

**For discussion
on 8 March 2005**

LegCo Panel on Food Safety and Environmental Hygiene

**Control Measures against
Food Businesses Operating without Licences**

Purpose

This paper proposes to step up measures against food businesses operating without licences.

Background

2. At the meeting of the LegCo Panel on Food Safety and Environmental Hygiene held on 14 December 2004, Members were advised that we would consider suspending the issue of a provisional/full licence for a certain period to food premises which were found to have operated without licences upon conviction.

3. Under section 125(1) of the Public Health and Municipal Services Ordinance (Cap. 132), the licensing authority is empowered to require registration or to grant any licence or permit. Such registration, licence or permit shall -

- (a) be made, granted or renewed subject to any requirements, conditions or restrictions as the licensing authority may think fit to impose for the purpose of carrying out the objects of this Ordinance, and may, for the like purpose, include a declaration by the licensing authority waiving the application of any of the provisions of any regulation made under this Ordinance;
- (b) be refused, suspended or cancelled at the sole discretion of the licensing authority for the purpose of carrying out the objects of this Ordinance, but no registration, licence or

permit shall be suspended or cancelled for any cause other than the contravention of any of the provisions of this Ordinance or of any requirement, condition or restriction to which such registration, licence or permit was subject.

Hence, under section 125(1)(b), the licensing authority can refuse the issue of a provisional/full licence for a certain period of time on the grounds to deter the operation of food business without a licence which poses a serious health threat to the general public.

Our Proposal

4. We propose to adopt the following course of action -
 - (a) Upon detection of unlicensed food business conducted at any premises, staff of the Food and Environmental Hygiene Department (FEHD) will take immediate enforcement action against the person/corporation in charge of the business at the time;
 - (b) FEHD will stop processing the application for licence filed by that person/corporation in respect of the premises in (a) above;
 - (c) If FEHD proceeds with prosecution action and upon conviction, the department may refuse the application and impose a ban on the person/corporation convicted to obtain a licence for 6 months after taking into consideration all relevant factors, counting from the date of conviction; or where the department does not proceed with prosecution action or in the case of acquittal, the application process will be reactivated immediately.

5. In the meantime, if the unlicensed food business is found to continue to operate, the department will apply for closure order against the premises under section 128B of Cap. 132.

Appeal Channel

6. There is an existing channel of appeal under the law. Section 125(8) of Cap. 132 states that where any registration, licence or permit is cancelled or suspended, or any application for the grant or renewal thereof is refused, the licensing authority shall forthwith serve a notice in writing upon the licence holder or applicant declaring its decision. Under section 125(9) of Cap. 132, if any person is dissatisfied with the decision, i.e. application for the grant of licence is refused, he may appeal to the Licensing Appeals Board and may further appeal to the Municipal Services Appeals Board under section 125B(4) of Cap. 132.

Advice Sought

7. Members are invited to comment on the proposal as set out in paragraph 4.

Health, Welfare and Food Bureau
Food and Environmental Hygiene Department
March 2005