

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 2009-2010 Legislative Council ("LegCo") session. It will be tabled at the Council meeting on 7 July 2010 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 12 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

Food Safety Bill

5. On 9 February 2010, the Administration briefed members on the detailed proposals of the Food Safety Bill which sought to introduce new food safety control tools such as the introduction of a mandatory registration scheme for food importers and distributors and requiring food traders to maintain proper records on the movement of food so as to enhance traceability; the results of the related

public consultation; and the findings of the Business Impact Assessment study. Members were supportive of the Bill and urged its early implementation.

6. Noting that the Administration would transfer Part VA of the Public Health and Municipal Services Ordinance (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.

7. 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 the Director of Food and Environmental Hygiene ("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.

8. Also 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 ("FEHD") could determine that a food retailer was indeed a food retailer.

9. The Administration pointed out 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.

10. The Food Safety Bill was introduced into LegCo on 2 June 2010. A Bills Committee was formed by the House Committee on 4 June 2010 to scrutinise the Bill.

Review on the positioning, functions and usage of public markets and related matters

11. On 10 November 2009, the Panel was briefed by the Administration on the results of its consultation with market trades on the positioning, functions and usage of public markets, as well as the proposals relating to the public market rental adjustment mechanism and arrangements to recover air-conditioning charges and rates.

12. In view of the important social functions served by public markets to (a) historically re-site on-street hawkers who would otherwise be trading on-street, (b) provide one of the major sources of fresh provisions as far as the grassroots were concerned, and (c) provide employment opportunities for the grassroots, which were also recognised by the Administration, members urged the Administration to continue its long standing practice of paying rates on behalf of the tenants and not recover rates from them. Consideration should also be given to allowing stall tenants to pay only the electricity charges for the air-conditioning incurred in their own stalls.

13. Whilst welcoming the Administration's plan to further consult market tenants before introducing a new rental adjustment mechanism, members urged that apart from making reference to the latest bid price for a similar stall in the same public market in assessing the open market rental ("OMR"), consideration should be given, amongst others, to the prevailing economic situation, the number of vacant stalls in the market and the affordability of the grassroots.

14. The Administration advised that it had all along taken into account these factors in assessing the stall rentals of public markets. Although the latest bid price for a similar stall in the same public market was one of the factors in assessing the OMR, the open auction price of a market stall would be adjusted downwards if there was no bidder and the stall was vacant for six months or more. The Administration further advised that should no consensus on market rental adjustment mechanism be reached before 30 June 2010, the rental of the new tenancy upon tenancy renewal after 30 June 2010 would have to be based on the prevailing rental.

15. Some members questioned the validity and appropriateness of the Administration using OMR provided by the Ratings and Valuation Department ("RVD") in assessing public market rental, having regard to the fact that the facilities of public markets were outdated and their environment and management far from satisfactory.

16. The Administration explained that OMR was not based on the rentals of private markets/fresh provision shops located in the vicinity of public markets. Rather, OMR was based on various factors, such as the most recent bid price for a

similar stall let out under open auction in the same public market, the location of the public market, the different rating factors attributed to the unique features of the stall concerned (such as its proximity to escalators), and customer flow in the public market.

Alignment of Public Market Tenancy Agreements and One-off Tenancy Transfer Scheme for Operators

17. The Panel held two meetings with the Administration in December 2009 and April 2010 to discuss the alignment of public market tenancy agreements by FEHD and its introduction of the one-off tenancy transfer scheme.

18. Members were advised that having carefully considered the concerns expressed by tenant representatives and traders on the tenancy agreement template, amendments would be made to the template as follows -

- (a) unnecessary clauses would be removed to make the template simple and easy to understand;
- (b) new clauses, such as requiring the tenant to display conspicuously at the stall the Business Registration Certificate issued in his/her name; and when FEHD called upon the tenant for an interview for the purpose of execution of the tenancy agreement, the tenant should duly comply within 14 days or provide an acceptable reason for non-compliance, would be added to step up the prevention of stall subletting;
- (c) clauses on the restriction of the keeping of dogs, cats or other pets and the requirement to produce records of business operation of the stall would be removed; and
- (d) the circumstances in which the tenant should be responsible for repair or compensation in the event of any loss or damage to stall fixtures and fittings provided by the Government, other than those arising from normal wear and tear, would be clearly spelt out in the template.

19. Members were further advised that to resolve historical problems arising from scenarios such as several family members giving up on-street hawking in exchange for one market stall, those who met the following criteria would be allowed, on a one-off basis, to apply for taking over the status of a tenant on producing relevant proof and with the consent of the original tenant -

- (a) any person who had been a registered assistant of the stall concerned for at least three years; or

- (b) any person who had invested in the business of the stall concerned for at least three years.

The above one-off transfer scheme would expire along with the existing tenancy agreements on 30 June 2010. If an application was approved, the stall would be offered to the applicant on signing a new tenancy agreement and at open market rental. The applicant would not be required to vacate the stall or suspend business when awaiting the outcome of his/her application.

20. Whilst expressing support for the one-off transfer scheme, Hon Fred LI was of the view that the scheme should, in addition to a registered assistant, also cover any person who took part in operating the stall in other capacities or forms. Hon CHAN Kam-lam was also of the view that any person who could produce proof that he was a registered assistant or business partner of the tenant concerned at the time of application should be eligible for the scheme provided that the application was supported by the sitting tenant.

21. On the suggestion of extending the deadline of implementing the one-off transfer scheme beyond 30 June 2010 to allow applicants more time to provide the relevant proof, the Administration advised that 30 June 2010 was merely the cut-off date for eligible persons to submit applications for the one-off transfer scheme. The processing of applications could continue after that date if necessary.

22. The Panel held a special meeting on 3 May 2010 to listen to the views of market traders on the alignment of public market tenancy agreements. Members shared deputations' views that the Administration should continue its long-standing practice of paying rates on behalf of market tenants and that the air-conditioning charges attributable to public areas of markets such as passages and lobbies should be borne by the Government, while tenants should only pay charges pro rata to their stall areas.

23. The Administration advised that it would seek members' view on the specific arrangements for the recovery of rates when the details of rates assessment were finalised, before deciding on the way forward. As regards recovery of air-conditioning charges, the Administration undertook to review whether the existing air-conditioning charging mechanism could be fine-tuned by excluding more common areas of markets from the amount of air-conditioning charges payable by stall tenants.

24. On a proposal for including a preamble in the tenancy agreement to recognise the historical background and social functions of public markets, the Administration advised after the meeting on 4 June 2010 that more time was needed to examine carefully whether the suggestion could be implemented. It pointed out that public market tenancy agreement was a legally binding contract signed between the Government and market tenants. From the perspective of

contract law, the preamble of a contract in general served only to briefly introduce information related to the contract, rather than giving a detailed account of the historical background and/or social functions of a certain trade. Besides, a preamble of a contract should not be inconsistent with other clauses of the contract. The Administration further advised that if it was concluded that the suggestion was worthy of implementation, consideration would be given to drafting the relevant clauses in consultation with the stakeholders.

Allocation of vacant fixed hawker pitches

25. The Panel met with deputations on 12 January 2010 to listen to their views on the allocation of vacant fixed hawker pitches. Members shared deputations' view that the Administration should give priority to the existing some 5 600 registered assistants of licensed hawkers over members of the public in the allocation of vacant fixed hawker pitches, as registered assistants generally had ample experience in operating hawker stalls.

26. The Administration was of the view that the vacant pitches should be allocated in a fair and open manner. Moreover, given that the number of registered assistants with ample experience in the hawking trade would be far more than the 208 pitches presently available for allocation, even if priority were given to only long-serving registered assistants, say, those who had been registered for five years or more, there would not be sufficient vacant pitches to go around. However, bearing in mind the need to balance the interest of different groups of people in the community and having regard to the views received at the meeting, the Administration would consider setting aside not more than half of the vacant pitches for restricted balloting by long-serving registered assistants.

27. Members maintained the view that existing registered assistants with experience in the hawking trade should be given priority over members of the public in the allocation and selection of vacant pitches. They passed a motion urging the Administration to do so.

28. The Administration subsequently informed members in February 2010 that it was prepared to give priority to existing registered assistants with experience in the hawking trade to apply for 70% of the vacant fixed hawker pitches.

Columbarium facilities

29. Members noted from the 2009-2010 Policy Agenda in relation to food safety and environmental hygiene that the Administration would review the provision of cemeteries, columbaria and crematoria facilities to meet future demand. The Administration would also continue its work on promoting the options of scattering cremated human ashes at sea and in gardens of remembrance

("GoRs"). Since the new GoRs commenced operation and the procedures for scattering of cremated human ashes at sea were streamlined in 2007, the Administration had handled 538 and 966 applications respectively.

30. At the special meeting to receive a briefing from the Secretary for Food and Health on the 2009-2010 Policy Agenda, members were advised that the Administration was looking at other innovative ideas, such as using industrial buildings, for providing columbarium facilities. The Food and Health Bureau ("FHB") would discuss with the Lands Department ("LandsD") on ways to ensure that development of private columbaria could meet demand on the one hand and acceptance of people in the vicinity of the proposed private columbaria on the other.

31. On 9 February 2010, the Administration briefed the Panel on the latest progress in the development of columbarium facilities in Hong Kong. Members were advised that FHB had set up a Working Group in coordination with the Development Bureau, the Home Affairs Bureau and various departments to study measures for increasing the supply of columbarium facilities and enhancing protection of the rights of consumers of private columbaria. The Government would adopt all feasible measures to increase the supply of public columbarium niches, including actively identifying suitable locations for the development of public columbarium facilities in different areas in Hong Kong (including urban areas), such as by construction of or conversion into multi-storey columbarium blocks. There had been successful experiences of overseas countries, such as Japan, in using high-rise buildings as columbarium blocks. To better protect the interests of purchasers of private niches, the Administration was calling on the trade to increase their transparency. The Administration would also look into ways to achieve this end by, say, setting up a voluntary registration system for operators of private columbaria.

32. Concern was raised about the growing number of private columbaria operating on land/buildings not permitted for columbarium use.

33. The Administration advised that under the Town Planning Ordinance (Cap. 131) ("TPO"), the Planning Authority might take enforcement and regulatory actions against any "columbarium" not conforming to the requirements of the land use zoning as specified in the statutory Outline Zoning Plan for the site under concern. Such enforcement and regulatory actions could only be taken in respect of land use in areas covered by the Development Permission Area Plans (i.e. rural areas in the New Territories). There were views from the public that the enforcement and regulatory actions should be extended to areas not covered by the Development Permission Area Plans (i.e. urban areas and new towns). Given the large number of existing high-density development and mixed use buildings in these areas, there were technical difficulties to develop a comprehensive record of existing land use and use of individual floor in these areas for enforcement and

regulatory purposes. It was also not the most cost-effective way of utilising the resources to regulate columbaria business.

34. The Administration further advised that upon receipt of a complaint about operation of columbarium niches in breach of land use requirements stated in land lease, LandsD would deploy its staff to carry out inspection on the site concerned regardless of whether the land was covered by the Development Permission Area Plans. Legal advice would be sought on the lease conditions which might be involved in the actual circumstances, and follow-up action taken as appropriate. If a site was found to be in breach of the lease conditions, LandsD would take lease enforcement action and request the parties concerned to purge the breach immediately. Where landowners applied for regularising a breach of land lease requirements, or intended to apply for modification of lease conditions for the provision of columbarium facilities, LandsD would consider and deal with the case. The Department would normally advise applicants to apply for and obtain the planning permission first, and would consider the views of the relevant departments in the process. If the application was approved, LandsD would include the appropriate conditions for lease modification, and this might entail the payment of a land premium.

35. Some members, including Hon Fred LI and Hon WONG Sing-chi, urged the Administration to introduce a licensing regime to regulate the operation of private columbaria as soon as practicable to enhance consumer protection. The Administration advised that it would not rule out the possibility of doing so. In mapping out the way forward, the Administration would also need to take into account the undesirability of affecting buyers of niches provided by private columbaria which had operated for a long time but did not comply with the relevant legislation and land lease requirements.

36. On the suggestion of constructing columbaria on outlying islands with small population, the Administration advised that it might not be feasible to do so as ferry companies would have great difficulties in providing adequate ferry service to meet the demand generated by large number of grave sweepers during the Ching Ming and Chung Yeung Festivals.

37. Hon TAM Yiu-chung and Hon WONG Sing-chi urged the Administration to step up effort on encouraging the public to dispose cremains of their loved ones in designated Hong Kong waters or GoRs. The Administration advised that it had been promoting such alternative ways of burials through the non-governmental organisations operating elderly and end-of-life care services. A promotional video had recently been produced to promote the free ferry service launched by FEHD for scattering cremated human ashes at sea.

38. The Administration would revert to the Panel measures to increase the supply of columbarium facilities and enhance protection of the rights of

consumers of private columbaria on 6 July 2010.

39. The Panel would conduct an overseas duty visit to Japan in early September 2010 to obtain first-hand information on the country's columbarium facilities.

Implementation of the Nutrition Labelling Scheme

40. On 13 April 2010, the Administration briefed the Panel on preparatory actions taken for implementing the Nutritional Labelling Scheme ("the Scheme") which would come into operation on 1 July 2010.

41. Members were advised that in order to understand the impact of the Scheme on food choice of consumers, the Centre for Food Safety ("CFS") of FEHD had commissioned an independent consultant to find out the quantity of different types of prepackaged food products available in various retail outlets before and after the commencement of the Scheme, and to assess the change in market situation. Furthermore, the surveys would assess the quantity of prepackaged food products that complied with the Scheme before 1 July 2010 and its subsequent changes. The first and second surveys were conducted from October 2009 to January 2010 and in March 2010 respectively. According to the survey results, the consultant estimated that there were a total of 73 000 prepackaged food products in the market that would be regulated by the Food and Drugs (Composition and Labelling) (Amendment: Requirements for Nutrition Labelling and Nutrition Claim) Regulation 2008 ("the Amendment Regulation"). Among the 2 360 prepackaged food products randomly selected, the first survey found that 47% had either already complied with the requirement in the Amendment Regulation, or had already obtained small volume exemption ("SVE"); and in the second survey the preliminary figure further increased to 57%. The third survey would be conducted in April 2011, and the whole survey project was expected to complete by the end of 2011. CFS would keep close contact with the trade in this regard.

42. Members were further advised that with the steer of the Task Force on Nutrition Labelling Education, which comprised members from various professional bodies, consumer group, food trade, academia and government departments, CFS formally launched the Publicity and Education Campaign on Nutrition Labelling ("the Campaign") in March 2009 and would assess its effectiveness through quantitative indicators (e.g. number of people visiting websites/attending workshops, number of publicity materials distributed). To provide a benchmark for comparison, a baseline survey was conducted in the summer of 2008 to assess public knowledge, attitude and practice regarding nutrition labelling. After the completion of the whole Campaign in 2011, CFS would conduct another survey for comparison with the baseline survey to evaluate the changes in public knowledge, attitude and practice regarding nutrition

labelling.

43. Question was raised as to whether the trade would be allowed a grace period to make the necessary adjustments after the commencement of the Scheme on 1 July 2010.

44. The Administration advised that during the early stage of implementation, if a retailer was found not complying with the Amendment Regulation which would come into force on 1 July 2010, enforcement action would not be taken in the first instance. Instead, CFS would issue a letter to the retailer requiring him/her to give an explanation within 21 days on why he/she failed to comply with the new law. If the explanation given by the retailer was found to be unsatisfactory, a warning letter would be issued to the retailer who would be required to comply with the new law within 60 days.

45. Hon Vincent FANG asked whether consideration could be given to waiving the requirement for traders to apply for SVE if the annual sales volume of the food concerned was very small, say, not more than 3 000 units, to facilitate the staging of food fair and promotion events for market testing purpose.

46. The Administration saw no justification to lower the annual sales volume eligible for SVE at this stage. The inclusion of a SVE Scheme for food products with annual sales volume of 30 000 units or below in the Amendment Regulation was made in response to the call by the trade to facilitate the staging of food fair and promotion events held usually for market testing purpose.

47. On whether local laboratories had the capacity to provide quality nutrient testing service, the Administration advised that according to the local private laboratories, their current workload for nutrient testing was below their maximum capacity and they were able to provide laboratory testing service for energy, the seven core nutrients, and some other nutrients, e.g. dietary fibre, cholesterol, vitamins. Moreover, the testing fee had dropped from \$4,000-\$7,000 to \$3,000-\$5,000 per food sample.

Poultry slaughtering centre

48. On 8 June 2010, the Administration informed the Panel of its decision to shelve the development of a Poultry slaughtering centre ("PSC") in Hong Kong because the latest scientific assessment confirmed that the risk of avian influenza ("AI") in Hong Kong at present was very low. This was the outcome of the biosecurity measures and preventive and control measures against avian influenza implemented at the poultry farm, wholesale, retail and import levels over the years. According to the on-going surveillance conducted in retail outlets by the University of Hong Kong, the isolation rate of H9N2 viruses, which was a good indicator of the loading of avian influenza virus in the poultry population, had

dropped significantly from 5.11% before the ban on the keeping of live poultry overnight in retail markets and introduction of the buyout scheme for the live poultry trade in 2008 to 0.09% recently. A consultancy study on the commercial viability study of the proposed PSC also revealed that the project was not attractive in commercial terms and that a substantial segment of the community, in particular the culinary sector, was still very endeared to retaining live chicken sale in Hong Kong.

49. Members urged the Administration to increase the supply of live chickens in Hong Kong, provided that to do so would not increase the AI risk, so as to bring the retail prices of live chickens down.

50. The Administration advised that although the risk of AI in Hong Kong had been significantly reduced in recent years, it was necessary to maintain the status quo for the supply of live chickens as well as the number and rearing capacity of chicken farms in Hong Kong, as the possibility of the AI viruses re-assorting into deadly viruses could not be ruled out. The Administration further advised that given that Hong Kong was a free economy, retail price of live chickens should be determined by the market. It should however be pointed out that with the advancement in the technology for producing chilled food products in recent years, the texture and taste of chilled chickens had become increasingly close to those of live chickens. There had been a significant rise in the market share of chilled and frozen chickens over the past few years. In 2009, the market share of live chickens was 6%, whereas the share of chilled and frozen chickens was 30% and 64% respectively.

51. Hon WONG Kwok-hing was of the view that although the Administration had no plan to increase the numbers of poultry retailers, wholesalers and farmers in Hong Kong which currently stood at 133, 23 and 30 respectively following the implementation of the buyout scheme in July 2008, the Administration should at least conduct a study on the possibility of such. The Administration advised that it would study to see whether any slight adjustment in the number of retailers was justified without compromising public health.

52. Hon Andrew CHENG held the view that the Administration should proceed with the development of a PSC in Hong Kong, as it could not be ruled out that the AI viruses might re-assort into deadly viruses.

53. The Administration stressed that the decision to shelve the development of a PSC was based on science, with the health of the public as an overriding concern. Review on the risk of AI in Hong Kong would be conducted every two to three years. As long as the AI risk was kept low with biosecurity measures at local farms remaining effective and there being no significant change to the avian flu virus as to pose new threats to public health, the PSC project would not be revived in future.

Other matters discussed

54. Other subject matters discussed by the Panel included promotion of local produce, report on the Food Surveillance Programme of 2009, outsourcing of food testing services, Total Diet Study, Report of the Committee on Sustainable Fisheries, issues related to food safety and fisheries under the Framework Agreement on Hong Kong/Guangdong Co-operation and enforcement actions under the Places of Public Entertainment Ordinance (Cap. 172).

55. The Panel was consulted on the Administration's proposal to amend the Sweeteners in Food Regulation (Cap. 132U) to add neotame and steviol glycosides to the list of permitted sweeteners specified in the Schedule to Cap. 132U.

56. From October 2009 to June 2010, the Panel held a total of 12 meetings, including three special meetings.

Council Business Division 2
Legislative Council Secretariat
2 July 2010

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 2009-2010 session

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|------------------------|---|
| Chairman | Hon Fred LI Wah-ming, SBS, 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, SBS, JP Hon KAM Nai-wai, MH Dr Hon LEUNG Ka-lau Hon Alan LEONG Kah-kit, SC (up to 28 January 2010) (rejoined on 19 May 2010) Hon WONG Yuk-man (up to 28 January 2010) (rejoined on 26 May 2010) (Total : 12 Members) |
| Clerk | Miss Mary SO |
| Legal adviser | Mr Stephen LAM |
| Date | 26 May 2010 |