

立法會
Legislative Council

LC Paper No. LS49/04-05

**Paper for the Panel on
Food Safety and Environmental Hygiene
One licence for one shop**

We have been instructed by the Panel on Food Safety and Environmental Hygiene (“the Panel”) to advise on the question whether the proposed amendment of one licence for one shop to the Public Health and Municipal Services Ordinance (Cap. 132) (“the PH&MSO”) resulting from the concerns about—

- (a) the hygiene standard of the imported chilled pork; and
- (b) the hygiene conditions for selling chilled pork at premises with a licence to sell fresh, chilled and frozen meat.

is within the scope of the PH&MSO.

Scope of the PH&MSO

2. The long title to an ordinance is a useful context to understand the scope of the ordinance.

3. The long title to the PH&MSO reads as follows—

“To make provision for public health and municipal services”.

The long title does not further explain or illustrate the respective meaning of public health and municipal services. The Hansard on the passage of the Public Health and Urban Services Bill, 1960 and the subsequent amendments to the Ordinance, after its enactment, also does not shed light on the meaning of these terms. The content of the PH&MSO could thus be considered to ascertain the meaning of public health. There are provisions on food and drugs in Part V of the Ordinance. There are also items of subsidiary legislation made under the PH&MSO relating to composition and labelling of food and drugs, food business, slaughterhouses, sanitation, etc. It would seem that all these matters fall within the scope of public health.

The existing arrangement for supply of chilled pork

4. At present, chilled pork is imported into Hong Kong under the Imported Game, Meat and Poultry Regulations (Cap. 132 sub. leg. AK).

5. According to the paper on Import of Chilled Pork from Mainland issued by the Administration to the Panel on 11 January 2005 vide LC Paper No. CB(2)566/04-05(05) (“the Paper”), the Administration explains, in paragraphs 4-5 of the Paper, the monitoring system for imported chilled pork. One of the measures in the monitoring system is to conduct random testing on chilled pork at retail level.

The existing arrangement for sale of chilled pork at retail level

6. Under section 31 of the Food Business Regulation (Cap. 132 sub. leg. X) (“the Regulation”), a licence granted by the Director of Food and Environmental Hygiene is required to operate a fresh provision shop. Under the same section a fresh provision shop means any food business which involves the sale of fresh, chilled or frozen pork etc., but does not include a market stall, etc. Section 33 of the Regulation sets out the conditions for the issue of a licence. Section 125(1) of the PH&MSO provides that a licence may be granted subject to such requirements, conditions or restrictions as the licensing authority may think fit to impose for the purpose of better carrying out the objects of the Ordinance. Members may note that requirements etc. for the protection of public health would fall within the requirements etc. the licensing authority may impose.

7. Members may note in paragraph 7 of the Paper that the Administration has explained the control of chilled pork at retail level, including fresh provision shop licensees and public market tenants (who sell chilled meat according to the tenancy conditions).

The problem of identifying the chilled pork on sale for tests to meet the requirements of food safety and public health

8. The Panel has noted the various control measures of chilled pork at various levels and the object to safeguard public health by so doing. The Panel was of the view that it is difficult to achieve the object at the retail level. Although there are licensing requirements (for fresh provision shop operators) and tenancy conditions (for market tenants) to display a legible notice at a conspicuous location and on refrigerators that imported chilled meat is available for sale at the premises and they are not allowed to display chilled meat for sale as fresh meat, the temptation to sell chilled pork (after defrosting) as fresh pork is still great due to the price difference. In order to better safeguard the public health against consumption of chilled pork

posed as fresh pork after defrosting and unhygienic imported chilled pork, an effective random testing on the chilled pork at retail level and checking on the fresh provision shops and market stalls is highly desirable. The Panel has also noted that the present arrangement for premises with a fresh provision shop licence and a market stall to sell fresh, chilled and frozen meat makes random testing and checking ineffective because it is difficult to differentiate chilled pork (after defrosting) from fresh pork in fresh provision shops or market stalls where one single licence or agreement covers the sale of fresh, chilled and frozen meat. The Panel has thus requested the Administration to consider revising the PH&MSO so that separate licences and premises will be required for selling fresh meat and chilled meat. The purpose is to facilitate enforcement of the licensing requirements for selling chilled meat, e.g. by matching invoices with the amount of pork sold, tracing the source of import and conducting hygiene checks on the meat.

Conclusion

9. Some of the provisions of the PH&MSO and its subsidiary legislation are concerned with public health. The “one licence for one shop” proposal made by the Panel could be considered as one of the possibilities to better promote public health and would thus be within the scope of the PH&MSO. From the legal point of view, a revision of the PH&MSO and its subsidiary legislation would be one of the possibilities to achieve the purpose of the Panel to facilitate enforcement of the licensing requirements. Members may have noted that the legal advice obtained by the Administration was that if the consideration is for consumer protection, then such consideration falls outside the scope of the PH&MSO and it is inappropriate to further pursue the proposal under the PH&MSO. The focus of the advice is apparently on the basis of consumer protection, but not the concerns of the Panel on facilitating enforcement of licensing conditions.

Prepared by

Legal Service Division
Legislative Council Secretariat
11 April 2005