

# 立法會 *Legislative Council*

LC Paper No. CB(2)1843/09-10(02)

Ref: CB2/BC/1/09

## **Bills Committee on Food Safety Bill**

### **Background brief prepared by the Legislative Council Secretariat**

#### **Purpose**

This paper gives an account of the past discussions by the Panel on Food Safety and Environmental Hygiene ("the Panel") on the proposed Food Safety Bill.

#### **Background**

2. The existing control of food safety is mainly provided in Part V of the Public Health and Municipal Services Ordinance (Cap. 132). Under section 52 of Cap. 132, no person shall sell to the prejudice of a purchaser any food which is not of the nature, or not of the substance or not of the quality of the food demanded by the purchaser. Section 54 of Cap. 132 further provides that no person shall sell any food which is intended for but unfit for human consumption.

3. Food incidents in the past years revealed inadequacies in Cap. 132 in the control of food safety. In this regard, the Chief Executive announced in his 2007-2008 Policy Address of the Government's plan to introduce a Food Safety Bill to strengthen legislative control on food safety. The Bill will provide for food safety control measures including -

- (a) a registration scheme for food importers and food distributors;
- (b) a requirement for food traders to maintain proper transaction records to enhance food traceability;
- (c) power to make regulations for tightening import control on specific food types based on risk assessment; and
- (d) power for the authorities to make orders to prohibit the import and supply of problem food and order the recall of such food.

4. At the Panel meeting on 11 December 2007, the Administration briefed members on the proposed Food Safety Bill. The salient features of the Bill

were as follows -

(a) Authority of the Bill

The Director of Food and Environmental Hygiene ("DFEH") would be the Food Safety Authority ("FSA") under the new legislation.

(b) Definition of "food"

The definition of "food" in the Bill would be modelled on the definition of "food" in Cap. 132 and extended to cover live aquatic products and edible ice intended for human consumption.

(c) Mandatory registration scheme for food importers and distributors

All food importers and distributors would be required to register with FSA. Only food importers who had registered with FSA would be allowed to import food into Hong Kong. The requirement would apply equally to food coming from overseas or produced locally. In addition to creating an offence for conducting food import and distribution without having been properly registered, it would be an offence for food distributors and retailers to patronise non-registered food importers or non-registered food distributors respectively.

(d) Record-keeping requirement

All food importers and distributors would be required to keep transaction records of the business from which they obtained their food and the business to which they supplied the food. Food retailers would also be required to keep records of the business from which they obtained their food, but not information on the ultimate consumers to whom they sold the food.

(e) Import control for specific food types

The Bill would empower the Secretary for Food and Health to make regulations for tightening import control on specific food types, according to their risk level.

(f) Prohibition of import and sale of problem food and mandatory recall

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FSA would be empowered to make orders to prohibit the import or supply of problem food and to issue a recall order when FSA had reasonable grounds to believe that the food concerned posed a serious health hazard to the public.

(g) Food Safety Appeals Board

A Food Safety Appeals Board would be established to hear appeals from any person who felt aggrieved by the decision of FSA.

5. Given the immense public concern on food safety in the wake of the melamine incident in 2008, the Administration decided to expedite work in respect of administrative orders to prohibit the import and supply of problem food and order a recall of the problem food in an Amendment Bill, ahead of the introduction of the full Food Safety Bill. The Public Health and Municipal Services (Amendment) Ordinance 2009, which amended Cap. 132 by adding a new Part VA to empower DFEH to make orders to prohibit the import and supply of problem food and order a food recall when he has reasonable grounds to believe that public health is at risk, was passed by the Legislative Council ("LegCo") on 29 April 2009 and came into operation on 8 May 2009.

6. On 9 February 2010, the Administration briefed members on the detailed proposals of the Food Safety Bill, the results of the related public consultation and the findings of the Business Impact Assessment ("BIA") study.

7. Members were supportive of the Bill and urged its early implementation. Noting that the Administration would transfer Part VA of Cap. 132 to the Food Safety Bill, members urged the Administration not to drag its feet in transferring Part V of Cap. 132 and the related subsidiary legislation to the Bill, including reviewing the provisions concerned to bring them up-to-date to better meet present day circumstances.

8. The Administration advised that it had considered transferring Part V of Cap. 132 and the related subsidiary legislation to the Food Safety Bill. However, to do so would delay the implementation of the Bill to enable DFEH to trace problem food swiftly and thoroughly in the event of food incidents, among others. Hence, decision was made to first enact the Bill to enhance the protection of public health and consumer interests. The Administration agreed to transfer Part V of Cap. 132 and the related subsidiary legislation to the Bill at an appropriate time after the implementation of the Bill.

9. Noting that food retailers whose principal business was not the distribution or supply of food to other retailers or catering establishments would not be required to register with DFEH, question was raised as to how the Food and Environmental Hygiene Department could determine that a food retailer was indeed a food retailer.

10. The Administration responded that under the Bill, DFEH would be empowered to inspect the transaction records maintained by food traders. As such, transaction records of food retailers could be inspected to determine if the principal business of the food retailers was in the distribution or supply of food to other retailers or catering establishments. The Bill would provide a defence

if the food retailer concerned could show that it was the retailer's normal business to supply food by retail and it was reasonable to assume that the particular transaction was not a wholesale supply. A code of practice on enforcement of the Bill would be formulated for training health inspectors who would be primarily responsible for carrying out the enforcement work. The food trade would be consulted on the code of practice before implementation.

11. Some members noted with concern that the Administration had dropped its earlier proposal to make it an offence in the Food Safety Bill for any person to knowingly sell food obtained from unregistered food importers or distributors (unless they were exempted) in the course of a trade or business. They asked whether doing so was made in favour of the trade.

12. The Administration advised that during public consultation and the BIA study, food traders had raised concerns that it was not practicable for food businesses to check the registration status of different food suppliers before every transaction. They also considered that the responsibility of registration should fall on the individual food importers or distributors. Taking into account the views obtained and that the proposed record-keeping requirement would help enhance food traceability, a decision was made to drop the proposal. The Administration believed that the Bill had struck a proper balance in not imposing a huge burden on the food trade whilst safeguarding public health and consumer interests.

13. The Administration further advised that having considered the views of the trade, the fee level for registration and renewal of registration for a three-year term would be kept under \$200, and the retention period of transaction records would be linked to the shelf-life of the food in that transaction or capture records would be required to be kept for a period of three months (for live aquatic products and food with a shelf-life of three months or less, e.g. fresh meat) or 24 months (for food with a shelf-life over three months, e.g. canned food).

### **Relevant papers**

14. Members are invited to access the LegCo website (<http://www.legco.gov.hk>) for details of the relevant papers and minutes of the meetings.