

立法會 *Legislative Council*

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Report of the Panel on Food Safety and Environmental Hygiene for submission to the Legislative Council

Purpose

This report gives an account of the work of the Panel on Food Safety and Environmental Hygiene (the Panel) during the 2008-2009 Legislative Council (LegCo) session. It will be tabled at the Council meeting on 24 June 2009 in accordance with Rule 77(14) of the Rules of Procedure.

The Panel

2. The Panel was formed by resolution of the Council on 8 July 1998 and as amended on 20 December 2000, 9 October 2002, 11 July 2007 and 2 July 2008 for the purpose of monitoring and examining Government policies and issues of public concern relating to food safety, environmental hygiene and agriculture and fisheries.
3. The terms of reference of the Panel are in **Appendix I**.
4. The Panel comprises 13 members, with Hon Fred LI Wah-ming and Hon WONG Yung-kan elected as Chairman and Deputy Chairman respectively. The membership list of the Panel is in **Appendix II**.

Major work

Public Health and Municipal Services (Amendment) Bill 2008

5. Food incidents in the past years have revealed inadequacies in the Public Health and Municipal Services Ordinance (Cap. 132) in the control of food safety. In this regard, the Administration has been working on a Food Safety Bill to introduce new food safety control tools, such as the introduction of a mandatory registration scheme for food importers and distributors, requiring food traders to

maintain proper records on the movement of food so as to enhance traceability, and empowering the Director of Food and Environmental Hygiene (DFEH) to make administrative orders to prohibit the import and supply of problem food and order a recall of the problem food, for the better protection of public health.

6. Given the immense public concern on food safety, the Administration has decided to expedite work on the part of administrative orders to prohibit the import and supply of problem food and order a recall of the problem food by way of a Public Health and Municipal Services (Amendment) Bill 2008 (the Amendment Bill), ahead of the introduction of the full Food Safety Bill.

7. The Administration briefed the Panel on 23 October 2008 on the Amendment Bill to empower DFEH to make orders administratively to prohibit the import and supply of any food and direct that any food supplied be recalled in the manner specified in the order, if DFEH had reasonable grounds to believe, at the time of making the order, that the making of the order was necessary to prevent or reduce the possibility of a danger to public health or to mitigate any adverse consequence of a danger to public health.

8. Members were supportive of the Amendment Bill and urged its early implementation. Some members had the following concerns/suggestions -

- (a) in view of the wide range of factors that DFEH would take into consideration in making the prohibition of import and supply orders and recall order of problem food, a code of practice in this regard should be drawn up;
- (b) as some food products, such as live fish, had a very short saleable period, separate prohibition and recall orders and compensation for this type of food should be devised;
- (c) although persons bound by DFEH's orders might appeal to the Municipal Services Appeals Board, some members of the trade might not have the resources to hire lawyers to defend their cases;
- (d) setting the fine at level 6, i.e. \$100,000, and imprisonment of 12 months for contravening an order made by DFEH lacked deterrent effect for large food importers and suppliers; and
- (e) apart from paying compensation not exceeding the market value of the food at the time of making the order, anticipated profits and any costs incurred for recalling food from the market should also be included, albeit a ceiling could be set on the amount that could be recovered from the Government.

9. The Amendment Bill was introduced into LegCo on 5 November 2008, and was scrutinised by a Bills Committee. The Amendment Bill was passed at the meeting of the Council on 29 April 2009 and came into operation on 8 May 2009.

Poultry supply in Hong Kong

10. The Panel met with the poultry trade and the Administration on 22 October 2008 to discuss the drastic drop in the daily live poultry supply from about 36 000 in the past to about 10 000 after the expiry of the buyout scheme for the live poultry trade in September 2008. According to the Administration, the scheme was made in response to a strong wish expressed by a majority of the poultry trade retailers who considered that it was very difficult to adapt to the "no live poultry overnight" requirement which came into operation on 2 July 2008.

11. Some members, including Hon Albert CHAN and Hon Vincent FANG, urged the Administration not to control the supply of live chickens, but should let the market decide.

12. Whilst appreciating the efforts of the Administration in reducing the risk of avian influenza outbreaks, Hon TAM Yiu-chung considered it necessary to bring the average wholesale price of live chickens down to make live chickens more affordable to the general public.

13. The Administration advised that the current market situation largely tallied with the Administration's forecast. There was no indication of shortage of live chicken supply at the retail level. From 25 September to 20 October 2008, the daily average total supply of imported and local live chickens amounted to around 11 700, with 9 100 available at the retail outlets and 2 600 left overnight in the wholesale market. On the other hand, the consumption trend of chickens demonstrated that the market demand for imported chilled chickens had gradually increased in the past years and had largely substituted that of live chickens. This was reflected in the acute increase in the combined market share of chilled and frozen chickens from 58% in 2003 to 85% in 2008 (as of 31 August 2008). Given the increased supply and improved quality of imported chilled chickens, market demand for this type of chickens was expected to continue to rise. Notwithstanding, practical ways were being actively explored by the Administration to address the trade's request for an increased supply of live chickens as well as public concern over rising retail prices of live chickens, while keeping the risk of avian influenza at a manageable level.

14. Concern was also raised about the drastic drop in the supply of Mainland day-old chicks from about 450 000 a month in the past to only about 30 000 a month recently.

15. The Administration explained that the supply of Mainland day-old chicks depended on local demand and supply of local day-old chicks. To this end, the Administration maintained a close liaison with the Mainland authorities concerned on making available more day-old chicks for export to Hong Kong to meet the needs of local farms. In so doing, due regard had to be paid to the health risk posed by an over-supply of live chickens and the production capacity of local hatcheries.

Control of vegetables imported from the Mainland

16. The Panel met with deputations and the Administration on two occasions on 9 January 2009 and 3 April 2009 to discuss the claims from local vegetable traders that some Mainland vegetables supplied to Hong Kong came from non-registered vegetable farm under the disguise of a proper label from a registered vegetable collection and processing plant. The Panel also paid a visit to the Man Kam To Control Point (MKTCP) on 23 February 2009 to observe the joint operation of the Customs and Excise Department (C&ED) and the Centre for Food Safety (CFS) of the Food and Environmental Hygiene Department (FEHD) on the inspection of vegetable vehicles and sampling of vegetables from the Mainland.

17. Members expressed concern that despite repeated calls by the trade since December 2007 for the Administration to follow up with the Mainland authorities to eradicate the import of vegetables from improper sources into Hong Kong, the problem continued unabated.

18. The Administration responded that it had informed the State General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) and the Shenzhen Entry-Exit Inspection and Quarantine Bureau (SZCIQ) about each and every report made by the trade or the media that some vegetables imported from the Mainland into Hong Kong came from improper sources, and had requested the Mainland authorities to take follow-up actions.

19. The Administration further advised that since late 2008, C&ED had increased the number of inspection to vehicles carrying vegetables and CFS had increased the taking of vegetable samples for pesticide residues at MKTCP. In response to recent reports on possible food safety concerns involving vegetables imported from the Mainland which were not distributed through Government vegetable wholesale markets or the Vegetable Marketing Organisation, CFS and C&ED conducted a month-long joint operation at MKTCP in mid January 2009 in order to enhance the efficiency of inspecting vegetable vehicles, targeting in particular vehicles carrying vegetables for direct sale. All the vegetable samples tested for pesticide residues were also found to be satisfactory.

20. Hon KAM Nai-wai urged the Administration to come up with a timeframe to eradicate the problem. The Administration advised that it had conveyed to the Mainland authorities the need to expedite investigation on the reports that some vegetables exported for Hong Kong came from improper sources. As more evidence had to be gathered, it would not be possible nor reasonable to request the Mainland side to eradicate the problem, if any, within a certain time period.

21. Concerning the incident reported by the assistant of Hon Fred LI at the meeting on 3 April 2009 that he had been able to export vegetables from non-registered vegetable farms after a label issued by a registered collection and processing plant had been attached to the consignment in the Nanshan Centre for Processing and Distribution of Agricultural Products to Hong Kong (南山供港農產品加工配送中心) (the Nanshan Centre) in Shenzhen, the Administration wrote to the Panel on 11 May 2009 that the SZCIQ had completed its investigation. According to the SZCIQ, the establishment involved was not the Nanshan Centre but a collection and processing plant which was allowed to supply vegetables to Hong Kong direct. In view of the offence committed by the plant, the AQSIQ had cancelled its registration status as a collection and processing plant for export to Hong Kong and the company could not supply vegetables to Hong Kong for the time being. The Administration would continue to maintain close liaison with the AQSIQ and the SZCIQ in safeguarding food safety.

Review on hawker licensing policy

22. The Panel held three meetings with the Administration on 10 February 2009, 10 March 2009 and 14 April 2009 to discuss the review on hawker licensing policy, including one meeting to listen to the views from hawker associations and other stakeholders.

23. Some members, including Hon WONG Yuk-man, Hon KAM Nai-wai, Hon Cyd HO and Hon WONG Yung-kan, were of the view that the Administration should have regard to the values of the hawking trade on improving people's livelihood and stimulating local economy, which were particularly pertinent in this time of economic downturn, in the review on hawker licensing policy.

24. The Administration recognised that street hawking had a long history in Hong Kong. It also provided job opportunities and customers might find a cheaper source of goods. There was, however, a need to strike a balance in fostering the hawking trade and preventing environmental hygiene problems, noise nuisance and obstruction to public passageway. As about 1 300 of the about 8 000 fixed pitches were still vacant, the Administration would not consider

increasing the number of additional new fixed-pitch licences for the time being until after all proposed efforts aimed at reducing the vacancy rate, such as giving priority to fixed pitch hawkers at the front row in taking up adjacent vacant fixed pitches in the back row, had attracted more new operators.

25. Hon Tommy CHEUNG opined that instead of waiting for the District Councils (DCs) to propose issuing new Fixed-Pitch (Cooked Food or Light Refreshment) Hawker Licences to operate "Dai Pai Tong" in vacant pitches previously used to operate "Dai Pai Tong", the Administration should take the initiative in consulting DCs on allowing new operators to trade in these vacant pitches.

26. Hon Audrey EU pointed out that open-air bazaars could help to boost Hong Kong's tourism attraction and provide job opportunities. Open-air bazaars needed not be confined to selling goods and could take various forms, such as serving as a venue for art performances, and could have different modes of operation, such as operating during night time or weekends. Ms EU urged the Administration to explore with DCs on establishing open-air bazaars in their districts, as open-air bazaars established by members of the public generally had wider appeal than those established by the Administration.

27. Members were of the view that priority should be given to registered assistants, who generally had ample experience in operating hawker stalls, to apply for hawker licences for trading in the vacant pitch.

28. The Administration advised that vacant pitches should be allocated in a fair and open manner. The Administration could not agree to the suggestion of giving priority to existing registered assistants to select the vacant pitches after the fixed pitch hawker licensees had taken up their adjacent vacant pitches in the back row. Existing registered assistants might submit applications for issuing new hawker licences as other persons interested in joining the hawking trade. Even if priority were given to the existing some 5 600 registered assistants to select the vacant pitches, there would not be enough vacant pitches to go around. There were at present about 1 300 vacant pitches, and it was estimated that some 800 of them would be taken up by existing fixed pitch hawker licensees.

29. Members unanimously requested the Administration to increase the number of additional new Itinerant (Frozen Confectionery) from 30 to 100, having regard to the difficulty of low-skilled persons in securing employment in the current poor economic climate.

30. Subsequent to the meeting on 14 April 2009, the Administration decided to issue 61 new Itinerant (Frozen Confectionery) Hawker Licences, thus increasing the total number of such licences from the existing 27 to 88, and to

invite applications for these licences on 24 April 2009.

31. Some members, including Hon Fred LI, Hon Vincent FANG and Hon KAM Nai-wai, urged FEHD to be more lenient in taking enforcement against hawkers, having regard to the present poor economic climate.

32. The Administration advised that FEHD had reminded hawker control staff that, provided that hawking activity was not found at locations in the "no prior warning" list and did not involve sale of food, warning should be served to disperse the hawkers. Prosecution action would only follow if the warning was unheeded. The Administration, however, pointed out that enforcement against hawking activities had led to increase in complaints both by the public against obstruction and by shop owners, retailers and market stall lessees against unfair competition posed by hawkers. Maintaining a balance was no easy task.

33. The Panel also agreed that a holistic approach should be adopted in formulating hawking policy, having regard to its cultural, economic and social relevance. As the matter went beyond the purview of the Panel, the matter might also be followed up by other Panel(s), such as the Panel on Commerce and Industry.

Hawker licence fee and public market stall rental waiver

34. The Panel held one special meeting with deputations and the Administration on 18 December 2008 on hawker licence fee and public market stall rental waiver.

35. Some members, including Hon Vincent FANG and Hon WONG Kwok-hing, opined that the Administration should not use the "user pays" principle as an excuse not to waive hawker licence fee for one year. If the Administration could waive business registration fee for one year, the same should be done for hawker licence fee, as both were Government fees and charges.

36. The Administration explained that the main purposes of business registration were to provide the Inland Revenue Department with information on businesses for it to create tax files and to enable the public to obtain information on businesses for reference. It was applicable to all businesses and did not aim at regulating individual types of business. On the other hand, the purpose of hawker licensing was to regulate hawking activities. The nature of a hawker licence was similar to that of a licence or permit for certain types of business, such as karaoke establishment permit, restaurant licence and amusement game centre licence. As such, the hawker licence fee should not be compared to the business registration fee. The Administration pointed out that there had been no adjustment to the licence fee since 1998 and the Government was currently unable

to achieve cost-recovery for licensing.

37. Members noted that although the Director of Audit in his Report No. 51 recommended that the Administration should put up for LegCo Panel's consideration as soon as possible a suitable and aligned rental adjustment mechanism for public markets, it should not be made an excuse for the Administration not to immediately reduce or waive public market rental, as disparity in rentals for similar stalls had already existed for more than 10 years. Hon Alan LEONG also pointed out that the focus of Chapter 6 of the Director of Audit's Report No. 51 on "Management of public markets" as well as the report of the Public Accounts Committee (PAC) was to examine whether the policy on provision of public markets could meet the needs of the community and whether the services performed by the Administration on management of public markets was value-for-money.

38. The Panel passed a motion urging the Government to waive the licence fees for all hawkers for one year and the rentals of all public markets for two quarters so as to assist small traders in overcoming the difficulties brought about by the financial tsunami.

39. As announced by the Financial Secretary in his Budget speech on 25 February 2009 on the provision of a 20% rental reduction for most government properties and short term tenancies of government land for three months, and an extension of the freeze on government fees and charges related to people's livelihood, the Administration reported to the Panel on 14 April 2009 of its plan to provide public market tenants with a 20% rental reduction for three months from 1 April 2009 to 30 June 2009 and to continue to freeze hawker licence fees until 31 March 2010.

40. Members were of the view that providing public market tenants with a 20% rental reduction for three months from 1 April 2009 to 30 June 2009 was too little, and should at least be extended to one year. Hon WONG Yuk-man expressed dissatisfaction about the Administration's failure to take heed of the motion passed by the Council on 12 November 2008 urging the Government to waive the rentals of all food markets, government markets and shopping arcades for one quarter and waiving the hawkers' licence fees for one year and another motion carried by the Panel on 18 December 2008 urging the Government to waive hawker licence fee for one year and public market rental for two quarters. The Administration was requested to convey members' views on the matter to the Financial Secretary for consideration.

41. The Administration informed the Panel in May 2009 of its decision to further extend the rental freeze of public market stalls for another year until 30 June 2010.

Public market tenancy agreements

42. Members noted that FEHD had earlier issued letters to some 10 000 market stall tenants whose tenancies would expire on 30 June 2009, inviting them to sign the new aligned tenancy agreements. In line with the Government's earlier decision to extend the rental freeze for public markets for 12 months to 30 June 2010, the new measures would be valid for a period of one year up to 30 June 2010. The new tenancy agreement template was applicable to all public markets in the territory, and incorporated the following major amendments when compared with the old versions -

- (a) it stated explicitly that the rent was exclusive of rates, air-conditioning charge (if applicable) and other miscellaneous payments, all of which should be paid by the tenant separately. The Government might, by giving the tenant not less than one month's notice, adjust the air-conditioning charge;
- (b) it required the tenant to display in a conspicuous manner at the stall the Business Registration Certificate issued in the name of the tenant;
- (c) it conferred to the Government the right to vary the category of prescribed commodities to be sold at the stall or the use of the stall to meet the operational need of the market; and
- (d) it required the tenant to comply with the Government's request for an interview within 14 days, except with an acceptable reason.

According to the Administration, these new or revised clauses were introduced mainly in response to the recommendations of the Audit Commission and PAC to address the practice of not recovering from stall tenants rates paid on their behalf as well as the air-conditioning cost and to eradicate the problem of stall subletting and FEHD's successive tenancy extension.

43. The Panel met with representatives of public market stall tenants and the Administration on 2 June 2009 to discuss the new public market tenancy agreements.

44. Members criticised the Administration for not first seeking the views of the Panel and conducting thorough consultation with public market stall tenants, before arranging for these tenants to sign the new tenancy agreement. Hon Alan LEONG also criticised the Administration for failing to first rationalise the positioning, functions and subsidisation of public markets, as recommended by

PAC, which was tantamount to putting the cart before the horse.

45. Members passed a motion urging the Administration to suspend the signing of the new public market tenancy agreements for one year and to extend the tenancy agreements with stall tenants for one year; in the meantime, the Administration should consult the views of the Panel and public market stall tenants on the terms of the new tenancy agreements and formulate a clear policy on the positioning, functions and subsidisation of public markets before deciding on the way forward; in addition, FEHD should also give due recognition to the status of the partners and assistants of market stallholders under the new market tenancy agreements.

46. The Administration informed the Panel on 9 June 2009 of its decision to suspend the signing of the new public market tenancy agreements for one year until 30 June 2010.

Development of food testing industry in Hong Kong

47. Whilst welcoming the Administration's plan to develop food testing industry in Hong Kong, question was raised as to how the Administration could ensure that the food testing performed by accredited private laboratories met international standards of practice.

48. The Hong Kong Accreditation Service (HKAS) under the Innovation and Technology Commission advised that before granting accreditation, HKAS would send a team of independent specialist experts to assess the competence of the applicant organisation in performing the activities to be accredited. To obtain accreditation, a food testing laboratory must be meeting the requirements of the International Standard ISO/IEC 17025 and be subject to rigorous on-site assessments and monitoring by the assessors. Performance of accredited organisations was monitored through periodic on-site re-assessments, surprise on-site surveillance visits, proficiency testing programmes, monitoring of changes, and feedback from users of the accredited services. Mandatory re-assessments were conducted one year after the granting of accreditation and at two-year intervals thereafter. Accredited laboratories were visited at least once a year and were required to participate in proficiency testing activity at least once every four years for each major sub-area of major disciplines. It was further pointed out that HKAS operated in accordance with the requirements of ISO/IEC 17011, including taking part in international and regional cooperation of accreditation bodies and the multilateral mutual recognition arrangements administered by them. Under these multilateral mutual recognition arrangements, accreditation service provided by HKAS was subject to on-site assessments by overseas accreditation bodies once every four years. An independent Accreditation Advisory Board was also set up to monitor, review and provide advice to HKAS to ensure that the

accreditation criteria for food testing laboratories in Hong Kong met local needs.

49. In response to members' enquiry on the timeframe for developing food testing industry in Hong Kong, the Administration advised that strategies for developing such were being worked out by the Task Force on Economic Challenges. The Administration would, however, kick start the initiative by providing an additional funding of \$1.6 million to HKAS each year to enhance its accreditation service for local laboratories.

50. Hon Alan LEONG questioned whether Hong Kong was well positioned to develop food testing industry, given that large international testing laboratories, such as SGS, had already set up operations in many parts of the Mainland to provide service at a cost lower than the Hong Kong service providers. Mr LEONG considered that a better way forward was to expand the types of products for testing and certification in Hong Kong.

51. The Administration pointed out that with the progressive setting of legal standards of harmful substance in food in the coming years and the commencement of nutrition labelling requirements in July 2010, coupled with Hong Kong's geographical proximity to growing markets in the Mainland, the demand for food testing services in Hong Kong should increase substantially. At the outset, potential clients were expected to mainly comprise local traders, local traders operating in the Mainland and Mainland traders. Strengthening HKAS in providing accreditation service for a wider range of testing for consumer products, such as toys and textiles and garments, would be pursued next.

52. In response to Hon Vincent FANG's enquiry as to whether Hong Kong had the testing capacity to meet demand from traders upon the commencement of nutrition labelling requirements on 1 July 2010, the Administration replied in the affirmative as not all traders would need to engage private laboratories to conduct testing to find out the nutrition information of their prepackaged food before putting the food concerned for sale. For instance, many imported prepackaged food were already labelled with nutrition information, albeit in a format different from the prescribed format used in Hong Kong, and prepackaged food with annual sales volume not exceeding 30 000 units could apply for exemption under the Small Volume Exemption Scheme.

Other matters discussed

53. Other subject matters discussed by the Panel included enforcement against unauthorised display of bills and posters, operation of the Pest Control Section under FEHD, sulphur dioxide in beef, finding of poultry carcasses in New Territories, preventive measures against avian influenza, regulation of pet shops and pet breeders, and implementation of the Nutritional Labelling Scheme.

54. The Panel was consulted on the Administration's proposals to re-provision Wo Hop Shek Crematorium, amend the Food Business Regulation (Cap. 132X) to prohibit extraction of seawater from specified areas for keeping live fish or shell fish for sale for human consumption, create one supernumerary post of Administrative Officer Staff Grade B in the Food and Health Bureau, convert a directorate Administrative Officer post into an Assistant Director of Municipal Services post in FEHD, construct a columbarium and garden of remembrance at Kiu Tau Road, Wo Hop Shek, implement Phase 6 of the conversion of aqua privies into flushing toilets, and relax the food room requirements for licensed restaurants and factory canteens.

55. From October 2008 to June 2009, the Panel held a total of 18 meetings, including one joint meeting with the Panel on Health Services on the prevention and control of human swine influenza in Hong Kong.

Council Business Division 2
Legislative Council Secretariat
19 June 2009

Legislative Council

Panel on Food Safety and Environmental Hygiene

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to food safety, environmental hygiene and agriculture and fisheries.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

Legislative Council
Panel on Food Safety and Environmental Hygiene

Membership list for 2008-2009 session

Chairman Hon Fred LI Wah-ming, JP

Deputy Chairman Hon WONG Yung-kan, SBS, JP

Members Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Dr Hon Joseph LEE Kok-long, JP
Hon Alan LEONG Kah-kit, SC
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Dr Hon LEUNG Ka-lau
Hon WONG Yuk-man

(Total : 13 Members)

Clerk Miss Mary SO

Legal adviser Mr Stephen LAM

Date 14 October 2008