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Paper for the House Committee meeting on 26 June 2009

**Report of the Subcommittee on
Food Business (Amendment) Regulation 2009**

Purpose

This paper reports on the deliberations of the Subcommittee on Food Business (Amendment) Regulation 2009 (the Amendment Regulation).

Background

2. At present, the Food and Environmental Hygiene Department (FEHD) adopts a number of measures to control the quality of water used for keeping live fish and shell fish intended for sale for human consumption.

Legislative control

3. Section 10A of the Food Business Regulation (Cap. 132 sub. leg. X) provides that no person shall in the course of any food business keep any live fish or shell fish intended for human consumption in water of a quality below the standard specified by the Director of Food and Environmental Hygiene by notice published in the Gazette. The specified standard is "*E. coli* less than 610 per 100 ml and absence of pathogenic organisms". Contravention of the provision is liable to a maximum fine of \$10,000 and imprisonment for three months upon conviction.

Inspection regime

4. In accordance with the licensing requirements/conditions and market tenancy conditions of FEHD, licensed/permitted food premises and public market stalls are required to install and maintain proper filtration and disinfection facilities to filter and disinfect water used for keeping live fish and live shell fish intended for sale for human consumption. Licensees/permittees and public market stallholders are also prohibited from using flushing water for keeping live seafood.

5. FEHD staff conduct regulation inspections to public market fish stalls and wholesale premises once every eight weeks and conduct regular inspections to supermarkets, fresh provision shops and restaurants, etc. to ensure that operators comply with the licensing requirements/conditions and market tenancy conditions. Verbal and written warnings are given for non-compliance. Repeated breaches of requirements and conditions may lead to cancellation of licence or permit or termination of tenancy.

Water sampling and surveillance

6. In addition to routine inspections, fish tank water samples are collected from all licensed/permitted food premises and public market stalls for *E. coli* and *Vibrio cholerae* testing. Under a risk-based surveillance programme implemented since January 2004, while the normal frequency of testing for *E. coli* for each premises remains at once every eight weeks, the action level is set at 180 per 100 ml. This provides an early alert signal to those premises with deteriorating quality of fish tank water or failing disinfection system so that remedial measures can be carried out in a timely manner. Upon receipt of any report exceeding this action level, FEHD staff will inspect the premises concerned within three working days to give advice to the operators to carry out proper maintenance work. If the test results of the follow up samples remain unsatisfactory, FEHD staff will take enforcement action as appropriate, continue to conduct site inspections and take samples until the irregularities are rectified.

7. In addition, at least one separate sample will be taken from each premises for *Vibrio cholerae* testing between May and September every year. Once the presence of highly infectious *Vibrio cholerae* is detected in a water sample, FEHD will close the premises concerned on health hazard grounds under the authority conferred by section 128C of the Public Health and Municipal Services Ordinance (Cap. 132).

Quality Seawater Assurance Scheme

8. A voluntary Quality Seawater Assurance Scheme was launched in January 2006 to enhance the quality of seawater supplied by seawater suppliers, to assist seafood traders to have better control of the quality of their fish tank water for compliance with the legal standards and to help inform the public about the quality of the fish tank water of seafood restaurants and sales outlets. Under the Scheme, seawater suppliers who comply with the accreditation criteria can be accredited as "Accredited Quality Seawater Suppliers". They are not allowed to extract seawater from areas which show a high level of *E. coli*. Seafood restaurants/sales outlets which acquire seawater from Accredited Quality Seawater Suppliers or prepare their own synthetic seawater using marine salt and tap water are eligible to apply for accreditation as "Quality Seawater Logo Holders".

The Amendment Regulation

9. The Amendment Regulation seeks to -
- (a) make it an offence for a person to do any of the following -
 - (i) extract seawater from a prohibited area for the purpose of keeping by him, in the course of any food business, any live fish or shell fish that is intended for human consumption;
 - (ii) use for the purpose of keeping, in the course of any food business, any live fish or shell fish that is intended for human consumption seawater knowing or having reason to believe that it is extracted from a prohibited area;
 - (iii) extract seawater from a prohibited area knowing or having reason to believe that it is to be used by another person for the purpose of keeping, in the course of any food business, any live fish or shell fish that is intended for human consumption; or
 - (iv) supply, deliver or cause to be delivered to another person seawater knowing or having reason to believe that it is extracted from a prohibited area and it is to be used for the purpose of keeping, in the course of any food business, any live fish or shell fish that is intended for human consumption; and
 - (b) add a new Schedule 1A to Cap. 132 sub. leg. X to define the following areas from which extraction of seawater for the purpose of keeping live fish or shell fish in the course of any food business would be prohibited -
 - (i) the Victoria Harbour;
 - (ii) the 14 typhoon shelters specified in the Schedule to the Merchant Shipping (Local Vessels) (Typhoon Shelters) Regulation (Cap. 548 sub. leg. E);
 - (iii) areas along the shoreline of Hong Kong Island (including Ap Lei Chau); and
 - (iv) areas along the western shoreline of the New Territories (including Tsing Yi).

The Amendment Regulation will come into operation on 1 August 2009.

10. The scrutiny period of the Food Business (Amendment) Regulation 2009 has been extended from 10 June 2009 to 8 July 2009 by a resolution of the Council.

The Subcommittee

11. At the meeting of the House Committee on 15 May 2009, members agreed that a subcommittee should be formed to study the Amendment Regulation. Under the chairmanship of Hon Tommy CHEUNG Yu-yan, the Subcommittee held two meetings with the Administration and paid a visit to the Lei Yue Mun (LYM) seafood bazaar to understand the operation of the seafood traders. The membership list of the Subcommittee is in the **Appendix**.

Deliberations of the Subcommittee

12. Whilst supporting the objective of the Amendment Regulation to control the source of fish tank water in order to strengthen the protection for public health, Hon Fred LI has requested the Administration to exclude the coastal strip of waters immediately outside the Sam Ka Tsuen Typhoon Shelter where LYM seafood traders obtain seawater round-the-clock for keeping their seafood so as to preserve LYM seafood bazaar as one of the major tourist attractions in Hong Kong. Mr LI notes that according to FEHD records, only two and one prosecutions were taken against the licensed food business premises in LYM for failing to meet the statutory standard of "*E. coli* less than 610 per 100 ml" in 2006 and 2007 respectively.

13. The Administration maintains its view that the coastal strip of waters immediately outside the Sam Ka Tsuen Typhoon Shelter should not be excluded from the proposed prohibited areas for the following reasons -

- (a) in response to the claims made by some seafood traders in LYM that the water quality of the coastal strip of waters immediately outside the Sam Ka Tsuen Typhoon Shelter where they usually obtained seawater for keeping their seafood was satisfactory and should therefore be excluded from the proposed prohibited areas, FEHD had engaged a laboratory accredited under the Hong Kong Laboratory Accreditation Scheme to ascertain the water quality of that coastal strip in accordance with the general protocol for marine water testing adopted by the Environmental Protection Department in September 2008. Laboratory findings were that the average *E. coli* content of seven of the 10 locations tested ranged from 629 to 990 per 100 ml and

exceeded the statutory limit for fish tank water, which was "*E. coli* less than 610 per 100 ml and absence of pathogenic organisms". The *E. coli* counts at the remaining three locations ranged from 529 to 552 per 100 ml and were close to the statutory limit;

- (b) allowing seawater where *E. coli* counts exceed the statutory limit for keeping live seafood intended for human consumption would be tantamount to allowing flushing water for keeping live seafood intended for human consumption, as the target quality of flushing water is less than 1 000 *E coli* per 100 ml, and licensees/permittees and public market stallholders are prohibited from using flushing water for keeping live fish or live shell fish. In fact, the *E coli* count of flushing water is generally ranged between single to double digits per 100 ml;
- (c) there are alternative methods that the seafood traders could resort to. For example, the seafood traders could prepare their own synthetic seawater from marine salts and tap water, purchase seawater supplied by quality seawater suppliers and/or extract seawater by pipes directly from fishing boats/vessels which extract seawater from non-prohibited areas and deliver fish supply to the seafood traders at the LYM coastal area. According to a survey conducted by the Administration on the source of water used by seafood restaurants or sales outlets, 222 of the 285 respondents indicated that they prepared their own synthetic seawater using marine salts and tap water. Of the remaining 63 respondents, they indicated that they used either natural seawater or synthetic seawater and natural seawater concurrently; and
- (d) using synthetic seawater and/or purchasing quality seawater should not entail significant increase in the operating costs of seafood traders. It is estimated that additional cost to traders for using synthetic seawater ranged from \$500 to \$3,000 per month per shop, whereas that for purchasing natural seawater ranges from \$1,000 to \$6,000 per month per shop.

14. Hon CHAN Kam-lam considers it not desirable to exclude the coastal strip of waters immediately outside the Sam Ka Tsuen Typhoon Shelter from the proposed prohibited areas, as this might give rise to objection from other seafood traders. As LYM seafood traders are considering constructing a seawater extraction facility to obtain seawater immediately outside the proposed prohibited area in LYM, Mr CHAN has suggested that the Administration should postpone the implementation of the Amendment Regulation for one year to 1 August 2010. In the meantime, the Administration should render assistance to LYM traders in constructing the

seawater abstraction facility where appropriate. This should not undermine public health, having regard to the existing regulatory regime mentioned in paragraphs 3 to 7 above.

15. Hon Fred LI holds the view that the implementation of the Amendment Regulation should not be delayed by the concerns of LYM seafood traders. To allow sufficient time for LYM seafood traders to construct a seawater extraction facility to obtain seawater immediately outside the proposed prohibited area in LYM, Mr LI has suggested that the Administration should specify a separation commencement date for the part of the new Schedule 1A that concerns the coastal strip of waters immediately outside the Sam Ka Tsuen Typhoon Shelter. However, as one cannot tell at this stage as to when the construction of the seawater extraction facility can be completed, Mr LI considers that the part of the new Schedule 1A that concerns the coastal strip of waters immediately outside the Sam Ka Tsuen Typhoon Shelter should only come into operation on a day to be appointed by notice published in the Gazette.

16. As most members, including Hon Tommy CHEUNG, Hon CHAN Kam-lam, Hon WONG Yung-kan, Hon WONG Ting-kwong, Hon WONG Kwok-kin and Hon Mrs Regina IP, support postponing the implementation of the Amendment Regulation to 1 August 2010, the Subcommittee has agreed that the Chairman should, on behalf of the Subcommittee, give notice to move an amendment at the Council meeting on 8 July 2009 to change the commencement date of the Amendment Regulation to 1 August 2010 if the Administration declines to do so.

17. Some members, including Hon Fred LI and Hon WONG Yung-kan, consider that the Administration should make use of the proposed construction of the LYM waterfront promenade to extract seawater from outside the proposed prohibited areas for use by LYM seafood traders.

18. The Administration has advised that it would not be a prudent use of public money to construct seawater extraction facilities to provide seawater from outside the proposed prohibited areas for use by LYM seafood traders, as the project would incur significant resources. There is also grave concern about the fluctuation of the quality of seawater just outside the proposed prohibited areas (i.e. east boundary of the Victoria Harbour) over time. Moreover, it would not be fair for the Administration to spend taxpayers' money to help a few seafood traders to maintain their mode of operation but risking the health of the public, not to mention that there are other viable alternatives as mentioned in paragraph 13(c) above.

19. Hon WONG Kwok-kin has asked the Administration whether it would consider providing interest-free loan to LYM traders for making alterations to their fish tanks, arising from the implementation of the Amendment Regulation.

20. The Administration has advised that the cost for making alterations to fish tanks is estimated to be about \$10,000 on average for a LYM seafood trader. The Administration would consider whether it is feasible to provide interest-free loan to LYM seafood traders to make alterations to their fish tanks and any possible read-across implications, should members so wish.

Advice sought

21. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
25 June 2009

Subcommittee on Food Business (Amendment) Regulation 2009

Membership list

Chairman	Hon Tommy CHEUNG Yu-yan, SBS, JP
Members	Hon Fred LI Wah-ming, JP Hon CHAN Kam-lam, SBS, JP Hon WONG Yung-kan, SBS, JP Hon Alan LEONG Kah-kit, SC Hon WONG Ting-kwong, BBS Hon WONG Kwok-kin, BBS Hon Mrs Regina IP LAU Suk-ye, GBS, JP
	(Total : 8 Members)
Clerk	Miss Mary SO
Legal Adviser	Mr Stephen LAM
Date	29 May 2009