

**For discussion
on 8 January 2008**

LegCo Panel on Food Safety and Environmental Hygiene

**Rationalisation of the Time Limit for Prosecution
against Unauthorised Alteration in FEHD-Licensed Premises**

PURPOSE

This paper briefs Members on the Administration's proposal to rationalise the time limit for prosecution against unauthorised alteration in premises licensed by the Food and Environmental Hygiene Department ("FEHD").

BACKGROUND

The Present Position

2. Under the existing licensing regime, when an operator of food businesses or other trades (set out at the Annex) applies for a licence, he is required by law to submit layout plans of the premises under application to the Director of Food and Environmental Hygiene ("DFEH") for approval. Where appropriate, these layout plans are also referred by FEHD to the relevant government departments such as the Buildings Department and Fire Services Department for vetting. Once a licence is granted, except with the written permission of DFEH, the licensee shall not cause or permit any alteration or addition to be made to the premises which would result in deviation from the approved plan, which may cause environmental hygiene, building or fire safety hazards. If FEHD officers detect any unauthorised alteration during inspections, prosecution actions will be taken against the licensee concerned.

Limitation of the Existing Regime

3. At present, prosecutions against unauthorised alteration are subject to a statutory time limit provided for by section 26 of the Magistrates Ordinance (Cap. 227), which stipulates that in case of an offence other than an indictable offence where no time is limited by law for making any complaint or laying any information before the court in respect of such offence, such complaint shall be made or such information laid within six months from the time when the matter of such complaint or information respectively arose.

4. In practice, it is difficult to know for certain when the unauthorised alteration was carried out. From the legal perspective, unless evidence can be adduced by FEHD (e.g. through cautioned statement of the licensee, invoice of construction for the alteration, etc.) to ascertain the actual date of an unauthorised alteration, the six-month time limit should count from the day following the date when the approved plan was last checked and found to have been complied with, rather than from the day on which the unauthorised alteration is detected by FEHD officers.

5. In the Direct Investigation Report on “Monitoring of Cases with Time-bar for Prosecution” released in March 2007, the Ombudsman considered the present situation unsatisfactory because, in some cases, very little time was left for prosecution action after the unauthorised alterations were detected. In the event that an unauthorised alteration was discovered just about six months from the last checking of the approved plan, it might not be possible to initiate prosecution at all due to the statutory time limit. The Ombudsman therefore recommended that FEHD should consider amending the law to enable its officers to initiate prosecution within six months from the unauthorised alteration being discovered or coming to their notice.

THE PROPOSAL

6. We accept the recommendation of the Ombudsman as a means to facilitate enforcement against unauthorised alterations in FEHD-licensed premises. Although the recommendation was made with reference to unauthorised alteration in respect of food businesses licensed under the Food Business Regulation (Cap. 132X), we consider that, for consistency, the

principle should also apply to other premises licensed by DFEH.

7. Accordingly, we propose to amend the regulations listed at the Annex to state clearly our intention that the six-month time limit for prosecution against unauthorised alteration should count from the day following the date when the alteration is detected by or comes to the notice of DFEH. This would achieve an effect similar to section 17(5) of the Factories and Industrial Undertakings Ordinance (Cap. 59), which provides that notwithstanding section 26 of Cap. 227, prosecution for specified offences under Cap. 59 shall be commenced within six months from the offence being discovered or coming to the notice of the Commissioner for Labour.

NEXT STEPS

8. Subject to any views that Members may have on the above proposal, we will consult the affected trades and prepare the necessary legislative amendments for tabling at the Legislative Council in 2008.

ADVICE SOUGHT

9. Members are invited to comment on the proposal and the proposed follow-up action as set out in paragraphs 7 and 8 above.

Food and Health Bureau
Food and Environmental Hygiene Department
January 2008

Relevant Provisions to be Covered by the Proposed Amendment

- (a) Section 7 of the Commercial Bathhouses Regulation (Cap. 132I)
- (b) Sections 34 and 34D of the Food Business Regulation (Cap. 132X)
- (c) Section 20 of the Frozen Confections Regulation (Cap. 132AC)
- (d) Section 17 of the Milk Regulation (Cap. 132AQ)
- (e) Section 11 of the Offensive Trades Regulation (Cap. 132AX)
- (f) Section 11 of the Slaughterhouses Regulation (Cap. 132BU)
- (g) Section 7 of the Swimming Pools Regulation (Cap. 132CA)
- (h) Regulations 7 and 164 of the Places of Public Entertainment Regulations (Cap. 172A)¹

¹ The Places of Public Entertainment Regulations (Cap. 172A) is under the policy purview of the Secretary for Home Affairs (“SHA”), but DFEH has been designated as the authority for issuing places of public entertainment licences. SHA’s agreement has been sought for the amendment to Cap. 172A.