

**For discussion  
on 9 July 2013**

**LegCo Panel on Food Safety and Environmental Hygiene**

**Proposed Measures for Compliance with  
Fire Safety Requirements by Food Premises**

**Purpose**

This paper briefs Members on new measures proposed by the Food and Environmental Hygiene Department (FEHD) and the Fire Services Department (FSD) for ensuring compliance with fire safety requirements (FSRs) by food premises.

**Background**

2. The Cornwall Court fire in 2008<sup>1</sup> aroused public concern over the fire safety of licensed premises, especially those patronized by members of the public in large number. In June 2009, the Ombudsman initiated a direct investigation into the fire safety regulatory measures for food premises. In its report dated May 2010, the Ombudsman made, among others, two recommendations on monitoring compliance with FSRs by food premises to FEHD and FSD, namely that –

- (a) FEHD should impose conditions in food business licences for compliance with FSRs; and
- (b) FEHD should work out arrangements with FSD to ensure that food premises meet FSRs before approving their applications for licence renewal.

3. In addition, the Efficiency Unit (EU) completed a study on fire safety control and related management issues of FSD in June 2011 and recommended, among others, that in the case of applications for provisional food business licences (P-licences), FSD and other relevant departments should consider reviewing the documents to be submitted by food premises for proof of compliance with FSRs so as to facilitate checking and following

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<sup>1</sup> On 10 August 2008 a fire broke out in Cornwall Court in Mongkok, which was a commercial / residential building. The fire took almost six hours to put out and claimed four lives.

up by FSD officers.

4. It is considered that General Restaurants (GRs), Light Refreshment Restaurants (LRRs) and Factory Canteens (FCs) bear a higher fire safety concern given that they provide seating accommodation and are intended to serve the general public in the premises. As the first step, we propose to roll out measures to implement the recommendations set out in paragraph 2 above in respect of the licences for these three types of food premises.

5. FEHD and FSD have worked out measures (as set out in paragraphs 6 to 14 below) to implement the Ombudsman / EU's recommendations. The two departments, with the assistance of the Economic Analysis and Business Facilitation Unit, have also commissioned an outside consultant in August 2012 to conduct a Business Impact Assessment (BIA) Study to examine the possible impact of the proposed measures on the trade.

## **Proposed New Measures**

### ***(a) Monitoring Mechanism for Food Business Licences for Continuous Compliance with FSRs***

6. In accordance with the Food Business Regulation (Cap. 132X), FEHD will not grant a food business licence unless the premises in respect of which the application is made comply with the requirements issued by relevant departments, including FSD. After the issue of licence, the premises are required to comply at all times with FSRs so imposed.

7. To ensure continuous compliance with FSRs by GRs, LRRs and FCs, FEHD will set up a monitoring mechanism with FSD for handling breaches of FSRs. At the same time, FEHD will expressly impose the following licensing condition in GR, LRR and FC licences –

*“The licensee shall at all times comply with FSRs issued by the Director of Fire Services.”*

8. Under the proposed arrangement, compliance with FSRs will be monitored under a fire safety-related warning letter system. Taking into account the associated fire risks, breaches are classified into serious and minor ones and they will be followed up differently. The proposed system is set out at **Annex I**.

9. For serious breaches of FSRs, the associated fire hazards would render the premises (i.e. GRs, LRRs and FCs) unsafe for business operation with admission of patrons. As and when any such breach comes to light, FSD will, apart from taking enforcement action under its ambit, recommend to FEHD immediate suspension of the licence under section 125(1)(b) of the Public Health and Municipal Services Ordinance (Cap. 132). Upon receipt of the recommendation, FEHD will issue a notice to the licensee requiring him to suspend his business immediately. The suspension will remain in force until FEHD is satisfied, on the advice of FSD, that the fire hazard(s) in the premises has/have been abated.

10. For minor breaches of FSRs notified by FSD, FEHD will issue a warning letter (W/L) to the licensee requiring him/her to rectify the breaches within 30 days. If the licensee fails to comply with three consecutive W/Ls issued within a period of six months, the licence is subject to suspension for seven days. Thereafter, should the licensee fail to comply with a further two consecutive W/Ls issued within four months following the suspension, the licence is subject to cancellation. If the licensee fails to observe a suspension order, the licence is also subject to cancellation.

***(b) Ensuring Compliance with FSRs before Licence Renewal***

11. At present, licensees of GRs, LRRs and FCs are required under the Fire Service (Installations and Equipment) Regulations (Cap. 95B) and the Ventilation of Scheduled Premises Regulation (Cap. 132CE) to employ Registered Fire Service Installation Contractors (RFSICs) and Registered Specialist Contractors (Ventilation) (RSC(V)s) to carry out annual inspections of fire service installations and equipment (FSI) and ventilating system of the premises concerned respectively. The respective RFSICs and RSC(V)s are required to submit copies of Certificate(s) of FSI (FS251(s)) and Annual Inspection Certificate for Ventilating System (AIC) within 14 days to FSD after completion of annual inspection. At present, FEHD does not require any documentary evidence of compliance with FSRs when processing applications for licence renewal.

12. When processing applications for licence renewal, we propose to put in place a new requirement to ensure that GRs, LRRs and FCs have met FSRs before their licences are renewed annually. It is proposed that licences will only be renewed when FS251(s) and AIC(s) are valid at the time of renewal. The licences would not be renewed if licensees fail to submit copies of valid FS251(s) and AIC(s) to FSD before renewal. In this connection, the following additional condition will be imposed in these three

types of licences –

*“Renewal of the licence may be refused by FEHD if the FS251 and AIC of the respective food premises are no longer valid on the commencement date of the coming term of the licence and no valid documents are made available not less than 14 days before expiry of the licence to FSD for verification.”*

**(c) Compliance with FSRs for issuing of P-licences**

13. Under section 33C of Cap. 132X, a P-licence may be issued if FEHD is satisfied that all licensing requirements for the P-licence, including FSRs, are met. A Certificate of Compliance C (Fire Safety Requirements) (Form C) certified by authorized persons or registered structural engineer(s) registered under the Buildings Ordinance (Cap. 123) and RFSIC(s) should be submitted to FEHD together with other required documents when the applicant reports compliance with the licensing requirements for issue of P-licence. In processing application for full and P-licences, the set of FSRs imposed by FSD includes the submission of invoice(s) and fire safety test certificate(s) of polyurethane (PU) foam filled mattresses and upholstered furniture (Invoice(s) and Test Certificate(s)) if they are in use in the subject premises.

14. We propose to revise the existing Form C, thereby facilitating the applicant to declare whether PU foam filled mattresses and upholstered furniture are in use in the subject premises, and if so to submit the relevant Invoice(s) and Test Certificate(s).

**BIA Study and Trade Consultations**

15. As has been mentioned in paragraph 5 above, FEHD and FSD had, in August 2012, commissioned an outside consultant to conduct a BIA Study. In addition, FEHD and FSD had jointly conducted three briefing sessions for concerned licensees and two trade consultation forums to engage representatives of trade associations in September and October 2012. A summary of the key findings and recommendations of the consultant is at **Annex II**.

16. The findings of the BIA Study suggest that the aim of Government’s initiative to raise awareness of fire safety issues is generally welcomed by the relevant trade participants (RTPs) and that the proposed measures (a) and (b) above are generally practicable and would not cause significant impact on the business operation of the trade. Members of the

trade are concerned about possible difficulties in obtaining FS251(s) of buildings because those FS251(s) are owned by the building owners but not the food premises themselves in many cases. In light of the views expressed by the trade, FSD would check the FS251(s) of buildings from their records. In other words, the licensees would only be required to submit the FS251s for their own premises (as opposed to the FS251s for the whole building) for licence renewal.

17. For the proposed measure (c) above, the BIA study revealed that, at present, the Invoice(s) and Test Certificates(s) are usually not attached because the furniture supplier(s) tended to retain them until the food premise owner settled the outstanding payments. In light of this common trade practice and without compromising fire safety, the consultant proposed that the terms and conditions of Form C should be further revised whereby FSD would grant a six-week grace period for the P-licence applicants to submit the relevant Invoice(s) and Test Certificate(s) to FSD provided that the applicant is able to provide a copy of the delivery note(s) of the concerned furniture when FSD inspects the premises (within 7 days after the issue of the P-licence).

18. FEHD and FSD have accepted the recommendation of the consultant in respect of the proposed measure (c) above. The two departments are satisfied that the recommendation has already taken into account the trade practice and note that the duration of the grace period for submission of the required Invoice(s) and Test Certificates(s) to FSD (i.e. six weeks) has also been confirmed by the relevant professional service providers to be sufficient. The measure would also not cause significant impact on the business operation of the trade.

### **Way forward and Implementation Timetable**

19. FEHD and FSD are now working on the implementation details of the proposed measures. We plan to roll out the measures in the first quarter of 2014. Before implementation, FEHD and FSD will publish a brochure to help the trade better understand FSRs and the importance of all-time compliance with FSRs, and conduct briefings for the trade, RFSICs and RSC(V)s.

### **Advice Sought**

20. Members are invited to note and comment on the content of this

paper.

**Food and Health Bureau  
Food and Environmental Hygiene Department  
Fire Services Department**

**July 2013**

**Breaches of Fire Safety Requirements  
and the System for Handling them**

1. For the purpose of ensuring continuous compliance with fire safety requirements (FSRs) imposed by the Fire Services Department (FSD) on General Restaurant (GR)/Light Refreshment Restaurant (LRR)/Factory Canteen (FC), a monitoring mechanism is devised for handling **serious** and **minor** breaches of FSRs.
2. When non-compliance with more than one major FSRs (as listed in paragraph 4 below) is confirmed in the course of an inspection carried out by FSD, it will be treated as a '**Serious Breach of FSR**'. FSD will recommend to the Food and Environment Hygiene Department (FEHD) immediate suspension of the relevant food business licence.
3. When non-compliance with
  - (a) one major FSRs (as listed in paragraph 4 below); or
  - (b) one major FSR plus any number of other FSRs (as listed in paragraph 5 below); or
  - (c) any number of other FSRs

is confirmed in the inspection, it will be treated as a '**Minor Breach of FSR**'. FSD will inform FEHD for issuance of a warning letter.

Major FSRs

4. The major FSRs are as follows -

- (a) *Fire Service Installations and Equipment (FSIs)*

The following FSIs inside the food premises, if installed as required, shall be maintained in efficient working order:

- Automatic sprinkler system
- Hydrant/Hose Reel System
- Automatic Smoke Detection System
- Smoke Extraction System
- Manual Fire Alarm System
- Emergency Lighting System

That any one of the above FSIs is found not in efficient working order will be regarded as one breach.

(b) *Fuels used in GR/LRR/FC*

Fire safety requirements in relation to fuels used in the premises shall be complied with, e.g. Liquefied petroleum gas is not permitted to be used on any floor below the ground floor of the food premises.

(c) *Openable/Breakable Windows*

In general, no more than 50% of total area of designed openable/breakable windows or 25% of the upper part of the windows inside the premises shall be obstructed.

Other FSRs

5. The other FSRs are as follows –

(a) *Other FSIs*

FSIs other than those listed in paragraph 4(a) (e.g. fire extinguishers) inside the premises shall be maintained in efficient working order.

(b) *Fire Retardant Treatment*

All combustible materials used as false ceilings, partitions or wall furnishings, and all fabrics used as draperies and curtains shall conform to relevant international fire safety standards.

(c) *Drop Hatch*

The fire resisting performance of the drop hatch of a food serving opening shall conform to relevant fire safety requirement.

(d) *PU Foam Filled Upholstered Furniture*



PU foam filled upholstered furniture and covering materials used for fabrication of furniture inside the food premises shall conform to relevant international fire safety standards.

(e) *Mechanical Ventilating System*

Mechanical ventilating system (including fire dampers) inside the food premises shall conform to relevant fire safety requirement.

(f) *Other requirements issued by FSD*

The food premises shall comply with any other FSR issued by FSD.

6. The examples below show how breaches of FSRs would be classified -

<b>Example Scenario</b>	<b>Non-compliance with FSR(s)</b>	<b>Classification of Breach</b>
1	i. Automatic sprinkler system is not in efficient working order (a major FSR); <b>and</b> ii. Smoke extraction system is not provided as required (a major FSR)	<b>Serious</b>
2	i. Use of unspecified or non-permitted fuels is found (a major FSR); <b>and</b> ii. More than 50% of the total area of designed openable/breakable windows are obstructed by decoration or sealed up (a major FSR)	<b>Serious</b>
3	i. Fire extinguishers as required are not provided (not a major FSR)	<b>Minor</b>
4	i. Use of unspecified or non-permitted fuels is found (a major FSR); <b>and</b> ii. Fire extinguishers as required are not provided (not a major FSR)	<b>Minor</b>

Example Scenario	Non-compliance with FSR(s)	Classification of Breach
5	<ul style="list-style-type: none"> <li data-bbox="411 282 1155 360">i. Hydrant/hose reel System is not in efficient working order (a major FSR); <b>and</b></li> <li data-bbox="411 360 1155 439">ii. Fire extinguishers as required are not provided (not a major FSR); <b>and</b></li> <li data-bbox="411 439 1155 566">iii. Fire retardant treatment requirements for combustible partition are not complied with (not a major FSR)</li> </ul>	<b>Minor</b>

**Business Impact Assessment (BIA) Study on  
Proposed Measures for Compliance  
with Fire Safety Requirements by Food Premises**

**Summary of Findings and Recommendations**

**Background**

The Administration proposes to implement the following three new measures to take forward the recommendations of the Ombudsman / Efficiency Unit to the Fire Services Department (FSD) and the Food and Environmental Hygiene Department (FEHD) for monitoring compliance with fire safety requirements (FSRs) by food premises -

- (a) to impose the following condition in the licences for General Restaurant (GR), Light Refreshment Restaurant (LRR) and Factory Canteen (FC): “the licensee shall at all times comply with the FSRs issued by the Director of Fire Services.”. This is to be implemented in conjunction with a new warning letter system that would be set up to monitor compliance;
  - (b) to impose the following condition in the licences for GR, LRR and FC: “renewal of the licence may be refused by FEHD if the Certificate(s) of Fire Service Installations and Equipment (FSI) (FS251(s)) and Annual Inspection Certificate for Ventilating System (AIC) of the food premises are no longer valid on the commencement date of the coming term of the licence and no valid documents are made available not less than 14 days before expiry of the licence to FSD for verification”; and
  - (c) to revise the existing Certificate of Compliance C (Fire Safety Requirements) (Form C), which is one of the pre-requisite documents to be submitted by a food business licence applicant to FEHD for issue of Provisional Licences (P-licences), thereby facilitating the applicant to declare whether PU foam filled mattresses and upholstered furniture are in use in the subject premises, and if so to submit the relevant invoice(s) and test certificate(s) (Invoice(s) and Test Certificate(s)).
2. Given the possible impact on the trade, FEHD and FSD, with

the assistance of the Economic Analysis and Business Facilitation Unit, commissioned an outside consultant to conduct a Business Impact Assessment (BIA) Study. The study commenced on 13 August 2012. The BIA report is now being finalised.

### **Key Findings and Recommendations of the BIA Study**

3. The consultant found that the relevant trade participants<sup>1</sup> (RTPs) generally welcome the aim of Government's initiatives to raise awareness of fire safety issues.

#### ***Proposed Measure (a)***

4. The consultant found that the RTPs have no objection to the proposed measure (a) if there are no direct and significant impacts on their business operation. The consultant also found that the underlying new monitoring mechanism associated with the proposed measure (a) provides the RTPs with reasonable time to arrange for prompt rectification of discovered defects. The consultant therefore **recommended** the Administration to implement the proposed measure (a) as a step to better uphold the fire safety standard in licensed food premises. However, the description of non-FSI-related FSRs under the proposed measure (a) needs realignment to enable clearer understanding as RTPs, in particular small and medium enterprises, had expressed difficulties in understanding what constitute serious/minor breaches of FSRs used in the monitoring mechanism. A realignment of the FSRs' description should also enable licensees to better understand the FSRs and hence help achieve all-time compliance. The consultant also **recommended** that to further enhance the knowledge of RTPs on FSRs, the Administration should consider publishing an illustrative brochure to raise the licensees' awareness of their responsibilities in continuously complying with FSRs and the availability of communication channels already established by the Government to address relevant FSRs related to food premises.

#### ***Proposed Measure (b)***

5. The consultant found that the RTPs offered no objection to the proposed measure (b) provided that there are no direct and significant impacts on their business operation. Given that the proposed measure (b) does not require RTPs to perform any additional activities (except the

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<sup>1</sup> The Relevant Trade Participants interviewed in the study include representatives from restaurants, as well as trade bodies representing restaurants, hotels, cinemas, clubs and bars etc. For the purpose of this study, more than 50 RTPs have been interviewed.

concern being raised about the submission of FS251(s) of buildings), the consultant **recommended** the Administration to implement the proposed measure (b) and impose the licence renewal requirement as an enhancement of administrative procedures to align business operation with the compliance with FSRs. Taking into account the difficulties that licensees might face in obtaining FS251(s) of buildings, the consultant further **recommended** that the Administration should not require the licensees to submit building FS251(s) during licence renewal. Instead, FSD should consider setting up a working protocol to check the submission of FS251(s) of buildings through its new computer system.

### ***Proposed Measure (c)***

6. The consultant found that the proposed measure (c) is not entirely compatible with the trade practice, as small and medium enterprises may not be able to obtain the Invoice(s) and Test Certificate(s) in time for acquiring a P-licence. As a pragmatic alternative and without creating an excessive burden on the trade, the consultant **recommended** the Administration to consider implementing the proposed amendment to Form C for P-licence applications by further revising the associated terms and conditions therein in order to better align with the trade practice without compromising fire safety, and granting a six week grace period to the P-licence applicants to submit the Invoice(s) and Test Certificate(s) to FSD provided that delivery note(s) with details of the PU foam filled mattresses and upholstered furniture are presented to the FSD inspecting officer on-site during the compliance check upon issue of P-licence. The duration of the grace period should be determined with reference to the trade practice raised by the RTPs, and further confirmed by relevant professional service providers as being sufficient for obtaining the required documents.

### **Analysis of Business Compliance Cost**

7. The result of the Business Compliance Cost (BCC) analysis revealed that the proposed measures (a) and (b) in their original form are bearable to the RTPs as the compliance costs are insignificant. The human efforts can be absorbed within the current manpower deployment. Most interviewed RTPs also accepted that these two measures would not add much burden to their business operation.

8. As for the proposed measure (c), the consultant observed that, to the extent that a delay to commencement of business could not be ruled out (due to difficulties in obtaining the Invoice(s) and Test Certificate(s) in time),

the resultant loss in terms of rent and labour costs incurred may create a significant impact on the RTPs. However, with the mitigation measures as recommended by the Consultant (ie. a six-week grace period for the P-licence applicants to submit the Invoice(s) and Test Certificate(s) to FSD provided that the applicant is able to provide a copy of the delivery note(s) of the polyurethane (PU) foam filled mattresses and upholstered furniture when FSD inspects the premises), the BCCs will be reduced to an insignificant level.