

立法會 *Legislative Council*

LC Paper No. CB(2)863/14-15(03)

Ref : CB2/SS/3/14

Subcommittee on Dutiable Commodities (Liquor) (Amendment) Regulation 2015 and Dutiable Commodities (Liquor Licences) (Fees) (Amendment) Regulation 2015

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Administration's legislative proposals to amend the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg. B) ("DCLR") to, among others, extend the maximum validity period of a liquor licence from one year to two years, and the Dutiable Commodities (Liquor Licences) (Fees) Regulation (Cap. 109 sub. leg. H) to provide for the fees payable when the validity period of liquor licences exceeds one year. It also summarizes the concerns of members of the Panel on Food Safety and Environmental Hygiene ("the Panel") on the legislative proposals.

Background

2. Under DCLR, the sale of liquor at any premises for consumption on those premises is prohibited except on the authority of a liquor licence¹. The Liquor Licensing Board ("LLB") is an independent statutory body established under DCLR to consider liquor licence applications. Regulation 17 of DCLR stipulates that LLB shall not grant a liquor licence unless it is satisfied that - (i) the applicant is a fit and proper person to hold the licence; (ii) the premises to which the application relates are suitable for selling and supplying intoxicating liquor; and (iii) the grant of the licence is not contrary to the public interest.

3. According to the Legislative Council ("LegCo") Brief (File ref.: FH CR 2/3231/13) issued by the Food and Health Bureau and the Food and Environmental Hygiene Department ("FEHD"), there had been persistent concerns in recent years about crime, nuisance and potential fire danger brought about by the proliferation of bars, particularly those accommodated on the upper floors of multi-storey domestic/commercial buildings (commonly referred to as "upstairs bars"), and at the same time, there were calls from the trade to lower

¹ According to the Administration, as at 31 October 2014, there were 6 800 liquor-licensed premises.

the regulatory burden and nurture a business-friendly environment. The Administration conducted between July and September 2011 a public consultation on the review of liquor licensing ("the public consultation"), which covered regulation of upstairs bars and measures to further streamline the liquor licensing procedures such as extending the duration of liquor licences, and allowing liquor licence applicants to advertise their application through other means instead of publishing an advertisement on newspapers.

4. According to the Administration, the views collected from the public consultation indicated that the trade supported the proposed trade facilitation measures but did not favour tightening of the regulation over liquor-licensed premises. Nevertheless, representatives and residents of local communities where a large number of bars existed urged the Government to impose more stringent control on liquor-licensed premises and strengthen enforcement actions against premises causing nuisances, and a significant number of respondents pointed out that safety should be accorded top priority in vetting liquor licence applications from upstairs bars.

5. Taking into account the views collected from the public consultation, the Administration had put in place a number of administrative measures to improve liquor licensing in the past two years, including -

- (a) with effect from May 2013, for applications for the renewal or transfer of liquor licence by premises which (i) drew objections when the licence was renewed on the previous occasion; or (ii) were the subject of complaints in the past 12 months, the District Council ("DC") member of the respective geographical constituency where the premises were located would be consulted as a matter of course before the case was put before LLB;
- (b) in December 2013, LLB published the "Guidelines on Assessing Liquor Licence Applications" ("the Guidelines")², which outlined the factors that were taken into account when assessing liquor licence applications, so as to enhance transparency, facilitate compliance by the trade and help address the concerns of the public; and
- (c) since June 2014, express provisions had been added in the licensing conditions stipulating that restaurant licensees³ must comply with fire safety requirements at all times.

² For the Guidelines, refer to Annex C to the LegCo Brief.

³ According the Administration, over 90% of the liquor-licensed premises, including practically all upstairs bars, had restaurant licences. Following the addition of the express provisions, minor breaches, if repeatedly not attended to promptly, would render a restaurant licence holder liable to licence suspension/cancellation. Furthermore, documentary evidence of continuous compliance with fire safety requirements must be adduced when FEHD processed applications for licence renewal.

Dutiable Commodities (Liquor) (Amendment) Regulation 2015 and Dutiable Commodities (Liquor Licences) (Fees) (Amendment) Regulation 2015

6. The Dutiable Commodities (Liquor) (Amendment) Regulation 2015 (L.N. 20 of 2015) is made by the Chief Executive in Council under section 6 of the Dutiable Commodities Ordinance (Cap. 109) ("DCO") to amend DCLR to -

- (a) extend the maximum validity period of a liquor licence from one year to two years;
- (b) provide that the maximum period (or the aggregate of the periods) for which a person may be authorized to manage the licensed premises during the illness or temporary absence of the licensee be capped at 25% of the licence duration, and for licences that bear a duration exceeding one year, each period of absence must not exceed 90 days (and the total period of absence must not exceed 90 days within any 12 consecutive months during the licence duration); and
- (c) provide that the requirement for a signature in an application submitted in the form of electronic records can be satisfied by a digital signature, or a password assigned or approved by LLB.

7. According to the LegCo Brief, the extension of the maximum validity period of a liquor licence would have greater flexibility in granting liquor licences of a longer duration in meritorious cases, and by reducing LLB's workload that would otherwise arise from the processing of straight-forward licence renewal cases⁴, it would allow LLB to focus its attention on handling new applications and contested licence renewal applications. To address the concerns of some DC members about the possibility of deterioration in performance on the part of those licensed premises having granted a 24-month licence, the Administration proposed to introduce a mid-term review mechanism⁵ for licences of a two-year validity period.

⁴ These cases are referred to by the Administration as "cases with a good track record", including those cases that - (a) did not have any substantiated complaint/enforcement action recorded against the licensed premises or the licensees in the licences register for at least two consecutive years immediately before licence renewal; (b) had been granted a full term (at present one year) licence at the time when their licences were last approved or renewed; and (c) did not receive objection or adverse comment from the public from its licence renewal application notice. The Administration indicated that as at 31 December 2013, about 78% of the liquor-licensed premises would be categorized as "cases with a good track record".

⁵ Under the proposed mechanism, the mid-term review will be conducted in the 11th month during the validity period of a two-year liquor licence. As an integral part of the mid-term review, the Liquor Licensing Office under FEHD will compile a register for individual liquor-licensed premises whereby it can check the record of complaint and enforcement against the premises concerned and report to LLB.

8. Dutiable Commodities (Liquor Licences) (Fees) (Amendment) Regulation 2015 (L.N. 21 of 2015) is made by the Secretary for Food and Health under section 6A of DCO to amend the Dutiable Commodities (Liquor Licences) (Fees) Regulation (Cap. 109 sub. leg. H) to provide for the fees payable when the validity period of liquor licences exceeds one year. Such amendment is consequent upon the extension of the maximum validity period of a liquor licence in L.N. 20 of 2015. It is proposed that the fee for a licence that is valid for a period of two years or any period more than one year but less than two years is set at a level which is 1.5 times higher than the fee prescribed for a one-year licence⁶.

9. Both L.Ns. 20 and 21 of 2015 come into operation on 3 August 2015.

Deliberations of the Panel

10. The Panel discussed with the Administration the legislative proposals at the meetings on 10 January 2012 and 8 April 2014. Members' main views and concerns relating to the legislative proposals are summarized in the following paragraphs.

Duration of a liquor licence

11. Some members were supportive of the proposed amendments of extending the liquor licence duration to a maximum of two years. These members considered that the concern about public interest would be duly addressed as LLB would take into account the record of enforcement action and substantiated complaints of the liquor-licensed premises in considering whether the licensee should be granted a 24-month licence. Some other members, however, expressed concern about this proposal. They urged the Administration to put in place a clear and stringent mechanism to monitor the liquor-licensed premises' continuous compliance with the licensing conditions.

12. According to the Administration, only cases with a good track record for at least two consecutive years immediately before the liquor licence renewal application might be considered for licence renewal by two years. The Administration also proposed to introduce a mid-term review mechanism such that a review would be conducted in the 11th month during the validity period of a two-year liquor licence. The Liquor Licensing Office under FEHD would compile a register for individual liquor-licensed premises whereby it could check the complaints and enforcement against premises concerned and reported to LLB. At the time of the mid-term review, liquor-licensed premises with no record of enforcement action or substantiated complaint would be deemed to have passed the mid-term review whereby they could carry on their operation within the remainder of the 24-month licence period.

⁶ The fee payable for licences granted for any period less than one year remains unchanged, i.e. such proportion of the prescribed fee as the period for which such licence will be valid bears to a period of 12 months.

Public consultation on liquor licence applications

13. While some members were supportive of the Administration's proposal of allowing liquor licence applications to be advertised on free channels or media such as the Internet, some other members considered that written notices on liquor licence applications in the vicinity of the liquor licence premises concerned should be maintained as some members of the public would not use the Internet. The Administration was urged to improve the consultation process to ensure that residents in the neighbourhood of the premises applying for liquor licences were aware of the public notices of their applications.

14. The Administration advised that FEHD would refer the liquor licence applications to the relevant departments including the Police and the Home Affairs Department ("HAD") for advice. HAD would maintain the existing practice of posting notices on liquor licence application at the liquor-licensed premises concerned and in the vicinity of its location, and the relevant District Offices would gauge the views of nearby residents, DC members and area committees for LLB's consideration. LLB would take into account the views collected and impose additional licensing conditions where appropriate on a case-by-case basis. In addition, members of the public might provide their views on the liquor-licensed premises to LLB directly, as LLB publicized the list of liquor-licensed premises with the expiry dates of their licences.

Regulation of upstairs bars

15. There was concern about the problems such as fire safety, noise and other environmental nuisance caused by upstairs bars. Some members considered that the Administration should adopt more stringent control measures to tighten the regulation of upstairs bars. Some other members, however, pointed out that as there were a great number of commercial cum residential buildings in urban areas, the Administration should strike a balance between the interests of the trade and those of the public. Concern was also raised that over-regulation of upstairs bars would lead to the problem of unlicensed bars.

16. The Administration stressed that LLB had endeavoured to balance the interests of both the trade and the public. On the basis of the results of the public consultation, LLB had issued the Guidelines for the purpose of enhancing transparency. As regards the control on nuisances caused by liquor-licensed premises, LLB had made known, through the Guidelines, to the trade that it would consider imposing additional licensing conditions to reduce the impact of the noises on the neighbouring residents where necessary. To underline the importance LLB attached to the proper management of upstairs bars, new licensing conditions would be added for upstairs bars, including requiring the licensees to attend the "Seminar on Liquor Licensing" and imposing a more stringent safety margin on the capacity limit, for example, 90% of the capacity limit that is otherwise applicable.

Relevant papers

17. A list of the relevant papers on the LegCo website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
16 February 2015

**Relevant papers on
Dutiable Commodities (Liquor) (Amendment) Regulation 2015 and
Dutiable Commodities (Liquor Licences) (Fees) (Amendment) Regulation 2015**

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	13.7.2011*	Public consultation document on "Review of Liquor Licensing" [LC Paper No. CB(2)2366/10-11(01)]
	10.1.2012 (Item III)	Agenda Minutes CB(2)1849/11-12(01)
	8.4.2014 (Item V)	Agenda Minutes

*Issue date

Council Business Division 2
Legislative Council Secretariat
16 February 2015