

**Economic and Employment Council  
Retail Task Force**

***Progress update on follow up actions  
with trades' view of the  
food/catering and supermarket/  
convenience store categories***

**Purpose**

This paper updates Members on the follow up actions with trades' view of the two retail categories on regulatory activities.

**Response from Food and Environmental Hygiene Department (FEHD)**

2. FEHD has provided a written response (*distributed to Members on 21 February 2005*) to issues and concerns raised within its purview. Senior directorates of the department will attend the coming Task Force meeting to elaborate the departments' response and to discuss possible improvements with Members.

**Issues and concerns related to other agencies**

3. The following issues and concerns are related to agencies other than FEHD –

- long lead time to ascertain suitability of premises;
- long lead time by Fire Services Department to conduct on-site inspection;
- problems with setting up shops in Housing Authority estates;
- step up control over unauthorized building works (*grouped under inconsistent interpretation of licensing requirements*); and
- utilities connection not always possible.

The Secretariat is consulting relevant agencies on the above and will update members on the outcome.

## **Progress of implementation of the consultancy study on non-restaurant food business**

### **(a) General Comments**

The Business and Services Promotion Unit of the then Commerce and Industry Bureau commissioned KPMG Consulting Asia Ltd. (the Consultant) to conduct a study on the licensing of food premises (other than restaurants) in 2000. The Consultant recommended, among other things, in the final report delivered in May 2001 that the existing licence types of non-restaurant food premises be replaced by two generic categories as follows in order to allow food premises with multiple product line to be operated under a single licence-

- (i) food manufacturing licence for food storage, processing and manufacturing licence for premises that do not sell their products directly to customers; and
- (ii) combined retail / manufacturing licence for combined retail, food manufacturing and preparation licence for retail sector food premises (e.g. supermarkets, bakeries with retail sales, fresh provision shops and take away food outlets).

Legal advice on the feasibility of the implementation of generic licence was sought in August 2002. It was suggested that the proposal was, in principle, workable subject to amendment of relevant legislation. The introduction of generic licence in addition to existing licence types was also discussed during the consultation meeting held on 25.3.2003. The trade, however, expressed concern on the adoption of the suspension and cancellation policy to the generic licence. It suggested that only the portion of licensed premises in breach of law and licensing requirements/conditions was to be penalized through cancellation of the endorsement, and permission to be re-granted upon compliance of improvement works. Legal advice was sought in that respect. It was confirmed that partial suspension is not legally workable as a licence is a single and intact entity and there is no provision for severance of a licence into different parts.

(b) Specific Comments

| <i>Need to comply with regulations of different disciplines</i>  |  |
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| There should be flexibility for setting regulatory requirements as long as the principles for regulation are observed. Consideration should be given to centralizing the staff of various disciplines ( <i>Lands Department, Electrical and Mechanical Services Department, Food and Environmental Hygiene Department (FEHD), FSD, BD, etc.</i> ) under a single licensing office. They should be given the authority to approve applications, and to give minor concessions to requirements laid down in regulations. | FEHD is open-minded to new suggestions for streamlining the licensing process. The introduction of Application Vetting Panel was a partial implementation of joint departmental effort to centralize staff of various disciplines. The proposal of further centralizing the staff of various disciplines (Lands Department, Electrical and Mechanical Services Department, Food and Environmental Hygiene Department, Fire Services Department, Buildings Department, etc.) under a single licensing office has to be jointly considered by relevant departments. It may possibly involve amendments to relevant legislation and additional staff resources. The lead department for the centralized licensing office, if established, should be the one which plays a major role in determining whether the licence should be issued. |
| <i>Inconsistent interpretation of licensing requirements</i>   |  |
| The interpretation of licensing requirements sometimes varies among different officers. There is inconsistency in applying compliance requirements and standards in processing licence applications.   | FEHD licensing staff act in conformity with the policy and licensing requirements/conditions laid down in the departmental guide book “A Guide To Licensing” which allow flexibility to be exercised where appropriate, provided the basic requirements/conditions are met. We have in place a monitoring system for vetting reports by senior officers in order to ensure accuracy and consistency in the issue of licence and meeting the performance pledge.  |

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| FEHD seems to have reverted to the practice of assigning different officers to process different licence applications lodged for a particular store location. This causes inconvenience to applicants and a longer licence process time.   | It is the current practice of the department to assign applications for licences at the same location to a single case manager.   |
| Private kitchens operating in residential premises are unlicensed. They may cause fire hazard as well as hygiene problems to residents.  | Enforcement actions by FEHD are ongoing against operation of unlicensed food premises including those operating in the mode of private kitchen.   |
| There is a requirement to mount a full-height fixed glazed panel to separate all parts of a food counter ( <i>which is within 1.2m of the street or open space</i> ) from the street or public area. Some licensees would fend off the fixed panel requirement by conducting continuous work to change the layout. The fixed panel requirement should be strictly enforced since this is for hygiene purposes. | Removal of the fixed glazed panel during renovation is allowed only when business has been suspended. Exposing food to the risk of contamination as a result of removing the panel is liable to prosecution under the Food Business Regulation. FEHD will continue to take enforcement actions against such irregularities. |

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| Enforcement actions on large operators are more stringent than those actions on smaller ones.  | We have adopted a risk-based inspection system in which food premises with higher risk in food safety and environmental hygiene are subject to a higher inspection frequency. The size of clientele is one of the factors in classifying the risk type for food premises. Enforcement actions will be taken as appropriate against irregularities found during site inspections. There are on-going training courses in licensing enforcement for staff in order to equip them with the necessary skills and knowledge. |
| <b><i>Inconsistent requirements and practices for shops in urban areas and New Territories</i></b>   |   |
| Licence fees for shops in the New Territories (NT) are higher than those in the urban areas.   | A review on alignment of licence fees in urban and New Territories is being conducted by this department.   |
| Licences for a NT shop can only be collected with the licence fee settled at a designated local post office while an applicant in the urban area could have the licence sent to him and the payment settled at any post office. The arrangement for NT shops has generated additional administrative work for operators. | Three licensing offices, one each in Hong Kong, Kowloon and N.T. will be set up to centralize the issue and renewal of licences under a Licensing Management Information System to be introduced in May 2005. Licensees may go to either one of the licensing offices to renew their licences. They may also renew their licences by post or through the Internet.  |
| <b><i>Duplicate and excessive licensing requirements</i></b>   |   |
| A Food Factory Licence could be issued to premises of 200 to 240 sq. ft. if 50% or more of the area is designated as a food preparation area. A kitchen of 100-120 sq. ft. would hardly apply the proper hygiene standard for food   | Under the existing licensing policy, the minimum aggregate food room area for food factories selling take-away cooked food is <b>6 square metres</b> . There are no provisions requiring a designated percentage of area for exclusive use of food preparation area in licensed food factory. In any case, we expect the major  |

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| <p>cooking and a retail outlet of the same or smaller area would likely encroach into the common passageway/public place. It is suggested that if only limited food preparation work is conducted on-site, the ratio of the food preparation area to the premises area should be relaxed.</p>   | <p>portion of a licensed food factory should be designated for food preparation as the food sold is for consumption by the customers off the premises.</p>   |
| <p>Each product licence has its own set of licensing requirements. When an operator carries multiple products, some requirements common to several licences would become excessive. An example is to provide different sets of basin and sink for a Modified Food Factory Licence and a Frozen Confection Factory Licence in a convenience store.</p>                                   | <p>Since 14 June 2002, this department has lifted the requirement for a Modified Food Factory Licence and a Frozen Confection Factory Licence in the same convenience store to provide ablution and washing facilities separately in view of the simple mode of operation unless the two factories are far away from each other.</p>   |
| <p>Licensing by specific products is considered outdated. The number of licences for a supermarket should be reduced by grouping licences into broad categories. Sale of different products could be taken as endorsements under a broad licence category. Consideration could be given to group existing food licences under the two broad categories – raw and ready to eat food.</p> | <p>Grouping licences into broad categories is the same as having a generic licence for multiple product lines. Apart from the legal implications mentioned in (a) above, it should be noted that the applicant of a generic licence has to comply with multiple sets of requirements for Fresh Provision Shop, Frozen Confection, Siu Mei Lo Mei altogether. Hence, there is not much scope in shortening the processing time.</p> |

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| In renewing licences, operators have to re-submit documents on company profiles, among other documents. The former is considered unnecessary if there is no change in ownership.  | In renewal of licences issued by FEHD, re-submission of documents of company profiles is not required.  |
| The treatment standard for oil and grease in water is considered high. It would be more efficient and effective if central treatment facilities are incorporated into new property developments or during major renovation/maintenance of old buildings.                              | Greasy water discharging from scullery facilities e.g. sink is only required to pass through box-type grease trap before it is diverted into the government sewer. Box-type grease trap is a simple and inexpensive equipment which requires not much skill in installation.  |
| <b><i>No performance pledge for processing layout change application:</i></b>   |   |
| While provisional licensing and the associated performance pledges have speeded up the processing of new licence applications, there is no performance pledge for processing applications for layout changes. Business operators could not plan and monitor progress in this respect. | Processing of application for change of layout is often similar to that of new application which requires the approval of the Fire Services Department and the Buildings Department. FEHD will deal expeditiously with applications for change of layout, but accords a higher priority to processing new applications. |

| <i>Absence of standard practice in communicating with chain stores operated by the same operator</i>   |   |
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| <p>There is no standard practice in communicating with chain stores operated by the same operator. A few regional offices of FEHD communicate with a branch store, while some regional offices write to the head office of the operator. In other cases, FEHD write to both the branch store and its head office. In general, operators prefer correspondence direct with the head office.</p> | <p>For those licensees who have advised FEHD to communicate with their head office direct, FEHD will send the correspondence to their head office. Otherwise, FEHD will send the correspondence to the premises to which the licence relates.</p> |



***Insufficient consultation with trade prior to introducing regulatory requirements.***

There is insufficient consultation with the business community especially the affected sector when new regulatory requirements are introduced. A typical case was the regulation on nutrition labeling.

The Government attaches great importance to the views of the trade. Before introducing any new regulatory requirement, it is a standing practice that views from the trade are gathered. This will ensure that the regulation thus implemented would be able to meet the needs of the society and accepted by the vast majority of the community.

In regard to the proposed Labelling Scheme on Nutrition Information, a feasibility study had been conducted in 2002, and a consultation exercise was launched in November 2003 (25 November 2003 – 31 January 2004) to gather the views of the trade and other sectors of the society. To enhance direct communication with the trade and address their concerns, different sectors of the food trade had been invited to attend technical meetings chaired by the FEHD to discuss the proposals in detail. Fully acknowledging the trade's concerns over the potential impact of the proposed legislation, the Government commissioned a consultancy to conduct a Regulatory Impact Assessment (RIA), in which views of various sectors of the trades, especially those more likely to be impacted under the proposed Scheme, such as SMEs, were assessed. Further consultation will be conducted in due course before finalizing the proposals.

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| <p>A provisional licence normally lasts for 6 months in anticipation that a full licence could be issued within the period. In some cases, a much longer processing time is needed due to inadequate coordination among government departments. To cater for cases that required more than 6 months to process, the validity period of provisional licences should be extended to one year upon payment of a higher fee.</p> | <p>Under the Food Business Regulation, the validity of a provisional food business licence is 6 months. The timespan of 6 months is considered reasonably sufficient for compliance of all requirements for a full licence. To further safeguard the interest of the applicant, the law also allows the provisional licence to be extended for another 6 months on the condition that any delay in complying with the outstanding requirements is not due to the fault of the applicant.</p> |
| <p><b><i>Slow progress in the implementation of the Study on Licensing of Non-restaurant Food Premises</i></b></p>   |  |
| <p>The study was conducted in 2000. Out of the 24 recommendations, only 8 have now been implemented. Trade is concerned about the little progress made in implementing the study recommendations and would like to know details of implementation for those that are outstanding.</p>  | <p>Out of the 24 recommendations, 8 recommendations have been completed, 4 recommendations have not been pursued and 12 recommendations are being pursued. Out of the 12 recommendations, 5 will be completed in the first half of 2005; one will be completed upon amendment of relevant legislation; 3 are under review; and preparation work for the remaining 3 are in progress for further consultation with LegCo/trade. Please see details in Appendix.</p>                           |

***Non-restaurant Licensing***

| <b><i>Consultant's Recommendation</i></b>  | <b><i>Progress of Implementation Work</i></b>  |
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| <b>(A) Recommendations completed</b>   |  |
| No. 1 Review supermarket cold storage area loading requirements  | Revised floor loading requirement (15Kpa relaxed to 5 Kpa) was incorporated into the respective guides to application for licences in November 2001.   |
| No. 2 Improve co-ordination between departments and agencies involved in the regulation of food premises | Courier service has been used in delivering referrals of applications to the Buildings Department (BD) and Fire Services Department (FSD) since September 2001. Referrals to BD and FSD are enclosed with layout plans of large size, which could only be done by hand delivery.   |
| No. 3 Reduce reiteration of layout plans during application process                                      | The Food and Environmental Hygiene Department (FEHD) worked out with BD and FSD a list of scenarios that warranted re-submission of layout plans. Guidelines to applicants and staff were issued. No re-submission of layout plan is required until completion of work unless there are major changes.   |
| No. 4 Improve training of FEHD licensing staff and food workers  | On-going training programmes for licensing staff have been launched since December 2001. Staff members are kept abreast of current licensing issues to give more precise advice to applicants / licensees. Training courses for hygiene supervisors have been provided. The attendees for hygiene supervisor courses are assessed on the knowledge gained before awarding certificates. This enhances the knowledge of food handlers in food safety and for adoption of good food hygiene practices. |

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| No. 5 Target inspection to areas of greatest risk  | New inspection arrangement started in early 2003. The new inspection frequency of food establishments is classified as Type I, Type II and Type III according to the potential risk factors. Inspection will be carried out at intervals of 12, 8 and 4 weeks respectively. This new system is more comprehensive, thorough and cost-effective as more resources are allocated to inspection of high-risk premises. |
| No. 6 Allow reasonable care as a defence in court actions  | Reasonable care has already been accepted as a defence in court case. There are existing provisions in law which allow "reasonable care" to be used as defence in respect of food safety and hygiene at food premises.  |
| No. 7 Replace the approved equipment supplier lists with a code of practice                                | The approval regime for most of the food service equipment has been removed. Approval for food service equipment that is required by law such as utensil washing machine is still needed. The code of practice for food service equipment like barbecue machine and non-bottled drink dispensing machine was issued in December 2003.   |
| No. 8 Improve BD and FSD internal work methods   | The streamlined building safety procedures have been put on trial in industrial buildings since January 2003. The scheme has been put into practice since October 2003.   |
| <b>(B) Recommendations being pursued</b>   |   |
| No. 1 Revise the current system of demerit points  | FEHD plans to submit proposals to LegCo Panel for discussion in mid 2005.   |
| No. 2 Standardise and simplify the duplicated and outdated licensing requirements under different licences | FEHD plans to submit proposals to LegCo Panel for discussion in mid 2005.   |

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| No. 3 Change the scope and classification system for food licences                               | Legal advice on the proposed provision of a generic licence for food premises with multiple product lines was sought and Department of Justice pointed out that partial suspension of the licence is not legally workable.   |
| No. 4 Remove less risky food from the current permit system                                      | FEHD has completed a review and proposed to remove a less risky food item Man Tau Lo from the current permit system. Amendment to legislation is necessary according to the priority of the legislative programme.   |
| No. 5 Non-recovery of monitoring cost  | The fees and charges review is in progress. It remains our goal to fully recover cost of delivering the service through the fees/charges as instructed by Financial Services and the Treasury Bureau. Cost recovery for abandoned or withdrawn applications would be considered in the review.<br><br>The setting of up of the Licensing Management Information System in FEHD is expected to be completed in May 2005. The new system will bring about improvement to issues raised in Nos. 8 – 12. |
| No. 6 Adopt practices to support departmental objective of cost recovery                         |  |
| No. 7 Reduce number of abandoned or withdrawn applications                                       |  |
| No. 8 Eliminate unnecessary steps in the opening of new files                                    |  |
| No. 9 Streamline communication process with external parties                                     |  |
| No. 10 Enhance application status monitoring system  |  |
| No. 11 Improve inter-departmental referral process   |  |
| No. 12 Improve work mechanism in application submission and vetting, site inspection and payment |  |

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| <b>(C) Recommendations not pursued</b>  |   |
| No. 1 Change treatment of factory canteens and cold stores                            | It is not feasible to categorise factory canteens under the restaurant licensing system due to land use restriction and fire safety reason. The de-licensing of cold store is not supported as the licensing of such premises is to ensure food is kept properly at appropriate temperature pending sale, especially food with high risk, as well as to achieve the effective regulation of imported food.  |
| No. 2 Provide an option for the applicant to apply for an instant provisional licence | The trade did not favour this option given the cost implications. They also found the arrangement of fitting out works before applying for a licence risky.   |
| No. 3 Investigate scope for outsourcing the licensing process                         | Given the law enforcement requirements, it is not acceptable in principle to outsource the licensing process to the private sectors.  |
| No. 4 Allow the option of licensing by food safety plan                               | A working group on promoting Hazard Analysis and Critical Control Point (HACCP) practice in food trade was formed in Aug 2002 to examine the pros and cons of various options of HACCP based inspection regime. FEHD concluded that the option of licensing by food safety plan is not feasible as the premises still have to be regulated to address fire and building safety concerns. FEHD at present is looking into the feasibility of implementing an HACCP inspection scheme for food premises on voluntary basis. Food premises joining the scheme will be excluded from the risk-based inspection regime and subject to less frequency of inspection under the HACCP scheme. |