

# **立法會**

## ***Legislative Council***

LC Paper No. CB(2)923/18-19(07)

Ref : CB2/PL/FE

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

#### **Background brief prepared by the Legislative Council Secretariat for the meeting on 12 March 2019**

#### **Online sale of food**

#### **Purpose**

This paper provides background information on and summarizes major concerns of members of the Panel on Food Safety and Environmental Hygiene ("the Panel") over the regulation of online sale of food.

#### **Background**

##### Regulation of online sale of food

2. According to the Administration's reply to a written question raised at the Council meeting of 21 November 2018, with e-commerce getting increasingly popular, more and more enterprises are tapping into the business opportunities by offering various kinds of food for sale through the Internet, mobile applications or social media platforms ("online food sale") with the purchase delivered straight to the customers.

3. Currently, food safety and food trade operations are regulated in various aspects under the laws of Hong Kong. Any person who undertakes business relating to the production, trading, import or distribution of food must meet the requirements of relevant legislation, irrespective of whether the business is conducted in physical premises, or through any means of transactions (including face-to-face, phone, electronic media, etc.). The relevant legislation include:

- (a) the Public Health and Municipal Services Ordinance (Cap. 132) stipulates that all food for sale for human consumption in Hong Kong, whether imported or locally produced, must be fit for human consumption;
- (b) under the Food Business Regulation (Cap. 132X) ("the Regulation"), any person who carries on any business which involves the preparation of food for sale for human consumption outside the premises, including online sale of the food concerned, must obtain a food factory licence issued by the Food and Environmental Hygiene Department ("FEHD"). In addition, depending on the circumstances, modes of operation and the types of food for sale, operators of online food sale business must obtain relevant licences or permits issued by FEHD. Any person operating online food sale business shall not sell any restricted food specified in the Regulation (including sashimi, sushi, oysters to be eaten in raw state, etc.) unless the Director of Food and Environmental Hygiene has granted written permission to the person to do so; and
- (c) the Food Safety Ordinance (Cap. 612) stipulates a registration scheme for food importers and distributors and provides for requirements for them to maintain transaction records, so that in the event of a food incident, the sources and points of sale of the food concerned can be traced.

#### Licensing requirements for online sale of restricted food

4. To further safeguard the food safety of online food sale, with effect from February 2016, FEHD requires operators who do not have physical premises to apply for permits in accordance with the Regulation if they sell restricted food online. Permits are issued on the conditions that the operators must provide particulars, such as permit number, type(s) of restricted food permitted for sale and business address, on their websites and printed promotional materials for consumers' reference. Consumers can verify such information through FEHD's website. In addition, the restricted food must be obtained from lawful sources and prepackaged by the suppliers before delivering to customers; the packages shall not be tampered with during transportation to prevent cross-contamination; and the food shall be stored at a safe and proper temperature at all times.

5. Operators of food premises which are holders of food business licences or permits (except for Factory Canteen Licence, Cold Store Licence, Fresh Provision Shop Licence with endorsement(s) for sale of live poultry and/or processed fresh poultry carcasses and offal, and Permit to Sell Food by means of Vending Machine) must comply with the conditions stated in paragraph 4 above if they also carry out online food sale.

6. According to information provided by the Administration in January 2019, as at 31 December 2018, FEHD has issued 395 permits for online sale of restricted food. The list of food premises issued with food business licences or permits, as well as operators without physical premises issued with permits for online sale of restricted food, are available on FEHD's website for public inspection.

### **Members' concerns**

7. Members' major views and concerns over the regulation of online sale of food are summarized below.

### **Surveillance and enforcement efforts**

8. While most members welcomed the Administration's regulation over online food sale, some members expressed concern as to whether the regulation would cause undue burden to small vendors operating online business. In these members' view, small food business operators (e.g. those selling homemade food products on the Internet) should be given room to carry on their business.

9. According to the Administration, under the existing legislation, regardless of whether the food business was conducted online or in the traditional manner, the operator concerned was required to obtain relevant licences or permits from the Environmental Hygiene Branch of FEHD and pay the relevant licence fees. This was not a new requirement. In view of the increasing prevalence of online food sale activities, to ensure food safety, the Administration saw a need to regulate vendors operating online food business which involved the preparation of food for sale for human consumption, irrespective of its scale, nature and operational mode, even if they only acquired the food from other food suppliers for resale to the customers through the Internet without being involved in the import, production or wholesale of food.

10. In response to members' enquiry about the Administration's efforts in monitoring online food sale activities, the Administration advised that FEHD

had been closely monitoring such activities (including online traders who were not involved in food production and did not have physical premises). If any food sold online for human consumption was suspected to be involved with unlicensed food business or its source was suspicious, FEHD would conduct investigations (including decoy operations to collect evidence and information) and take follow-up actions (such as taking food samples for testing, seizing food exhibits, and issuing warnings against the online traders concerned). Should there be sufficient evidence, prosecution would be initiated. In 2017, 22 prosecutions were instituted by FEHD against unlicensed food premises conducting online food sale activities in breach of the Regulation.

11. Enquiry was raised about measures taken by the Administration to monitor online food sale activities through overseas websites, which were not subject to the laws of Hong Kong. The Administration admitted that there were limitations to regulate online food sale activities conducted through overseas websites. That said, the Centre for Food Safety ("CFS") regularly monitored the websites of overseas food safety agencies and media reports on food safety issues to ensure that food on sale in Hong Kong complied with the legal requirements and was fit for human consumption. In addition, CFS took food samples at the import, wholesale and retail (including online retailers) levels for testing and adopted a risk-based principle in determining the types and size of samples to be collected and the laboratory analyses to be conducted.

#### Publicity and education

12. Some members expressed concern that the food business trade seemed to have insufficient understanding of the additional licensing conditions associated with the permit for online sale of restricted foods. In these members' view, the Administration should step up publicity on the new requirements and consequences of contravening the requirements.

13. The Administration advised that FEHD had enhanced public education and publicity on matters which the public and the trade should pay attention to when purchasing and selling food online. Through channels such as FEHD's website, television and radio Announcements in the Public Interest, leaflets and posters, members of the public were made aware of the nature, potential risks and temperature control during delivery of food purchased online, in particular perishable and high-risk food. FEHD also kept reminding the trade of the need to apply for a food business licence or permit under the law for operating a food business, irrespective of its scale and nature, in order to protect consumers' rights and health. During peak periods of online food sale activities over Christmas and the Chinese New Year, FEHD had also intensified publicity to promote safety awareness of food purchase through the Internet.

### **Latest developments**

14. At the Panel meeting on 11 October 2018, there was a suggestion that the Panel should follow up with the Administration on food safety and hygiene issues relating to online food sale, including the potential food safety risks involved in the delivery process of food products sold through these platforms. At the request of the Panel, the Administration provided in end-January 2019 an information paper on the subject (LC Paper No. CB(2)746/18-19(01)). The Panel has decided to discuss the matter at its meeting on 12 March 2019.

### **Relevant papers**

15. A list of the relevant papers on the website of the Legislative Council is in the **Appendix**.

Council Business Division 2  
Legislative Council Secretariat  
5 March 2019

## Appendix

### Relevant papers on online food sale

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	10 November 2015 (Item VI)	<u>Agenda</u> <u>Minutes</u>
	14 February 2017 (Item V)	<u>Agenda</u> <u>Minutes</u>  Administration's supplementary information on Food Surveillance Programme (LC Paper No. <u>CB(2)1217/16-17(01)</u> )
	13 February 2018 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Legislative Council	21 November 2018	<u>Written question raised by Hon Jimmy NG on "Food safety issues concerning online food ordering platforms"</u>
Panel on Food Safety and Environmental Hygiene	31 January 2019*	Administration's paper entitled "Food Safety of Online Food Sale" (LC Paper No. <u>CB(2)746/18-19(01)</u> )

\* Issue Date