

LEGISLATIVE COUNCIL BRIEF

The Secretary for Food and Health submits the following note for Members' information:

Title of the Note	Date of Gazette
Food Business (Amendment) Regulation 2010 Frozen Confections (Amendment) Regulation 2010 Milk (Amendment) Regulation 2010 Public Health and Municipal Services (Fees) (Amendment) Regulation 2010	20 May 2010

LEGISLATIVE COUNCIL BRIEF

Public Health and Municipal Services Ordinance (Cap. 132)

FOOD BUSINESS (AMENDMENT) REGULATION 2010 FROZEN CONFECTIONS (AMENDMENT) REGULATION 2010 MILK (AMENDMENT) REGULATION 2010 PUBLIC HEALTH AND MUNICIPAL SERVICES (FEES) (AMENDMENT) REGULATION 2010

INTRODUCTION

By virtue of section 56(1) of the Public Health and Municipal Services Ordinance (Cap. 132) (“PHMSO”), the Director of Food and Environmental Hygiene (“DFEH”) may make regulations for securing the observance of sanitary and cleanly conditions and practices and wholesome methods in connection with the sale of food for human consumption, and the preparation of food intended for sale or sold for human consumption. Separately, section 124I(1)(e) of the PHMSO provides that the Secretary for Food and Health (“SFH”) may by regulation provide for the fees and charges payable in connection with the licensing of premises engaged in the preparation and sale of food for human consumption.

2. In exercise of the aforementioned powers, the DFEH has made the Food Business (Amendment) Regulation 2010, the Frozen Confections (Amendment) Regulation 2010 and the Milk (Amendment) Regulation 2010, at **Annexes A to C**, to –

- (a) introduce a new type of licence known as a composite food shop licence under the Food Business Regulation (Cap. 132X) (“FBR”) for the sale and preparation for sale of various types of simple or ready-to-eat food items for human consumption off the licensed premises;
- (b) make consequential amendments to the Frozen Confections Regulation (Cap. 132AC) (“FCR”) and Milk Regulation (Cap. 132AQ) (“MR”) to

provide that if an appropriate composite food shop licence issued under the FBR is in force, the requirements that a licence / permission from DFEH is required under the FCR and MR for the sale and preparation for sale of their respective regulated food items would not apply; and

- (c) relax the statutory food room requirements stipulated in the FBR for licensed general restaurants (GRs), light refreshment restaurants (LRRs) and factory canteens (FCs).

3. Separately, the SFH has made the Public Health and Municipal Services (Fees) (Amendment) Regulation 2010 at **Annex D** to prescribe the fees applicable to a composite food shop licence under the Public Health and Municipal Services (Fees) Regulation (Cap. 132CJ).

BACKGROUND AND JUSTIFICATIONS

Composite Food Shop Licence

4. At present, food businesses are required to obtain different licences or permissions issued by the DFEH under the FBR and other related subsidiary legislation under the PHMSO for the sale and preparation for sale of ready-to-eat food, in particular “restricted food” items specified in Schedule 2 of the FBR, for human consumption off the licensed premises. For instance, a food shop selling pre-cooked food reheated immediately before sale, sushi and sashimi, siu mei and lo mei (燒味及滷味), soft ice-cream, cut fruit, milk or milk beverage for consumption off the premises will require three licences and two permissions. Even smaller food shops such as a convenience store may also need a number of licences and permissions if it has a variety of “restricted food” items for sale or is involved in food handling. There is room to enhance the business friendliness of the existing system and reduce compliance costs of the trade without compromising food safety and hygiene standards.

5. Accordingly, the Food and Environmental Hygiene Department (“FEHD”) has developed a proposal for the introduction of a composite food shop licence under the FBR to cover the sale and preparation for sale of various types of simple or ready-to-eat food items for human consumption off the

licensed premises.

Relaxation of Food Room Requirements

6. In order to ensure that licensed GRs, LRRs, and FCs have sufficient space for handling and preparing food to safeguard food safety and environmental hygiene, the FBR specifies the minimum food room requirements of these premises. Under the FBR, “food room” refers to any room where any person engaged in the handling of open food or cleaning of equipment for the purposes of a food business, including the kitchen, other food preparation areas (such as a bar counter) and space used for cleansing of utensils. The existing area bands for licensed GRs, LRRs, and FCs, as well as their corresponding minimum food room requirements, have been in place for more than 20 years.

7. Over the years, there have been significant changes in the operation of food business. Many food businesses now operate in chains and share the same food supplier who undertakes some common food preparation procedures centrally before delivering food to individual outlets. This reduces the food room area required of individual food business premises for serving the same number of customers. Improvements in food preparation equipment, storage equipment and cleansing facility / arrangement have also made possible the lifting or keeping of hygiene standard of food businesses with less food room area. Besides, there are nowadays more larger-scale GRs and FCs operating with a larger gross floor area. At present, about 2 520 GRs and 120 FCs fall within the existing top area band (i.e. with a gross floor area of 250m² or over). A single area band may not be able to take into account the operating characteristics of different sizes of large GRs and FCs.

8. In response to the food trade’s request and after reviewing the existing requirements in respect of food room area ratio for licensed GRs, LRRs and FCs in different area bands, the FEHD considers that the existing requirements can be reasonably relaxed without compromising food safety and environmental hygiene.

THE PROPOSAL

Composite Food Shop Licence

9. As a new type of licence, the proposed composite food shop licence will allow –

- (a) the preparation for sale of certain simple or ready-to-eat food items such as salads / sandwiches and coffee / tea that do not involve complicated preparation; and
- (b) the sale of most ready-to-eat “restricted food” items specified in Schedule 2 of the FBR,

for consumption off the licensed premises. When the DFEH grants a composite food shop licence, he may be regarded as having granted “individual permissions” for the sale or preparation for sale of different food items or groups of food items and those “permissions” may be refused, suspended or cancelled by the DFEH separately by virtue of the power vested in him under section 125(1) of the PHMSO in accordance with the rules and procedures promulgated from time to time by FEHD. Any such decision by the DFEH with respect to the grant, refusal, suspension or cancellation of a composite food shop licence can be appealed against to the Licensing Appeals Board.

10. The composite food shop licence is not meant to replace any of the existing licences or permissions issued or granted under the FBR or other related legislation. Operators are free to decide whether to apply for a composite food shop licence or other existing licences or permissions having regard to their own needs. The issuance of a composite food shop licence by the DFEH will be subject to satisfactory compliance with the general (applicable to the licence as a whole) as well as specific (applicable to individual food items) statutory and administrative requirements and conditions.

11. Composite food shops will enjoy some unique features applicable solely to them. First, since the food items covered by the proposed composite food shop licence do not involve any complicated food handling procedures, the DFEH will generally be satisfied that the applicant has complied with the

necessary hygiene requirements for the issuance of a full composite food shop licence if certificates issued by authorised persons / registered structural engineers are produced.¹

12. Besides, the FEHD will apply an adapted version of the Demerit Points System (“DPS”) and warning letter system² to composite food shops. Each food item under a composite food shop licence would be treated as if it were a separate licence / permission on its own, provided that the preparation / sale of that food item does not share any common work area, facility or equipment (e.g. wash-hand basin or wash-up sink) with other food items under that composite food shop licence. Accumulation of sufficient demerit points or warning letters may lead to suspension or cancellation of the composite food shop licence in relation to the relevant food item, but will not affect other food items covered by the licence. However, if a licensee operates the licensed premises in such a way that certain food items share common work areas, facilities or equipment, those food items would be treated together for the purpose of registering demerit points and warning letters, as well as suspension and cancellation of the composite food shop licence. Operators are free to decide whether food items under the same composite food shop licence should share common areas, facilities or equipment and, if so, the extent of so doing.

13. Notwithstanding the above, in case sufficient demerit points or warning letters are registered against common areas covered by the licence, or facilities or equipment that cannot be attributed to any individual food items or groups of food items granted under a composite food shop licence, the suspension or cancellation will apply to the whole licence.

14. Having considered the cost of the Government in providing licensing service, the affordability of the trade and the comparable fee structure of the food factory licences, fee proposals for the grant, renewal, duplicate and amendment of a composite food shop licence are set out at **Annex E**.

¹ Currently, such third party certification mechanism is only applicable to provisional food business licences.

² Demerit points are registered against a food business licence upon conviction of specified offences under the FBR or other related legislation. FEHD may also issue warning letters to licensees in the event of failure to comply with licensing requirements and conditions. Accumulation of a prescribed number of demerit points or warning letters within a specified period of time may lead to licence suspension or even cancellation. DFEH’s decision to suspend or cancel a food business licence under the DPS or warning letter system can be appealed against to the Licensing Appeals Board.

Relaxation of Food Room Requirements

15. As for the proposal to relax the food room requirements for GRs, LRRs and FCs, we propose to –

- (a) introduce new area bands for larger-scale GRs and FCs and reduce their minimum food room requirements;
- (b) reduce the minimum food room requirements for GRs in existing smaller area bands;
- (c) maintain the existing requirement for GRs to provide for a kitchen, but remove the minimum kitchen area requirement; and
- (d) revise the absolute minimum food room area for each area band of GRs and LRRs to ensure that a restaurant at the lower end of a higher area band will be required to provide a food room larger in size than that required of one at the upper end of a lower area band despite the diminishing percentage requirement.

16. Following the implementation of the relaxation proposals, all food premises will continue to be subject to rigorous monitoring and control including inspections, enforcement and licence suspension or cancellation on accumulation of sufficient demerit points, so as to ensure the relaxation will not adversely affect food safety or hygiene. With the introduction of the new food room requirements, the existing food room requirements will be repealed. Transitional provisions will be made to stipulate that the existing requirements would continue to apply to licences issued before the introduction of the new requirements. However, if an existing licensed GR, LRR or FC makes any alteration to the space of its food room or gross floor area after introduction of the new food room requirements and the alteration is permitted by DFEH, it will be subject to the new requirements once the alteration is made.

Other Amendments

17. Taking the opportunity of this legislative exercise, we propose to remove the statutory requirement for the internal walls and ceiling of the food room of licensed premises to be in light colour. This will not undermine food safety or hygiene, but will allow operators greater flexibility in designing their premises. The relaxed requirement will apply to all licensed food premises including those to be covered by composite food shop licences. A few technical amendments aiming at improving the presentation, and enhancing the readability, of the FBR will also be made in this exercise.

THE AMENDMENT REGULATIONS

18. The Food Business (Amendment) Regulation 2010 will amend the FBR to introduce the composite food shop licence and relax the food room requirements for GRs, LRRs and FCs. The main provisions are as follows -

- (a) Section 2 amends the FBR so that the requirement that a permission from the DFEH is required for the sale of certain restricted food does not apply in respect of a food business selling certain simple or ready-to-eat restricted food, or preparing certain simple or ready-to-eat restricted food for sale, for consumption off the premises, if the composite food shop licence granted for the food business covers the restricted food.
- (b) Section 3 adds a new requirement that a licence is required to carry on the business of a composite food shop. Such a licence is not required if a food business has already obtained permission from the DFEH which covers the food items involved in the business.
- (c) Section 4 provides for specific requirements concerning an application for a composite food shop licence.
- (d) Section 5 amends the FBR to dispense with the requirement that the internal surfaces of the walls of any food room of a food business must be in a light colour. The amendment will also provide for the relaxed food room requirements for GRs, LRRs and FCs.

- (e) Section 9 adds a new provision to enable the DFEH to cancel a composite food shop licence if a false plan or certification has been submitted to the DFEH for the application of the licence. Another new provision is added to provide that a composite food shop licence may be suspended or cancelled to the extent that it is related to any particular food or class of food covered by the licence.
- (f) Section 11 adds provisions to provide for transitional requirements for existing licensed GRs, LRRs and FCs in respect of the food room requirements.

19. Separately, the Frozen Confections (Amendment) Regulation 2010 and the Milk (Amendment) Regulation 2010 make consequential amendments to the FCR and MR to provide that if an appropriate composite food shop licence issued under the FBR is in force, the requirements that a licence / permission from DFEH is required under the FCR and MR for the sale and preparation for sale of their respective regulated food items would not apply. The Public Health and Municipal Services (Fees) (Amendment) Regulation 2010 prescribes the fees applicable to a composite food shop licence under the Public Health and Municipal Services (Fees) Regulation (Cap. 132CJ).

20. Subject to negative vetting by the Legislative Council, all of the above Amendment Regulations will come into operation on 1 August 2010.

LEGISLATIVE TIMETABLE

21. The legislative timetable is as follows –

Publication in the Gazette	20 May 2010
Tabling at the Legislative Council	26 May 2010

IMPLICATIONS OF THE PROPOSAL

22. The Amendment Regulations are in conformity with the Basic Law,

including the provisions concerning human rights. They do not affect the current binding effect of the PHMSO, FBR, FCR, MR and the Public Health and Municipal Services (Fees) Regulation. On the assumption that about 110 food shops will apply for the composite food shop licences if they consider it more user-friendly, the annual revenue from food licensing is expected to decrease by around \$326,000³. Additional staffing and funding requirements, if any, arising from the implementation of the proposal would be absorbed within the existing manpower and financial resources of the FEHD. On economic implication, the proposed regulatory changes would help lower business costs and facilitate business operation of the relevant types of food outlets. There is no productivity, environmental or sustainability implication.

PUBLIC CONSULTATION

23. On the proposal to introduce the proposed composite food shop licence, four rounds of trade consultation were conducted in November 2005, March 2006, July and October 2007. As for the proposal to relax the food room requirements, two rounds of trade consultation were conducted in January and May 2009. There was wide support from the trade for the two proposals.

24. We briefed the LegCo Panel on Food Safety and Environmental Hygiene on the proposed composite food shop licence and food room requirement relaxation in January 2008 and June 2009 respectively. Members gave their support to the proposals.

PUBLICITY

25. To tie in with the introduction of the composite food shop licence and relaxation of food room requirements, publicity will be arranged through FEHD's website and relevant information will also be disseminated through food trade associations. A spokesman will be made available to answer media enquiries.

³ This is calculated on the assumption that the 110 food shops will apply for the various licences and permissions under the prevailing regime and pay for the respective prescribed fees.

ENQUIRIES

26. For enquiries relating to this brief, please contact Mr Francis Ho, Principal Assistant Secretary for Food and Health (Food) 2 at 2973 8232.

Food and Health Bureau
May 2010

FOOD BUSINESS (AMENDMENT) REGULATION 2010

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FOOD BUSINESS (AMENDMENT) REGULATION 2010

(Made by the Director of Food and Environmental Hygiene under section 56 of the Public Health and Municipal Services Ordinance (Cap. 132))

1. Commencement

This Regulation comes into operation on 1 August 2010.

2. Restriction on sale, etc. of specified articles

Section 30 of the Food Business Regulation (Cap. 132 sub. leg. X) is amended by adding before subsection (1A) –

“(1AA) Subsection (1) does not apply to item 9, 10, 11, 12, 13, 14, 15, 17, 18, 19 or 20 of Schedule 2 if the sale, or the preparation for sale, of the item is carried on under and in accordance with a composite food shop licence.”.

3. Licensing of food business

(1) Section 31(1)(a) is amended by repealing “, not being a milk factory or a frozen confection factory”.

(2) Section 31(1)(c) is amended by repealing “mei or lo” and substituting “mei and lo”.

(3) Section 31(1)(e) is amended by repealing the full stop and substituting “; or”.

(4) Section 31(1) is amended by adding –

“(f) any composite food shop.”.

(5) Section 31 is amended by adding –

“(1A) If a food business involves only either or both of the following –

(a) the sale of all or any of the foods or classes of food specified in Part 2 of

Schedule 2A for human consumption off the premises;

- (b) the sale of food by a vending machine for human consumption off the premises,

and the food business is carried on in compliance with section 30(1), subsection (1) does not apply to the food business.”.

(6) Section 31(2) is amended, in the definition of “food factory”, by repealing “manufacture or”.

(7) Section 31(2) is amended, in the definition of “temporary licence”, by repealing “section 31(5)” and substituting “subsection (5)”.

(8) Section 31(2) is amended by adding –

““authorized person” (認可人士) has the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123);

“composite food shop” (綜合食物店) means any food business which involves –

(a) the sale and preparation for sale of all or any of the foods or classes of food specified in Part 1 of Schedule 2A;

(b) the sale of all or any of the foods or classes of food specified in Part 2 of that Schedule;

(c) the reheating of pre-cooked food for sale;
or

(d) the sale of food by a vending machine,

for human consumption off the premises;

“composite food shop licence” (綜合食物店牌照) means a licence granted under this section in respect of a composite food shop;

“general restaurant” (普通食肆) means a restaurant other than a light refreshment restaurant;

“light refreshment restaurant” (小食食肆) means a restaurant selling only light refreshments;

“registered structural engineer” (註冊結構工程師) has the meaning given by section 2(1) of the Buildings Ordinance (Cap. 123);”.

(9) Section 31(3)(c) is amended by repealing everything after “any food” and substituting “or class of food other than the food or class of food that is specified in the licence;”.

(10) Section 31(3) is amended by adding –

“(d) in the case of a composite food shop licence, a condition prohibiting or restricting the preparation for sale at the food premises to which the licence relates of any food or class of food other than the food or class of food that is specified in the licence.”.

(11) Section 31(3) is amended, in the Chinese text, by repealing “各項或任何一項” and substituting “任何或所有”.

4. Application for licence

(1) Section 32(1) is amended by adding –

“(da) if the application relates to a composite food shop, the space, and equipment and furniture of a substantial and permanent nature, allocated for use in the sale, or the preparation for sale, of the food or class of food to which the licence will relate, and the siting of the space, equipment and furniture;”.

(2) Section 32 is amended by adding –

“(2A) Every plan submitted for approval under subsection (1) in an application for a composite food shop licence must be –

- (a) accompanied by a statement in writing declaring the food or class of food intended to be covered by the licence; and
- (b) certified by an authorized person or a registered structural engineer to be in conformity with the layout of the food premises to which the application relates.”.

(3) Section 32 is amended by adding –

“(4) Every application for a composite food shop licence must be accompanied by a certification made by an authorized person or a registered structural engineer that, in relation to the premises in respect of which the application is made, the authorized person or registered structural engineer is satisfied as to all matters specified in section 33(1)(b), (c), (d), (e), (f), (fa), (g), (h), (i), (l) and (m).”.

5. Conditions for issue of licence

(1) Section 33(1)(f) is repealed and the following substituted –

“(f) the floors of every food room are surfaced with smooth, light coloured and non-absorbent material;”.

(2) Section 33(1) is amended by adding –

“(fa) the internal surfaces of the walls of every food room are surfaced with smooth and non-absorbent material up to a height of not less than 2 m and the junctions between the walls and floors of every food room are coved;”.

(3) Section 33(1)(*h*) is amended by repealing “in the opinion of the Director,”.

(4) Section 33(1)(*j*), (*ja*), (*k*), (*ka*) and (*kb*) is repealed.

(5) Section 33(1)(*l*) is amended by repealing “and” at the end.

(6) Section 33(1)(*m*) is amended by repealing the full stop and substituting a semicolon.

(7) Section 33(1) is amended by adding –

“(n) if the application relates to a general restaurant –

(i) at least one kitchen is provided; and

(ii) the area of the food room, or if there is more than one food room, the aggregate area of the food rooms, is not less, or less in proportion to the gross floor area, than that prescribed in Part 1 of Schedule 5A;

(o) if the application relates to a light refreshment restaurant, the area of the food room, or if there is more than one food room, the aggregate area of the food rooms, is not less, or less in proportion to the gross floor area, than that prescribed in Part 2 of Schedule 5A; and

(p) if the application relates to a factory canteen, the area of the food room, or if there is more than one food room, the aggregate area of the food rooms, is not less, or less in proportion to the gross floor area, than that prescribed in Part 3 of Schedule 5A.”.

(8) Section 33(1) is amended, in the Chinese text, by repealing everything from “署長除非” to “批出正式牌照” and substituting “凡有正式牌照申請就某處所而提出，署長除非就該處所信納以下事宜，否則不得根據第31條批出該牌照”.

6. Additional requirement for issue of licence for siu mei and lo mei shops

Section 33A is amended by repealing “mei or lo” and substituting “mei and lo”.

7. Compliance with fire safety requirements

Section 33B is amended, in the Chinese text, by repealing “申請牌照” and substituting “申請”.

8. Provisional licence

Section 33C(1)(a) is amended by repealing “to (i), (ja), (ka), (kb) and (m)” and substituting “, (c), (d), (e), (f), (fa), (g), (h), (i), (m), (n), (o) and (p)”.

9. Alteration or addition to the matters specified in section 32(1)

Section 34D(2)(a) is amended by repealing “paragraph (a), (b), (c), (d) or (k) of section 32(1)” and substituting “section 32(1)(a), (b), (c), (d), (da) or (k)”.

10. Sections 34E and 34F added

The following are added in Part IV –

“34E. False certification

Without prejudice to section 125(1)(b) of the Ordinance, if a composite food shop licence is granted on an application under section 32, and the plan or certification referred to in section 32(2A), or the certification referred to in section 32(4), that is submitted in connection with the application is found to be false or misleading in a material particular, the Director may cancel the licence.

34F. Partial suspension or cancellation of licence

Without prejudice to section 125(1)(b) of the Ordinance, a composite food shop licence or a provisional licence granted in respect of a composite food shop may be suspended or cancelled to the extent that it is

related to any particular food or particular class of food covered by the licence.”.

11. Offences and penalties

(1) Section 35(3)(a) is amended by repealing everything before “section 29” and substituting –

“(a) for an offence under subsection (1) for contravening”.

(2) Section 35(3)(aaa) is amended by repealing everything before “section 30AA(1)” and substituting –

“(aaa) for an offence under subsection (1) for contravening”.

(3) Section 35(3)(aa) is amended by repealing everything before “section 30(1A)” and substituting –

“(aa) for an offence under subsection (1) for contravening”.

(4) Section 35(3)(b) is amended by repealing everything before “(2)” and substituting –

“(b) for an offence under subsection (1) for a contravention other than those referred to in paragraphs (a), (aaa) and (aa), an offence under subsection”.

12. Section 38 added

The following is added –

“38. Transitional requirements for restaurants and factory canteens

(1) In relation to a restaurant or factory canteen in respect of which a licence was granted under section 31 before 1 August 2010 (“relevant date”), section 33(1)(j), (ja), (k), (ka) and (kb) (“repealed provisions”) as in force immediately before the relevant date continues to apply as if it had not been repealed, and section 34(b) and Schedules 4 and 5 are to have effect accordingly.

(2) In relation to a restaurant or factory canteen in respect of which a licence was granted under section 31 before the relevant date, if

any alteration is made on or after the relevant date in respect of any matter specified in the repealed provisions applicable to it under subsection (1), and the written permission of the Director referred to in section 34 is given in respect of the alteration –

- (a) subsection (1) ceases to apply on the date of the written permission; and
 - (b) section 33(1)(n), (o) or (p) applies to the restaurant or factory canteen as if a licence were granted in respect of it under section 31 on or after the relevant date.
- (3) The repealed provisions are set out in Schedule 7.”.

13. Restricted foods

Schedule 2 is amended by repealing item 9 and substituting –

- “9. Milk or any milk beverage within the meaning of the Milk Regulation (Cap. 132 sub. leg. AQ) other than milk or milk beverage approved by the Director under section 5(2) of that Regulation”.

14. Schedule 2A added

The following is added –

“SCHEDULE 2A [s. 31]

FOOD AT COMPOSITE FOOD SHOP

PART 1

FOODS OR CLASSES OF FOOD THAT MAY BE PREPARED FOR SALE AND SOLD AT COMPOSITE FOOD SHOP

1. Coffee
2. Tea

3. Salad
4. Sandwich
5. Waffle
6. Sashimi
7. Sushi
8. Oyster to be eaten in raw state
9. Soft ice cream
10. Frozen carbonated beverage

PART 2

FOODS OR CLASSES OF FOOD THAT MAY BE SOLD AT COMPOSITE FOOD SHOP

1. Siu Mei or Lo Mei
2. Cut fruit
3. Leung Fan
4. Non-bottled drinks
5. Frozen confections
6. Chinese herb tea
7. Milk or any milk beverage within the meaning of the Milk Regulation (Cap. 132 sub. leg. AQ) other than milk or milk beverage approved by the Director under section 5(2) of that Regulation

8. Sashimi
9. Sushi
10. Oyster to be eaten in raw state”.

15. Apportionment of space in restaurants

Schedule 4 is amended by repealing “[s. 33(1)(j) & (k)]” and substituting “[s. 38 and Sch. 7]”.

16. Apportionment of space in restaurants and factory canteens

Schedule 5 is amended by repealing “[s. 33(1)(ja), (ka) & (kb)]” and substituting “[s. 38 and Sch. 7]”.

17. Schedule 5A added

The following is added –

“SCHEDULE 5A [s. 33]

FOOD ROOM REQUIREMENT FOR RESTAURANTS
AND FACTORY CANTEENS

PART 1

GENERAL RESTAURANTS

Gross floor area	Minimum area of food room
100 m ² or less	25% of gross floor area, but not less than 8 m ²
exceeding 100 m ² but not exceeding 150 m ²	22% of gross floor area, but not less than 25 m ²
exceeding 150 m ² but not	19% of gross floor area,

exceeding 250 m ²	but not less than 33 m ²
exceeding 250 m ² but not exceeding 500 m ²	16% of gross floor area, but not less than 48 m ²
exceeding 500 m ² but not exceeding 1 000 m ²	13% of gross floor area, but not less than 80 m ²
exceeding 1 000 m ²	10% of gross floor area, but not less than 130 m ²

PART 2

LIGHT REFRESHMENT RESTAURANTS

Gross floor area	Minimum area of food room
23 m ² or less	Not less than 4.5 m ²
exceeding 23 m ² but not exceeding 35 m ²	20% of gross floor area or 6 m ² whichever is less
exceeding 35 m ² but not exceeding 55 m ²	18% of gross floor area or 7.5 m ² whichever is less
exceeding 55 m ² but not exceeding 95 m ²	14% of gross floor area or 12 m ² whichever is less
exceeding 95 m ² but not exceeding 185 m ²	13% of gross floor area or 17 m ² whichever is less
exceeding 185 m ²	9% of gross floor area or 18 m ² whichever is more

PART 3

FACTORY CANTEENS

Gross floor area	Minimum area of food room
250 m ² or less	14% of gross floor area, but not less than 5 m ²
exceeding 250 m ² but not exceeding 1 000 m ²	12% of gross floor area, but not less than 35 m ²
exceeding 1 000 m ²	10% of gross floor area, but not less than 120 m ²

Note: In this Schedule, “gross floor area” (總樓面面積), in relation to a restaurant or factory canteen, means the roofed-over area used exclusively for the business of the restaurant or factory canteen. It includes any area used for a store-room, cold storage chamber, staff changing room, office, air-conditioning engine room, lavatory, lift lobby or stair hall.”.

18. Schedule 7 added

The following is added –

“SCHEDULE 7 [s. 38]

SECTION 33(1)(j), (ja), (k), (ka) AND (kb) IN FORCE
IMMEDIATELY BEFORE 1 AUGUST 2010

- (j) in the case of any restaurant (other than a restaurant selling only light refreshments) in respect of which –
- (i) a licence was granted before 1 February 1974; and

- (ii) since that date, no alteration has been made to the space allocated to the kitchen, the preparation of food or the seating accommodation,
the space allocated to the kitchen and the preparation of food and cleansing of utensils is not less in proportion to the space allocated to the seating accommodation than that prescribed in Schedule 4;
- (ja) in the case of any restaurant (other than a restaurant selling only light refreshments) in respect of which a licence was not granted before 1 February 1974, the space allocated to the kitchen and the preparation of food and cleansing of utensils is not less in area, or in proportion to the gross floor area, than that prescribed in Part I of Schedule 5;
- (k) in the case of any light refreshment restaurant, in respect of which –
 - (i) a licence was granted before 1 February 1974; and
 - (ii) since that date, no alteration has been made to the space allocated to the kitchen, the preparation of food or the usable floor space,
the total space allocated to the kitchen and the preparation of food and cleansing of utensils is not less in proportion to the usable floor space than that prescribed in Schedule 4;
- (ka) in the case of any light refreshment restaurant in respect of which a licence was not granted before 1 February 1974, the total space allocated to the kitchen and the preparation of food and cleansing of utensils is not less in area, or in proportion to the gross floor area, than that prescribed in Part II of Schedule 5;
- (kb) in the case of any factory canteen, the total space allocated to the kitchen and the preparation of food and cleansing of utensils is not less in area, or in proportion to the gross floor area, than that prescribed in Part III of Schedule 5;”.

Director of Food and Environmental
Hygiene

2010

Explanatory Note

The main object of this Regulation is to provide for a new class of licence under the Food Business Regulation (Cap. 132 sub. leg. X) (“the Regulation”) and to relax certain licensing requirements for food businesses.

2. Section 2 amends section 30 of the Regulation so that the requirement that a permission from the Director of Food and Environmental Hygiene (“the Director”) is required for the sale of certain food (“restricted food”) does not apply in respect of a food business selling certain simple or ready-to-eat food, or preparing certain simple or ready-to-eat food for sale, for human consumption off the premises (“composite food shop”), if the licence granted under section 31 of the Regulation for the composite food shop (“composite food shop licence”) covers the restricted food.

3. Section 3 amends section 31 of the Regulation to add a new requirement that a licence is required to carry on the business of a composite food shop. However, if the business of a composite food shop is covered by one or more permissions granted under section 30 of the Regulation, the new requirement does not apply to that composite food shop.

4. Section 4 amends section 32 of the Regulation to provide for specific requirements concerning an application for a composite food shop licence.

5. Section 5 amends section 33 of the Regulation –

- (a) to dispense with the requirement that the internal surfaces of the walls of any food room of a food business must be in a light colour; and
- (b) to provide for relaxed food room requirements for restaurants and factory canteens.

6. Section 10 adds 2 sections relating to composite food shop licences. The new section 34E enables the Director to cancel a composite food shop licence if a false plan or certification has been submitted to the Director to support the application for the licence. The new section 34F provides that a composite food shop licence or a provisional licence granted in respect of a composite food shop may be suspended or cancelled to the extent that it is related to any particular food or particular class of food covered by the licence.

7. Section 12 adds provisions to provide for transitional requirements as regards the food rooms of restaurants and factory canteens.

**FROZEN CONFECTIONS (AMENDMENT)
REGULATION 2010**

(Made by the Director of Food and Environmental Hygiene under section 56 of the Public Health and Municipal Services Ordinance (Cap. 132))

1. Commencement

This Regulation comes into operation on 1 August 2010.

2. Section 5 substituted

Section 5 of the Frozen Confections Regulation (Cap. 132 sub. leg. AC) is repealed and the following substituted –

“5. Permits or licences to sell frozen confections

A person must not sell, or offer or expose for sale, for human consumption, or possess for sale for human consumption, any frozen confection except under and in accordance with –

- (a) the permission in writing of the Director granted under section 30 of the Food Business Regulation (Cap. 132 sub. leg. X); or
- (b) a composite food shop licence within the meaning of that Regulation.”.

3. Frozen confections not to be sold except in the manufacturer’s containers

(1) Section 15(1) is amended, in the English text, by repealing “No person shall” and substituting “A person must not”.

(2) Section 15(2) is repealed and the following substituted –

“(2) Subsection (1) does not apply in respect of –

- (a) any frozen confection which is sold on any premises for human consumption on

those premises in respect of which a licence has been granted under section 31 of the Food Business Regulation (Cap. 132 sub. leg. X); or

- (b) any frozen confection the sale of which is carried on under and in accordance with a composite food shop licence within the meaning of that Regulation.”.

4. Section 17 substituted

Section 17 is repealed and the following substituted –

“17. Frozen confections not to be manufactured except under licence

(1) Except under and in accordance with a licence granted by the Director and in the premises that are specified in the licence, a person must not manufacture any frozen confection or cause any frozen confection to be manufactured.

(2) Subsection (1) does not apply in respect of –

- (a) any frozen confection which is manufactured on any premises for human consumption on those premises in respect of which a licence has been granted under section 31 of the Food Business Regulation (Cap. 132 sub. leg. X); or
- (b) any frozen confection the manufacture of which is carried on under and in accordance with a composite food shop licence within the meaning of that Regulation.”.

5. Full licence

Section 19(1)(e) is amended by repealing everything after “manufactured” and substituting –

“_

- (i) the floors are surfaced with smooth, light coloured and non-absorbent material;
- (ii) the internal surfaces of the walls are surfaced with smooth and non-absorbent material up to a height of not less than 2 m and the junctions between the walls and floors are coved; and
- (iii) the ceilings are impervious to dust;”.

6. Offences and penalties

- (1) Section 41(1)(a) is amended by adding “(1)” after “17”.
- (2) Section 41(2)(a) is amended by adding “(1)” after “17”.

Director of Food and Environmental
Hygiene

2010

Explanatory Note

The object of this Regulation is to amend the Frozen Confections Regulation (Cap. 132 sub. leg. AC) (“the principal Regulation”) in connection with the introduction of a new class of licence under the Food Business Regulation (Cap. 132 sub. leg. X) (“the Food Business Regulation”). The new class of licence is introduced for a food business selling certain simple or ready-to-eat food or preparing certain simple or ready-to-eat food for sale for human consumption off the premises on or from which the business is carried on (“composite food shop”). This Regulation also relaxes certain licensing requirement for a full licence granted under the principal Regulation permitting the manufacture of frozen confections.

2. Section 2 replaces section 5 of the principal Regulation by new provisions which provide that the prohibition under the principal Regulation against selling frozen confections does not apply to the sale of frozen confections under a licence granted under section 31 of the Food Business Regulation in respect of a composite food shop (“composite food shop licence”).

3. Section 3 amends section 15 of the principal Regulation to provide that the requirement that only frozen confections contained in manufacturer’s containers may be sold does not apply to the sale of frozen confections under and in accordance with a composite food shop licence.

4. Section 4 replaces section 17 of the principal Regulation by new provisions which provide that the requirement that a licence must be obtained from the Director of Food and Environmental Hygiene for the manufacture of frozen confections does not apply to the manufacture of frozen confections under and in accordance with a composite food shop licence.

5. Section 5 amends section 19 of the principal Regulation to dispense with the requirement that the internal surfaces of the walls and ceilings of any premises where frozen confections are manufactured must be in a light colour.

MILK (AMENDMENT) REGULATION 2010

(Made by the Director of Food and Environmental Hygiene under section 56 of the Public Health and Municipal Services Ordinance (Cap. 132))

1. Commencement

This Regulation comes into operation on 1 August 2010.

2. Interpretation

Section 3 of the Milk Regulation (Cap. 132 sub. leg. AQ) is amended, in the English text, in the definition of “milk beverage”, by repealing “the combining with a liquid of milk fat and” and substituting “combining liquid milk fat with”.

3. Section 5 substituted

Section 5 is repealed and the following substituted –

“5. Permits or licences to sell milk or milk beverage

(1) A person must not sell any milk or milk beverage for human consumption except under and in accordance with –

(a) the permission in writing of the Director granted under section 30 of the Food Business Regulation (Cap. 132 sub. leg. X); or

(b) a composite food shop licence within the meaning of that Regulation.

(2) Despite subsection (1), no permit or licence is required for the sale in sealed containers of those brands of sterilized milk or sterilized milk beverage that are approved by the Director, if the Director is satisfied that there is no danger to public health.”

4. Full licence

Section 16(1)(e) is amended by repealing everything after “reconstituted” and substituting –

“–

- (i) the floors are surfaced with smooth, light coloured and non-absorbent material;
- (ii) the internal surfaces of the walls are surfaced with smooth and non-absorbent material up to a height of not less than 2 m and the junctions between the walls and floors are coved; and
- (iii) the ceilings are impervious to dust;”.

Director of Food and Environmental
Hygiene

2010

Explanatory Note

The object of this Regulation is to amend the Milk Regulation (Cap. 132 sub. leg. AQ) (“the principal Regulation”) in connection with the introduction of a new class of licence under the Food Business Regulation (Cap. 132 sub. leg. X) (“the Food Business Regulation”). The new class of licence is introduced for a food business selling certain simple or ready-to-eat food or preparing certain simple or ready-to-eat food for sale for human consumption off the premises on or from which the business is carried on (“composite food shop”). This Regulation also relaxes certain licensing requirement for a full licence granted under the principal Regulation permitting the carrying on of a milk factory.

2. Section 3 replaces section 5 of the principal Regulation by new provisions which provide that the prohibition under the principal Regulation against selling milk or milk beverage does not apply to the sale of any milk or milk beverage under a licence granted under section 31 of the Food Business Regulation in respect of a composite food shop.

3. Section 4 amends section 16 of the principal Regulation to dispense with the requirement that the internal surfaces of the walls and ceilings of any premises where milk or milk beverage is processed or reconstituted must be in a light colour.

**PUBLIC HEALTH AND MUNICIPAL SERVICES
(FEES) (AMENDMENT) REGULATION 2010**

(Made by the Secretary for Food and Health under section 124I of the Public Health and Municipal Services Ordinance (Cap. 132))

1. Commencement

This Regulation comes into operation on 1 August 2010.

2. Fees

(1) Section 3 of the Public Health and Municipal Services (Fees) Regulation (Cap. 132 sub. leg. CJ) is amended, in the heading, by adding “payable in respect of hawker licences etc.” after “Fees”.

(2) Section 3 is amended by repealing “the Schedule are” and substituting “Schedule 1 are”.

(3) Section 3 is amended by repealing “the Schedule in” and substituting “that Schedule in”.

3. Section 4 added

The following is added –

“4. Fees relating to composite food shop licences

(1) The fee payable in respect of the grant or renewal of a full licence for a composite food shop under section 31 of the Food Business Regulation (Cap. 132 sub. leg. X) (“the Regulation”) is the appropriate fee specified in Schedule 2.

(2) The fee payable in respect of the issue of a duplicate of a full licence or provisional licence granted in respect of a composite food shop under section 31 or 33C of the Regulation is \$225.

(3) The fee payable in respect of an amendment to a full licence or provisional licence granted in respect of a composite food shop under section 31 or 33C of the Regulation is \$140.”.

4. Fees payable for issue or renewal of hawker licences or for allocation and use of hawker pitches or stalls

The Schedule is amended by repealing “SCHEDULE” and substituting “SCHEDULE 1”.

5. Schedule 2 added

The following is added –

“SCHEDULE 2 [s. 4]

**FEES PAYABLE FOR GRANT OR RENEWAL OF FULL
LICENCES FOR COMPOSITE FOOD SHOPS**

Size of composite food shop by reference to floor area	Fee \$
Not exceeding 100 m ²	4,460
Exceeding 100 m ² but not exceeding 150 m ²	5,570
Exceeding 150 m ² but not exceeding 200 m ²	7,820
Exceeding 200 m ² but not exceeding 250 m ²	10,050
Exceeding 250 m ² but not exceeding 300 m ²	12,250
Exceeding 300 m ² but not exceeding 350 m ²	14,500
Exceeding 350 m ² but not exceeding 400 m ²	16,750
Exceeding 400 m ² but not exceeding 450 m ²	18,950
Exceeding 450 m ² but not exceeding 500 m ²	21,200
Exceeding 500 m ² but not exceeding 600 m ²	24,550

Exceeding 600 m ² but not exceeding 700 m ²	29,000
Exceeding 700 m ² but not exceeding 800 m ²	33,450
Exceeding 800 m ² but not exceeding 900 m ²	37,950
Exceeding 900 m ² but not exceeding 1 000 m ²	42,400
Exceeding 1 000 m ² but not exceeding 2 000 m ²	67,000
Exceeding 2 000 m ² but not exceeding 3 000 m ²	111,600
Exceeding 3 000 m ² but not exceeding 4 000 m ²	156,300
Exceeding 4 000 m ² but not exceeding 5 000 m ²	200,800
Exceeding 5 000 m ²	223,300”.

Secretary for Food and Health

2010

Explanatory Note

The object of this Regulation is to amend the Public Health and Municipal Services (Fees) Regulation (Cap. 132 sub. leg. CJ) to provide for the fee payable for the grant, renewal or amendment of a licence granted under the Food Business Regulation (Cap. 132 sub. leg. X) in respect of a composite food shop and the fee payable for the issue of a duplicate of such a licence.

Annex E

Fee proposal for the grant, renewal, duplicate and amendment of a composite food shop licence

- (1) The fee payable in respect of the grant or renewal of a full licence for a composite food shop under section 31 of the Food Business Regulation (Cap. 132 sub. leg. X) (“the Regulation”) is the appropriate fee specified in the chart below.

Size of composite food shop by reference to floor area	Fee \$
Not exceeding 100 m ²	4,460
Exceeding 100 m ² but not exceeding 150 m ²	5,570
Exceeding 150 m ² but not exceeding 200 m ²	7,820
Exceeding 200 m ² but not exceeding 250 m ²	10,050
Exceeding 250 m ² but not exceeding 300 m ²	12,250
Exceeding 300 m ² but not exceeding 350 m ²	14,500
Exceeding 350 m ² but not exceeding 400 m ²	16,750
Exceeding 400 m ² but not exceeding 450 m ²	18,950
Exceeding 450 m ² but not exceeding 500 m ²	21,200
Exceeding 500 m ² but not exceeding 600 m ²	24,550
Exceeding 600 m ² but not exceeding 700 m ²	29,000

Exceeding 700 m ² but not exceeding 800 m ²	33,450
Exceeding 800 m ² but not exceeding 900 m ²	37,950
Exceeding 900 m ² but not exceeding 1 000 m ²	42,400
Exceeding 1 000 m ² but not exceeding 2 000 m ²	67,000
Exceeding 2 000 m ² but not exceeding 3 000 m ²	111,600
Exceeding 3 000 m ² but not exceeding 4 000 m ²	156,300
Exceeding 4 000 m ² but not exceeding 5 000 m ²	200,800
Exceeding 5 000 m ²	223,300

- (2) The fee payable in respect of the issue of a duplicate of a full licence or provisional licence granted in respect of a composite food shop under section 31 or 33C of the Regulation is \$225.
- (3) The fee payable in respect of an amendment to a full licence or provisional licence granted in respect of a composite food shop under section 31 or 33C of the Regulation is \$140.