

Bills Committee on Food Safety Bill

Follow-up on Matters arising from the Bills Committee Meeting on 29 September 2010

Purpose

This paper sets out our response to the issues raised by Members at the Bills Committee meeting on 29 September 2010. These include –

- (a) the criteria used by the Director of Food and Environmental Hygiene (the Director) to exempt a person or a class of persons from the requirement to be registered under Part 2 (Clause 6) and the requirement to keep transaction records under Part 3 (Clause 29) of the Food Safety Bill (the Bill);
- (b) the safeguards against a person using different companies to circumvent the Director's power to refuse his registration due to previous offences under the Bill (Clause 8);
- (c) the assistance and training to be provided to fishermen as well as owners of small stalls to help them comply with the requirements under the Bill, including an adjustment to the grace period; and
- (d) the policy intention regarding "period" of capture in Clause 23.

Criteria used by the Director to exempt a person or a class of persons from the requirement to be registered under Part 2 (Clause 6) and the requirement to keep a record under Part 3 (Clause 29) of the Bill

2. Clause 6(1) provides that the Director may in writing exempt a person from the requirement to be registered under Part 2 of the Bill in respect of a business while Clause 6(4) provides that the Director may, by notice published in the Gazette, exempt a class of persons from the requirement to be registered under Part 2 of the Bill in respect of a class of businesses.

3. As explained in our reply dated 10 September 2010 to the Assistant Legal Advisor's letter dated 27 July 2010, the reason for the provision of these Clauses is that the Director may consider exempting a person or a class of persons from the requirement to be registered under Part 2 of the Bill when the situation warrants and that it would not cause any undue threat to public health.

4. In making the decision, the Director may, in so far as is practicable and reasonable, take into account all factors relevant to the circumstances of the case that the Director considers appropriate, including but not limited to the following –

- (a) whether the exemption would cause any undue threat to public health;
- (b) past records of the applicant (e.g. previous conviction records under the Bill or the Public Health and Municipal Services Ordinance (Cap. 132), previous revocation of registration as a food importer/distributor);
- (c) whether the information of the food importer/distributor is readily available from other sources (e.g. in the case of exhibitors in a food exhibition, whether the detailed information of the exhibitors would be available from the organiser);
- (d) whether the food in question would be used for exhibition purpose (including free tasting) or sold for human consumption; and
- (e) the type and quantity of food that would be imported or distributed.

5. As an example, exhibitors in some major food exhibitions in Hong Kong¹ may be exempted from registration as food importers. This is because organisers of these exhibitions generally possess detailed information of exhibitors, and exhibitors would only import small quantities of food over a short period of time for exhibition purposes. Many of them will only be importing food items on a one-off basis, without the intention to become a regular importer at that stage.

¹ Examples may include HOFEX, Asian Seafood Exposition and Asia Fruit Logistica, the purpose of which is to allow overseas food traders to promote their business and test new food products in the Hong Kong market.

6. Pursuant to Clauses 6(2) and 6(3), the Director may impose conditions on the exemptions (e.g. stipulating that the food can only be used for exhibition purpose and not for sale) and withdraw the exemption granted should the conditions not been complied with. In addition, food importers and distributors exempted from registration are still required to keep import or wholesale supply records if any under the Bill.

7. Similarly, Clause 29(1) provides that the Director may in writing exempt a person from the requirement to keep a record under Part 3 of the Bill while Clause 29(4) provides that the Director may, by notice published in the Gazette, exempt a class of persons from the requirement to keep a record under Part 3 of the Bill.

8. In making the decision, the Director may, in so far as is practicable and reasonable, take into account all factors relevant to the circumstances of the case that the Director considers appropriate, including but not limited to the following –

- (a) whether the exemption would cause any undue threat to public health;
- (b) whether the applicant has mechanisms in place to ensure that the food he supplies is fit for human consumption;
- (c) past records of the applicant (e.g. previous conviction records under the Bill or the Public Health and Municipal Services Ordinance (Cap. 132));
- (d) whether there is genuine and practical difficulty in keeping the required records under Part 3 of Bill;
- (e) whether the food in question would be used for charitable purpose; and
- (f) the type and quantity of food in question.

9. As an example, we are considering exempting some charitable food banks from the requirement to keep records if they have mechanisms in place to ensure that the food they supply is safe (for example, whether the staff from the organization would check the labels for expiry dates or conditions of the food for deterioration). This is due to the difficulty of keeping records of food donated by the public as some

donors may wish to remain anonymous. Requiring donors to provide personal information may unnecessarily deter some in donating and hence disrupt the operation of these food banks. In many cases, the food donated is in pre-packaged form with manufacturing details provided, which poses less of a problem for source tracing should this be necessary.

10. We consider it necessary for the Director to have the power to grant exemption in those exceptional cases. However, the circumstances of each case may vary, it would be difficult to draw up an exhaustive list of factors which the Director should consider in exercising the power of exemption under Parts 2 and 3 of the Bill. That said, the Director will exercise caution and will not compromise public food safety in considering whether to grant an exemption. The Director will also consider including the above factors in the guidelines or Code of Practice to be issued in relation to the registration scheme and the record keeping requirements under the Bill.

11. Regarding a Member's enquiry on whether statutory bodies involved in the food supply chain would be exempted from the registration and record-keeping requirements under Part 2 and Part 3 of the Bill, if the statutory body is regularly engaged in the food supply chain as a food importer or distributor (e.g. the Fish Marketing Organisation), we do not consider an exemption justifiable.

Safeguards against a person using different companies to circumvent the Director's power to refuse his registration due to previous offences under the Bill (Clause 8)

12. As Members have pointed out at the last Bills Committee meeting on 29 September, Clause 8(2) of the Bill does not allow the Director to refuse the registration of an applicant which is a body corporate on the ground that in the past 12 months, the owners or directors of that company have repeatedly contravened the Bill or their (or their other companies') registration have been revoked or cancelled.

13. If the directors or owners are employees or agents of a company, their contraventions may be imputed to the company under Clause 52(1)

or (2), depending on the circumstances of the case. Accordingly, the Director may refuse registration of the company due to repeated contraventions of the Bill by its directors or owners on behalf of the company.

14. The past contraventions of owners or directors not relating to the company are currently not a ground for refusal. The measure of checking the past records of the owners and directors of a company is only adopted in very rare cases when the integrity of the owners and directors of the company is crucial in the business of the company, e.g. section 71(2)(a) of the Banking Ordinance (Cap. 155) provides that the Monetary Authority shall refuse to give consent unless it is satisfied that the person concerned is a fit and proper person to be the chief executive or a director of the authorized institution concerned. Since our policy intention of putting in place a registration scheme of food importers and distributors is mainly to assist the Director in identifying and contacting a more defined group of food traders speedily in a food incident, we do not consider that it is necessary to adopt such measure.

Assistance and Training for Fishermen and Owners of Small Stalls

15. Clause 1(3) provides that there is a grace period of six months after the Bill commences. During this period, we will carry out publicity and education programmes so that food traders will be informed of the new measures under the Bill.

16. We will also tailor-make some programmes for target groups, for example, fishermen and owners of small stalls. For instance, FEHD and AFCD would co-operate to conduct briefing sessions on records keeping for fishermen during the next fishing moratorium in mid 2011. Besides, we also plan to conduct briefing sessions for market and owners of small stalls during the six-month grace period.

Policy Intention Regarding “period” in Clause 23

17. From our discussion with the fisherman associations, we

understand that it might be difficult for fishermen to specify the exact date of their capture since a fishing trip may take more than one day. Thus, we allow them to record the period instead of an exact date when the capture is made. We do not specify a specific duration in the Bill as the mode of operation varies among fishermen, and therefore it will be difficult to do that. We note from the pilot scheme that fishermen generally have no difficulties in providing either the date or period of their capture.

18. With regard to a Member's comment on the Chinese term “期間” (period) in “period of the capture” under Clause 23(1)(a), we note that the same Chinese term “期間” is commonly adopted in other legislative provisions, for example, section 2(1) of the Construction Workers Registration (Fees) Regulation (Cap. 583B), section 2 of the Telecommunications (Method For Determining Spectrum Utilization Fees by Auction) Regulation (Cap. 106AC), and section 1A of the Betting Duty Ordinance (Cap. 108), etc. Hence, we consider it appropriate to adopt “期間” as the Chinese rendition for “period”.

Advice Sought

19. Members are asked to note the Administration's response to the issues raised by Members at the last meeting.

Food and Health Bureau
October 2010