of public market rental freeze”.

7. In response to the Chairman’s enquiry about the reason for extending the rental freeze of public market stalls for nine months instead of 12 months, Deputy Secretary for Health, Welfare and Food (Food and Environmental Hygiene) DS(FEH) said that in the light of the recent economic recovery, the Administration would review at an earlier date the need for a further extension of the rental freeze.

IV Monitoring of food businesses operating under provisional licences and issuing of closure orders by the Director of Food and Environmental Hygiene

[LC Paper Nos. CB(2) 362/04-05(03) and (04)]

8. The Chairman said that the Legislative Council (LegCo) Secretariat had prepared a background brief on the subject matter.

9. Deputy Director of Food and Environmental Hygiene (Environmental Hygiene) briefed members on the salient points of the Administration’s paper.

Improvement measures for control over food business

Suspension of the issue of a provisional/full licence to food premises operated without licence

10. Mr WONG Kwok-hing said that the cluster of food poisoning incidents relating to meals consumed at a restaurant at Langham Place had caused much public concern about the operation of restaurants before being issued with a provisional licence. Mr WONG pointed out that under the existing legislation, any person who operated food business without a licence would be liable on summary conviction to a fine up to \$50,000 and imprisonment for six months, and an additional fine of \$900 for each day where the offence was a continuing offence. Mr WONG considered that penalty did not have much deterrence against unlicensed operation, as it took time to institute prosecution against the operator concerned, and some operators regarded the fine as part of their operating cost. He said that the recent food poisoning incidents had reflected that there was loophole in the existing licensing system, and asked whether the Administration planned to plug the loophole.

11. DFEH said that he was aware of the problem mentioned by Mr WONG Kwok-hing. DFEH further said that he was empowered to prosecute any person who operated food business without the requisite licences. In cases where the operator was convicted, the Administration was considering suspending the issue of a provisional or full licence to the food business concerned for a certain period of time. He was

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seeking legal advice from the Department of Justice (D of J) whether legislative amendments would be required.

12. Mr WONG Kwok-hing expressed support for DFEH's proposal. However, he expressed concern that pending the implementation of the new proposal, some food premises would continue to operate without the requisite licences. He asked when the Administration would be able to brief the Panel on the details of the proposal.

13. DFEH responded that the Administration planned to revert to the Panel in February 2005. DFEH said that under the existing legislation, he was empowered, under section 128C of the Public Health and Municipal Services Ordinance (Cap. 132), to make a closure order to close immediately premises that pose immediate health hazard to the public. Under section 128B of Cap. 132, DFEH could also apply to the court for a closure order to close premises for carrying out activities without the requisite licence or permit. However, the action taken under section 128B took time, and in some cases, the premises concerned would have already been issued the requisite licence or permit when DFEH's application for a closure order was heard by the court. DFEH added that as far as the food premises at Langham Place were concerned, three food premises had continued to conduct business without the requisite licences, and prosecution action had been instituted against all those premises which operated without a licence.

14. In response to the Chairman, DFEH said that the Administration's preliminary thinking was that the proposal of suspension of issue of licence would apply to all food premises which operated without the requisite licences, irrespective of whether an application for licence had been submitted.

15. Mr Tommy CHEUNG said that the proposal of suspending the issue of provisional /full licence to food premises which were found to have operated without licences was too harsh. Mr CHEUNG further said that while the industry agreed that operating food premises without licences should not be encouraged, the extent of the problem was not very serious and in many such cases, the food premises obtained the provisional licence within a matter of days. He considered that the food premises were unable to get a licence before operation largely due to the long time taken for processing the licence applications.

16. DFEH explained that the proposal should help achieve greater deterrence against operation of food businesses without the requisite licences, having regard to the limitations of the existing legislation. The Administration would provide more details of the proposal to the Panel in February 2005 after seeking legal advice.

17. Dr KWOK Ka-ki said that he was astonished to learn that a number of food premises in Langham Place continued to operate without licences even after the food poisoning incidents came to light. Dr KWOK considered that the Government had the responsibility to safeguard public health, and he supported measures to step up control

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over unlicensed or unhygienic food business, in order to uphold Hong Kong's reputation of Hong Kong as a food paradise and a tourist city. Dr KWOK said that he supported the proposal of suspending the issue of a provisional or full licence to food premises which had been convicted of operating without a licence.

18. Dr KWOK enquired about the number of occasions on which DFEH had invoked section 128C of Cap. 132 and whether there were problems in this connection.

19. DFEH said that the new sections concerning closure orders in Cap. 132 came into effect in 2003. He had ordered closure of restaurants on three and nine occasions respectively in 2003 and 2004 under section 128C of Cap. 132, on grounds that the food premises concerned posed immediate health hazard. Some of these premises could re-open within a short period of time after the health hazard had been removed. DFEH further said that when the first few cases of food poisoning relating to the restaurant in Langham Place came to light, his staff inspected the food premises concerned and asked the operator to take remedial measures. However, more food poisoning cases were reported in the subsequent days, and upon epidemiological evidence that the health hazard continued to exist, he ordered closure of the restaurant concerned under section 128C of Cap. 132. DFEH added that he could not issue a closure order to premises operating without licences, if they did not give rise to immediate health hazard. Instead, he could apply to the court for a closure order under section 128B, on the ground that the premises operated without a licence.

Hygiene Manager and Hygiene Supervisor Scheme

20. Mr Tommy CHEUNG expressed regret that the Administration would impose an additional licensing requirement and condition for both provisional and full licences upon application or renewal, by requiring the licensee to appoint a Hygiene Manager and/or Hygiene Supervisor. Mr CHEUNG pointed out that the food business did not support the Hygiene Manager and Hygiene Supervisor Scheme when it was proposed, because it would add to the cost of the trade. He considered it unreasonable for the Administration to launch the Scheme for the trade following the recent food poisoning incidents which were, in his view, isolated cases. He added that it would be more effective for the Health Inspectors to provide more advice and training to food operators on the proper food handling practices during inspections. Mr CHEUNG urged the Administration to reconsider its proposal.

21. DFEH said that when the Hygiene Manager and Hygiene Supervisor Scheme was first put forward for consultation, the food business trade had suggested that the Scheme should be taken forward only when sufficient training had been provided for the trade. DFEH informed members that up to November 2004, 5 960 Hygiene Managers and 27 800 Hygiene Supervisors had undergone the required training. DFEH further said that the recent food poisoning incidents were not given rise by unhygienic conditions of the food premises concerned, but improper food handling

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practices. The Administration considered that the appointment of a Hygiene Manager or a Hygiene Supervisor to strengthen food safety supervision at food premises was the long term solution to the problem.

22. Mr Tommy CHEUNG asked about the number of trained Hygiene Managers and Hygiene Supervisors remained in service in the food business trade, in view of the high staff turnover in the trade.

23. DFEH said that although the Administration did not have the information requested by Mr CHEUNG, it was estimated that the implementation of the Scheme would only require about 3 000 Hygiene Managers and 19 000 to 20 000 Hygiene Supervisors. The number of trained Hygiene Managers and Hygiene Supervisors would be able to meet the demand. Moreover, training courses for Hygiene Managers and Hygiene Supervisors were on-going.

Inspection of food premises with a provisional licence

24. Referring to paragraph 12 of the Administration's paper, Mr Vincent FANG asked about the criteria for classifying food premises as high-risk. DFEH responded that based on the experience of Food and Environmental Hygiene Department (FEHD), food premises selling raw and ready-to-eat food, and those food premises with records of food poisoning cases would be regarded as high-risk. It was explained in the paper that that food premises operating under a provisional licence were classified as high-risk. To step up control over these premises, the first inspection to these premises would be advanced to within three to five working days upon the issue of a provisional licence.

Processing of licence applications

25. Mr TAM Yiu-chung said that some food business operators claimed that the time taken for processing licence applications was unduly long, and they had to commence operation before obtaining the requisite licences to avoid losses due to high rental of the premises. Mr TAM asked whether the departments responsible for approving the licence applications could speed up the process.

26. Mr Tommy CHEUNG said that although the licensing authority could inform an applicant for a provisional/full licence within 20 working days of the requirements for revisions to the layout plan, the departments concerned often took 20 to 30 days to study the revised layout plan submitted by the applicant. To his knowledge, the Buildings Department (BD) took over 30 days to process the certifications made by Authorized Persons.

27. DFEH explained that under the existing procedures, upon receipt of an application together with the layout plan, FEHD would refer the layout plan to BD and Fire Services Department (FSD) for comments. For complicated cases involving

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other matters, more departments would be involved. These departments would conduct site inspection to ascertain general compliance with the layout plan submitted by the applicant. The Application Vetting Panel would be held within 20 working days, and the applicant would be notified by the 20th working day whether the premises were licensable, or rectification works were necessary. DFEH said that the applicant could then make the necessary rectification works and engage an Authorized Person to certify compliance with the licensing requirements. A provisional licence would be issued upon receipt of the certification.

28. DFEH further said that a provisional licence could be issued within 24 hours when the applicant had submitted acceptable certificates of compliance to the satisfaction of the licensing authority. In other words, the shortest possible time for an applicant to be granted a provisional licence for restaurant was 21 working days. DFEH added that the time for issuing a provisional licence would depend on the time required by the applicant to meet the licensing requirements. In 2003, the average time for issuing a provisional licence for restaurant was 42 working days.

29. Mr WONG Yung-kan said that of the 35 premises operating at Langham Place, FEHD had instituted prosecution actions against 11 premises which had started business before obtaining a licence. Mr WONG asked whether the processing time for licence applications in respect of these 11 premises was unduly long.

30. DFEH said that of the 11 premises at Langham Place which started business before the issue of licence, the earliest application was submitted in mid-September 2004 while the latest one was made on 2 December 2004 (i.e. after prosecution was taken against the premises concerned). DFEH further said that it was difficult to estimate the time for issue of a provisional licence as it depended on the time required by the applicant to make the necessary rectifications for compliance with the licensing requirements.

31. Mr WONG Yung-kan said that to facilitate the applicants in meeting the licensing requirements, the licensing authority should provide clear guidelines to the applicants, as the contractors would need such details in carrying out the necessary works.

32. DFEH responded that apart from the guidance notes on licensing procedures, there was a resource centre to provide advice and information to applicants and their contractors.

33. Mr Andrew CHENG said that food premises without licences should under no circumstances be allowed to operate. Mr CHENG considered that the crux of the problem was the unduly long processing time for licence applications, and that was why the Administration seldom applied to the court for an order to close those food premises operating without a licence. He further said that the issue of a provisional licence was a strange measure to deal with the problem of long processing time for

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applications of full licences. Mr CHENG asked the Administration to make reference to the licensing systems in other places, for example, Japan and Singapore took a shorter time for processing food business licence applications. Mr CHENG was of the view that if the licensing authority could streamline the licensing procedures and issue the licence within a shorter time, food premises would have no excuse in starting business before obtaining a licence. Any food premises found to have operated without a licence should be ordered closed immediately.

34. The Chairman asked whether it was possible to second staff from BD and FSD to the licensing office of FEHD, so that a real one-stop service could be provided to licensees by a dedicated licensing team at FEHD.

35. DFEH said that while the Administration would further explore ways to expedite the licence processing time, the time for issuing a provisional or full licence depended largely on the responsiveness of the applicant in complying with the licensing requirements. Moreover, streamlining of the procedures did not mean that the basic licensing requirements could be relaxed.

36. Dr Joseph LEE said that, to safeguard public health, the Administration should step up publicity to educate members of the public how to differentiate food premises which operated with or without a licence. In this connection, he asked about the progress of the open categorisation scheme for food premises.

37. DFEH said that operators were required to display the restaurant licence at a prominent location within the food premises. A list of licensed food premises by district was also available at FEHD's website. DFEH further said that the Administration was still considering the details of the open categorisation scheme and would revert to the Panel in 2005.

38. Mr Andrew CHENG said that Members had time and again expressed concern about the need to streamline the existing licensing framework for food business. Mr CHENG considered that to better safeguard public health, the Administration should seriously consider ways to speed up the processing of licence applications. Mr CHENG proposed that a subcommittee should be formed under the Panel to study the streamlining of licensing framework, and the Research and Library Services Division should be requested to conduct a research study on the licensing systems in overseas countries.

39. The Chairman informed members that the Research and Library Services Division of LegCo Secretariat had prepared a research study on Licensing of Food Premises in 1999. Members might wish to ask the Secretariat to update the research findings for consideration by the subcommittee. Members agreed. The Chairman said that the Clerk would issue a circular to invite members to join the subcommittee.

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Admin 40. The Chairman requested the Administration to revert to the Panel in February 2005 on the proposal of suspending the issue of provisional/full licence to food premises which were found to have operated without licences upon conviction.

V Public Health and Municipal Services (Amendment) Bill
[LC Paper Nos. CB(2) 362/04-05(05) and (06)]

41. Mr Andrew CHENG said that he had no strong views on whether amendments should be made to the existing legislation to empower FEHD to take further enforcement action against mosquito breeding. Mr CHENG asked whether the difficulties encountered by FEHD in carrying out mosquito control operations could be solved after amending section 27 of Cap. 132. Mr CHENG referred to paragraph 10(a) of the Administration's paper and sought clarification on the meaning of "potential breeding ground". He was concerned that if the definition of "potential breeding ground" was unclear, it would give rise to other enforcement problems. He also enquired whether similar provisions were adopted in overseas legislation.

42. Principal Assistant Secretary for Health, Welfare and Food (Food and Environmental Hygiene)2 (PAS(FEH)2) responded that under the existing legislation, FEHD might take anti-mosquito action only when there was accumulation of water. The proposed amendments sought to cover other possible mosquito breeding grounds such as building sites, buildings under construction, abandoned huts, dilapidated building structures, litter or waste and used tyres. PAS(FEH)2 said that the proposed amendments were targeted at those private premises where accumulation of water or potential breeding grounds at such premises posed an immediate health hazard, e.g. the occurrence of Japanese encephalitis and dengue fever. Under normal circumstances, FEHD staff would have to issue a notice to the occupier or owner of the premises or body of persons responsible for the management of the premises, or the appointed contractor of a building site or building under construction, to take steps to prevent mosquito breeding.

Admin 43. DFEH said that the Administration shared Mr Andrew CHENG's concern, and was discussing with D of J how "imminent health hazard" should be drafted in legislation. The Administration also planned to draw up a code of practice for enforcement staff. DFEH agreed to provide information on similar provisions in overseas legislation as requested by Mr CHENG.

44. Mr Tommy CHEUNG asked about the criteria for selecting locations for placing ovitraps in common areas of private premises, for example, private farmland. He said that the Administration should avoid causing disturbance to the owners or users of the private premises.

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45. DS(FEH) explained that under the legislative proposal, FEHD would place ovitraps only in the common areas. He agreed that this would be spelt out clearly in the legislation.

46. Mr WONG Yung-kan said that mosquito-breeding problem had been discussed regularly by the Panel and District Councils in the New Territories. Mr WONG pointed out that in the past, enforcement departments would take active measures to eliminate mosquito breeding grounds before the onset of rainy season. However, the enforcement departments presently only took action to eliminate mosquito breeding grounds upon receipt of reports. Mr WONG further said that while he had no objection to the legislative proposal, he urged that FEHD should step up its mosquito preventive measures.

47. DS(FEH) responded that FEHD had made public the Area Ovitrap Indices and Monthly Ovitrap Index on a monthly basis, to enable members of the public to learn about the situation of mosquito problems at different areas and at different times of the year. Active measures to eliminate mosquito breeding grounds were also taken well before the onset of rainy reason. DS(FEH) informed members that Home Affairs Department coordinated the anti-mosquito operations of different departments and encouraged community participation in combating the mosquito problem. The Administration had also stepped up its publicity programmes to increase public awareness of the need to control mosquito breeding.

48. Dr KWOK Ka-ki expressed support for the legislative proposal. Dr KWOK pointed out that there were also mosquito breeding problems at vacant government land and landfill sites. He asked about the progress of anti-mosquito actions in respect of government land.

49. PAS(FEH)2 said that all 18 districts had set up their own District Anti-Mosquito Task Force to strengthen the coordination of anti-mosquito operations of different departments. Anti-mosquito operations would be conducted on problem areas irrespective of whether they were government or private land.

50. Dr KWOK Ka-ki requested the Administration to provide information on the breeding places identified by District Anti-Mosquito Task Force which were government land and the measures taken to eliminate the breeding places. PAS(FEH)2 agreed to provide the information after the meeting.

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51. The Chairman concluded that the Panel supported in general the legislative proposal. PAS(FEH)2 said that the Administration intended to introduce the legislation into LegCo in the current session.

VI Mandatory scheme to regulate coral reef fish

[LC Paper No. CB(2) 75/04-05(07)]

[LC Paper No. CB(2) 362/04-05(07)]

52. Mr Tommy CHEUNG expressed concern that, if fish “suspected” to contain ciguatoxin was to be destroyed under the proposed mandatory recall system, it would cause much adverse impact on the retailers. Mr CHEUNG said that when one fish was found to contain ciguatoxin, it did not necessarily mean that other fish keeping in the same fish tank also contained ciguatoxin. He pointed out that the fish tank might contain fish of different species and sourced from different suppliers.

53. DS(FEH) advised that the Administration was now developing a voluntary Code of Practice with the fish trading industry. Under the proposed Code of Practice, fish traders were required to provide information on each lot of imported fish to FEHD. DS(FEH) further said that there were difficulties to identify within a short time the types of fish which might contain ciguatoxin, and the records kept by fish traders would provide useful information for FEHD to investigate the fish species involved, trace the source of the fish and advise the fish traders concerned to stop selling the same fish species sourced from the same fishing grounds. DS(FEH) added that the Code of Practice would be implemented on 15 December 2004. The Administration would review its effectiveness in about six months’ time. As some fish traders were uncooperative in destroying fish suspected to contain ciguatoxin, if the Code of Practice proved to be ineffective, the Administration would consider further measures to be taken such as introducing legislation and a mandatory recall system.

54. Mr Tommy CHEUNG said that there was no need for the Administration to introduce legislation to regulate the whole industry only because there was one “black sheep” in the industry. He reiterated that it was not necessary to destroy all the fish in the tank if only one fish was found to contain ciguatoxin.

55. Dr KWOK Ka-ki supported the Administration’s proposed measures to address the problem of ciguatera poisoning. Dr KWOK asked whether the Administration would eventually prohibit the import of certain high-risk coral reef fish species or fish coming from high-risk areas.

56. DS(FEH) said that the Administration had explored the experiences in other countries such as Japan, Australia and Singapore in handling the problem of ciguatera fish poisoning. In Japan, the import and sale for human consumption of 10 high-risk fish species were banned. The Administration would need more time to study the operational arrangements in Japan.

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Admin 57. Dr KWOK Ka-ki said that he was surprised to learn that the Administration had yet to obtain information on the arrangements in other countries, as the subject had been discussed for a long time by the Panel. He urged the Administration to provide such information to the Panel as soon as possible, and not to wait until the completion of the review of the Code of Practice. DS(FEH) agreed.

(Post meeting note : The Administration has subsequently provided information on overseas experience at the Annex.)

58. Mr WONG Yung-kan informed members that in developing the Code of Practice, the fish trading industry had reached agreement with the Administration on many of the issues. The industry had suggested that, to prevent ciguatera fish poisoning, the Administration should consider conducting sample tests on coral fish catches prior to importation and expediting the testing process. Mr WONG said that in the recent ciguatoxin poisoning incidents, some ciguatoxic fish was in fact imported from the Mainland even though such fish was prohibited for sale in the Mainland. To address the problem, he urged the Administration to improve communication with the Mainland in respect of ciguatoxin fish poisoning cases and step up the surveillance and control measures over the importation of coral fish from the Mainland.

59. DS(FEH) said that Hong Kong had been communicating with the Mainland in respect of food poisoning incidents. PAS(FEH)2 said that conducting ciguatera testing on samples of large coral fish was not reliable. Even if no ciguatoxin was found in these samples, there was still no guarantee that the other fish in the consignment was not contaminated. It was therefore more appropriate to control the problem at source by controlling the import of certain coral reef fish from high-risk areas. PAS(FEH)2 further said that the Administration was studying the proposed mandatory measures and would revert to the Panel later.

60. Mr Vincent FANG expressed support for the implementation of the voluntary Code of Practice. In his view, voluntary participation would be most effective in encouraging industry self-regulation. Mr FANG pointed out that some fish trading was carried out at high seas and he asked about the criteria for determining coral reef fish coming from high-risk areas.

61. PAS(FEH)2 said that high-risk areas referred to those areas where there were reported cases of ciguatoxic fish. Mr WONG Yung-kan added that the problem of ciguatera poisoning was mainly due to the importation of fish from few new fishing areas.

Admin 62. At the request of the Chairman, DS(FEH) undertook to report to the Panel in six months' time its review of the effectiveness of the Code of Practice.

VII The need for setting up a framework for mandatory food recall in Hong Kong

[LC Paper No. CB(2) 362/04-05(08)]

63. Mr WONG Yung-kan said that problematic food (e.g. chilled meat and fish) usually came to notice a few days after it was consumed, and it was impossible to recall the concerned food products as they would have been consumed. It would be unfair to recall the same type of food which did not belong to the same consignment. Mr WONG further said that as far as live fish was concerned, the Administration should consider the need for setting up a mandatory food recall system after the review of the implementation of the Code of Practice. Mr WONG added that the Administration currently only relied on the health certificate accompanying imported meat. He considered that the Administration should step up surveillance and control measures over meat and high-risk food products, instead of reacting to reports of problematic food products and recalling the food products concerned from the retail outlets.

64. The Chairman asked whether the proposed legislative amendment would cover live fish.

65. DS(FEH) said that under the existing legislation, live fish was not regarded as “food”, and FEHD was not empowered to recall live fish from sale or to seize the fish for disposal. While FEHD was empowered to institute prosecutions against the sale of food products which caused health hazard, it had encountered difficulties in recalling such food products. It would be more operationally effective if the Administration was given the statutory power to order the trade to conduct a mandatory recall. DS(FEH) further said that after taking into account members’ views, the Administration would further consider the details of the proposed regulatory framework for mandatory food recall in Hong Kong.

66. DFEH said that no import permit was required for importing general food products, such as canned food, into Hong Kong, but FEHD operated an elaborate surveillance system on food sold locally. Imported raw meat, however, must be accompanied by an official health certificate from the exporting country stating that the meat was fit for human consumption. DFEH further said that as Hong Kong practised free trade, no discriminatory import control measures should be imposed against certain food products under normal circumstances.

67. Mr Tommy CHEUNG said that he had no objection to recalling food products which posed health hazard. However, he had reservations about setting up a mandatory food recall system. Mr CHEUNG said that the food manufacturers, instead of the distributors and retailers, should be held responsible for producing the problematic food. A mandatory food recall system would be unfair to the wholesalers and retailers, as the problematic food would have been sold and the stock in hand might not belong to the same batch.

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68. DS(FEH) clarified that the proposed mandatory food recall system was only to require the manufacturers, importers or distributors to recall the concerned food products. It did not mean that the products would be confiscated. The purpose of the recall was to ensure the concerned food products would not be put on sale until the safety of the food products was ascertained. DS(FEH) further said that these food products would be destroyed only when they were proved to be unfit for human consumption.

69. Responding to Mr Tommy CHEUNG's enquiry, DFEH said that there were often disputes over the food test results, and the manufacturers or importers concerned often conducted their own food tests in private laboratories. The mandatory food recall system was to allow time to ascertain the safety of the food products concerned, and such products should not be sold in the meantime. DFEH advised that there would be an appeal mechanism under the proposal.

70. Dr KWOK Ka-ki supported the principle of setting up a framework for mandatory food recall in Hong Kong. Dr KWOK enquired under what circumstances would the food manufacturers, importers or distributors be required to take the recall action. Dr KWOK said that the Government should take the initiative in food recall action. He asked whether there would be any protection clause for the Government in mandating the food recall action, in case that food manufacturers, importers or distributors considered the recall action unreasonable and sought compensation. Dr KWOK also asked about the overseas experience in this respect.

71. DFEH said that the Government would order the trade to conduct a mandatory recall when there were reports from overseas or local authorities that the safety of the food products was in question. DFEH stressed that to recall the food products was to withdraw the product from the market to avoid any risk of the public consuming a potentially unsafe food product. As the food products would not be destroyed, the legal responsibility of Government would only be limited. DFEH said that more information on the overseas experience would be obtained when working out the details of the recall system.

72. Mr Vincent FANG said that the trade would usually recall the food products immediately if reported by the media or required by the Government. He asked about the number of cases where the food manufacturers, importers, distributors or retailers had been uncooperative in recalling their products which might pose a health hazard to the public.

73. DFEH said that there had been occasions where the distributors had to seek confirmation from the manufacturers overseas before taking recall action in Hong Kong. However, as the problematic food had been reported by the media, the importers or distributors eventually took recall action. DS(FEH) added that time was of the essence in recalling food products that might pose a health hazard to the public.

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The Administration therefore considered it desirable to set up a mandatory food recall mechanism to enable urgent actions to be taken to recall unsafe food products from the market.

74. Mr Vincent FANG stressed that when a particular food item was reported to be unsafe, the public would stop buying that product immediately. He saw no reason why the trade would be unwilling to recall their products voluntarily in such cases. He said that the Administration should be cautious in making public the suspected cases.

75. The Chairman said that the Panel members had different views over the proposal of setting up a framework for mandatory food recall in Hong Kong. The Chairman added that Members belonging to the Democratic Party and Dr KWOK Ka-ki supported the proposal.

VIII Administration of urn grave cemeteries

[LC Paper Nos. CB(2) 362/04-05(09) and (10)]

76. Referring to The Ombudsman's investigation report, Mr WONG Kwok-hing said that the report stated that the Ombudsman's Office was astounded by FEHD's feeble action against illegal burials and exhumations. The report also criticised FEHD's attitude as being cavalier and somewhat callous. Mr WONG further said that the Administration's paper still failed to give an account of the remedial actions taken. He considered that the Administration should explain whether it had conducted investigations into those cases with irregularities, and give a full account on the cases concerned, e.g. whether the cases involved corruption or criminal elements and whether any staff concerned should be held responsible and punished.

77. DFEH responded that six cases were involved since 2000. Two cases had been resolved, and FEHD was studying how to deal with the remaining cases. DFEH said that his staff were not callous, but there were moral and ethical considerations in dealing with any skeletal remains found in urn graves. FEHD had to seek information on the skeletal remains and then trace their descendents, but FEHD encountered much difficulty in the process. DFEH further said that the outstanding cases involved urn graves allocated decades ago, and FEHD had to seek legal advice in determining the way forward. DFEH added that although burial and exhumation without FEHD permission constituted a criminal offence, it was usually difficult to identify the responsible offender in a particular case.

78. DFEH said that to better monitor contractors providing exhumation, burial and grave covering/tombstone services, FEHD planned to implement a registration system which required contractors to register with FEHD on a compulsory basis in order to gain access to FEHD's cemeteries. DFEH further said that FEHD would take forward a full-scale survey of all urn graves to verify the existing data on record, to be

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followed by the merging of all records into one computer database system for regular updating. DFEH explained that when FEHD took over the responsibility for administration of all urn graves in January 2000, there were two separate record systems kept by the two former municipal councils. FEHD had not been able to merge the two systems because of the time and resource constraints.

79. Dr Joseph LEE said that to facilitate the Panel to monitor the progress of various improvement measures taken by the Administration, the Administration should provide the implementation timetable for each measure.

80. DFEH responded that FEHD planned to conduct the full-scale survey of all urn graves to verify the existing data on record in 2005. FEHD would also improve the tracking system for exhumed human remains. In addition, FEHD had identified appropriate locations for setting up guard posts, and that tender for security services contract would be invited in early 2005. The Chairman requested the Administration to provide the Panel with a progress report on the implementation of the various improvement measures mentioned in paragraphs 9 to 16 of the Administration's paper.

Admin DFEH agreed.

81. Mr WONG Yung-kan considered the administration of urn grave cemeteries unacceptable. Mr WONG said that pending the implementation of a registration system for cemeteries contractors, FEHD should step up training and provide specific guidelines for the staff concerned in conducting patrol, e.g. the locations to be covered and frequency of patrol.

82. DFEH said that following the recommendations made by The Ombudsman, FEHD had already implemented a number of improvement measures. As a longer term measure, FEHD was reviewing its overall administration of urn grave cemeteries with a view to identifying problems and areas for improvement.

83. Mr Tommy CHEUNG suggested that to further tighten the security control, the Administration could install closed circuit television system in the cemeteries.

84. Dr KWOK Ka-ki asked whether the staff concerned referred to in paragraph 35 of The Ombudsman's report were FEHD staff. Dr KWOK further asked whether FEHD staff concerned should be disciplined.

85. DFEH said that The Ombudsman was referring to FEHD staff in the report. DFEH further said that FEHD was now following up all the complaint cases and would examine whether disciplinary actions should be taken against the staff concerned. Training courses on customer services would also be provided to the frontline staff in order to learn from these cases and enhance their communication skills.

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86. The Chairman asked whether the Administration would further shorten the three-week processing time for the allocation of urn grave spaces.

87. DFEH responded that the allocation of urn grave spaces in new cemeteries could be completed within one day. For vacated spaces, allocation would take three weeks because of the need for site visit.

IX Any other business

88. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 2
Legislative Council Secretariat
10 January 2005

Annex

(para. 57 of the minutes of the meeting on 14 December 2004)

Overseas Experiences on the Prevention of Ciguatera Poisoning

Japan

In Japan, the import and sale for human consumption of 10 high-risk fish species are banned. For another seven high-risk fish species, the information that importers are required to prove includes –

- (a) the fishes to be imported have been taken from identified sea areas approved by the authorities of exporting countries;
- (b) the said fishes are common ones to consume as foods for a long time; and
- (c) no food poisoning cases have occurred by consuming the said fishes.

Australia

The Australian government has legislation to prevent certain fish species from being harvested in high-risk coral reef areas within the Australian waters. They have stopped the export of certain high-risk fish species. They have also established a ciguatera working party to develop guidelines for the on-going management of the issue and had in place a quick response mechanism should new high-risk areas be located.

Singapore

The Singaporean government can demand fish importers to prove that the fish being imported are safe for human consumption if they suspect or know the fish come from a high-risk area.