

Advisory Council on Food and Environmental Hygiene

The Proposed Food Safety Bill

PURPOSE

This paper sets out the Administration's proposal on the formulation of a Food Safety Bill with new food safety control tools to enhance the protection of public health and consumer interests.

BACKGROUND

2. In recent years, food incidents related to aquatic products and poultry eggs have heightened public concern over the safety of food and exposed the deficiencies of the existing food legislation. In the light of the public concern, the Chief Executive announced in the 2007 Policy Address that he would introduce a Food Safety Bill to provide for a comprehensive registration scheme for food importers and distributors. Under the scheme, importers and distributors will be required to maintain proper transaction records of imported food, so that in the event of a food incident, the sources and points of sale of the food concerned can be traced by the Government swiftly and thoroughly. Under the new legislation, when public health is under serious threat, the authorities will be empowered to require all wholesalers and retailers to stop selling and recall the food concerned.

EXISTING FOOD SAFETY LEGISLATION

3. The existing control of food safety is mainly provided under the Public Health and Municipal Services Ordinance (Cap 132) and its subsidiary legislation. The existing food legislation has the following problems –

- (a) A number of food items which are high risk or of wide public concerns, because of the definition of "food" in the existing legislation (see Annex A), are not being regulated or are insufficiently regulated. Examples include live fish and ice commonly used in drinks.

- (b) The Centre for Food Safety (CFS) of the Food and Environmental Hygiene Department (FEHD), with the exception of game, meat and poultry, currently lacks the power to impose requirements on the other imported food items to ensure that they meet the specified food safety standards.
- (c) CFS does not maintain a comprehensive database of food importers and distributors in Hong Kong. The absence of such a database renders it difficult for CFS, in the case of a food safety incident, to quickly trace the food importers and distributors concerned and ascertain the source and distribution of the food.
- (d) There is no legal requirement for the food trade, including food importers and distributors, to keep proper records of the movement of food which will assist CFS in tracing the distribution of problem food.
- (e) The Government also lacks the power to prohibit the import and sale of problem food and order a recall of the food concerned from the market even when a food item is suspected to have posed a serious health hazard to the public.

NEW FOOD SAFETY BILL

4. To address the above problems, we propose to enact a Food Safety Bill to strengthen legislative control. In this regard, we have reviewed the existing food safety legislation in Hong Kong and researched into overseas legislation and regulatory regime on food safety, including those of Australia, the European Community, Singapore and the United Kingdom. Many countries have adopted useful food safety control tools to ensure the supply of safe food for human consumption. These new tools are either not provided or inadequately provided for in existing legislation in Hong Kong. In addition, given that some 95% of the food we consume are imported from overseas, we need to strengthen our import control measures.

5. We therefore propose to formulate a new Food Safety Bill to improve upon our food regulatory regime. The Bill will provide for those new food safety control tools and to incorporate the import control measures for specific food types under Cap 132, with consequential amendments as deemed necessary to Cap 132.

KEY FEATURES OF THE BILL

6. The key features of the Food Safety Bill are summarized in the ensuing paragraphs.

(A) AUTHORITY OF THE FOOD SAFETY BILL

7. The Director of Food and Environmental Hygiene (DFEH) will be the Food Safety Authority under the new legislation. The Food Safety Authority will be empowered to make regulations under the Food Safety Bill within the ambit of the Bill.

(B) DEFINITION OF “FOOD”

8. The definition of “food” in the existing Cap 132, as set out in Annex A, does not include live fish (except shell fish), live amphibian and water¹. These food types are therefore outside the scope of our control at present.

9. We propose to broaden the definition of “food” under the new Food Safety Bill to cover live fish, live amphibian as well as ice (which is commonly incorporated into food or drink). With this expanded definition, the new food safety control measures proposed under the Food Safety Bill will be applicable to these food types.

10. In order that the food safety standards under Cap 132 are also applicable to these new food types and for the sake of consistency, we will introduce corresponding amendments to the definition of “food” under Cap 132.

(C) MANDATORY REGISTRATION SCHEME FOR FOOD IMPORTERS AND DISTRIBUTORS

11. The food trade is best placed to devise a system for the safe supply of food. It should bear the primary legal responsibility for ensuring food safety. The Food Safety Bill will include a number of

¹ Except aerated water, distilled water, water from natural springs and water placed in a sealed container for sale for human consumption

new requirements for the trade so as to ensure that the food it supplies to the public is fit for human consumption.

12. While most overseas authorities already have some form of arrangement requiring food importers and distributors to register with them or obtain licence, this measure is of even greater importance in the context of Hong Kong which imports some 95% of its food. There is indeed a pressing need to establish a well-structured and comprehensive database of all food importers and distributors in Hong Kong to facilitate food tracing.

13. We propose to include in the Food Safety Bill a mandatory requirement for all food importers and distributors to register with the Food Safety Authority. Only food importers who have registered with the Food Safety Authority will be allowed to import food into Hong Kong². It will be an offence if food importers fail to comply with this requirement upon the enactment of the Food Safety Bill. Whether importers need to comply with other additional requirements will depend on the food types they import.

14. A food item imported into Hong Kong will go through many different layers and channels before it reaches the final consumers. A system for identifying the traders involved in the food supply chain can enhance the Government's ability to trace problem food, even after the food has left the importer and is finding its way to the final consumers. We propose to stipulate in the Bill that food distributors will be required to register with the Food Safety Authority and inform the Authority of the type(s) of food that they distribute before they are allowed to conduct food distribution business in Hong Kong. The registration requirement equally applies to food coming from overseas or is locally produced. Food distributors will not include mere transporters of food and food retailers. In addition to creating an offence for conducting food import and distribution without having been properly registered, we further propose to make it an offence for food distributors and retailers to patronise respectively non-registered food importers or non-registered food distributors.

15. The registration for food importers and distributors will be for a period of three years, subject to renewal. Registration fee will be charged on the basis of full-cost recovery. We estimate that there are now some 6 400 importers and 9 600 distributors in the food trade. In

² Bona fide travellers who import food in their personal baggage for non-commercial use will be exempted.

order to enable FEHD to gain practical experience in administering the registration scheme and to familiarise the food trade with the new requirements, we have since December 2006 launched by phases a voluntary registration scheme for food importers and distributors for various food types, including poultry eggs, game/meat/poultry, live food animals/poultry, milk/milk beverage/cream/frozen confection, fish/fishery products, and vegetables/fruits. As at 30 November 2007, some 800 importers and 400 distributors have registered with FEHD under the voluntary scheme.

(D) FOOD TRACEABILITY – RECORD-KEEPING REQUIREMENT

16. Notwithstanding the requirement for all food importers and distributors to register with the Food Safety Authority, the registration scheme alone will not guarantee food traceability, especially for a food chain which consists of more than one distributor. The registration scheme will provide information on the identity, address and contact details of the food importers and distributors which will assist the Food Safety Authority in establishing better communication with them and contacting them more quickly in the event of a food incident. To trace where the problem food came from and where it has gone to, we need to further require food importers and distributors to keep records on the movement of food.

17. We propose to make provision in the Food Safety Bill to require all food importers and distributors to keep records of the business from which it obtained its food and the business to which it supplied the food³. To this end, all food importers and distributors shall put in place systems and procedures for making available the food movement information to the Food Safety Authority on demand. Non-compliance with the record-keeping requirement will be an offence under the Food Safety Bill. The Authority will be empowered to inspect all records maintained by the food importers and distributors for the purpose of food tracing.

18. The record-keeping requirement will also apply to all food retailers. However, we will only require food retailers to keep records of the business from which it obtained its food, but not information on the final consumers⁴ to whom it sold the food⁵ as it is impractical to do so and will impose huge burden on the trade and the consumers.

³ This is known as the “one-step-backward, one-step-forward” approach.

⁴ Final consumers mean the ultimate consumers of food who will not use the food as part of any business operation or activity.

⁵ This means “one-step-backward” only, and no need for “one-step-forward” record keeping.

(E) SPECIFIC IMPORT CONTROL FOR FOOD TYPES

19. Management at source is a key success factor for ensuring food safety. As Hong Kong relies heavily on imported food, this basically means import control – we should ensure that all food which enters Hong Kong is fit for human consumption.

20. To strengthen import control, we propose to include in the Bill various import control measures for different food types, according to their risk level (food safety is essentially a risk management issue and it is unnecessary to impose stringent import control measures on all imported food, regardless of risk level). We will also have to balance the risk factor against the concerns of the public and the trade about over-regulation which will result in higher compliance cost, and hence higher food price and reduction in food choice.

21. Accordingly, we propose to adopt an incremental and risk-based approach in expanding our import control, initially over food with high potential health risk. The Bill should also reserve powers for the Food Safety Authority to extend the various control measures to other food types should there be change in circumstances (e.g. when the risk level of the food concerned has changed). Our proposals in respect of control over the various food types, subject to consultation with the trade, are set out in Annex B. To cater for food brought in by members of the public, after going on sightseeing, business trips, etc, we propose to stipulate in the Food Safety Bill that import of certain food types by bona fide travellers for non-commercial use will be exempted from the import requirements.

(F) PROHIBITION OF IMPORT AND SALE OF PROBLEM FOOD AND MANDATORY RECALL

22. We further propose to include in the Food Safety Bill a power for the Food Safety Authority to issue an order to prohibit the import or sale of problem food and to issue a recall order, where the situation warrants.

23. The power to prohibit sale of, and order a recall of problem food is often found in overseas food safety legislation whereby the authorities concerned can make an order to mandate the food businesses, including

the manufacturers, importers, distributors and retailers to stop selling and/or recall problem food from the market. The present Cap 132 however does not provide for such a power.

24. We propose to empower the Food Safety Authority to issue a prohibition of import order, prohibition of sale order and/or a recall order where the Authority has reasonable grounds to believe that the food concerned poses a serious health hazard to the public.

25. Given the large amount of food imported into Hong Kong, we consider that a prohibition of import order is a highly effective and direct measure for stopping problem food from entering the Hong Kong market. For food types where an import licence is/will be required for each consignment (i.e. game, meat, poultry and poultry eggs⁶), we may achieve the same effect by stop issuing import licence. For other food types, where overseas food safety or health authorities have issued food alerts or where the Food Safety Authority has received negative testing results, and has reasonable grounds to believe that the food concerned poses a serious health hazard to the public, it may issue a prohibition of import order under the Food Safety Bill to ban the import of that particular food type. It has to be stressed that this measure is solely for addressing public health concerns and has nothing to do with the putting up of trade barrier. Where the Food Safety Authority is aware that only the food products produced by a particular overseas plant or only the food products of a particular batch to be imported from overseas has problem, the prohibition of import order will apply to that particular plant or that particular batch of food, instead of the whole exporting country/place.

26. Where the problem food has already entered Hong Kong or the food is locally produced or manufactured, the Food Safety Authority will consider issuing a prohibition of sale order. All food businesses will no longer be allowed to put the food products concerned on the market.

27. The Food Safety Bill will also empower the Food Safety Authority to issue a food recall order. The order will require the immediate withdrawal of the food concerned from being supplied and the retrieval of those food already supplied, in a manner and to the extent reasonably possible. The order may require the food businesses, including food importers, distributors, or retailers, where applicable, to arrange a public recall announcement and immediately notify all known

⁶ Import licence will be required for import of poultry eggs following the enactment of the Import of Game, Meat and Poultry (Amendment) Regulations. The Regulations will be tabled at the Legislative Council in early 2008.

consumers of the recall and its arrangement. The order may also require the food businesses to impound, isolate, destroy or otherwise dispose of the problem food concerned in accordance with the manner specified by the Food Safety Authority. The food businesses will have to notify the Food Safety Authority the details of the recall. FEHD will monitor the effectiveness and progress of each recall exercise.

(G) FOOD SAFETY APPEALS BOARD

28. We propose to establish a new Food Safety Appeals Board under the Food Safety Bill to hear appeals from any person who feels aggrieved by the decision of the Food Safety Authority (e.g. a prohibition of sale or recall order).

LOCAL PRIMARY PRODUCTION

29. While local primary production constitutes only 5% of our total food consumption, we also need to ensure that our local primary produce is fit for human consumption and meets the same level of safety standards. In this regard, the food safety standards stipulated in Cap 132, such as veterinary drug residues and pesticide residues⁷, apply equally to both imported food as well as local primary produce. Under the Food Safety Bill, local primary producers including fish farmers or vegetable farmers who distribute food are also required to register with the Food Safety Authority and keep records on the movement of food to facilitate food tracing. The provision relating to prohibition of sale order and food recall order will also apply to local primary produce.

30. To encourage local primary producers to adopt good husbandry practice as well as to provide quality and safe local agricultural products to the public, the Agriculture, Fisheries and Conservation Department (AFCD) is currently running voluntary accreditation schemes for local vegetable farms and fish farms. Accredited farmers are required to follow the guidelines in the schemes and their operations are monitored and inspected by AFCD on a regular basis. The products from these accredited farms are sampled and tested to ensure their compliance with relevant statutory standards. Suitable technical support and advice is also provided to the farmers under the schemes. AFCD will continue to encourage local farmers to participate in the schemes.

LEGISLATIVE TIMETABLE

⁷ A new regulation on pesticide residues will be introduced into the Legislative Council in 2008-09.

31. We plan to introduce the Food Safety Bill into the Legislative Council for first and second reading in the 2008-09 legislative session.

PUBLIC CONSULTATION

32. We will brief the Legislative Council Panel on Food Safety and Environmental Hygiene our proposal on 11 December 2007. Thereafter, we will consult the Trade Consultation Forum, a body set up by FEHD for liaison with the food trade which includes representatives from a wide spectrum of food traders including food importers, distributors and retailers. We will also consult the relevant stakeholders of the proposal, including the food trade, health and medical sector, and Consulates-General of various countries, etc.

ADVICE SOUGHT

33. Members are invited to comment on the above proposals.

Food and Health Bureau
December 2007

**Definition of “Food” under
the Public Health and Municipal Services Ordinance (Cap 132)**

The existing definition of “food” under section 2 of Cap 132 is as follows –

“Food” (食物) includes –

- (a) drink;
- (b) chewing gum and other products of a like nature and use;
- (c) smokeless tobacco products; and
- (d) articles and substances used as ingredients in the preparation of food or drink or of such products,

but does not include-

- (i) live animals, live birds or live fish (excluding shell fish);
- (ii) water, other than-
 - (A) aerated water;
 - (B) distilled water;
 - (C) water from natural springs, either in its natural state or with added mineral substances; and
 - (D) water placed in a sealed container for sale for human consumption;
- (iii) fodder or feeding stuffs for animals, birds or fish;
- or
- (iv) articles or substances used only as drugs.”

**Proposed Specific Import Control for Different Food Types
Under the Food Safety Bill**

1. The proposed import control measures for the different food types are set out below.

Game, Meat, Poultry and Poultry Eggs

2. The import of game, meat and poultry is currently regulated under the Imported Game, Meat and Poultry Regulation (Cap 132AK) and the Import and Export (General) Regulations (Cap 60A). All consignments of frozen or chilled meat or poultry imported into Hong Kong must be accompanied with an official health certificate which certifies that the meat and poultry concerned is fit for human consumption, and an import licence issued by the Food and Environmental Hygiene Department (FEHD). In addition, anyone who wants to import certain types of frozen or chilled meat or poultry is also required to obtain a permit from FEHD. Meantime, we will extend the control of Cap 132AK to cover poultry eggs as well. The proposed amendments to Cap 132AK will be tabled in the Legislative Council in early 2008.

3. Cap 132AK, with suitable modifications, will be transferred to the Food Safety Bill to provide for import control for game, meat, poultry and poultry eggs.

Aquatic Products

4. Under the existing Public Health and Municipal Services Ordinance (Cap 132), there is very limited control over live fish as well as aquatic products which are intended to be used as food. In 2005, we amended the Harmful Substances in Food Regulations (Cap 132AF) to prohibit the presence of malachite green in all food (including live fish, live reptiles and live poultry) imported to and sold in Hong Kong. We have also implemented administrative arrangement with the Mainland authorities whereby freshwater fish imported to Hong Kong must come from registered fish farms and that each consignment must be properly sealed by the Mainland authorities and accompanied with a health certificate. Such administrative arrangement however is not backed up by legislation. Given that Hong Kong people consume a daily average

of over 100 tonnes of freshwater fish, 280 tonnes of marine fish and 270 tonnes of shellfish and fish are in general regarded as medium to high risk food products, we must address this problem in the new Food Safety Bill. With the expanded definition for “food” in the Bill, we will be able to govern the import of live fish to ensure that they are safe for human consumption.

5. In addition to requiring all importers of fish or aquatic products to register with the Food Safety Authority, we consider that each consignment of import of fish or aquatic products must be accompanied with a health certificate issued by the health authorities of the place of origin. This arrangement is however subject to the availability of health certificates from the food safety/health authorities of the place of origin and we are now actively consulting our trading partners on this matter. The specific import requirements for different types of fish or aquatic products will be imposed by the Food Safety Authority through conditions imposed during the registration of importers. For certain high risk aquatic products, like ready-to-eat seafood intended for raw consumption, we are further considering more stringent requirement, like the issue of an import licence for each consignment. We, however, note that it would be impractical to impose the above import requirements for wild catch marine fish. We are therefore considering to exempt the above requirement of health certificate for import of wild catch marine fish, provided that the importers could submit a self-declaration that the consignment contains only of wild catch marine fish.

6. To facilitate surveillance checking by FEHD staff, we are also considering to designate specific sea landing points to restrict the point of entry of imported aquatic products. It is already a requirement under the Marine Fish (Marketing) Ordinance (Cap 291) for marine fish (except live fish) to land at the seven wholesale marine fish markets of the Fish Marketing Organisation (FMO) for the purpose of facilitating the wholesale marketing operation¹. We understand it is also the practice of the trade for other types of aquatic products imported into Hong Kong by the sea route. To facilitate the trade operation, in addition to the seven FMO markets, we will also consider, in consultation with the trade, the inclusion of other popular landing points, e.g. Lau Fau San, Kwai Chung Container Terminal (mainly for frozen products) as designated landing points.

¹ Marine fish, meaning any fish or part thereof, whether fresh or processed, in any manner indigenous in sea water or partly in fresh water and partly in sea water, including any product derived therefrom, but excluding all crustaceans or molluscs and fish alive and in water, are required to be landed at the seven wholesale marine fish markets of the Fish Marketing Organisation.

Fruits and Vegetables

7. Fruits and vegetables are not considered as high risk food. However, due to the large volume of consumption and past incidents (e.g. detection of high level of pesticide residues), the public is also concerned about the safety of these two food products. In this regard, we are working on a new subsidiary legislation on pesticide residues under Cap 132 which will set the standards for the safe use of pesticides in food.

8. We propose that importers of fruits and vegetables, like the importers of game, meat, poultry and aquatic products, should be required to register with the Food Safety Authority and keep proper records of movement of the fruits and vegetables. The consignments will be checked randomly by FEHD at the border control points. There is, however, no need for each consignment of fruits and vegetables to be accompanied with an official health certificate as this is not the international practice among exporting countries of vegetables and fruits.