

# 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 during the 2010-2011 Legislative Council ("LegCo") session. It will be tabled at the Council meeting of 6 July 2011 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. The terms of reference of the Panel are in **Appendix I**.

3. The Panel comprises 13 members in the 2010-2011 session. Hon Tommy CHEUNG Yu-yun and Hon WONG Yung-kan were elected as Chairman and Deputy Chairman respectively. The membership list of the Panel is in **Appendix II**.

#### **Major Work**

##### Voluntary surrender scheme for itinerant hawker licences

4. In 2002, the Administration announced the introduction of the voluntary surrender scheme ("scheme") for itinerant hawker licences ("IHL"). The scheme took effect on 1 January 2003 and lasted until 31 December 2007.

The validity period of the scheme had been extended thrice to 31 December 2010. In November 2010, the Panel was briefed on the expiry of the scheme on 31 December 2010 as scheduled.

5. Members noted that under the scheme, an IHL holder who voluntarily surrendered his licence might choose any one of the following options -

- (a) to select a vacant fixed pitch and become a licensed fixed-pitch hawker;
- (b) to select a vacant public market stall and enjoy certain concessionary rental arrangements; or
- (c) to receive an ex-gratia payment ("EGP") of \$30,000.

As at 30 September 2010, 466 IHL holders still had not surrendered their licences under the scheme and the majority of them were elderly people. Members pointed out the request of the elderly IHL holders for an extension of the validity of the scheme to enable them to continue to work until they chose to retire in due course. Some members opined that when considering the scheme, the Administration should approach it with compassion for this group of elderly hawkers and no time limit should be set. There was a view that the continuation of the scheme would provide an incentive for the IHL holders to surrender their licences. Since the Government was promoting caring for the people in need and had set up a Community Care Fund, the Administration could meet the additional funding required for EGP from the Fund, if necessary. Members urged the Administration to consider the request of the elderly IHL holders.

6. According to the Administration, the purpose of the scheme was to address the environmental hygiene problems posed by street hawking. The approval by the Finance Committee of LegCo of the funding proposal for the scheme was based on the same objective, and making special arrangements for the elderly would depart from the policy intent of the scheme as well as the purpose of the funding approval. The validity of the scheme had already been extended thrice. In the Administration's view, the scheme should not be a permanent arrangement and a reasonable time limit should be set.

7. At its meeting on 9 November 2010, the Panel passed a motion urging the Government to retain the scheme for IHLs. Subsequent to the meeting, the Panel was informed of the Administration's decision to extend the options of an EGP of \$30,000 and priority selection of a vacant fixed pitch under the scheme for IHLs by two years until 31 December 2012, while the option of selecting a

vacant public market stall would expire on 31 December 2010 as scheduled.

### Public market rentals and air-conditioning charges

8. The Panel closely followed up on the adjustment mechanism for public market rentals and air-conditioning charges therein. The Panel was briefed in December 2010 the new proposals put forward by the Administration for the rental adjustment mechanism and arrangement to recover air-conditioning charges.

#### *Proposed rental adjustment mechanism*

9. Members noted that under the proposed rental adjustment mechanism, for stalls paying a rental lower than the actual average rental, their rentals would be increased to the actual average rental level by equal annual increments during a three-year tenancy period. If the open market rental of a stall was lower than the actual average rental, the rental payable by the stall tenant should be set at the open market rental only.

10. Some members considered that the proposed rental adjustment mechanism failed to take into account different historical reasons for the operators to move into public markets. Notably, some operators were re-sited to public markets by the Administration in order to regulate street hawking activities while others might be attracted by the concessionary rental arrangements introduced by the Administration in the light of high vacancy rate in public markets. It was unfair to these stall operators if the public market rentals were adjusted across the board. Some members were of the view that using the median rental as the basis of rental adjustment mechanism would be more desirable to minimize rental disparity than the actual average rental approach if the highest and the lowest rentals varied greatly.

11. Some members pointed out that the lacklustre operating environment of public markets was unattractive to potential operators and customers. In their view, the Administration should improve the business environment of public markets so as to attract more potential operators and customers and induce the operators to continue their business in public markets. When the operators could make a profit, they would be willing to pay a higher rent.

12. Members noted from the Administration that the objective of the rental adjustment mechanism was neither to achieve the principle of full cost recovery nor to bring the rental of public market stalls on par with the commercial market, but to rectify the long standing problems of having different versions of rental

adjustment mechanisms in the territory applicable in the Urban Council and Regional Council eras. Given that rentals in public markets had been frozen since 1998, some market stalls had been paying concessionary rentals which were far below the open market rentals. As there was a host of historical factors that had led to the problem of disparity, a rental adjustment mechanism based on the actual average rental would help minimize rental disparity among stalls of the same category in the same market on the one hand and take into account the historical problems on the other. The Administration was open-minded on the level of rental adjustment and the timetable to implement the mechanism.

*Proposed mechanism for recovery of air-conditioning charges*

13. According to the Administration, the proposed mechanism for recovery of air-conditioning charges would rectify the existing unfair situation where some air-conditioned market tenants were not required to pay air-conditioning charges.

14. Concern was raised over whether it was reasonable to charge stall operators with air-conditioning charges for common areas in public markets as this deviated from the arrangements in commercial premises. Members were advised that the proposed arrangement was the same as that for other government premises. Moreover, the design of commercial premises was different from public markets in that customers would usually conduct their shopping in markets' common area. The Administration considered it not appropriate to compare the arrangements to recover air-conditioning charges for commercial premises with those for the public markets.

*The Panel's motions*

15. At its special meeting in February 2011 to receive views from stall operators and trader organizations, the Panel passed a motion urging the Government to continue to freeze public market rental and hawker licence fee given its huge fiscal surplus; opposing the Government's adoption of a new rental adjustment mechanism based on the actual average rental or market rental; requesting the Government to calculate the air-conditioning charges of stalls according to the actual rental area; and requesting the Government to allocate additional resources to improve the business environment of public markets. The Panel also passed another motion requesting the Government to withdraw its proposals, and to solicit afresh views of LegCo and market traders.

16. In April 2011, the Panel was informed of the Administration's decision to further extend the rental freeze of public market stalls for 18 months until 31

December 2012. The Administration would study the views of the Panel and traders on the proposed rental adjustment mechanism and further discuss the matter with the Panel.

### Review of liquor licensing

17. The Panel was briefed on the Administration's latest thinking on the various proposed trade facilitation measures in respect of liquor licensing and the problems besetting upstairs bars in Hong Kong. The Panel also met with representatives from the Liquor Licensing Board ("LLB") and 10 other organizations/individuals.

#### *Public nuisance and crime caused by bars*

18. Some members enquired about the enforcement of the licensing conditions to tackle public nuisance caused by upstairs bars, and pointed out that the enforcement of the smoking ban was made difficult by the physical locations of upstairs bars, which were tucked inside high-rise buildings. Members expressed worry that the Police had attached more importance to combating crimes associated with upstairs bars than dealing with their nuisance problems, which were the major areas of public complaints.

19. The Administration explained that the enforcement actions taken by the Police were based on a whole spectrum which included enforcing liquor licensing conditions and tackling crimes. The Police took specific actions and attempted to control the problems such as illegal parking and noise nuisance through the licensing regime, including restriction on the liquor selling hours, capacity limit, the requirements on closing of doors and windows of the premises, etc. If the smoking problem in bars was aggravated, the Administration would consider the need for amendments to the relevant legislation.

20. Noting the higher number of crimes related to upstairs bars than other liquor licensed premises, members sought information on the established procedures for the inspection of upstairs bars. Members also enquired whether LLB could provide a list comprising the buildings which were regarded as high risk targeted buildings as well as those suitable for bar business for applicants' reference.

21. According to the Administration, the number of upstairs bars had increased from 123 in 2005 to 430 in February 2011. Upstairs bars represented 7.4% of all the liquor licensed premises and accounted for 11% of all crimes at

liquor licensed premises in 2010. For the inspection of upstairs bars, the Police would focus on the business model of those bars which encouraged underage drinking or binge drinking, attracted crimes or caused nuisance, and would seek additional control of bars which caused public nuisances and crimes. Although the number of commercial establishments in a district was determined by the relevant land and planning policies, and the usage of private premises were governed by the relevant Government lease and Deeds of Mutual Covenant, it would be difficult for the Administration to obtain all relevant information for the purpose of compiling a list of the buildings suitable for bar business. Since the scale and mode of operation of a bar would be made available only when an application for liquor licence was filed, LLB was unable to advise whether a premise was suitable for bar business in the absence of relevant information before receiving an application.

#### *Trade facilitation measures*

22. Members pointed out that as shown from overseas experience, classification of licences in accordance with the mode of operation of the business concerned was proven feasible. Members requested the Administration to consider introducing different categories of liquor licences according to the mode of operation of the business concerned.

23. On the review of the appropriate party for holding a liquor licence as recommended by the Efficiency Unit ("EU") in its review of liquor licensing in 2006, members were advised that the Administration would make reference to the Karaoke Establishment Ordinance (Cap. 573) in exploring modifications to the Dutiable Commodities (Liquor) Regulations (Cap. 109B) so that a person authorized by a company which wished to obtain a liquor licence could apply as the representative on its behalf. There was a view that the Administration should consider the trade's request and EU's recommendation to allow a body corporate to hold a liquor licence. Concern was raised over the current practice of requiring a natural person to be the licensee which would hinder the development of business as an operator might plan to operate more than one licensed premises. Members also called on the Administration to address various issues of the trade, such as the takeover of liquor licence by "reserve licensee" upon the departure of the current licensee from the business and hindrance to overseas investment in the trade caused by the existing requirement of a liquor licence holder to be a local person.

24. Concurring with LLB's views, the Administration considered it justifiable to retain the "natural person" requirement of a liquor licensee as this provided a clear liability and legal responsibility of the licensee to supervise

and manage the licensed premises personally. To address the trade's concern about the disruption to business when the licensee left the business without transferring his licence, the feasibility of an optional system of reserve licensee was being explored. If the reserve licensee had already been nominated at the time of the application or during the licence period by the licensee and was endorsed by LLB, the reserve licensee could take over the liquor licence upon the departure of the original licensee within a very short period of time.

25. Members noted that some members of LLB had suggested the introduction of a demerit points system ("DPS") (similar to the one applicable to food business licences) to provide a more objective basis for LLB in assessing renewal applications. There was a call for the Administration to provide clear guidelines on the operation of DPS. According to the Administration, the details, particularly on the provision of operational guidelines, could be further explored to ensure that DPS, if implemented, could provide quantitative indices for LLB's reference and allow flexibility for LLB in its overall consideration. The Administration would further invite views, especially those of licensed premises operating in the Central and Western, Wanchai and Yau Tsim Mong districts, and would make practical suggestions in the consultation documents.

#### *Consultation regarding applications for liquor licences*

26. On the consultation regarding applications for liquor licences, members were advised that the Food and Environmental Hygiene Department would refer the liquor licence applications to the relevant departments including the Police and the Home Affairs Department for advice. The relevant District Offices would help consult the local stakeholders including District Council members, area committees, owners' corporations, property management companies, and/or other residents' organizations. LLB would take into account the views collected and impose additional licensing conditions (such as restriction on liquor selling hours and a ban on playing of music after certain hours, and the duty hours of the licensee) where appropriate on a case-by-case basis. LLB required all applicants for new liquor licences to advertise their applications on local newspapers. Notice in respect of the application for liquor licence would also be posted in conspicuous locations of the building in which the premises under application were situated. Members of the public could give their views to LLB on the applications. There was a view that LLB, being an independent statutory body to consider liquor licence applications, should advise the enforcement departments on the consultation process.

### *Legislative timetable*

27. Some members expressed concern over the Administration's timetable for drawing up the proposals to enhance regulation of upstairs bars and facilitate the trade business, and introducing the necessary legislative amendments. They urged the Administration to expedite the process.

28. Members were advised that the Administration would seek the views of LLB and conduct trade and public consultation after briefing the Panel on the preliminary proposals. As the Administration would have to discuss the proposals thoroughly with LLB, a consultation paper would be issued to the trade and public by the third or fourth quarter of 2011. Depending on the outcome of the consultation, the Administration would proceed with the legislative amendment exercise.

29. There was worry that Members would not have sufficient time to scrutinize the legislative amendments before the current term expired in July 2012 if public consultation was to commence in the third quarter of 2011. The Administration was urged to proceed with drafting the legislative amendments in respect of the non-controversial issues in parallel with the trade and public consultation, and to provide the timetable for the relevant legislative amendment exercise.

30. The Administration agreed to revert to the Panel after it had consulted the DCs concerned.

### Columbarium policy

31. One of the major concerns of the Panel is the provision of columbarium facilities and regulation of private columbaria. On 6 July 2010, the Food and Health Bureau published a consultation document on the review of columbarium policy for three-month public consultation. The Panel was briefed on the outcome of the public consultation, the updated measures taken by the Administration to increase the supply of columbarium facilities and some preliminary proposals for a licensing scheme to strengthen regulation of private columbaria.

### *Proposed licensing scheme*

32. Members noted that during public consultation, views had been expressed for pre-existing private columbaria with niches of a designated number or below or those which had existed for a long time to be exempted

from the licensing scheme. Members suggested that the Administration should specify the designated number and define the expression of "long time" for exemption to avoid possible disputes. Members were worried that if the time span of existence was not defined, operators of unauthorized columbaria might mislead consumers by claiming that they would be exempted from the scheme.

33. Members were advised that the designated number of niches and the time-span of their existence were two of the possible factors for the consideration of exemption from the licensing scheme. During the public consultation, there were suggestions for storage of cremains of family members at home and storage of cremains of monks or believers in the genuine religious institutions to be exempted from the scheme. Also, certain pre-existing private columbaria had been operating at their locations long before the development of residential estates nearby. Further discussions would be necessary for the public to reach a consensus on the standard of "limited number" and "time-span of existence". There were records documenting the existence of private columbaria, including records at the Planning Department and the Lands Department. The licensing authority could draw reference to these documents in identifying the starting date of a columbarium's business.

34. Concerns were raised over whether the columbaria to be exempted from the licensing scheme would need to comply with the requirements to be imposed by the licensing authority in order to protect the interests of consumers. According to the Administration, all those columbaria to be exempted from the scheme would still need to adhere to the requirements of other legislation such as those on lands, planning, fire safety and building structure. In order to continue their business, the unauthorized columbaria should regularize any breaches of planning and/or lease terms by applying for the relevant planning permission and/or modification. The Development Bureau had published information on private columbaria ("the Information") known to the Planning Department and the Lands Department. Those columbaria pending checking for compliance with the relevant requirements for inclusion in Part A of the Information, or had been confirmed not compliant with the user restrictions in the land lease and/or statutory town planning requirements and/or were illegally occupying Government land, would be included in Part B. Relevant departments would continue to take enforcement actions against relevant aspects of private columbaria in accordance with their respective mandate as empowered by the relevant legislation and/or land lease.

35. Regarding the concern over the enforcement of unauthorized columbaria, members were informed that the Planning Department had issued enforcement notice to three private columbaria for discontinuation of the

unauthorized development. The Planning Department would re-visit the concerned columbarium and assess whether the unauthorized development had discontinued. In case of non-compliance, the Planning Department would collect evidence and initiate prosecution action against the columbarium operator. If an operator did not agree to the Government's action and sought judicial review, such information would also be reflected in Part B of the Information where appropriate.

36. Members enquired whether the requirement of setting up maintenance fund would be adopted as a licensing condition. The Administration advised members that according to the views collected in the public consultation, there was concern about the operation of columbaria pertaining to the safety and long term maintenance of the physical structure, particularly those columbaria where most niches had been sold, as their long-term income source was limited and unstable. The Government, therefore, proposed that an applicant for a licence to operate a columbarium should set up a maintenance fund to be used for the repair and maintenance of the columbarium concerned. Detailed proposals of the fund, e.g., sources of the fund and monitoring measures, would be further discussed in the second public consultation exercise. The Administration would make reference to overseas practice in drawing up the proposals.

#### *Supply of columbarium facilities*

37. Members noted that to address the concern of insufficient provision of niches, the Government was building a new public columbarium within the Wo Hop Shek Cemetery providing about 41 000 niches by 2012. Apart from public columbaria, non-governmental organizations, such as the Board of Management of the Chinese Permanent Cemeteries, would also provide more niches in the coming years. In the long run, support from communities in all districts for district-based columbarium development scheme would be essential.

#### *Legislative timetable*

38. On the timetable for introducing legislation into LegCo, members were advised that the Administration hoped to proceed with legislation as early as practicable. However, as the issues involved were complicated and sensitive, the Government needed to gauge the mainstream public opinion on the detailed proposals, particularly the exemption criteria and the definition of columbarium. The Administration would develop more detailed proposals to further consult the public on the licensing scheme and would launch the second public consultation in the second half of 2011. It would hence be more practicable to submit the legislative proposals in the next term of the Government.

39. Members urged the Administration to expedite the introduction of legislation into LegCo.

#### Proposal to ban trawling activities

40. The Chief Executive announced in the 2010-2011 Policy Address on 13 October 2010 the Administration's plan to ban fish trawling in Hong Kong waters through introducing legislation into LegCo in the 2010-2011 session. To address the livelihood problems faced by the affected fishermen, the Administration would launch a voluntary trawler buyout scheme for eligible trawler fishermen ("the Scheme"). The Scheme included (a) payment of an ex-gratia allowance ("EGA") to owners of the affected trawlers; (b) introducing a voluntary buyout scheme to purchase the trawlers from the affected owners; and (c) payment of a one-off grant to help local deckhands employed by owners of trawlers joining the buyout scheme.

41. The Panel was consulted on the Administration's proposal to ban trawling activities in Hong Kong waters, and the funding requirement of about \$1,726.8 million for the whole exercise. The Panel also received views from 42 deputations and academics on the proposed trawl ban.

#### *Proposed ex-gratia allowance to affected trawler fishermen*

42. Members were generally concerned about the impact of the trawl ban on the livelihood of trawler fishermen and other related trades. Concerns were raised over the principles adopted for calculating the amount of EGA, the eligibility criteria for EGA and whether local trawler fishermen operating in Mainland waters would be eligible. Members also queried whether the Administration intended to make reference to the existing formula for calculating EGA payable to fishermen affected by marine works projects in determining the EGA payment. Members pointed out the views of the fisheries trade that the EGA payment should be raised to the notional value of 15 years' fish catch in the affected area. The related trades (e.g. fish collectors, ice supply and vessel repair) also requested the grant of EGA as they would also be affected by the trawl ban.

43. According to the Administration, the eligibility criteria for EGA would be determined by an inter-departmental working group ("the Working Group") established for the trawl ban exercise. Only applicants who could meet the criteria would be eligible for EGA. The criteria included, inter alia, that the applicant must be the owner of a trawler vessel which was used for fishing only

and not engaged in other commercial activities as at 13 October 2010, and at the time of application was still the owner of that trawler. There were about 1 130 trawler vessels of different types in Hong Kong (580 pair trawlers, 160 stern trawlers, 350 shrimp trawlers and 40 hang trawlers) and of which about 400 inshore trawlers operated wholly or partly in local waters. For these inshore trawlers, their owners were most affected as they would lose their fishing grounds in Hong Kong waters. During its consultation with the fisheries trade, the Administration had noted the view of owners of inshore trawlers that the amount of EGA derived from the existing formula for calculating EGA for fishermen affected by marine works projects was inadequate to address the plight of local fishermen affected by the trawl ban. Unlike past marine works projects which affected localized areas of Hong Kong waters only, the trawl ban would cover the entire Hong Kong waters. The affected fishermen would have to travel further afield, if they wished to continue fishing. The impact on fishermen arising from the trawl ban would be more significant than that of marine works projects.

44. Members welcomed that having considered the above factors and upon further discussions with the fisheries sector, the Administration proposed to raise the multiplier of the EGA formula from seven years to 11 years' notional fish catch value in calculating EGA for inshore trawler owners affected by the trawl ban. The EGA payable to individual trawler owners would depend on the number of successful applications as well as other apportionment criteria such as vessel type, vessel length, engine power, equipment on board, the percentage of time spent on trawling, and/or production in Hong Kong waters. The estimated ranges of EGA payable to different types of inshore trawlers might vary from about \$900,000 to about \$5.5 million per vessel.

45. Concern was raised over the great difference between the estimated EGA payable to owners of pair trawlers and to the owners of hang trawlers. The Administration advised members that the data collected in the past showed that fishing vessels of various types had different modes of operation and time spent in fishing in local waters. The amount of EGA payable to individual trawler owners was to reflect the aforementioned differences. To facilitate the Working Group's consideration of EGA applications, applicants should explain their own circumstances in detail with relevant evidence produced. If an applicant was aggrieved by the Working Group's decision relating to EGA, he could appeal to a Fishermen Claims Appeal Board, which comprised non-official members, to be set up where necessary for processing appeal cases.

46. For the about 700 larger trawlers which generally did not operate in Hong Kong waters, members noted the Administration's proposal to give a lump sum EGA of \$150,000 for each larger trawler if the relevant application was successful. The Administration's explanation was that as these larger trawlers would lose the opportunity to move back to Hong Kong for trawling in future, their demand for EGA as reflected during the consultation should also be addressed. However, as the impact of the trawl ban on them was far much less when compared with inshore trawlers, a lump sum EGA was considered to be appropriate.

47. Some members pointed out the dissatisfaction of owners of the larger trawlers about the amount of lump sum EGA to be payable to them. Request was made for the Administration to consider raising the amount of EGA. The Administration considered the proposed EGA fair and reasonable having regard to the fact that there was no immediate impact on these larger trawler owners.

48. As regards the call for EGA payable to the related trades, the Administration took the view that there were insufficient justifications in support of their requests, mainly because the remaining fishing vessels would continue to generate ancillary service requirements on these trades. As a result of the trawl ban, the Administration expected that there would be increased activities of fish collectors as some trawlers which at present operated mainly in Hong Kong waters might travel further afield to operate in the South China Sea and therefore would need the services of fish collectors and ice suppliers to transport the fish catches back to Hong Kong and keep them fresh. Vessels operating further afield might also require increased repair and maintenance service. Should the fish collectors require funding for equipping their vessels for change of mode of operations, they could apply to the Fisheries Development Loan Fund ("the Fund") for low-interest loans.

49. Some members did not accept the Administration's explanations. They were of the view that some form of compensation or EGA should be given to the related trades (e.g. fish collectors, ice supply) to help them modify their vessels or equipments to cater for the change of business model. They urged the Administration to reconsider the requests of the related trades. There was also a call for the Administration to use the contingency fund, which amounted to \$100 million, to assist the related trades.

#### *Voluntary buying out of trawlers*

50. Members noted the Administration's proposal to invite EGA claimants to indicate in their EGA applications whether they would surrender their trawler

vessels to the Government. The buyout scheme would be voluntary. Owners of trawlers could decide in the light of their own circumstances whether they would surrender their vessels to the Government or make their own arrangements to sell their vessels in the market. Members expressed concern about the buyout price of trawler vessels to be offered by the Government.

51. According to the Administration, the buyout price of an individual vessel to be offered by the Government would be the estimated current value to be determined by the Working Group and would vary according to the type, length, age and equipment/gear of the trawler vessels. The Working Group would also make reference to the valuation provided by an independent marine surveyor as necessary in determining the buyout price. The Administration estimated that the buyout prices would range from about \$130,000 for an old, small wooden-hull stern/shrimp trawler to about \$3.5 million for a newer, large hang trawler. About \$240 million would be required for the voluntary buying out of some 400 trawlers.

*One-off grants to local deckhands*

52. The eligibility criteria for and the amount of the one-off grants, and the provision of assistance to affected local deckhands to find employment were also of concern to members.

53. According to the Administration, the actual eligibility criteria were subject to the deliberations of the Working Group. The preliminary thinking was that the applicant must be a local deckhand and must, at the time of application, provided evidence proving that he had already been employed to work as at 13 October 2010 on the trawler vessel successfully joining the buyout scheme, and had remained working on the trawler vessel until the owner of the trawler vessel had submitted an application under the buyout scheme. The applicant should as far as practicable provide documentary evidence to support his claim in his employment on the trawler vessel. Family deckhands meeting the criteria would also be eligible. The Administration proposed to offer a one-off grant of \$34,000 to each eligible local deckhand, which was equivalent to about three months of the average salary of a worker. In the Administration's estimation, about 1 000 local deckhands would be eligible and about \$34 million would be required for the purpose.

54. On the query as to whether the one-off grant could be raised to more than three months' salary of a worker, the Administration considered the proposed amount appropriate after making reference to the buyout scheme for the poultry trade in 2008. Moreover, the trawl ban was announced in October

2010 and scheduled to take effect on 31 December 2012. The local deckhand would have more than two years from the announcement of the trawl ban initiative to prepare themselves and seek employment. The Agriculture, Fisheries and Conservation Department ("AFCD") and the Employees Retraining Board would organize suitable training programmes to assist them to switch to fisheries-related or other employment.

#### *Fisheries Development Loan Fund*

55. Members noted that affected fishermen might apply to the Fund, a government loan fund with a fund capital of \$290 million, for low-interest loans for switching to sustainable fisheries operations using selective fishing methods and other fisheries related operations. Some members requested the Administration to consider offering interest-free loans to affected fishermen. A suggestion was also made for part of the loan to be interest-free.

56. The Administration took the view that it was difficult to justify the provision of interest-free loans to fishermen, and consideration was being given to lowering the interest rate to between 1% and 2%. Nevertheless, the Administration was reviewing the mechanism and the terms of loans and eligibility of the applicants to better cope with fishermen's needs for developing or switching to sustainable fisheries and related operations.

57. Members called upon the Administration to provide adequate support to the affected trawler fishermen for switching to other sustainable fisheries operations. The Administration was requested to re-consider the suggestion of offering interest-free loans to the affected fishermen.

#### Safety of food imported from Japan

58. The earthquake and the subsequent tsunami which happened in Japan on 11 March 2011 had damaged the Daiichi nuclear power plant in Fukushima prefecture, leading to release of radioactive substances in the environment. It was reported by the Japanese authorities that the release of these radioactive substances had contaminated certain foods in the prefectures in the vicinity of the nuclear power plant, including Fukushima, Ibaraki, Tochigi and Gunma.

59. On 23 March 2011, tests conducted by the Centre for Food Safety ("CFS") indicated that three vegetable samples imported from Chiba prefecture of Japan had been contaminated with radioactive substances at such a level hazardous to human health. The Director of Food and Environmental Hygiene made an order under section 78B of the Public Health and Municipal Services

Ordinance (Cap. 132) ("the Order") to safeguard food safety and public health. Gazetted on 24 March 2011, the Order prohibits the import into and supply within Hong Kong certain food products which were harvested, manufactured, processed or packed on or after 11 March 2011 from five prefectures of Japan, namely, Fukushima, Ibaraki, Tochigi, Gunma and Chiba with effect from 12:00 noon on 24 March 2011 until further notice.

60. Arising from the concern over the safety of food products imported from Japan, the Panel conducted a visit to the Airport Food Inspection Office at the Hong Kong International Airport on 8 April 2011 to observe demonstrations of radioactivity screening of food by hand-held survey meters and operation of Contamination Monitoring System ("CMS"). At its meeting on 17 May 2011, the Panel followed up on the monitoring of radiation contamination of food products imported from Japan.

#### *Inspection of imported food*

61. Members were concerned about the inspection and testing of food imported from Japan. Members enquired about the measures taken by CFS to ensure the safety of food imported from Japan other than the five prefectures covered in the Order.

62. According to the Administration, for every food consignment from Japan, screening was conducted by hand-held survey meters for surface contamination and samples would be taken from every consignment for examination by CMS. Food consignment which failed the hand-held survey meters or CMS screening would be withheld and sample would be sent to the Government Laboratory for further quantitative analysis. Since 12 March 2011, CFS had stepped up surveillance and tested the radiation level of all fresh food imported from Japan, including vegetables, fruits, milk, meat, aquatic products and milk powder. Other foodstuffs were also monitored. As at 16 May 2011, a total of 8 929 samples had been tested. All results were satisfactory except the three samples tested on 23 March 2011 (paragraph 59 above refers).

63. Members were advised that CFS would keep in view the testing results of the samples of food imported from Japan. In the event that any samples were detected to contain radiation levels exceeding the Codex Alimentarius Commission in the Guideline Levels for Radionuclides in Foods Contaminated following a Nuclear or Radiological Emergency, the Administration would consider expanding the scope of the Order to cover more food types and prefectures from which the food was exported. Members were assured that CFS would continue to closely monitor the situation and make reference to the

recommendations of international authorities, including the World Health Organization ("WHO") and the International Atomic Energy Agency.

#### *Impact on the trades*

64. Concern was raised over the impact of the Order on the affected trades. Some members suggested that at the retail level, CFS should issue labels affixing onto food products confirming that they had passed the tests in order to restore the public confidence. According to the Administration, CFS met with the importers and distributors supplying Japanese food on 14 March 2011 and briefed the trades on the Order on 23 March 2011. Since 25 March 2011, if the radiation testing results were satisfactory for the concerned food consignments, CFS would issue a letter to the relevant importer stating words of a similar effect. Regarding the issuance of labels, the Administration considered that the matter should be dealt with care as it would be difficult to monitor the situation at the retail level.

#### *Manpower resources*

65. Members were advised that as part of CFS's food surveillance programme, samples of food from all sources were taken at the wholesale and retail levels for radiating testing. In response to the public concern over radiation contamination, CFS had increased the number of Japanese food samples. Given that the problems arising from the Daiichi nuclear power plant incident were unlikely to be resolved within a short period of time, members were concerned whether the existing manpower resources were adequate for CFS to cope with the increase in food inspection and whether its regular food surveillance programme would be affected.

66. According to the Administration, CFS had been contracting out part of its regular food surveillance tasks to recognized laboratories in recent years. This had allowed CFS to flexibly deployed its resources to cope with the increased workload. The regular food surveillance programme would not be compromised because of inadequate manpower. Should the need arise, additional manpower resources would be sought.

#### Food contaminated with plasticizer imported from Taiwan

67. At its meeting on 14 June 2011, the Panel was briefed on the measures taken by the Administration in response to the food contamination with plasticizer incident in Taiwan.

*Making of orders under section 78B of Cap. 132*

68. Members noted that the Food and Drug Administration ("FDA") in Taiwan announced on 23 May 2011 that di(2-ethylhexyl) phthalate ("DEHP") had been detected in 16 samples of drinks at levels up to 34.1 parts per million ("ppm") as DEHP had been mixed in the clouding agent used in the production of the drinks. Subsequently, further results announced by FDA indicated that DEHP had also been detected in other food products. FDA then further discovered that the manufacturers mixed another plasticizer, di-isononyl phthalate ("DINP") in the clouding agent. Although the acute oral toxicity of DEHP was low, large doses of DEHP were found to affect the liver and kidney as well as the reproduction and development of experimental animals. The toxicity of DINP was lower than DEHP, and it was also found to affect the liver and kidney as well as the development of experimental animals. The International Agency for Research on Cancer had classified DEHP as possibly carcinogenic to humans. As tested by CFS, the level of DEHP detected in samples of Speed Sports Drink and Speed Sports Drink (Lemon Flavour) produced in Taiwan was ranging from 11 to 43 ppm. Another test result indicated that a sample of Sheng Shiang Jen Konjac Coconut Jelly (Taro Flavour) contained DEHP at a level of 18 ppm. The exposure of DEHP from daily consumption of these samples of half bottle of 600ml sports drink by an average consumer or a cup of coconut jelly of about 25 gram by a 5-year-old average consumer far exceeded the tolerable daily intake ("TDI") of 0.025 milligramme per kilogramme ("mg/kg") of body weight under the WHO Guidelines for drinking-water quality. Test results of other samples of food products (including drink premix, mango syrup and fruit syrup) imported from Taiwan indicated that the exposures to DEHP from daily consumption by average or high consumers would exceed the safety reference value under the WHO Guidelines (i.e. TDI of 0.025 mg/kg of body weight). Another test result also indicated that the sample of DrinkaZine Energy Watt Sports Drink contained a plasticizer Dibutyl phthalate ("DBP") at a level of 0.97 ppm, exceeding the Specific Migration Limit (i.e. 0.3 ppm) for food contact materials of the European Union. Although the acute oral toxicity of DBP was low, chronic large-dose exposure to DBP was found to affect the reproduction and development of and cause birth defect in experimental animals.

69. Members noted that to protect the public from possible health threats from the concerned Taiwanese food products of which samples were found to contain exceedingly high levels of DEHP or DBP, the Director of Food and Environmental Hygiene ("DFEH") made five orders under section 78B of Cap. 132 ("the Orders") between 31 May and 14 June 2011 to prohibit the import into and supply within Hong Kong certain food produced in Taiwan (namely,

Speed Sports Drink and Speed Sports Drink (Lemon Flavour), Sheng Shiang Jen Konjac Coconut Jelly (Taro Flavour), ORIYEN Nutri Grow Orange Drink Premix (Boy), Mango Syrup, Fruit syrup of all flavours, Peach conc. juice and DrinkaZine Energy Watt Sports Drink). DFEH also ordered the trade to complete recall of the above-mentioned food products available in the market within 30 days of the issuance of the respective Orders. The concerned food products, if accompanied by a certificate issued by the relevant Taiwanese authority stating that the levels of DEHP did not exceed 1.5 ppm or the levels of DBP did not exceed 0.3 ppm, would be exempted from the Orders.

### *Food surveillance and testing*

70. Members were concerned about the surveillance and testing of food products contaminated with plasticizer imported from Taiwan. Noting that a level of 1 ppm in food for DEHP was adopted by the Taiwanese authority, members enquired why an action level of 1.5 mg/kg (equivalent to 1.5 ppm) was adopted in Hong Kong and whether the action level was adequate to protect public health.

71. Members were advised that CFS had strengthened its surveillance and testing of the five categories of products (namely, sports drinks, flavoured juice, tea beverages, fruit jam/syrup and fruit jelly, as well as powder and tablet supplement) according to the daily information on the vendors and products involved in the plasticizer contamination incident as released by the Taiwanese authority. The testing results would be published on the CFS website. On 2 June 2011, the Expert Committee on Food Safety endorsed that a proposed action level of 1.5 mg/kg (equivalent to 1.5 ppm) in food for DEHP would be adopted in Hong Kong. This level, proposed by CFS, was considered adequate to protect public health and useful to distinguish the presence of DEHP in food from environmental contamination or migration via food contact materials from adulteration. When proposing the action level, reference had been made to, among others, the TDI under the WHO Guidelines for drinking-water quality and TDI established by the European Food Safety Authority regarding average and high consumers. The TDI set by WHO, which was a more stringent requirement than that set by the European Food Safety Authority (i.e. TDI of 0.05 mg/kg of body weight), was adopted. The action level of 1.5 mg/kg would be reviewed when more scientific data or information was available in future. Risk assessment would be conducted when a food item was tested to contain DEHP above this level or DBP exceeding 0.3 ppm. The Expert Committee also endorsed the recommendation of CFS to include DEHP in Hong Kong's routine surveillance for pre-packaged food that might be produced with the use of clouding agents.

72. Members called upon CFS to test samples of similar products imported from other jurisdictions. Members were advised that as at 13 June 2011, CFS had tested 204 samples of products referred to in paragraph 71 above, of which some 50 samples were produced in the Mainland. Samples from other countries were also tested. Members were assured that CFS would closely monitor the situation, take samples at import, wholesale and retail levels for testing, and continue to liaise with the Taiwanese authority on the incident and take follow-up actions. CFS would also continue to liaise with other jurisdictions and to exchange information with them to better safeguard public health.

#### *Manpower and resources*

73. Members expressed concern whether CFS had adequate manpower and resources (e.g. equipment) to cope with the increase in surveillance and testing of food products contaminated with plasticizers, and whether CFS's regular food surveillance work would be affected. According to the Administration, CFS was coping with the increased workload through internal deployment and employment of temporary staff. The regular food surveillance work would inevitably be affected by major food incidents, but would not be compromised because of inadequate manpower. Additional manpower and resources would be sought should the need arise. Members were supportive of providing CFS with adequate manpower and resources where needed.

#### Other issues

74. The Panel had discussed other issues with the Administration during the session. These included conversion of aqua privies into flushing toilets (the Final Phase), report on the Food Surveillance Programme of 2010, review on provision of cooked food markets and cooked food centres, measures to step up environmental hygiene to tackle human swine influenza, as well as mosquito prevention and control measures.

75. The Panel was also consulted on a number of legislative and financial proposals. These included the proposals of other fisheries management measures for the conservation of marine environment, proposal to further enhance animal welfare, proposed restriction on the presence of prohibited substances in dried milk, condensed milk and reconstituted milk, proposal to regulate imported poultry eggs, and the creation of a Principal Veterinary Officer post in AFCD.

Meetings held and visit conducted

76. Between October 2010 and June 2011, the Panel held a total of 13 meetings, including a joint meeting with the Panel on Manpower to discuss the creation of employment opportunities under the hawker policy. The Panel also conducted a visit to the Airport Food Inspection Office at the Hong Kong International Airport (paragraph 60 above refers).

Council Business Division 2  
Legislative Council Secretariat  
28 June 2011

**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 2010 - 2011 session**

**Chairman** Hon Tommy CHEUNG Yu-yan, SBS, JP

**Deputy Chairman** Hon WONG Yung-kan, SBS, JP

**Members** Hon Fred LI Wah-ming, SBS, JP  
Hon Andrew CHENG Kar-foo  
Hon TAM Yiu-chung, GBS, 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 WONG Sing-chi  
Hon Alan LEONG Kah-kit, SC  
Hon WONG Yuk-man

(Total : 13 members)

**Clerk** Mrs Sharon TONG

**Legal adviser** Miss Carrie WONG

**Date** 13 April 2011