

CHAPTER 2

Food and Environmental Hygiene Department

Inspection and regulation of food premises

**Audit Commission
Hong Kong
31 March 2006**

This audit review was carried out under a set of guidelines tabled in the Provisional Legislative Council by the Chairman of the Public Accounts Committee on 11 February 1998. The guidelines were agreed between the Public Accounts Committee and the Director of Audit and accepted by the Government of the Hong Kong Special Administrative Region.

Report No. 46 of the Director of Audit contains 9 Chapters which are available on our website at <http://www.aud.gov.hk>.

Audit Commission
26th floor, Immigration Tower
7 Gloucester Road
Wan Chai
Hong Kong

Tel : (852) 2829 4210
Fax : (852) 2824 2087
E-mail : enquiry@aud.gov.hk

INSPECTION AND REGULATION OF FOOD PREMISES

Contents

	Paragraph
PART 1: INTRODUCTION	1.1
Background	1.2
Licensed and permitted food premises	1.3 – 1.7
Routine inspection of food premises	1.8
Unlicensed food business activities	1.9
Audit review	1.10 – 1.11
General response from the Administration	1.12
Acknowledgement	1.13
 PART 2: INSPECTION OF FOOD PREMISES	 2.1
Inspection of licensed food premises	2.2 – 2.3
Inspection of food premises other than licensed food premises	2.4 – 2.6
Food hygiene and safety standards	2.7
<i>Audit observations</i>	2.8 – 2.35
<i>Audit recommendations</i>	2.36
Response from the Administration	2.37 – 2.39
 PART 3: REGULATION OF LICENSED FOOD PREMISES	 3.1
Operation of licensed food premises	3.2
Demerit Points System	3.3

	Paragraph
Warning system	3.4
Immediate cancellation of licence	3.5
Closure order	3.6
<i>Audit observations</i>	3.7 – 3.15
<i>Audit recommendations</i>	3.16
Response from the Administration	3.17
 PART 4: ENFORCEMENT ACTION AGAINST UNLICENSED FOOD BUSINESS ACTIVITIES	 4.1
Enforcement action	4.2 – 4.6
<i>Audit observations</i>	4.7 – 4.28
<i>Audit recommendations</i>	4.29
Response from the Administration	4.30 – 4.31
 PART 5: MANAGEMENT INFORMATION	 5.1
Management information systems	5.2 – 5.6
<i>Audit observations</i>	5.7 – 5.14
<i>Audit recommendations</i>	5.15
Response from the Administration	5.16

	Page
Appendices	
A : Organisation chart of the FEHD (January 2006)	64
B : Inspection time spent on the previous and the accompanied routine inspections	65
C : Total point-score of the previous and the accompanied routine inspections	66
D : Three cases with late payment or non-payment of licence fees	67
E : Non-compliance with the Hygiene Manager and Hygiene Supervisor Scheme (August 2005)	68
F : Requirement of site inspection before the issue of provisional licence	69 – 70
G : Suspension of licences (January 2000 to June 2005)	71
H : Cancellation of licences (January 2000 to June 2005)	72
I : Enforcement action taken against licensed food premises (January 2000 to June 2005)	73
J : Removal of unlicensed food premises from the target list	74
K : Enforcement action taken against unlicensed food premises (January 2000 to June 2005)	75
L : Execution of a closure order to close an unlicensed food factory	76
M : Persistent operation of unlicensed food business	77
N : Summary arrest against operators of unlicensed food premises (January 2000 to June 2005)	78
O : Execution of closure orders for 3 unlicensed food premises in the blitz operation mounted in January 2005	79
P : Acronyms and abbreviations	80

PART 1: INTRODUCTION

1.1 This PART describes the background to the audit of inspection and regulation of food premises by the Food and Environmental Hygiene Department (FEHD) and outlines the audit objectives and scope.

Background

1.2 The FEHD is responsible for safeguarding public health through various activities. One of its major functions is the licensing and regulation of licensed food premises, including inspection of food premises, performed mainly through its 19 district environmental hygiene offices organised under the three Operations Divisions in Hong Kong, Kowloon and the New Territories. Details are shown in Appendix A. Inspection of food premises is a key element of the food safety and public health programme of the FEHD. In 2004-05, the expenditure in respect of inspection of food premises and related activities (such as investigations on water seepage, dripping air-conditioners and other environmental nuisance) was \$212 million, and the revenue from the issue of food business licences and permits for sale of restricted foods (see para. 1.6) was \$166 million.

Licensed and permitted food premises

Food business licences

1.3 Under the Public Health and Municipal Services Ordinance (Cap. 132) and its subsidiary legislations, all food premises in Hong Kong are required to be licensed to ensure that they comply with the requisite health, fire and building safety requirements before opening for business. Food business licences are classified into the following types:

- (a) restaurant licence (i.e. licences for general restaurants, light refreshment restaurants and marine restaurants);
- (b) food factory licence (i.e. licences for fast food shops, meat roasting shops, and businesses providing food catering and catering/supply of lunch boxes services);
- (c) fresh provision shop licence;
- (d) bakery licence;
- (e) frozen confection factory licence;
- (f) factory canteen licence;

- (g) siu mei and lo mei (Note 1) shop licence;
- (h) cold store licence; and
- (i) milk factory licence.

As at 30 June 2005, there were 20,441 food business licences (including full and provisional licences). Of these 20,441 licences, there were 11,024 (54%) restaurant licences, 3,957 (19%) food factory licences, 2,918 (14%) fresh provision shop licences, 998 (5%) bakery licences and 1,544 (8%) other licences.

Food business provisional and temporary licences

1.4 ***Provisional licences.*** The FEHD operates a provisional licensing system to facilitate processing of applications for all food business licences. Under the system, the FEHD issues a provisional food business licence to an applicant if he can produce evidence that the basic health, fire and building safety requirements have been met. The provisional licence, with compliance of the basic requirements of a full licence, is valid for six months so as to allow the applicant more time to complete all the outstanding works for meeting the licensing requirements of a full licence. The FEHD conducts routine inspection of food premises holding provisional licences to ensure that the basic requirements of the provisional licences are complied with. As at 30 June 2005, 990 (5%) of the 20,441 food business licences were provisional licences.

1.5 ***Temporary licences.*** For the operation of food stalls, the FEHD issues temporary food factory licences which are valid for a period not exceeding seven days. The licensee is allowed to sell only pre-cooked food (Note 2) for consumption off the premises in conjunction with certain public functions (such as exhibitions, shows, sports competitions and concerts). In 2004, the FEHD issued 271 temporary licences.

Permits for sale of restricted foods

1.6 In addition to food business full licences, provisional licences and temporary licences, the FEHD issues the following types of permits for sale of certain restricted foods:

Note 1: *Siu mei and lo mei are specially processed meat, poultry and offal products in Chinese cuisines.*

Note 2: *The pre-cooked food has to be supplied by licensed food factories. No cooking other than warming up of the food by electrical appliances is permitted on the premises.*

- (a) frozen confections permit;
- (b) milk permit;
- (c) non-bottled drinks permit;
- (d) cut fruit permit;
- (e) Chinese herb tea permit;
- (f) coin-operated automatic food vending machine permit;
- (g) shell fish permit; and
- (h) other permits (such as permits for sale of sushi, sashimi, and oysters and meat to be eaten in raw state).

As at 30 June 2005, there were 5,522 permits for sale of restricted foods.

Food premises other than licensed and permitted food premises

1.7 Apart from licensed food premises and food premises with permits for sale of restricted foods, the FEHD also inspects the following types of food premises:

- (a) cooked food stalls issued with hawker licences, and cooked food stalls and market stalls selling restricted foods (such as meat, fish, poultry, and siu mei and lo mei) under tenancy agreements in FEHD markets or cooked food centres;
- (b) mobile vans selling frozen confections under itinerant hawker licences;
- (c) canteens (other than factory canteens – Note 3); and
- (d) clubs with catering services (Note 4).

Note 3: *Canteens (other than factory canteens), which are for the exclusive use of the pupils of schools and persons employed in the workplace, are not required to obtain food business licences from the FEHD. Factory canteen means any food business in a factory building which involves the sale or supply of meals or unbottled non-alcoholic drinks other than Chinese herb tea for consumption on the premises by persons employed in any factory in that factory building.*

Note 4: *The Office of Licensing Authority under the Home Affairs Department is responsible for the issue and renewal of certificates of compliance for clubs under the Clubs (Safety of Premises) Ordinance (Cap. 376) to ensure that the clubs comply with the building and fire safety requirements. The FEHD is responsible for carrying out routine inspection of the catering services, if any, of these clubs.*

As at 30 June 2005, there were 351 cooked food stalls issued with hawker licences, 3,455 cooked food stalls and market stalls selling restricted foods, 61 itinerant hawkers selling frozen confections, 880 canteens (other than factory canteens) and 544 clubs with catering services.

Routine inspection of food premises

1.8 To ensure the operators of the licensed food premises, food premises issued with permits for sale of restricted foods and other food premises comply with the requirements, conditions and hygiene standards prescribed by the Public Health and Municipal Services Ordinance, FEHD Health Inspectors carry out routine inspection (see Photograph 1) to check the general hygiene condition of food premises (such as cleanliness of kitchen, maintenance of furniture and equipment, condition of drainage systems, and existence of any rodent or vermin infestation). In 2004 and for the first 6 months of 2005, the FEHD conducted 243,401 inspections and 106,702 inspections respectively on licensed and permitted food premises.

Photograph 1

Routine inspection of licensed food premises



Source: Photograph provided by the FEHD

Unlicensed food business activities

1.9 The FEHD is responsible for taking enforcement action against unlicensed food premises to stop their operation as soon as possible. Under the Public Health and Municipal Services Ordinance, the FEHD can institute prosecution for breaches of regulations, conduct summary arrest (Note 5) against persistent offenders, and apply to the court for closure orders to stop the operation of unlicensed food business. In 2004 and for the first 6 months of 2005, the FEHD conducted 32,702 inspections and 16,034 inspections respectively on unlicensed food premises.

Audit review

1.10 The Audit Commission (Audit) has conducted a review of the economy, efficiency and effectiveness of the inspection and regulation of food premises by the FEHD. The audit review has focused on the following areas:

- (a) inspection of food premises (PART 2);
- (b) regulation of licensed food premises (PART 3);
- (c) enforcement action against unlicensed food business activities (PART 4); and
- (d) management information (PART 5).

1.11 In carrying out the audit review, Audit examined the records and interviewed the staff of the FEHD. Audit has found that there are areas where improvements can be made in the inspection and regulation of food premises by the FEHD. Audit has made a number of recommendations to address the issues.

General response from the Administration

1.12 The **Director of Food and Environmental Hygiene** has said that he welcomes and generally agrees with the audit recommendations.

Acknowledgement

1.13 Audit would like to acknowledge with gratitude the full cooperation of the staff of the FEHD during the course of the audit review.

Note 5: *Summary arrest is conducted by authorised staff of the FEHD to arrest any person whom they may reasonably suspect of being guilty of any scheduled offence under the Public Health and Municipal Services Ordinance.*

PART 2: INSPECTION OF FOOD PREMISES

2.1 This PART examines the process of FEHD inspections of various types of food premises, reports the achievements and suggests measures for further improvement.

Inspection of licensed food premises

2.2 **Routine inspection.** In February 2003, the FEHD implemented a Risk-based Inspection System (RBIS – Note 6) to allocate resources for the routine inspection of licensed food premises according to the assessed potential risks (i.e. type of food handled, activity of food business, food preparation process, type and size of customer base, and past track record of the food business). Under the RBIS:

- (a) all licensed food premises are classified into high-risk, medium-risk or low-risk categories. For each licensed food premises, scores are allocated to each potential risk. These scores are summed up to classify licensed food premises into each category;
- (b) the risk classification of licensed food premises is subject to an annual reassessment;
- (c) food premises issued with provisional licences are classified as high-risk;
- (d) licensed food premises may be immediately reclassified as high-risk if it is implicated in a food poisoning incident;
- (e) all the licensed food premises are grouped into inspection packages so that each package can be completely inspected by a Health Inspector in about 3 hours to 3.5 hours under normal circumstances; and
- (f) with effect from 1 June 2005, high-risk, medium-risk and low-risk licensed food premises are inspected at 4-week, 10-week and 20-week intervals respectively (Note 7).

Note 6: *The RBIS replaces the former Selective Inspection System. Under the Selective Inspection System, licensed food premises were classified into Category A, B or C depending on their hygiene condition found in the previous 12 months, and subject to different frequencies of inspections, ranging from once every two weeks to once every two months. The purpose of the Selective Inspection System was that licensed food premises of lower hygiene standards were inspected more frequently.*

Note 7: *The frequency of routine inspection for licensed fresh provision shop selling live poultry is once a week.*

2.3 **Other types of inspections.** Apart from the routine inspection, the FEHD carries out the following types of inspections of licensed food premises:

- (a) **Formal inspection.** Senior Health Inspectors and Chief Health Inspectors of a district conduct formal inspection within their own district with particular emphasis on ascertaining whether there are any unauthorised alterations to the approved layout plans;
- (b) **Supervisory inspection.** Senior officers of the FEHD conduct supervisory inspection to supervise and improve the standard of work of Health Inspectors as follows:
 - (i) **Internal inspection.** Supervisory checks are conducted by Chief Health Inspectors and District Environmental Hygiene Superintendents of the FEHD within their own district to ensure consistency of inspection standards in the district and appraise the performance of Health Inspectors; and
 - (ii) **External inspection.** Supervisory checks are conducted by the District Environmental Hygiene Superintendent of another district to ensure consistency of inspection standards among the 19 districts and appraise the performance of Health Inspectors; and
- (c) **Night inspection.** Food premises which operate at night only are grouped into night inspection packages under the RBIS. Routine inspection for these night inspection packages is conducted at night. In addition, Health Inspectors conduct night inspection within each district for licensed food premises operating both day and night to exercise stricter control over the general environmental hygiene condition of licensed food premises outside normal working hours, and ensure that the licensees observe food hygiene laws at all times. All irregularities (i.e. the hawker situation, the cleanliness of the streets and the obstruction problems of food premises) found during night inspection are recorded.

Inspection of food premises other than licensed food premises

2.4 **Food premises under routine inspection.** Unlike licensed food premises, other food premises (e.g. cooked food stalls and market stalls) permitted to carry on food business by law are only subject to the routine inspection of the FEHD. These food premises are grouped into inspection packages according to their food business types.

2.5 ***Routine inspection of cooked food stalls and market stalls.*** The frequencies of routine inspections of cooked food stalls issued with hawker licences, and cooked food stalls and market stalls selling restricted foods under tenancy agreements in FEHD markets or cooked food centres are as follows:

- (a) once every 8 weeks for market stalls selling meat (fresh or frozen) and fish;
- (b) once every 4 weeks for licensed cooked food stalls, markets stalls selling siu mei and lo mei, and cooked food stalls in FEHD markets or cooked food centres; and
- (c) once every 2 weeks for market stalls selling live poultry under normal condition.

2.6 ***Routine inspection of other types of food premises.*** The frequencies of routine inspections of the food premises holding permits for sale of restricted foods, mobile vans selling frozen confections under itinerant hawker licences, canteens (other than factory canteens) and clubs with catering services are as follows:

- (a) once every 2 months for food premises holding permits for sale of restricted foods;
- (b) once every 4 weeks for mobile vans selling frozen confections; and
- (c) once every 10 weeks for canteens (other than factory canteens) and clubs with catering services.

Food hygiene and safety standards

2.7 The FEHD considers that a good inspection system should be fair and transparent, and should balance the interests of both the consumers and the trade. In July 2003, the FEHD published a set of food hygiene and safety standards, the “Food Hygiene Code” (the Code), to help the trade understand the ways and means to meet the licensing requirements and conditions. At the same time, the Code enables FEHD staff to determine the extent of compliance with and ensure consistency in the interpretation and enforcement of the licensing requirements and conditions. In addition to the Code, the FEHD “Environmental Hygiene Services Operational Manual” (the FEHD Operational Manual) provides guidelines for FEHD staff in carrying out inspections and enforcement work.

Audit observations

Frequencies of routine inspections

2.8 **Hygiene education.** The routine inspection under the former Selective Inspection System (see Note 6 to para. 2.2) focused primarily on the sanitation of food premises. Each inspection took about 25 minutes to complete. The shortcomings of the Selective Inspection System were that it did not take sufficient account of the crucial risk factors and little time was allowed for hygiene education. Under the RBIS introduced in February 2003, inspections are more comprehensive as follows:

- (a) in addition to sanitation checks, food safety checks are conducted on food temperature, food protection, food storage, food handling and personal hygiene of food handlers; and
- (b) hygiene education is provided during each routine inspection.

2.9 **Reduction of inspection frequencies.** When the RBIS was introduced in February 2003, the time for each routine inspection was extended to the range of 45 minutes to 60 minutes. The routine inspection frequencies for low-risk, medium-risk and high-risk licensed food premises were reduced to once every 12 weeks, 8 weeks and 4 weeks respectively (Note 8). Since 1 June 2005, the inspection frequencies for low-risk and medium-risk licensed food premises have been revised to once every 20 weeks and 10 weeks respectively. The inspection frequency for high-risk licensed food premises has remained unchanged at once every 4 weeks. As a result, the total number of inspections of licensed food premises has decreased substantially.

2.10 **Decrease in number of inspections.** As shown in Table 1, the number of licensed food premises increased by 15% from 17,634 in 2000 to 20,229 in 2004, and the number of permitted food premises increased by 10% from 5,095 in 2000 to 5,584 in 2004. However, the number of routine inspections of licensed and permitted food premises decreased by 44% from 437,127 in 2000 to 243,401 in 2004.

Note 8: *Under the former Selective Inspection System, the frequencies of routine inspections for Categories A, B and C licensed food premises were once every 8 weeks, 4 weeks and 2 weeks respectively.*

Table 1

**Routine inspection of licensed and permitted food premises
(January 2000 to June 2005)**

Year	Number of food premises as at year end		Number of routine inspections
	Licensed	Permitted	
2000	17,634	5,095	437,127
2001	18,311	4,952	356,818
2002	18,819	5,207	382,230
2003	19,307	5,277	264,585
2004	20,229	5,584	243,401
2005 (Up to June)	20,441	5,522	106,702

Source: FEHD records

2.11 ***No record of hygiene education provided.*** One of the main objectives of implementing the RBIS is to provide hygiene education to the licensees during routine inspection. However, there are no FEHD guidelines on how Health Inspectors should provide the hygiene education. There were no records indicating that hygiene education was given during routine inspection. **In view of the implementation of a Hygiene Manager and Hygiene Supervisor Scheme in May 2005 (see para. 2.29), Audit considers that the FEHD should critically review the requirement of providing hygiene education during routine inspection, and the time standards and frequencies of routine inspections so as to utilise its staff resources more efficiently.**

Records of inspections

2.12 ***Inspection Report.*** During routine inspection, Health Inspectors need to check the general hygiene condition of the food premises. They also need to check whether the food is properly stored and handled, and whether there is any breach of licensing requirements and conditions. All the findings are recorded in a “Licensed Food Premises Inspection Report” (the Inspection Report) on the spot during the inspection.

2.13 ***Incomplete inspection records.*** There are five types of Inspection Reports. Each type has a different set of inspection items and is used for different groups of licensed food premises (Note 9). Each inspection item listed is pre-assigned with a point-score commensurate with the associated health risk. A “tick” is marked on the inspection item if it is checked to be satisfactory. For an unsatisfactory inspection item, the findings, corrective actions required, advice or warning given and legal action or prosecution contemplated are recorded by the Health Inspector on the Inspection Report. Health Inspectors are required to prepare Inspection Reports for all types of inspections for licensed food premises. Audit examination of the Inspection Reports of the six selected districts (Note 10) indicated that:

- (a) the starting time and completion time of a small number of the inspections (including routine inspection and follow-up inspection) were not properly recorded; and
- (b) a small number of Inspection Reports did not indicate the type of inspection carried out.

The information recorded in the Inspection Report is important for monitoring the efficiency and effectiveness of the inspection. **Audit considers that the FEHD should ensure that the findings are accurately recorded in Inspection Reports with a view to taking follow-up action more efficiently and effectively.** Audit also notes that it is difficult to ensure that breaches of licensing requirements and conditions of health significance are accurately recorded in the Inspection Reports because report writing skills and inspection standards of Health Inspectors vary. **Audit considers that, to facilitate taking follow-up action on irregularities and enhance the consistency of inspection standards in all districts, the FEHD should explore the feasibility of taking photographs as evidence of irregularities found during inspections.**

Routine inspection

2.14 ***Time standard for planning routine inspection.*** Under the RBIS, food premises are grouped into inspection packages which are allocated to the Health Inspectors with only one hour to two hours’ advance notice. The FEHD Operational Manual

Note 9: *There are five types of Inspection Reports for the following five groups of food premises:*

- (a) *restaurants, factory canteens, bakeries and food factories;*
- (b) *frozen confection factories and milk factories;*
- (c) *siu mei and lo mei shops;*
- (d) *fresh provision shops; and*
- (e) *cold stores.*

Note 10: *The six selected districts are the Central and Western, Mongkok, Sham Shui Po, Shatin, Tuen Mun and Wanchai Districts.*

(Note 11) specifies routine inspection time standards for inspecting various types of food premises. In planning the number of food premises to be included in a package, the FEHD tries to ensure that each package can be completely inspected in about 3 hours to 3.5 hours, including travelling time to and from the district office, and from one food premises to another under normal circumstances. The routine inspection time standards for individual food premises range from 15 minutes to 60 minutes as follows:

- (a) 15 minutes for a small-scale food factory (e.g. a hot dog stand and a coffee cart) or a retail frozen confection factory;
- (b) 35 minutes for a factory canteen or a light refreshment restaurant;
- (c) 50 minutes for a general restaurant, a marine restaurant, a cold store, a wholesale food factory or a wholesale bakery; and
- (d) 60 minutes for a wholesale frozen confection factory or a milk factory.

2.15 ***Time required for routine inspection.*** Audit analysed the actual routine inspection time of 53 randomly selected inspection packages from the six districts (i.e. Central and Western, Mongkok, Sham Shui Po, Shatin, Tuen Mun and Wanchai) in 2004 and 2005. Audit found that, in a majority of cases, the actual inspection time (including FEHD estimated travelling time ranging from 20 minutes to 40 minutes) spent on each inspection package and the actual inspection time spent on each food premises were shorter than the FEHD specified time standards (see para. 2.14). Details are as follows:

- (a) ***High-risk inspection package.*** The actual inspection time ranged from 1.3 hours to 3.8 hours;
- (b) ***Medium-risk inspection package.*** The actual inspection time ranged from 50 minutes to 2.8 hours;
- (c) ***Low-risk inspection package.*** The actual inspection time ranged from 1.2 hours to 4.3 hours; and
- (d) ***Individual food premises.*** The actual inspection time ranged from 5 minutes for each of the 7 general restaurants (Note 12) to 1 hour for a bakery in a hotel.

Note 11: *According to the FEHD Operational Manual, the routine inspection time standards are not rigid. They can be adjusted according to the actual size and nature of business of the food premises.*

Note 12: *The standard for inspecting a general restaurant is 50 minutes.*

Audit notes that the FEHD inspection time standards do not include the travelling time to and from the district offices and from one food premises to another, and have not been regularly reviewed. **In view of the significant shorter inspection time taken for each inspection package and for each food premises, Audit considers that the FEHD should regularly review the routine inspection time standards for various types of food premises stated in its Operational Manual.**

Accompanied routine inspection

2.16 ***Findings in accompanied routine inspection.*** Audit observed the routine inspections (hereinafter referred to as accompanied routine inspection) of six inspection packages of licensed food premises in six FEHD districts in November and December 2005 (Note 13). Audit noted that:

- (a) according to the FEHD Operational Manual, irregularities with 7 point-score or above were considered as serious violations which should be rectified or followed up immediately or within a specified period of time. Other minor irregularities might be followed up until the next routine inspection or as soon as possible. However, breaches of licensing requirements and conditions of health significance found during some of the accompanied routine inspections had not been promptly followed up. For example, arising from the inspection of a general restaurant in May 2005, an irregularity of health significance with 10 point-score (Note 14) was not followed up until the next routine inspection conducted in October 2005;
- (b) failure to exhibit the licence at a conspicuous place was an offence under section 34B of the Food Business Regulation of the Public Health and Municipal Services Ordinance. According to the Code, failure to exhibit the licence sign (Note 15) at a conspicuous place was a breach of licensing condition. Figure 1 is a licence sign of a licensed general restaurant. In one accompanied routine inspection, the failure of the licensee to produce his licence for inspection was not recorded. A “tick” was marked on the inspection item “licence not yet expired; the licence and licence sign conspicuously displayed” of the Inspection Report; and

Note 13: *Audit selected two inspection packages for each risk category of licensed food premises under the RBIS in the Central and Western, Mongkok, Sham Shui Po, Shatin, Tuen Mun and Wanchai Districts.*

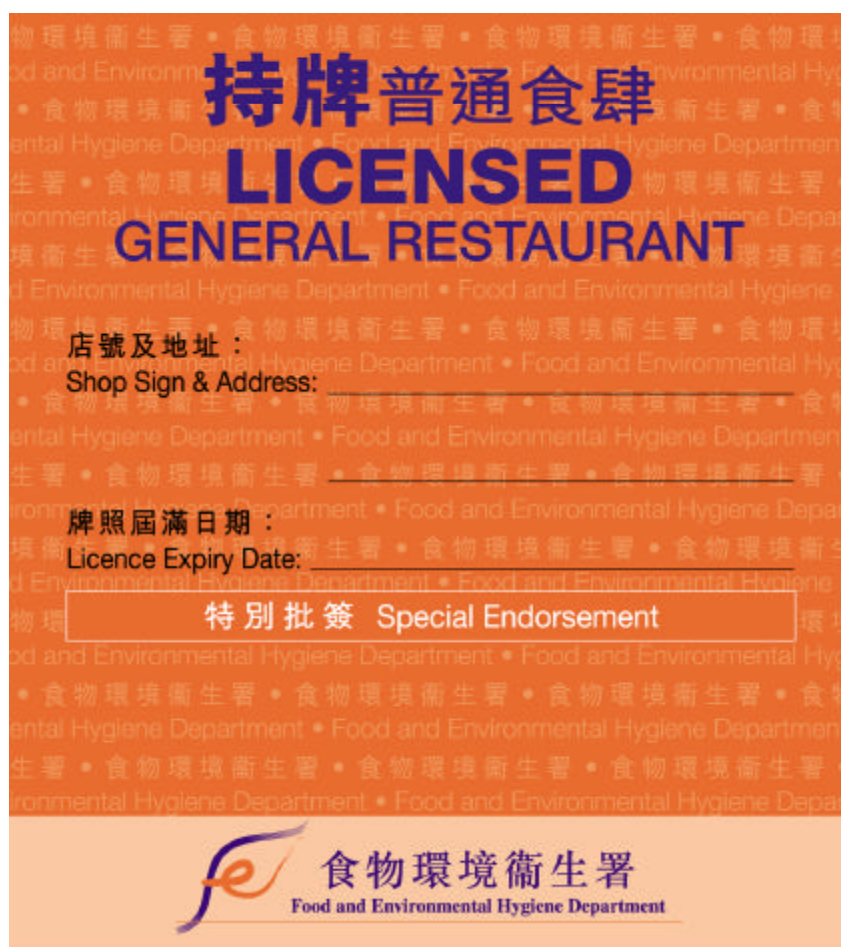
Note 14: *An example of irregularity of health significance with 10 point-score is the failure to keep the walls, floors, ceilings, doors and windows of the kitchen, food rooms and food processing areas clean.*

Note 15: *A licence sign is an orange colour label with shop sign, address and licence expiry date for the licensee to display near the entrance of the food premises in addition to the licence.*

- (c) it is a standard licensing condition for fresh provision shops, siu mei and lo mei shops, and premises selling ready-to-eat food (such as sushi and sashimi) to obtain food and food ingredients from approved sources and produce supplier certificates of restricted foods (Note 16) for inspection. In one accompanied routine inspection, the Health Inspector did not check the source of food. A “tick” was marked on the inspection item “no sale of unfit food/unauthorised food/prohibited food/food from non-approved source” of the Inspection Report.

Figure 1

Licence sign of a licensed general restaurant



Source: FEHD records

Note 16: The restricted foods are siu mei and lo mei, bakery products, frozen confections and milk, sushi, sashimi, oysters and meat to be eaten in raw state, and meat products.

2.17 ***Shorter inspection time and lower point-score of irregularities in previous inspections.*** Audit compared the Inspection Reports of the six accompanied routine inspections with those of the previous routine inspections. Audit found that:

- (a) the actual time of most of the accompanied routine inspections was longer than that of the previous routine inspections;
- (b) the actual time of most of the accompanied routine inspections spent on individual food premises was shorter than the routine inspection time standards stated in the FEHD Operational Manual;
- (c) the actual time spent on each inspection package was also shorter than the standard of 3 hours to 3.5 hours. Details are given in Appendix B; and
- (d) in a majority of cases, the total point-score of irregularities found during the accompanied routine inspections was higher than that of the previous routine inspections for the same food premises. The total point-score of irregularities of the accompanied routine inspections in all districts (other than the Sham Shui Po District) was higher than the highest total point-score of irregularities of the previous routine inspections by 40% to 644%. Details are given in Appendix C.

In view of the failure to record some of the breaches of regulation and licensing condition, and the significant higher total point-score of irregularities found during the accompanied routine inspections, Audit considers that the FEHD needs to ensure that Health Inspectors adopt consistent inspection standards throughout its 19 districts.

Other types of inspections

2.18 ***Night inspection.*** Food premises operating at night (such as karaoke, pub, night club and disco) are grouped into night inspection packages under the RBIS. Routine inspection for these night inspection packages is conducted at night. In addition, the FEHD conducts night inspection (Note 17) within each district for licensed food premises operating both day and night. According to the FEHD Operational Manual, the purpose of night inspection is to improve in general the environmental hygiene condition of the district with special emphasis on exercising stricter control over food premises outside normal working hours. The frequency of night inspection is once or twice a week so that all food premises in a district are covered within 3 months. Audit observations arising from a scrutiny of

Note 17: *According to the FEHD Operational Manual, night inspection should not start earlier than 6:00 p.m. and should last for not less than two hours. Inspection time should be adjusted from time to time according to operational needs. At least 6 food premises should be included in each night inspection. Priority should be given to those premises where illegal food business activities are suspected to be carried out after office hours.*

night inspection records of the six selected districts from January 2000 to September 2005 are as follows:

- (a) **Mongkok and Wanchai Districts.** Night inspection was conducted in accordance with the FEHD Operational Manual, in addition to the routine inspection for night inspection packages;
- (b) **Central and Western District.** From September 2004 to September 2005, only two night inspections were conducted, in addition to the routine inspection for night inspection packages; and
- (c) **Sham Shui Po, Shatin and Tuen Mun Districts.** No night inspection was conducted.

In Audit's view, the FEHD should ensure that night inspection is conducted in accordance with the FEHD Operational Manual in all districts.

2.19 **Formal inspection.** Formal inspection is conducted weekly by Senior Health Inspectors and Chief Health Inspectors within their districts (Note 18). The purpose is to check if there are unauthorised alterations to the approved layout plans of the licensed food premises. According to the FEHD Operational Manual, formal inspection schedules should be compiled to ensure that all food premises in the district are formally inspected within the prescribed time limit (Note 19). Audit review of the formal inspection records of the 19 districts from 2003 to 2005 indicated that no formal inspection schedule was compiled by the Wong Tai Sin District (Note 20). **Audit considers that the FEHD should ensure that all the 19 districts have a formal inspection schedule and formal inspection of all the licensed food premises in a district is conducted within the prescribed time limit.**

Note 18: *The licensees are informed of the formal inspection 14 days in advance. Formal inspection of all food premises in a district has to be completed within a period of 24 months to 30 months.*

Note 19: *The type, size and contiguity of the food premises to be inspected are taken into account and any new issue or cancellation of licence is updated for compilation of the formal inspection schedules.*

Note 20: *According to the District Environmental Hygiene Superintendent, only an informal pencil marked inspection roster was used to monitor the schedule of inspection.*

2.20 **Internal inspection.** According to the FEHD Operational Manual, the package for each internal inspection should comprise at least five licensed food premises (Note 21). Audit observations after reviewing the internal inspection records of the six selected districts from 2004 to 2005 are as follows:

- (a) **Shatin District.** Internal inspection was conducted in accordance with the FEHD Operational Manual. However, only 2 out of the 19 packages, selected for internal inspection from January 2004 to September 2005, comprised five licensed food premises in each package (Note 22);
- (b) **Central and Western District.** Internal inspection ceased in 2004 (Note 23); and
- (c) **Mongkok, Sham Shui Po, Tuen Mun and Wanchai Districts.** No internal inspection had been conducted since the establishment of the FEHD in 2000.

According to the FEHD, after the implementation of the RBIS, the number of food premises in an inspection package is sometimes less than five in order to ensure that an inspection package can be completed within the time standard of 3 hours to 3.5 hours including travelling time. Audit noted that there was a significant variance in the coverage of internal inspection for inspection packages of different risk categories in the Shatin District. As at 30 June 2005, 37% of the 250 inspection packages of the Shatin District were low-risk, 35% were medium-risk and 28% were high-risk. However, among the internal inspection packages, 56% were low-risk, 33% were medium-risk and 11% were high-risk. **In Audit's view, to ensure efficient use of staff resources, more internal inspections should be conducted on high-risk licensed food premises. The FEHD should closely monitor the internal inspection of all districts to ensure the overall consistency of the inspection standards and appraise the performance of Health Inspectors.**

2.21 **External inspection.** External inspection is conducted once every two months. As at 30 June 2005, the FEHD grouped the 20,441 licences into 4,190 inspection packages. From February 2003 to June 2005, the District Environmental Hygiene Superintendents

Note 21: *The District Environmental Hygiene Superintendent is responsible for preparing the monthly inspection schedule and assigning packages to Chief Health Inspectors.*

Note 22: *Each of the remaining 17 packages, selected for internal inspection, comprised only 2 to 4 licensed food premises.*

Note 23: *In October 2004, the Central District and the Western District were merged to form the Central and Western District. The Central District discontinued internal inspection in October 2004 while the Western District discontinued internal inspection in January 2004.*

conducted external inspection of only 267 (6.4%) inspection packages. Audit noted that there was a significant variance in the coverage of external inspection for inspection packages of different risk categories. Of these 267 inspection packages, 24% were high-risk, 49% were medium-risk and 27% were low-risk. **In Audit's view, the FEHD should consider conducting more external inspections of high-risk licensed food premises. The FEHD needs to closely monitor the external inspection of all districts to ensure the overall consistency of the inspection standards and appraise the performance of Health Inspectors.**

Licence fee

2.22 ***Payment of licence fee.*** Under the Food Business Regulation, the issue or renewal of a food business full licence is subject to the advance payment of licence fee to the Director of Food and Environmental Hygiene. The licence should be exhibited at a conspicuous place near the entrance of the food premises. According to FEHD computerised records, as at 8 August 2005, there were 738 cases of outstanding licence and permit fees, amounting to \$3 million for all the 10 districts in the urban area (Note 24). Audit examination of 12 outstanding cases indicated that in some districts:

- (a) no reminder was issued and no follow-up action was taken to collect the overdue fees;
- (b) the routine Inspection Report did not indicate that the licensees of these food premises had failed to produce valid licences for inspection; and
- (c) unlike other government fees and charges, no surcharge was imposed for late payment of licence or permit fees.

2.23 ***Late payment or non-payment of licence fee.*** Case 1, Case 2 and Case 3, shown in Appendix D, are examples of late payment or non-payment of licence fees. **Audit considers that the FEHD should strengthen its control over the collection of food business licence and permit fees, and ensure that food business licences are issued only after receipt of the licence fees. The FEHD should also ensure that prompt follow-up action is taken to collect overdue food business licence and permit fees, and consider imposing a surcharge for overdue licence and permit fees.**

Note 24: According to FEHD manual records, as at 3 August 2005, there were 225 cases of outstanding licence and permit fees amounting to about \$1 million for all the 9 districts in the New Territories. Since 22 August 2005, the manual records have been replaced by computerised records. Up to the end of December 2005, there were 437 cases of outstanding licence and permit fees amounting to \$1.4 million for all the 19 districts.

Food poisoning incidents

2.24 ***Database of Department of Health.*** The Department of Health collects, collates and analyses data on communicable diseases, including food poisoning incidents in Hong Kong. In the event of food poisoning incident involving food premises, the Department of Health will inform the FEHD to investigate the incident.

2.25 ***FEHD investigation.*** The number of investigations of food premises related to food borne diseases increased by 81% from 481 in 2000 to 870 in 2005. The majority of these investigations were on food poisoning. The investigations were conducted by district Health Inspectors and officers of the Food Incidents Response and Management Section (FIRMS – Note 25). District Health Inspectors checked the environmental hygiene of the food premises while officers of the FIRMS carried out epidemiological investigation at the food premises, formulated expert opinion on the source and contributing factors of the outbreak and offered professional advice on the control measures (Note 26). The identified major contributing factors for food poisoning incidents in 2004 were cross contamination of ready-to-eat food by raw food, contamination by food handlers, prolonged storage of food and improper food storage temperatures.

2.26 ***Food premises related to food borne disease investigations.*** In addition to carrying out investigations into food poisoning incidents, the FEHD collates and analyses food poisoning incident data to draw up food safety education programmes for the trade and the general public. According to FEHD Annual Statistical Reports, from 2000 to 2005, there were 3,220 food premises related to food borne disease investigations. Details are given in Table 2.

Note 25: *The FIRMS is staffed by doctors and nurses of the FEHD.*

Note 26: *One of the major objectives of the FIRMS investigation is to educate the food handlers on food, personal and environmental hygiene to prevent further outbreaks of food poisoning.*

Table 2

**Food premises related to food borne disease investigations
(2000 to 2005)**

Type of food premises	Number of food premises						Total	Percentage
	2000	2001	2002	2003	2004	2005		
Restaurant/food premises	363	383	292	206	338	406	1,988	62%
Canteen/club/market stall and other retail outlets	83	171	125	60	100	137	676	21%
Food factory	17	72	54	60	86	81	370	11%
Light refreshment restaurant (Note)	–	–	–	19	14	22	55	2%
Cooked food stall	18	15	4	5	11	17	70	2%
Siu mei and lo mei shop (Note)	–	–	–	16	22	23	61	2%
Total	481	641	475	366	571	686	3,220	100%

Source: FEHD records

Note: From 2000 to 2002, these food premises were grouped under restaurant/food premises.

2.27 Increase in the number of food premises related to food borne disease investigations. Audit noted that the number of food premises related to food borne disease investigations had increased by 43% from 481 in 2000 to 686 in 2005. **In view of the significant increase, Audit considers that the FEHD should take more stringent enforcement action against the licensed and permitted food premises, and the unlicensed food premises for breaches of hygiene regulations and failure to meet hygiene standards. The FEHD should also review the effectiveness of the existing inspection and enforcement systems of food premises.**

Hygiene Manager and Hygiene Supervisor Scheme

2.28 ***Inadequacy of food handling knowledge.*** Prior to 30 May 2005, the licensing requirements and conditions did not require that food handlers must be trained in food safety and handling before taking up jobs in food premises. Therefore, hygiene knowledge was not a major consideration in the hiring of staff in the food business. With a relatively high staff turnover and keen competition in the trade, there was little incentive for most food handlers to acquire food safety and handling knowledge. Hence, food handlers might not have sufficient understanding of the risks involved in food preparation and the ways of reducing these risks.

2.29 ***Requirements of the Hygiene Manager and Hygiene Supervisor Scheme.*** Improper food handling practice is one of the major identified causes of food poisoning incidents involving food premises. To improve the food safety and handling knowledge of food handlers and strengthen the supervision of food preparation process in licensed food premises for the prevention of food borne diseases, since 30 May 2005, the FEHD has implemented the Hygiene Manager and Hygiene Supervisor Scheme. Under the Scheme:

- (a) a hygiene manager (Note 27) is a managerial staff member providing in-house training to the food handlers at the licensed food premises. A hygiene supervisor (Note 28) is a staff member who performs a supervisory role in food handling;
- (b) all large food premises (Note 29) and premises producing high-risk food (Note 30) should appoint a full-time hygiene manager and a full-time hygiene supervisor; and

Note 27: *A hygiene manager is required to complete a formal course of training of 16 hours to 20 hours. Courses are provided by an academic institute or vocational training centre recognised by the FEHD.*

Note 28: *A hygiene supervisor is required to complete a training course of 4 hours to 6 hours. Since mid-2001, the FEHD has provided free training courses to the hygiene supervisors of licensed food premises. Up to August 2005, the FEHD held 934 courses for 42,615 hygiene supervisors and issued 40,328 certificates to successful attendees.*

Note 29: *Large food premises are general restaurants and factory canteens capable of accommodating over 100 customers, and food factories with a gross floor area of more than 200 square metres.*

Note 30: *High-risk food is sushi, sashimi, oyster and meat to be eaten in raw state, and any other food of animal, fish and shell fish origin to be eaten in raw state.*

- (c) all other food premises should appoint either a full-time hygiene manager or a full-time hygiene supervisor.

If a licensee fails to comply with these requirements and conditions, it may lead to the non-issuance or cancellation of his/her licence. Under the Scheme, Health Inspectors check the presence of the hygiene manager and/or the hygiene supervisor and their course certificates during routine inspection.

2.30 ***Non-compliance with requirements under the Scheme.*** Audit noted that as at 31 August 2005, 347 (1.7%) out of 20,217 licensees had not complied with the requirements of appointing a hygiene manager and/or a hygiene supervisor. Details are given in Appendix E. According to FEHD records, only verbal warnings were given or warning letters were issued to these licensees. **Audit considers that the FEHD should take more stringent action to ensure that licensees comply with the new licensing requirements under the Hygiene Manager and Hygiene Supervisor Scheme.**

2.31 ***Monitoring mechanism.*** Audit considers that the FEHD should critically review the effectiveness of the Scheme and develop a monitoring mechanism to ensure that the purpose of strengthening the supervision of food preparation process in licensed food premises to prevent food borne diseases is achieved. The monitoring mechanism may include the following control measures (Note 31):

- (a) requiring the licensed food premises to keep records of in-house training for food handlers conducted by the hygiene manager for FEHD inspection;
- (b) requiring the food handlers to take a short quiz periodically to ensure that they have acquired the basic food safety and handling knowledge from their hygiene manager or hygiene supervisor;
- (c) setting a validity period for the course certificates and requiring the hygiene managers and hygiene supervisors to attend periodic refresher courses to upkeep their food safety and handling knowledge;

Note 31: *The measures stated in paragraph 2.31(a) and (b) were proposed by the Clean Markets and Food Premises Sub-Committee in 1998. The Sub-Committee was chaired by the then Director of Urban Services. Its terms of reference were mainly to formulate strategies and plans for a coordinated effort to upgrade hygiene standards and promote healthy living, and devise measures to enhance community participation in efforts to identify and resolve environmental and public health problems.*

- (d) imposing more stringent requirements (such as requiring licensees to appoint more than one hygiene manager or hygiene supervisor, and requiring all food handlers to attend additional food safety courses) for licensed food premises involved in food poisoning incidents; and
- (e) requiring licensed food premises to keep records of daily checks conducted by the hygiene supervisor on the personal, environmental and food conditions of the food premises for FEHD inspection.

Provisional licence system

2.32 ***Abuse of provisional licence system.*** Under the provisional licence system, the FEHD normally issues a provisional food business licence over the counter if the applicant produces a certificate of compliance showing that the basic licensing requirements for operating food premises have been met (Note 32). The provisional food business licence is valid for six months to allow the applicant more time to complete the works for meeting the requirements of a full licence. However, some licensees have abused the system by just obtaining the certificates of compliance. They withdraw the full licence application shortly before the expiry of the provisional licence and apply again for another provisional licence so that they can continue to operate without meeting the requirements of a full licence.

2.33 ***Certification system.*** Audit examination of the application records of the three FEHD Licensing Offices (Note 33) from January 2000 to August 2005 indicated that 21 food premises had been operating for more than one year under consecutive provisional licences without obtaining full licences. Of these 21 food premises, 13 were food factories, 5 were general restaurants, 2 were light refreshment restaurants and 1 was a factory canteen. The FEHD relied on the certificates of compliance without inspecting the food premises before the issue of provisional licences.

Note 32: *Certificate of compliance is issued by a recognised professional authorised person under the Buildings Ordinance (Cap. 123) or the Fire Services Ordinance (Cap. 95).*

Note 33: *The three Licensing Offices of the FEHD are the Hong Kong and Islands Licensing Office, the Kowloon Licensing Office and the New Territories Licensing Office.*

2.34 ***Deterrent measures.*** According to the FEHD internal instruction issued in August 2003, the staff of district offices are required to notify the staff of the Licensing Offices regarding applications for provisional food factory licences, when it is suspected that genuine efforts have not been taken by the previous provisional licence holder at the same premises to comply with licensing requirements of the full licence. If non-compliance is found, the district offices should inform the Licensing Offices of the suspected cases (Note 34) so that the staff of the Licensing Offices will visit the premises to check compliance with licensing requirements before the issue of provisional licences.

2.35 ***Site inspection before issuing provisional licence.*** Audit noted that the staff of the Licensing Offices had not followed the instruction of visiting food premises before the issue of provisional licences in some suspected cases. Case 4, shown in Appendix F, illustrates the need to comply with this requirement. **To prevent abuse of the provisional licence system, Audit considers that the FEHD should consider incorporating into its Operational Manual the requirement of inspecting the food premises before the issue of provisional licence.**

Audit recommendations

2.36 **Audit has recommended that the Director of Food and Environmental Hygiene should:**

Frequencies of routine inspections

- (a) **in view of the implementation of the Hygiene Manager and Hygiene Supervisor Scheme to improve the hygiene knowledge of food handlers:**
 - (i) **critically review the effectiveness of providing hygiene education during routine inspection; and**
 - (ii) **review the time standards and frequencies of routine inspections so as to utilise FEHD staff resources more efficiently and effectively;**

Note 34: *To detect a suspected provisional licence abuse case, the District Environmental Hygiene Superintendent should check whether there was a previous application for a full and provisional food factory licence at the same premises, and whether non-compliance with major health requirements (e.g. food counter) was found in the previous application.*

Records of inspections

- (b) ensure that the inspection findings are accurately recorded in Inspection Reports with a view to taking follow-up action more efficiently and effectively;
- (c) explore the feasibility of taking photographs as evidence of irregularities found during inspection so as to facilitate taking follow-up action and enhance the consistency of inspection standards in all districts;

Routine inspection

- (d) in view of the significant shorter inspection time taken for each inspection package and for each food premises, critically and regularly review the routine inspection time standards for various types of food premises stated in the FEHD Operational Manual;

Accompanied routine inspection

- (e) ensure that the inspection standards adopted by individual Health Inspectors are consistent in all districts;

Other types of inspections

- (f) ensure that night inspection is conducted in accordance with the FEHD Operational Manual on all food premises operating both day and night in all the 19 districts;
- (g) ensure that all the 19 districts have a formal inspection schedule and formal inspection of all the licensed food premises in a district is conducted within the prescribed time limit;
- (h) closely monitor the internal inspection and external inspection of all districts to ensure the overall consistency of the inspection standards adopted by individual districts and among all the 19 districts, and appraise the performance of Health Inspectors;
- (i) periodically review and evaluate the efficiency and effectiveness of each type of inspection (i.e. formal, internal, external and night inspections) of licensed food premises in order to identify room for further improvement;

- (j) **allocate staff resources for carrying out all types of inspections of food premises in all the 19 districts having regard to the assessed potential risks of the food premises;**

Licence fee

- (k) **ensure that food business licences are issued only after the receipt of the licence fees in accordance with the Food Business Regulation;**
- (l) **ensure that prompt follow-up action is taken to collect overdue food business licence and permit fees;**
- (m) **consider imposing a surcharge for overdue licence and permit fees;**

Food poisoning incidents

- (n) **consider taking more stringent enforcement action against the licensed and permitted food premises, and the unlicensed food premises, in particular those involved in food poisoning incidents, for breaches of hygiene regulations and failure to meet hygiene standards;**
- (o) **in view of the significant increase in the number of food premises related to food borne disease investigations, critically review the effectiveness of the existing inspection and enforcement systems of food premises with a view to enhancing its effectiveness to safeguard public health;**

Hygiene Manager and Hygiene Supervisor Scheme

- (p) **take more stringent action to ensure compliance with the new licensing requirements under the Hygiene Manager and Hygiene Supervisor Scheme;**
- (q) **critically review the effectiveness of the Scheme and develop a monitoring mechanism (see para. 2.31) to ensure that the purpose of strengthening the supervision of food preparation process in licensed food premises to prevent food borne diseases is achieved; and**

Provisional licence system

- (r) **to prevent abuse of the provisional licence system, consider incorporating into the FEHD Operational Manual the requirement that the food premises should be inspected before the issue of provisional licence.**

Response from the Administration

2.37 The **Director of Food and Environmental Hygiene** has said that he generally agrees with the audit recommendations. He has also said that:

Frequencies of routine inspections

- (a) there is at present no requirement for Health Inspectors to record the action of conducting health education in the Inspection Report. The FEHD will consider revising the Inspection Report to include this item;
- (b) the FEHD will conduct refresher courses for Health Inspectors on knowledge and skills in conducting inspection, including dissemination of health education;
- (c) the FEHD will review the time standards and frequencies of all types of inspections taking into account a number of factors including the nature of the food business, the size of the food premises and the availability of resources with a view to increasing the effectiveness of the inspection regime;

Records of inspections

- (d) the FEHD will remind Health Inspectors to make proper entries and the Senior Health Inspectors to conduct proper checking;
- (e) the FEHD finds a paper report to be a very effective way to record findings of an inspection. In the Inspection Report, there is a space for the Health Inspector to record the remarks of the licensee/hygiene manager/hygiene supervisor/nominated manager (i.e. a manager nominated by the licensee for conducting the business in person at the licensed premises) on the inspection findings. The licensee/hygiene manager/hygiene supervisor/nominated manager also has to countersign to signify receipt of the report and to acknowledge any discussion with the Health Inspector. The Inspection Report is also subject to vetting by the Senior Health Inspector. The FEHD will ensure correct and informative entries and consistency of inspection standards through the issue of additional guidelines and refresher courses to frontline and supervisory staff. In parallel, the FEHD will explore the practicability and effectiveness of the recommendation of taking photographs as evidence;

Routine inspection

- (f) the FEHD will conduct a review on the time standards and frequencies of all types of inspections taking into account a number of factors including the nature of the food business, the size of the food premises and the availability of resources with a view to increasing the effectiveness of the inspection regime. The time standards should be used for reference and Health Inspectors would be given some flexibility to adjust them in the light of the prevailing circumstances;
- (g) the total time calculated for an inspection package includes the travelling time to and from the district office and from one food premises to another. This is particularly significant for visits to remote food premises. The FEHD suitably arranges food premises of the same category in a cluster. For remote premises, the package will contain fewer premises to allow for longer travelling time;

Accompanied routine inspection

- (h) the FEHD will issue guidelines on routine inspection of food premises and organise refresher courses on the RBIS for frontline and supervisory staff so as to achieve consistency in the standards of inspection;

Other types of inspections

- (i) there are two types of night inspections. The first refers to inspection conducted in food premises which operate at night only and they come under the RBIS regime. The second type serves a different purpose with the emphasis on improving the environmental hygiene conditions of a district. Priority areas include hawking, cleanliness of the streets and food premises with illegal extension of business or outside seating. The FEHD will critically review the scope of the second type of night inspection with a view to more clearly defining its objectives. The FEHD will also consider revising the FEHD Operational Manual/guidelines to make clear the objectives and procedures of these two different types of night inspections;
- (j) the FEHD will design a standard form for use by districts to record formal inspection schedules for monitoring purpose;
- (k) the main objective of internal and external inspections is to check on the work of Health Inspectors. The FEHD will consider according priority to the high-risk food premises to maximise the use of its resources. The FEHD will also set up a mechanism at the headquarters level to monitor implementation of both internal and external inspections in districts according to the prescribed schedules;

- (l) the FEHD will review the time standards and frequencies of all types of inspections taking into account a number of factors including the nature of the food business, the size of the food premises and the availability of resources with a view to increasing the effectiveness of the inspection regime;

Licence fee

- (m) the FEHD has commenced the Licensing Management Information System Phase 1B and Phase 1C since 16 January 2006. Renewal notices have been issued six to eight weeks before expiry of the licences or permits. New licences and permits are issued only after payment of the required fees;
- (n) to deter late payment, since 1 March 2006, the FEHD has implemented a new measure to speed up the process of taking action against late payment of licence/permit fees. Under this arrangement, the FEHD will revoke the right of the licensee/permittee to renew the licence/permit if payment is overdue for 30 days. Operator of food premises will be prosecuted in case food business continues without a valid licence or permit;
- (o) the FEHD will review the need to impose a surcharge in the light of the experience in implementing the new measure. Imposition of a surcharge will require amendment of legislation;

Food poisoning incidents

- (p) the FEHD will continue to take stringent enforcement actions against non-compliance of hygiene regulations. However, according to the Department of Health, almost 80% of food poisoning is caused by bacteria. The most important cause of bacterial food poisoning is improper food handling practices which cannot be readily identified by inspection. Strengthening of enforcement action against non-compliance of hygiene regulations alone cannot rectify such problems. Education and training work plus monitoring by the trade are also important;
- (q) under the RBIS, those licensed food premises involved in confirmed cases of food poisoning will be classified as high-risk food premises which will be subject to more frequent inspection of once every four weeks;

- (r) to deter operation of unlicensed food premises, prosecution action is taken on either weekly or monthly basis. The FEHD has also stepped up action to close unlicensed food premises which sell high-risk food, are subject to numerous and substantial food safety/public hygiene complaints, or are involved in food poisoning cases. The FEHD will keep the effectiveness of its enforcement action under regular review;

Hygiene Manager and Hygiene Supervisor Scheme

- (s) at present, all licensed food premises in general have complied with the requirements. The FEHD will take stringent action against non-compliance;
- (t) in the course of inspection, the FEHD will ensure the provision of the required hygiene manager/hygiene supervisor. The FEHD will also keep the Hygiene Manager and Hygiene Supervisor Scheme under review with a view to raising the qualifications for hygiene manager/hygiene supervisor as necessary;

Provisional licence system

- (u) acceptance of certificates of compliance without conducting field visit to confirm compliance with the requirements is for trade facilitation purpose. To require inspection to food premises prior to the issue of provisional licence will lengthen the process and defeat the purpose of introducing such licence. In cases where the FEHD suspects the genuineness of the applications or where malpractice is common in respect of a certain type of licence, the FEHD staff will conduct site visits as necessary before issuing provisional licence;
- (v) the FEHD has in place sanction against non-compliance in respect of provisional licence. The FEHD will cancel the provisional licence where the licensee is found to have breached fire and building safety or major hygiene requirements, and if rectification is not made within a specified grace period; and
- (w) according to FEHD records, there have only been a small number of abuse cases. Notwithstanding that, the FEHD has devised a scheme to prevent abuse of the provisional licence by refusing an application for provisional licence by the same applicant for the same class of food business at the same premises within a specified period. The FEHD will consult the trade in March 2006 prior to implementation.

2.38 The **Director of Health** has said that the Department of Health and the FEHD are partners in the management of food poisoning. As the public health authority, the Department of Health concentrates on management of victims while the FEHD is responsible for food safety and licensing of food premises.

2.39 The **Secretary for Financial Services and the Treasury** has said that many fees and charges do not have surcharge provisions. He has no objection to exploring the idea of charging a higher licence fee for late renewal.

PART 3: REGULATION OF LICENSED FOOD PREMISES

3.1 This PART examines the measures taken by the FEHD to enforce the hygiene regulations, licensing requirements and conditions of licensed food premises, and suggests measures for further improvement.

Operation of licensed food premises

3.2 The licensee of licensed food premises is required to ensure compliance with:

- (a) the provisions of the Public Health and Municipal Services Ordinance and its subsidiary legislations; and
- (b) the licensing requirements and conditions stipulated by the FEHD.

Under the Food Business Regulation of the Public Health and Municipal Services Ordinance, licensees of licensed food premises found guilty of breaching any provisions of the Ordinance are liable on summary conviction to a fine and imprisonment. In 2004, the FEHD took out 3,296 summonses for breaches of hygiene regulations by licensed or permitted food premises. Fines totalling \$4.5 million for 3,541 convictions were imposed.

Demerit Points System

3.3 In addition to the food premises inspection system, the FEHD operates a Demerit Points System (DPS) to enhance the deterrent effect by suspending and cancelling the food business licence/permit when the licensee/permittee is convicted of food hygiene related offences under the provisions of the Public Health and Municipal Services Ordinance and its subsidiary legislations. The DPS applies to licensees of all food premises, including cooked food stalls holding licences and permits issued by the FEHD. Under the DPS, licensees (Note 35) found guilty of breaching the regulations are registered with a predetermined number of demerit points. The demerit points for committing the same offence for the second and the third times within a period of 12 months are doubled and trebled respectively. Food business licences (including full and provisional licences) are suspended or cancelled in the following circumstances:

Note 35: The terms “licence” and “licensee” also refer to “permit” and “permittee” when the DPS applies to permits for sale of restricted foods.

- (a) **First suspension.** The licence will be suspended for 7 days if 15 demerit points or more are accumulated within a period of 12 months;
- (b) **Second suspension.** The licence will be suspended for 14 days if another 15 demerit points are accumulated within a period of 12 months from the date of committing the last offence leading to the first suspension; and
- (c) **Cancellation of licence.** The licence will be cancelled if another 15 demerit points are accumulated within a period of 12 months from the date of committing the last offence leading to the second suspension.

After the suspension period, the demerit points pertaining to the suspension are cancelled. If no demerit point is registered against the licensee for a period of 12 months, all demerit points and previous suspension records are cancelled.

Warning system

3.4 In addition to the DPS, the FEHD operates a warning system to enforce its licensing requirements and conditions. In November 2003, the FEHD revamped the warning system to implement the recommendations of Team Clean (Note 36) for improving the effectiveness of the system. Under the new warning system:

- (a) **Verbal warning.** A verbal warning is given to a licensee for an initial breach of a licensing requirement or condition. This warning is valid for six months;
- (b) **Warning letter.** If the same licensing requirement or condition is breached within the six-month period of the verbal warning, a warning letter is issued immediately, regardless of any improvement made by the licensee since the first breach of the requirement; and
- (c) **Cancellation of licence or permit.** The licence or permit will be cancelled if three warning letters are issued within six months.

Note 36: *After the outbreak of the Severe Acute Respiratory Syndrome in March 2003, Team Clean was set up to develop and take forward proposals for entrenching a high level of public and environmental hygiene in Hong Kong. Team Clean issued its final report "Report on Measures to Improve Environmental Hygiene in Hong Kong" in August 2003. Team Clean made a number of recommendations for licensed food premises.*

For breaches of licensing requirements and conditions under both the warning system and the Public Health and Municipal Services Ordinance (see para. 3.13), legal action is taken instead of the issue of warning letter. A warning letter, leading to the eventual cancellation of licence, is also issued for those cases where the FEHD cannot see that the licensee would rectify the irregularity by just taking legal action (Note 37).

Immediate cancellation of licence

3.5 Apart from the cancellation of licence under the DPS and the new warning system, a licence is cancelled with immediate effect when the licensee:

- (a) breaches the additional licensing requirements and conditions specified for selling live poultry (Note 38); and
- (b) is convicted of an offence for the sale, or offer or exposure for sale, or possession for sale or for use in the preparation of any article of food for sale, of fresh or frozen meat of animals from an unapproved source.

In 2004, one licence was cancelled immediately because the licensee had committed an offence of selling meat from an unapproved source.

Note 37: *In the case of a material deviation from the approved layout plan of the food premises, the licensee is summonsed for the offence and a verbal warning is given to require the licensee to revert the premises to the approved layout or submit revised plans for consideration.*

Note 38: *The additional licensing requirements and conditions imposed in November 2003 included:*

- (a) *only live poultry obtained from an approved source would be kept, stored or displayed for sale on the premises;*
- (b) *chilled or frozen meat/poultry should not be displayed or sold as fresh meat/poultry; and*
- (c) *compliance with the Rest Days conditions and other conditions for prevention of avian flu imposed on live poultry licensees.*

Closure order

3.6 Under the Public Health and Municipal Services (Amendment) Ordinance 2002, which took effect on 14 February 2003, the Director of Food and Environmental Hygiene is empowered to make a closure order to immediately close food premises which pose an immediate health hazard to the public (Note 39). In 2004 and 2005, the FEHD made 8 and 5 closure orders respectively.

Audit observations

Revamp of the DPS

3.7 **Team Clean recommendations.** In its final report issued in August 2003, Team Clean made a number of recommendations to enhance the hygiene standards of all food premises by tightening up licensing conditions and day-to-day regulation. One of Team Clean's recommendations was to revamp the DPS for licensed food premises to strengthen the sanction regime. Team Clean proposed to:

- (a) provide for a 21-day instead of 7-day suspension of licence on accumulating the requisite number of demerit points for the first time, and cancellation of licence for the second time;
- (b) critically review the number of demerit points accorded to individual offences so that petty offences which did not carry any public health or environmental hygiene implications (e.g. minor maintenance problems) would not be given any demerit points. Offences of health significance (e.g. sale of adulterated food) would be given a maximum of 15 demerit points and lead to immediate suspension or cancellation of licence;
- (c) carry forward the demerit points and penalties (in the form of suspension or cancellation of licence) incurred during the provisional licence period to the full licence of the same food premises; and

Note 39: *Examples of food premises posing immediate health hazard to the public include:*

- (a) *premises which do not have proper water supply and the operator uses water drawn from a well contaminated with effluent from a nearby dirty water storage tank or a polluted stream; and*
- (b) *premises where clinical data show that the food therein is contaminated and unfit for human consumption.*

The Director of Food and Environmental Hygiene can rescind the closure order if the immediate health hazard on the food premises has been eliminated to his satisfaction.

- (d) disallow the transfer of a licence or permit where the licensed food premises concerned had outstanding demerit points, unless the transferee was willing to take over all the demerit points and penalties incurred by the transferor.

According to Team Clean Final Report, the FEHD aimed at finalising the detailed proposals of the revamped DPS by the end of 2003 and implementing the new DPS in mid-2004 after consultation with the trade.

3.8 ***Changes made to the DPS.*** In response to the recommendations of Team Clean, the FEHD has introduced the following changes to the DPS:

- (a) with effect from May 2004, all outstanding demerit points and penalties incurred during the provisional licence period are carried forward to the full licence of the same food premises; and
- (b) with effect from August 2005, the FEHD no longer allows the transfer of licence or permit, unless the transferee is willing to take over all the demerit points and penalties incurred by the transferor. The purpose is to prevent the licensee or permittee from making use of the transfer to get rid of the penalties under the DPS.

3.9 ***Delay in revamping the DPS.*** Audit noted that, up to the end of December 2005, the FEHD had not implemented the other recommendations of Team Clean to revamp the DPS. Audit noted that in February 2004, the FEHD had revised the draft proposal for the review of the number of demerit points. Up to the end of December 2005, the review was still in progress. Audit noted that the FEHD intended to align the implementation of the DPS for licensed food premises with the DPS for public markets. **Audit considers that the FEHD needs to expedite the revamping of the DPS for the licensed food premises so as to strengthen its sanction regime of licensed food premises.**

New warning system

3.10 Before the implementation of the new warning system in November 2003 (see para. 3.4), the percentage of licences suspended under the old warning system ranged from 2% to 6%. After November 2003, no licence was suspended under the new warning system as breaches of licensing requirements and conditions only led to cancellation of licence. Details are shown in Appendix G.

3.11 The number of licences cancelled under the new warning system was about the same as that under the old warning system. Details are shown in Appendix H. With the implementation of the new warning system in November 2003, the number of penalty cases had decreased as no licence was suspended under the system. **In view of the increase in the number of food premises related to food borne disease investigations (see para. 2.27), Audit considers that the FEHD should critically review the effectiveness of the new warning system.**

Management information of enforcement action

3.12 Audit observations arising from the examination of the records of enforcement action taken against licensed food premises in the six selected districts are as follows:

- (a) ***Sham Shui Po and Shatin Districts.*** The Sham Shui Po District (since January 2005) and the Shatin District (since December 2003) had kept management information of the enforcement action taken under the warning system against individual food premises; and
- (b) ***Central and Western, Mongkok, Tuen Mun and Wanchai Districts.*** These districts did not keep management information of enforcement action taken under the DPS and the warning system against individual food premises. Individual districts compiled statistics manually as and when required by the FEHD Headquarters.

According to the FEHD, the management information kept by the Sham Shui Po and Shatin Districts is to facilitate input into the Environmental Hygiene Statistical Information System (EHSIS), implemented in 2004, for the compilation of statistical returns (Note 40). **In Audit's view, the FEHD should ensure that management information of the enforcement action taken against licensed food premises is kept by all districts in order to assess the potential risks of individual food premises and the effectiveness of the new warning system.**

Note 40: *The EHSIS provides statistical management information for the full range of environmental hygiene services of the FEHD including pest control, cleansing, hygiene, licensing, prosecution and other administrative returns. The statistical returns include monthly statistics on licences issued, prosecution statistics on licensed and unlicensed food premises, and statistics on suspension and cancellation of licensed food premises.*

The DPS and the warning system

3.13 The DPS is used to deal with breaches of legislation, and the warning system is used to handle breaches of licensing requirements and conditions. The Team Clean Final Report pointed out that a considerable number of legislative provisions were replicated as licensing requirements and conditions. In addition, both systems would lead to cancellation of licence or permit. In Audit's view, a good penalty system should be fair, clear, transparent and easy to understand. **Audit considers that the FEHD should explore the feasibility of consolidating the two systems into one so that the FEHD can enforce the provisions of the Public Health and Municipal Services Ordinance, and the licensing requirements and conditions more efficiently and effectively.**

Effectiveness of enforcement action

3.14 Audit noted that, despite an increase in the number of licensed food premises by 15% from 17,634 in 2000 to 20,229 in 2004, the number of prosecutions instituted by the FEHD had decreased by 40% from 5,489 in 2000 to 3,296 in 2004, and the number of licences suspended had decreased by 48% from 320 in 2000 to 165 in 2004. The number of licences cancelled remained at 2 to 3 a year. Details are given in Appendix I.

3.15 **In view of the significant increase in the number of food premises related to food borne disease investigations and the decrease in the number of prosecutions against licensed food premises, Audit considers that the FEHD should critically review its procedures of taking enforcement action against licensed food premises for breaches of hygiene regulations.**

Audit recommendations

3.16 **Audit has recommended that the Director of Food and Environmental Hygiene should:**

Revamp of the DPS

- (a) **expedite the revamping of the DPS for the licensed food premises so as to strengthen the sanction regime of licensed food premises;**

New warning system

- (b) **in view of the increase in the number of food premises related to food borne disease investigations and the removal of the option of suspension of licence under the new warning system, critically review the effectiveness of the new warning system;**

Management information of enforcement action

- (c) **ensure that management information of the enforcement action taken against licensed food premises is kept by all districts in order to assess the potential risks of individual food premises and the effectiveness of the new warning system;**

The DPS and the warning system

- (d) **critically explore the feasibility of consolidating the DPS and the warning system into one system so that the FEHD can enforce the provisions of the Public Health and Municipal Services Ordinance, and the licensing requirements and conditions more efficiently and effectively; and**

Effectiveness of enforcement action

- (e) **in view of the significant increase in the number of food premises related to food borne disease investigations and the decrease in the number of prosecutions against licensed food premises, critically review the FEHD procedures of taking enforcement action against licensed food premises for breaches of hygiene regulations.**

Response from the Administration

3.17 The **Director of Food and Environmental Hygiene** has said that he generally agrees with the audit recommendations. He has also said that:

Revamp of the DPS

- (a) the FEHD will consult the trade and the Legislative Council Panel on Food Safety and Environmental Hygiene in March 2006 prior to the revamping of the DPS;

New warning system

- (b) the FEHD will keep the new warning system under review to ensure that it provides sufficient deterrent against non-compliance;
- (c) the increase in food poisoning incidents is global and caused by multiple social, economic, technological and environmental factors. The factors contributing to the increase in local food poisoning incidents include a better economy resulting in more people dining out, more new restaurants with a wider selection of food types (which include high-risk items like raw seafood and buffet meals), increasing popularity of high-risk food (such as sushi and sashimi), a more stringent surveillance system, and higher awareness on the part of the public in reporting food poisoning incidents;
- (d) the major contributing factors for food poisoning incidents in 2004 and 2005 included cross contamination of ready-to-eat food by raw food, improper handling of food by food handlers and prolonged storage of food. Enforcement actions against breach of licensing regulations alone cannot eradicate such problems. Education and training, and monitoring by the trade are also important;

Management information of enforcement action

- (e) the FEHD will review the feasibility of computerising the records. This may be included as part of the feature of the Licensing Management Information System Phase 2. Meanwhile, the FEHD will devise a standard form for recording enforcement actions taken against licensed food premises for use by all districts for better monitoring;

The DPS and the warning system

- (f) the FEHD will critically explore the feasibility of consolidating the DPS and the warning system into one system. The two systems are distinct from each other as they deal with different offences/non-compliance and are well understood by the stakeholders. The DPS covers offences convicted by the court and the warning system covers breaches of licensing requirements/conditions; and

Effectiveness of enforcement action

- (g) the FEHD will keep the procedures of taking enforcement action against food premises under regular review to ensure compliance with food safety and public hygiene standards. There are many factors contributing to the increase in food poisoning incidents (see para. 2.37(p)).

PART 4: ENFORCEMENT ACTION AGAINST UNLICENSED FOOD BUSINESS ACTIVITIES

4.1 This PART examines the enforcement action taken by the FEHD against unlicensed food business activities and suggests measures for further improvement.

Enforcement action

4.2 ***Identification of unlicensed food premises.*** FEHD district offices identify unlicensed food premises through the following channels:

- (a) referrals from the three Licensing Offices (see Note 33 to para. 2.33) in respect of applications for the issue of food business licences (i.e. full, provisional and temporary licences) and permits for sale of restricted foods;
- (b) complaints from members of the public; and
- (c) referrals from other government departments (such as the Home Affairs Department, the Fire Services Department and the Buildings Department).

Upon identification of unlicensed food premises, the Health Inspector responsible for the area puts the premises under surveillance for weekly visits. Records of warnings issued to the operator and findings of the weekly visits are documented on file.

Prosecution

4.3 As at 31 December 2004, there were 435 identified unlicensed food premises in all districts. According to the FEHD Operational Manual, Health Inspectors institute prosecution (Note 41) against the unlicensed food premises on a weekly or monthly basis

Note 41: *According to the Food Business Regulation of the Public Health and Municipal Services Ordinance, any person who operates a food business without a licence commits an offence and any person who is guilty of such offence is liable on summary conviction to a maximum fine of \$50,000, imprisonment for six months and a daily fine of \$900.*

(Note 42). The prosecutions continue until the unlicensed food premises cease operation or obtain a licence. In 2004, the FEHD conducted 32,702 inspections on unlicensed food premises and instituted 1,558 prosecutions, and fines totalling \$6.7 million for 1,494 convictions were imposed (i.e. an average fine of \$4,500 for each conviction).

Summary arrest

4.4 Prosecution by summonses is often ineffective in deterring unlicensed food business activities as the operators of the unlicensed food premises often view the fines as part of their operating costs. Therefore, in addition to prosecuting the unlicensed food premises, the FEHD carries out summary arrest (Note 43). A target list of unlicensed food premises for summary arrest is maintained and updated monthly in each district. Health Inspectors arrest the operators of unlicensed food premises and take them to a nearby police station. Thereafter, periodical visits are conducted on these unlicensed food premises. The unlicensed food premises which have ceased operation for three continuous months are removed from the target list. In 2004, the FEHD carried out 420 cases of summary arrest. In the first 6 months of 2005, 193 cases of summary arrest were carried out.

Prohibition and closure orders

4.5 Prior to 14 February 2003, the FEHD could apply to the court for a prohibition order to stop the operator from using the premises for unlicensed food business activities. Upon the granting of the prohibition order, a copy was affixed on the premises. The prohibition order came into effect on the 8th day after it had been served. If the operator contravened the prohibition order, the Health Inspector could apply for a closure order to close the premises.

4.6 To enable the FEHD to safeguard public health more effectively, the Public Health and Municipal Services (Amendment) Ordinance 2002, effective from 14 February 2003, was enacted in January 2002. Under the provision of the Ordinance, the Director of Food and Environmental Hygiene is empowered to make a direct application to the court for closure orders to close any premises without applying for prohibition orders of

Note 42: *Health Inspectors institute prosecution weekly against unlicensed food premises:*

- (a) *not under application for a licence;*
- (b) *under application for a licence but found to be unlicensable;*
- (c) *under application for a licence but not issued with FEHD letter of requirements for 6 months from the date of application;*
- (d) *under application for a licence but failed to comply with FEHD letter of requirements within 12 months from issue date of the letter; and*
- (e) *with their business extended to a public place or pavement.*

Monthly prosecution is taken against unlicensed food premises other than those mentioned in (a) to (e) above.

Note 43: *Summary arrest is usually carried out fortnightly against the operators of unlicensed food premises by Health Inspectors (in teams of two) without police escort.*

the unlicensed food business activities (Note 44). Upon execution of a closure order, the premises are physically blocked off and sealed (see Photograph 2). Electricity and water supplies are disconnected (Note 45). Since April 2005, a district action plan (Note 46) on application of closure order has been maintained to keep track of the progress of the application for closure orders. In 2004 and for the first 6 months of 2005, the FEHD applied for 4 closure orders and 3 closure orders respectively. The FEHD executed 1 closure order obtained in 2004 and 3 closure orders obtained in the first 6 months of 2005. The other 3 applications for closure orders in 2004 were either withdrawn or rejected.

Photograph 2

Closure of an unlicensed food premises



Source: Photograph provided by the FEHD

Note 44: *The closure order will remain in force until it is rescinded by the court on application either by the Director of Food and Environmental Hygiene or a person affected by it. Upon the issue of a closure order, a copy is affixed on the premises. The order comes into effect on the 8th day after it has been affixed on the premises.*

Note 45: *If the premises were not suitable for application for closure order, subsequent summonses should be applied for every week after initiating the first summons. A closure order shall not operate to:*

- (a) prevent human habitation on the premises; or*
- (b) affect the use of any common area in any building or premises or public place so as to cause obstruction to public passage or fire escape.*

Note 46: *The plan included a target date of closure action for each unlicensed food premises.*

Audit observations

Identification of unlicensed food premises

4.7 **Target list of unlicensed food premises.** In addition to the target list of unlicensed food premises for summary arrest and the district action plan on application of closure order, some districts maintain target lists of unlicensed food premises. The target list of unlicensed food premises included all the premises on the list of unlicensed food premises for summary arrest and the district action plan. Audit observations arising from a scrutiny of the records kept by the six selected districts as at 30 September 2005 are as follows:

- (a) **Central and Western, Sham Shui Po and Tuen Mun Districts.** No target list of unlicensed food premises was kept (Note 47) as Health Inspectors of these districts adopted a “bring-up” system on unlicensed food premises. Under this system, the subject files of unlicensed food premises were referred to the Health Inspectors periodically for action; and
- (b) **Mongkok, Shatin and Wanchai Districts.** The target lists of unlicensed food premises produced for Audit scrutiny did not capture all the unlicensed food premises in the list of unlicensed food premises for summary arrest and the district action plan on application of closure order. These districts also adopted a “bring-up” system on unlicensed food premises.

In Audit’s view, the FEHD should ensure that a target list of unlicensed food premises is kept by all districts. The target lists should contain all the unlicensed food premises identified by the FEHD through various channels so that enforcement action can be taken against them more effectively.

4.8 **Means of identifying unlicensed food premises.** According to the FEHD, identification of unlicensed food premises was mainly through referrals from the three Licensing Offices and complaints from members of the public. Other than this, according to the staff of district offices, the number of unlicensed food premises identified by Health Inspectors was small as they were only responsible for identifying unlicensed food business activities during routine inspection. **Audit considers that the FEHD needs to take more proactive action to locate the unlicensed food premises in all districts.**

Note 47: *These districts report to the FEHD Headquarters the change of unlicensed food premises on a monthly basis.*

Inspection of unlicensed food premises

4.9 Health Inspectors of each district carry out inspections of the unlicensed food premises on their target lists. They institute weekly or monthly prosecution until the business ceases operation.

4.10 In February 2004, in response to a recommendation of the Independent Commission Against Corruption (Note 48), the FEHD reminded Senior Health Inspectors to carry out confirmatory checks if an unlicensed food business was reported to have ceased operation in four consecutive weekly visits. If the Senior Health Inspector was satisfied that the unlicensed food premises had ceased business continuously for two months, he should make a report to the Chief Health Inspector. The Chief Health Inspector should conduct a final check before removing the unlicensed food premises from the target list.

4.11 Audit scrutiny of the inspection records of unlicensed food premises from January 2000 to June 2005 indicated that some food premises were still on the target list, although no unlicensed food business was found during each inspection for more than six months. Case 5, shown in Appendix J, illustrates that there is a need to remove unlicensed food premises which have ceased operation from the target list. **Audit considers that for more efficient and effective deployment of staff resources, the FEHD should ensure that confirmatory checks are conducted by senior officers within the specified periods so that unlicensed food premises no longer in operation are removed from the target list.**

4.12 Unlike the Inspection Report of licensed food premises, there is no standard form for recording the inspection results of unlicensed food premises. Audit noted that district Health Inspectors usually documented the inspection results on file, but the date and time of some inspections had not been properly recorded (Note 49). Adequate documentation of the inspection results of unlicensed food premises is important for monitoring the operation of unlicensed food premises. **In Audit's view, the FEHD should ensure that the inspection results and enforcement action taken against unlicensed food premises are properly recorded. This would assist the FEHD management in monitoring the progress of enforcement action. The FEHD should, for the purpose of ensuring the completeness of inspection records, explore the feasibility of introducing a standard form for recording the inspection results of unlicensed food premises.**

Note 48: *The Independent Commission Against Corruption completed a study "The FEHD's enforcement against unlicensed food establishments" in 2003.*

Note 49: *For some inspections, Health Inspectors recorded in the files that inspections were conducted on several occasions together with the last date of inspection.*

Closure order and unlicensed food business

4.13 ***Decrease in the number of applications for closure orders.*** With effect from 14 February 2003, the FEHD is empowered under the Public Health and Municipal Services Ordinance to apply to the court for closure orders to close unlicensed food premises, without having to apply for prohibition orders. Since then, the FEHD had not applied for prohibition order. Audit noted that:

- (a) the number of prohibition orders applied by the FEHD had decreased by 87% from 149 cases in 2002 to 19 cases in 2003; and
- (b) the number of closure orders applied by the FEHD had decreased by 75% from 16 cases in 2003 to 4 cases in 2004. The number of summonses taken out had increased by 4% from 1,493 in 2003 to 1,558 in 2004.

Details are shown in Appendix K.

4.14 ***Effectiveness of closure order.*** Case 6, shown in Appendix L, illustrates that a closure order is effective in deterring unlicensed food business activities. **However, the numbers of identified unlicensed food premises in December 2004 and June 2005 were 435 and 434 respectively. Audit considers that the FEHD needs to strengthen the control measures to deter the operation of unlicensed food premises.**

4.15 ***Persistent operation of unlicensed food business.*** According to FEHD records, incidents of unlicensed food premises are still reported from time to time. Audit scrutiny of the target lists of unlicensed food premises revealed that many operators of these premises had applied for full licences. To recoup the costly overheads of running food premises (such as rental and staff expenses), there is a tendency for the operator to commence business before the issue of a licence and treat the fines imposed subsequent to FEHD prosecutions as part of the operating costs. Case 7, shown in Appendix M, illustrates the need to take more stringent enforcement action against this type of unlicensed food premises. **In Audit's view, the FEHD should critically review the effectiveness of the enforcement action and consider taking more stringent enforcement action (such as rejecting the application for full licence) against unlicensed food premises to deter their operation before the issue of the full licences.**

Summary arrest

4.16 According to the FEHD Operational Manual, there are five conditions for including unlicensed food premises in the target list for summary arrest (Note 50). The target lists in individual districts are updated monthly. The premises are deleted from the target lists after the cessation of their operations for three consecutive months. Audit noted that from 2000 to 2004:

- (a) summary arrest against operators of unlicensed food premises had decreased by 56% from 960 cases in 2000 to 420 cases in 2004;
- (b) the number of persons arrested had decreased by 82% from 510 in 2000 to 91 in 2004; and
- (c) the success rate of summary arrest (Note 51) had decreased from 53% in 2000 to 22% in 2004.

Details are shown in Appendix N.

4.17 Audit observations arising from the scrutiny of the target lists of unlicensed food premises for summary arrest of six districts from January 2004 to June 2005 are as follows:

- (a) **Mongkok, Sham Shui Po, Shatin and Wanchai Districts.** The success rates of summary arrest of these districts were less than 10%. The success rate of the Mongkok District was zero;
- (b) **Central and Western, and Tuen Mun Districts.** The success rate of summary arrest of the Central and Western District was 20%. The Tuen Mun District attained the highest success rate of 44%; and
- (c) **Summary arrest.** Monthly summary arrest against operators of unlicensed food premises continued to be carried out despite the fact that the premises had already ceased operation for more than three consecutive months.

Note 50: *The five conditions are: (a) the premises are unlicensable; (b) the premises are in very poor hygienic condition; (c) the premises are subject to repeated and justifiable complaints; (d) the operator of the premises has been evading summonses; and (e) the premises are under application for a licence or permit but do not comply with FEHD letter of requirements for over 6 months from issue date of the letter.*

Note 51: *Success rate represents the number of persons arrested as a percentage of the number of raids carried out.*

For efficient deployment of staff resources, Audit considers that the FEHD needs to ensure that the target lists of unlicensed food premises of individual districts are updated promptly so that unlicensed food premises found to have ceased operation for three consecutive months are deleted from the target lists. In view of the low success rate, the FEHD also needs to review the effectiveness of conducting summary arrest.

Blitz operation for closing down unlicensed food premises

4.18 Since the food poisoning incident in the Mongkok District in 2004, the FEHD has implemented additional control measures to step up enforcement action against unlicensed food premises. In January 2005, the FEHD promulgated guidelines for mounting a blitz operation in the same month to close unlicensed or unpermitted food premises (see Photograph 3). In doing so, the FEHD initiated closure action on the following 12 unlicensed food premises:

- (a) 3 shops for selling high-risk ready-to-eat food (i.e. 2 selling siu mei and lo mei, and 1 selling sushi and sashimi); and
- (b) 8 food factories and 1 general restaurant for rendering their surroundings in very poor hygienic conditions.

Photograph 3

Blitz operation against unlicensed food business activity



Source: Photograph provided by the FEHD

4.19 In July 2005, the FEHD reviewed the results of the blitz operation. The results indicated that up to June 2005:

- (a) only 3 closure orders were executed successfully; and
- (b) 4 unlicensed food premises were removed from the target list. The reasons were either a full licence had been approved, operation had ceased before the granting of the closure order, or the closure order had been held over pending legal advice.

4.20 Based on the experience of the 3 closure cases, the FEHD concluded that it generally took 10 weeks to execute a closure order (Note 52). Details are shown in Appendix O. The FEHD considered that:

- (a) it needed to build up more experience in executing closure orders to examine the effectiveness of the existing legislation;
- (b) the 19 districts should proceed to include all the unlicensed food premises in their action plans on application of closure order to enhance the deterrent effect in the long run to reduce the number of unlicensed food premises; and
- (c) districts should commence closure action by requesting the departments concerned (e.g. the Fire Services Department and the Buildings Department) to provide the required information on all outstanding cases.

Taking into account the time and staff resources required for applying for and executing a closure order, Audit considers that the FEHD needs to continue to critically review the effectiveness of the blitz operation and the progress of application for closure orders for the remaining five unlicensed food premises with a view to streamlining the procedures of applying for closure orders.

Clubs and private kitchens

4.21 ***Clubs exempted from obtaining restaurant licences.*** Under the Public Health and Municipal Services Ordinance, clubs in possession of certificates of compliance under the Clubs (Safety of Premises) Ordinance (Cap. 376), and serving food to their members and guests accompanied by members are exempted from the requirement of obtaining a restaurant licence. However, these clubs are subject to inspections by Health Inspectors to ensure the food hygiene and cleanliness of the premises. If an offence is committed (such as serving unwholesome food), the Health Inspector will prosecute the club operator.

Note 52: *The ten weeks included five weeks for completing all preparation work before a case could be referred to the court, four weeks for the court hearing to be arranged, and one week for the issue of a closure order.*

4.22 ***Clubs operating as restaurants.*** As obtaining a certificate of compliance under the Clubs (Safety of Premises) Ordinance is easier than getting a restaurant licence, some operators of food premises have resorted to obtaining the certificate of compliance (i.e. operating a club in name but in fact operating a restaurant). They accept “instant membership” for walk-in customers. Up to the end of December 2005, the FEHD did not take any proactive action to deter such malpractice.

4.23 ***Private kitchens.*** Private kitchens generally refer to those small and unlicensed food premises situated on the upper floors of commercial or residential buildings. They have gained popularity in recent years because they usually serve specialised cuisines. They usually open for business in the evening and their customers are usually required to make reservations. Some private kitchens are in fact licensed restaurants which choose to call themselves as private kitchens to attract customers, while others may only possess a certificate of compliance under the Clubs (Safety of Premises) Ordinance. However, some private kitchens possess neither a certificate of compliance nor a restaurant licence.

4.24 ***Unlicensed private kitchens.*** According to the FEHD, there were 25 unlicensed private kitchens as at 31 March 2005. Upon the identification of an unlicensed private kitchen, the Health Inspector visited the place with a view to taking prosecution action. However, the operator usually claimed that he was holding a dinner party and denied his place was operating as a restaurant. The customers tended to side with the operator. Without witnessing the process of payments and in the absence of circumstantial evidence such as a menu or price list of the food served, the chances of successfully prosecuting the operator were remote.

4.25 ***Legislative amendments.*** At the meeting held on 15 July 2002, the Legislative Council Panel on Food Safety and Environmental Hygiene discussed whether private kitchens should be brought under regulatory control. Some Panel members suggested that private kitchens should be brought under regulatory control and a flexible approach should be adopted as they operated only on a small scale and contributed to promoting Hong Kong as a gourmet paradise. Since November 2002, the FEHD has examined the proposal of classifying private kitchens as restricted restaurants. The FEHD has proposed to exempt private kitchens from the full licensing requirements provided that they:

- (a) meet the fire and building safety standards;
- (b) only open for business in the evening for not more than 4 hours and cease business before 11 p.m.; and
- (c) serve not more than 24 customers at any one time.

As at the end of December 2005, the FEHD was still working on the licensing requirements and conditions of the restricted restaurants.

4.26 ***Prosecution of unlicensed food premises.*** Many of the clubs and private kitchens publicise their food premises in newspapers and magazines. **Audit considers that the FEHD should take proactive action (e.g. by prosecution) to deter the operation of those food premises disguising as clubs but in fact operating as restaurants serving walk-in customers, and private kitchens that are unlicensed food premises.** More stringent enforcement action such as summary arrest should be taken against the operation of such types of unlicensed food premises.

4.27 ***Loopholes.*** Some clubs have used “instant membership” arrangements to enable them to operate as restaurants without meeting the restaurant licensing requirements and conditions. In response to audit enquiries, the FEHD has informed Audit in early March 2006 that according to the legal advice of the Senior Assistant Law Officer (Civil Law), Department of Justice, the Home Affairs Department is the authority of enforcing the Clubs (Safety of Premises) Ordinance. A “club” means “any corporation or association of persons formed for the purpose of affording its members facilities for social intercourse or recreation” under the Clubs (Safety of Premises) Ordinance. The appropriate way to plug the loophole arising from clubs using “instant membership” arrangements to enable them to operate as restaurants should be to amend the Clubs (Safety of Premises) Ordinance for empowering the authority to revoke the certificates of compliance of these clubs. Once the certificate of compliance is revoked, the premises will no longer be treated as a club and no exemption can be offered under the Food Business Regulation.

4.28 ***Public support.*** Unlicensed food premises are a health risk to the community. **To enhance public awareness of the health risks of unlicensed food premises, Audit considers that the FEHD should, from time to time, advise the public not to patronise them. The public should also be encouraged to report to the FEHD any suspected unlicensed food premises.**

Audit recommendations

4.29 **Audit has recommended that the Director of Food and Environmental Hygiene should:**

Identification of unlicensed food premises

- (a) ensure that target lists of unlicensed food premises are kept by all districts, and the target lists should contain all the unlicensed food premises identified by the FEHD through various channels so that enforcement action can be taken against them more effectively;
- (b) consider taking more proactive action to locate the unlicensed food premises in all districts;

Inspection of unlicensed food premises

- (c) for more efficient and effective deployment of staff resources, ensure that confirmatory checks are conducted by senior officers within the specified periods on the unlicensed food premises so that those premises which have ceased operation are removed from the target list of unlicensed food premises;
- (d) ensure that the inspection results and enforcement action taken against unlicensed food premises are properly recorded to assist the FEHD management in monitoring the progress of enforcement action;
- (e) explore the feasibility of introducing a standard form for recording the inspection results of unlicensed food premises for ensuring the completeness of inspection records;

Closure order and unlicensed food business

- (f) in view of 435 identified unlicensed food premises in December 2004 and 434 identified unlicensed food premises in June 2005, strengthen the control measures to deter the operation of unlicensed food premises;
- (g) critically review the effectiveness of the enforcement action and consider taking more stringent enforcement action against unlicensed food premises to deter their operation before the issue of the full licences;

Summary arrest

- (h) ensure that the target lists of unlicensed food premises of individual districts are updated promptly so that unlicensed food premises which have ceased operation for three consecutive months are deleted from the target lists;

- (i) **review the effectiveness of conducting summary arrest in view of the low success rate of this course of action;**

Blitz operation for closing down unlicensed food premises

- (j) **continue to critically review the effectiveness of the blitz operation and the progress of application for closure orders for the remaining five unlicensed food premises (see para. 4.20) with a view to streamlining the procedures of applying for closure orders;**

Clubs and private kitchens

- (k) **take proactive action (e.g. by prosecution) to deter the operation of food premises disguising as clubs but in fact operating as restaurants serving walk-in customers, and private kitchens that are unlicensed food premises; and**
- (l) **from time to time, advise the public not to patronise unlicensed food premises and seek their support to report to the FEHD any suspected unlicensed food premises.**

Response from the Administration

4.30 The **Director of Food and Environmental Hygiene** has said that he generally agrees with the audit recommendations. He has also said that:

Identification of unlicensed food premises

- (a) the FEHD will ensure a clear record be kept by each district on the unlicensed food premises;
- (b) the FEHD acts on public complaints and referrals, and takes the opportunity to locate unlicensed food premises during routine inspection. The Intelligence Unit also plays a role in detecting unlicensed food premises in its surveillance work. The FEHD will consider other means to locate unlicensed food premises in the light of resources available;

Inspection of unlicensed food premises

- (c) the FEHD will issue guidelines to alert senior officers to follow the established guidelines to conduct confirmatory checks to unlicensed food premises and remove the premises from the target lists upon confirmation of permanent cessation of the illegal food business;
- (d) the FEHD will ensure a clear record be kept by each district on the unlicensed food premises as well as details of the enforcement action taken for monitoring purpose. At the same time, the headquarters monitors closely the lists of unlicensed food premises in operation for the purpose of application for closure orders and for conducting summary arrest;
- (e) the FEHD will introduce a standard form for recording follow-up actions taken against unlicensed food premises for use by all districts for better monitoring;

Closure order and unlicensed food business

- (f) the Public Health and Municipal Services (Amendment) Ordinance 2002, which came into effect in February 2003, empowers the FEHD to more effectively tackle unlicensed food premises, in particular those which pose an immediate health hazard to the public. The proceeding for applying for prohibition order became not applicable to illegal food premises and food premises that pose an immediate health hazard. With a view to imposing more stringent enforcement action against unlicensed food premises, the FEHD applies to the court for a closure order without resorting first to a prohibition order. The FEHD will keep the effectiveness of this amended law under review;

Summary arrest

- (g) the FEHD will alert individual districts to keep an up-to-date target list of unlicensed food premises for summary arrest. The FEHD will arrange experience-sharing sessions with staff concerned with a view to formulating additional guidelines and training for staff concerned to enable them to carry out more effective operations and increase the success rate;

Blitz operation for closing down unlicensed food premises

- (h) the FEHD has kept the closure action against unlicensed food premises under close monitoring at the headquarters level. The FEHD will continue to review the effectiveness of the blitz operation for closing unlicensed food premises;

Clubs and private kitchens

- (i) for food premises operating without a valid food business licence or a certificate of compliance issued under the Clubs (Safety of Premises) Ordinance, the FEHD will continue to take enforcement action irrespective of whether they are operated in the name of private kitchen or club once illegal food business is established;
- (j) the FEHD will work in collaboration with the Home Affairs Department to take enforcement action as necessary against any unlicensed food premises which were once exempted from the requirements under the Food Business Regulation; and
- (k) the FEHD will continue to advise the public not to patronise unlicensed food premises and seek their support to report any suspected unlicensed food premises to the FEHD.

4.31 The **Director of Home Affairs** has said that she fully supports the audit recommendations. She has also said that:

Clubs and private kitchens

- (a) in recognition of the growing number of food business licensed as clubs in recent years, the Office of Licensing Authority (OLA) under the Home Affairs Department has conducted a review on the problems associated with food premises issued with certificates of compliance but are in fact operating as restaurants, in whole or in part (i.e. the club has completely turned into a restaurant or is serving members of the public during certain period of time of the day);
- (b) it has always been the policy that clubs operating with food business in their licensed premises must obtain valid food business licence from the FEHD if there are times when the club premises are not set aside for the exclusive use of their members and accompanied guests, but are in fact serving members of the public generally. Where sufficient evidence is found in respect of clubs which have changed their mode of operation to that of restaurants, she considers that these clubs should be regarded as having actually ceased to operate as a club within the definitions of the Clubs (Safety of Premises) Ordinance. Subject to legal advice, it is a matter of evidence for the FEHD to instigate prosecution action against these unlicensed food premises;

- (c) in August and September 2005, the OLA and the FEHD conducted joint enforcement operations to targeted food premises in the Yau Tsim District, the Central and Western District, and the Eastern District. Some of the inspected premises are holding valid certificates of compliance, and others are unlicensed food premises. As a result of the joint enforcement operations, evidence has been obtained that three of the premises holding valid certificates of compliance are in fact operating as restaurants. She understands that the FEHD has sought legal advice to consider prosecution action. It is expected that similar joint enforcement operations by the OLA and the FEHD will continue in future; and
- (d) following the review and apart from the joint enforcement operations by the OLA and the FEHD, the OLA is consulting the Department of Justice on the following action plan:
 - (i) to revise the application and processing procedures for certificates of compliance, including the forms for initial application and renewal of certificate of compliance application;
 - (ii) to conduct thorough check and require more supporting evidence for certificate of compliance applications, including evidence to prove that organisation is “formed for the purpose” of the declared business required under the Clubs (Safety of Premises) Ordinance (i.e. of affording its members facilities for social and recreation purpose, and requesting the applicant to declare if there are times when the premises will be used by person other than its registered members and their accompanied guests);
 - (iii) to conduct pre-licensing inspections to the premises concerned to verify the information declared by the applicants;
 - (iv) to consider, in cases where there are sufficient evidence to prove that the premises are not for the exclusive use of members and their guests, refusing the application;
 - (v) to impose reasonable licensing requirements and conditions into the certificate of compliance, including conditions relating to the declared mode of operation of the club premises and its membership system; and
 - (vi) to consider, in cases where there are sufficient evidence to prove that the club premises have actually ceased to operate as a club within the definitions of the Clubs (Safety of Premises) Ordinance, recommending to the OLA to suspend the relevant certificate of compliance after the OLA has considered all the circumstances of the cases and the relevant explanations, if any, from the operator of the premises.

PART 5: MANAGEMENT INFORMATION

5.1 This PART examines the management information for the inspection of food premises and the enforcement of hygiene regulations, licensing requirements and conditions, and suggests measures for further improvement.

Management information systems

Computer systems

5.2 In 2000, the FEHD took over from the then Urban Services Department and the then Regional Services Department some computer systems. The two computer systems, used to manage food premises records, are as follows:

- (a) ***Licences/Permits System (LPS) in urban area.*** The LPS was a mainframe system implemented in 1988. It was used in the district offices in the urban area to process and record renewal of licences and permits of food premises. The LPS was not used after the implementation of the Phase 1A of the Licensing Management Information System (LMIS – see para. 5.4) in May 2005. The district offices in the New Territories used a manual record system until August 2005; and
- (b) ***Food Premises Record System (FPRS) in the New Territories.*** The FPRS, implemented in 1998, runs on a computer network with nine personal computers at the district offices in the New Territories connected to a server at the Information Technology Division of the FEHD (Note 53). It was used to keep track of the grading of the licensed food premises under the Selective Inspection System. With the implementation of the RBIS in 2003, the FPRS is used to keep track of the food premises records, including risk category and inspection frequency. However, the urban districts continue to use a manual recording system. The FEHD does not extend the use of the FPRS in the New Territories to the district offices in the urban area.

5.3 In 2004, the FEHD implemented the EHSIS for the compilation of statistical returns. The EHSIS compiles statistics collated from the districts. However, monthly statistics submitted to the FEHD Headquarters are prepared by individual district offices based on their manual and computerised records of inspections of food premises.

Note 53: *The FEHD will review the feasibility of replacing the FPRS by Phase 2 of the LMIS.*

Feasibility study of the LMIS

5.4 In May 2001, the FEHD commenced a feasibility study of implementing the LMIS to standardise and automate the handling of licensing and inspection of food premises for all the 19 district offices (Note 54). In October 2001, the feasibility study concluded that the implementation of the LMIS would be divided into the following three phases:

- (a) **Phase 1.** The system would be used for handling and monitoring the application, renewal and amendment of licences or permits;
- (b) **Phase 2.** The system would be used for maintaining inspection schedules, prosecution and conviction records, demerit points, and suspension and cancellation of licences; and
- (c) **Phase 3.** The system would be used for handling inspection of food premises by using Personal Digital Assistants.

According to the system development plan of the feasibility study, the implementation of the LMIS Phase 1 would commence in April 2002 and be completed in March 2003.

5.5 In early 2002, after the completion of the feasibility study by the FEHD, the then Information Technology Services Department promulgated the arrangements for embedding the identification of Business Process Re-engineering (Note 55) opportunities in the various stages of the system development life cycle of administrative computer systems. The Business Process Re-engineering Study was completed in December 2002. The FEHD, after incorporating the workflow of licence application in the proposed LMIS, applied funding of \$8.8 million for the LMIS Phase 1 in November 2003. The application was approved in April 2004 and the scheduled completion date was April 2005.

Note 54: *In late 1998, the then Business and Services Promotion Unit of the Financial Secretary's Office funded an independent consultancy study on the licensing system. In January 2000, the consultant recommended the need for automation of the licensing procedures and improvement on the control measures over licensed food premises. In May 2000, the FEHD agreed to make improvement by the end of 2000 or early 2001.*

Note 55: *The Business Process Re-engineering Study aimed at fundamental rethink and radical redesign of key business processes to achieve dramatic and evolutionary improvements in cost, quality and time in service delivery.*

Anticipated benefits of the LMIS

5.6 According to the Project Initiation Document (Note 56), the implementation of the LMIS Phase 1 would bring about significant savings, including an annual staff cost saving of \$1.7 million for improved efficiency, and the following benefits:

- (a) ***Operation enhancement.*** The system would align different licensing procedures adopted in the 19 district offices and provide speedy retrieval and transmission of licensing information;
- (b) ***Better service to the public.*** The system would reduce the processing time for new licence and permit applications, and enhance the monitoring of licence and permit applications; and
- (c) ***Management control.*** The system would provide better management information for monitoring and controlling the progress of licence and permit applications.

Audit observations***Delay in the implementation of LMIS***

5.7 The Project Steering Committee (Note 57) was formed in April 2004 to monitor the progress of the implementation of LMIS Phase 1. In the seventh Project Steering Committee meeting held on 14 April 2005, the chairperson informed members that the LMIS Phase 1 would be launched in phases as follows:

- (a) ***Phase 1A.*** The handling of licence and permit renewal would be launched in May 2005;

Note 56: *The Project Initiation Document described the approach for managing the implementation of the LMIS for ensuring quality and timeliness in conducting the project. It brought together the information needed to start the project and conveyed it to the project team.*

Note 57: *The Project Steering Committee is mainly responsible for:*

- (a) *providing guidance and direction to ensure that the project remains within the specified constraints;*
- (b) *reviewing each completed stage before giving approval for proceeding to the next stage; and*
- (c) *ensuring that the project is in compliance with the directives of the Office of the Government Chief Information Officer and user management.*

- (b) **Phase 1B.** The handling of application for licence and permit would be launched in June 2005; and
- (c) **Phase 1C.** The handling of amendment of licence and permit in force would be launched in July 2005.

In May 2005, Phase 1A was launched. However, the launch of Phase 1B and Phase 1C was deferred to mid-January 2006.

5.8 According to the FEHD, the delay was mainly due to the additional user requirements and the consequential re-testing of the system, and the provision of training to all users. In addition, as the number of users had increased significantly, more equipment, training and testing of the system capacity were required. **Audit considers that the FEHD needs to closely monitor the progress of the remaining LMIS Phase 1B and Phase 1C so as to avoid further slippage for the whole Phase 1. The FEHD also needs to critically evaluate whether the expected benefits of the LMIS Phase 1 are realised before the implementation of the LMIS Phase 2 and Phase 3.**

Limitations of the FPRS

5.9 The FPRS, implemented in 1998, was used by the then Regional Services Department to maintain inspection and prosecution records of both licensed and unlicensed food premises in the New Territories. Since 2000, the FEHD has used the FPRS to monitor the inspections of food premises in the New Territories. Audit observations arising from a scrutiny of the records of the FPRS are as follows:

- (a) **Restricted use.** Only district offices in the New Territories used the FPRS;
- (b) **Inaccurate records.** The FPRS provided a management tool for users to monitor inspection of food premises. However, the records of the FPRS were not promptly updated. Some licensed food premises, inspected by Health Inspectors, were still marked as not yet inspected in the FPRS reports; and
- (c) **Lack of penalty records.** The FPRS did not keep penalty records such as giving verbal warnings and issuing warning letters to the licensees. Records of enforcement actions were kept in individual food premises subject files.

5.10 The LMIS Phase 2, planned for maintaining inspection schedules, and prosecution and penalty records of licensed food premises, might be used to replace the FPRS. **In view of the limitations of the FPRS, Audit considers that the FEHD needs to take expeditious action to draw up the implementation plan of the LMIS Phase 2 and Phase 3.**

Management information of unlicensed food premises in individual districts

5.11 The EHSIS is an information system implemented in 2004 to compile statistics collated from individual districts on the inspection and regulation of food premises. According to FEHD records, there is no computerised information to keep track of inspection and enforcement action of individual unlicensed food premises. Some districts still maintain manual records and prepare monthly returns manually. Accurate management information is required for monitoring the inspection and regulation of food premises. **In Audit's view, the FEHD should critically review the feasibility of computerising the management information of unlicensed food premises in individual district offices.**

Computerisation of guidelines and procedures

5.12 The FEHD Operational Manual provides guidelines for FEHD staff to carry out inspection and enforcement work of the licensed food premises and unlicensed food business activities. Audit notes that only part of the FEHD Operational Manual has been uploaded to the computer system for circulation to FEHD staff. Amendments to the FEHD Operational Manual are circulated to the staff in the form of memoranda or e-mails. However, up to the end of December 2005, the FEHD Operational Manual was not promptly updated with all these amendments. FEHD staff are required to refer to the relevant memoranda and e-mails for the amendments made after June 2002. An updated manual is essential for the efficient and effective operation of the FEHD. **Audit considers that the FEHD needs to promptly update its Operational Manual, and upload a complete set of the updated FEHD Operational Manual to its computer system.**

5.13 In addition to the FEHD Operational Manual, "A Guide to Licensing" (the Guide), dealing with licensing procedures, is issued to FEHD staff. Unlike the FEHD Operational Manual, the Guide has not been uploaded to the computer. Amendments to the Guide are circulated to the staff in the form of memoranda or e-mails. Electronically updated guidelines can provide staff with a ready reference. **Audit considers that the FEHD needs to make the Guide available electronically to its staff.**

Dissemination of information to the public

5.14 Audit scrutiny of the information disseminated to the public by the FEHD through its website and pamphlets (Note 58) revealed that some information had not been updated. For example, the address of the New Territories Licensing Office and some of the application processing procedures stated in the pamphlets or on the website are outdated. **Audit considers that the FEHD needs to regularly update the information on its website and publications so as to ensure that the updated information is disseminated to the public.**

Note 58: *The FEHD issues booklets (in both Chinese and English versions) to introduce the application procedures for eight types of licences. These include booklets for restaurant, bakery, factory canteen, food factory, fresh provision shop, frozen confection factory, milk factory, and siu mei and lo mei shop. Such application information is also uploaded to the website of the FEHD.*

Audit recommendations

5.15 **Audit has recommended that the Director of Food and Environmental Hygiene should:**

- (a) **closely monitor the progress of the remaining LMIS Phase 1B and Phase 1C so as to avoid further slippage for the whole Phase 1;**
- (b) **critically evaluate whether the expected benefits of the LMIS Phase 1 are realised before the implementation of the LMIS Phase 2 and Phase 3;**
- (c) **in view of the limitations of the FPRS, take expeditious action to draw up the implementation plan of the LMIS Phase 2 and Phase 3 for enhancing the efficiency in monitoring the inspection and regulation of licensed and unlicensed food premises;**
- (d) **critically review the feasibility of computerising the management information of unlicensed food premises in individual district offices;**
- (e) **promptly update the FEHD Operational Manual, and upload a complete set of the updated FEHD Operational Manual to the computer system;**
- (f) **consider making “A Guide to Licensing” available electronically to FEHD staff; and**
- (g) **regularly update the information on FEHD website and publications so as to ensure that the updated information is disseminated to the public.**

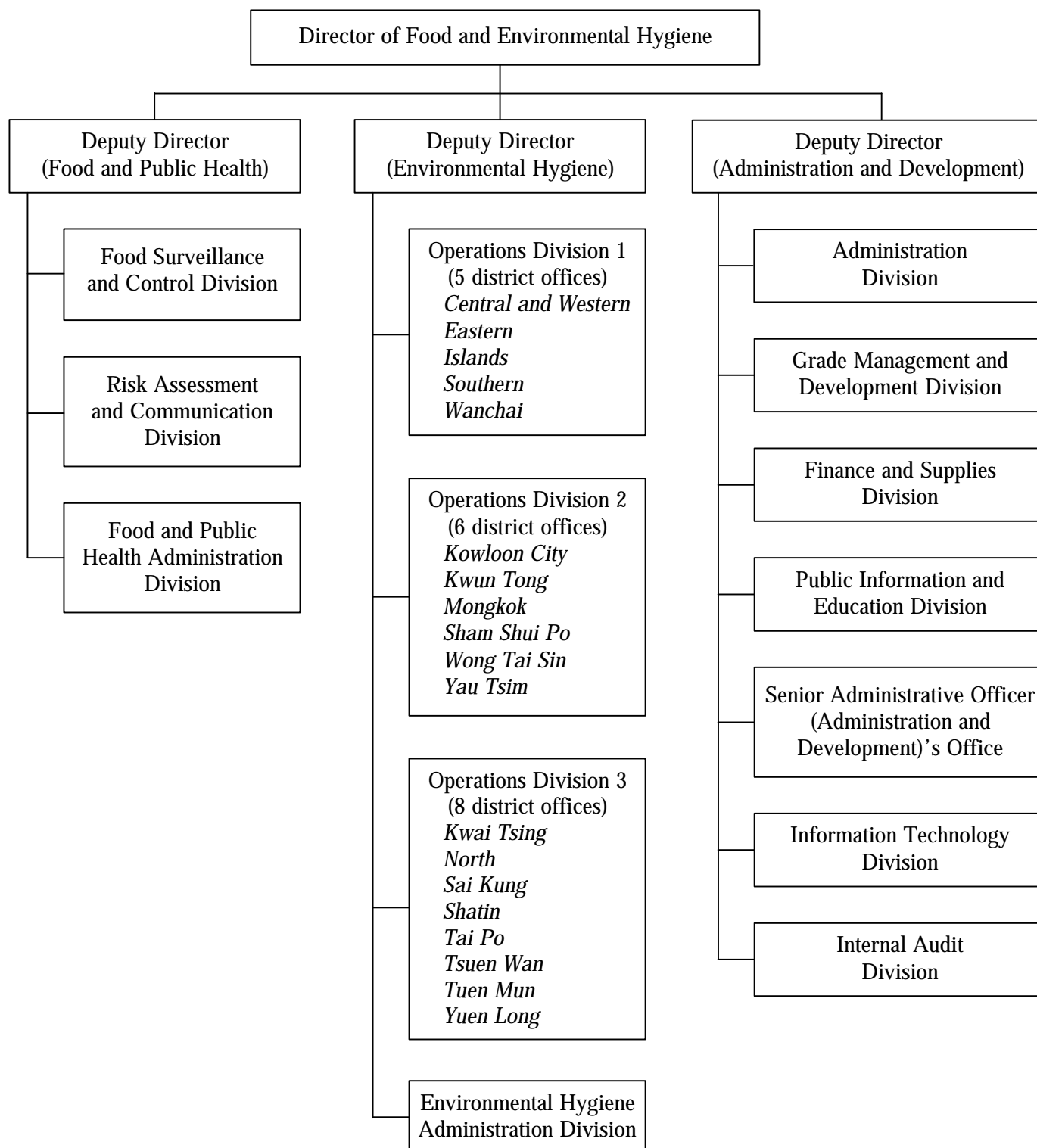
Response from the Administration

5.16 The **Director of Food and Environmental Hygiene** has said that he generally agrees with the audit recommendations. He has also said that:

- (a) the LMIS Phase 1B and Phase 1C were completed and implemented on 16 January 2006;

- (b) the FEHD has already realised the limitations of the FPRS and has no plan to extend the FPRS to the urban districts. The FEHD will critically evaluate whether the expected benefits of the LMIS Phase 1 are achieved before considering the implementation of the LMIS Phase 2 and Phase 3. Upon knowing in mid-2005 that staff of district offices were unable to complete data entry into the FPRS before the first day of each month, the FEHD reviewed the input procedure. Since December 2005, staff of district offices have been given time allowance for data entry before the fourth day of each month to ensure data accuracy. The FPRS would be upgraded and expanded gradually to cover all licensed food premises in the territory in the LMIS Phase 2 and Phase 3;
- (c) the FEHD will critically review the feasibility of computerising the management information of unlicensed food premises in individual district offices. In the meantime, the FEHD will introduce a standard form for recording follow-up actions taken against unlicensed food premises for use by all districts for better monitoring;
- (d) some new guidelines and policies are not collectively compiled in the FEHD Operational Manual. The FEHD will expedite action to upload the most updated set of the FEHD Operational Manual to the computer system;
- (e) the FEHD has already started to review “A Guide to Licensing” with a view to making it available electronically to staff; and
- (f) the FEHD regularly updates the information on the website (e.g. the information of licensed food premises is automatically updated weekly by retrieving the relevant data/information from the LMIS). The FEHD has taken immediate action to rectify the incorrect address in the pamphlets. The FEHD is also updating the application processing procedures stated in the pamphlets. In the meantime, amendment sheets will be inserted into the pamphlets for information of the public.

**Organisation chart of the FEHD
(January 2006)**



Source: FEHD records

Appendix B
(para. 2.17(c) refers)

**Inspection time spent on the previous
and the accompanied routine inspections**

District	Risk category of inspection package	Number of food premises inspected	Shortest time spent on previous routine inspections	Longest time spent on previous routine inspections	Time spent on accompanied routine inspections	Difference between longest time spent on previous routine inspections and accompanied routine inspections	
			(Notes 1 and 2)	(Notes 1 and 2)	(Note 2)	(c) = (b) - (a)	(d) = $\frac{(c)}{(a)} \times 100\%$
			(Minutes)	(Minutes)	(Minutes)	(Minutes)	(Percentage)
Central and Western	Low-risk	6	–	87	150	63	72%
Mongkok	High-risk	4	45	55	80	25	45%
Sham Shui Po	Medium-risk	6	70	88	131	43	49%
Shatin	High-risk	6	55	80	87	7	9%
Tuen Mun	Low-risk	3	–	60	56	(4)	(7%)
Wanchai	Medium-risk	5	50	56	109	53	95%

Source: FEHD records

Note 1: The longest time spent on the previous three inspections with the same inspection package was selected for comparison with the accompanied routine inspection time.

Note 2: Travelling time to and from district offices, and from one food premises to another were excluded.

Appendix C
(para. 2.17(d) refers)

**Total point-score of the previous
and the accompanied routine inspections**

District	Risk category of inspection package	Number of food premises inspected	Lowest total point-score of previous routine inspections	Highest total point-score of previous routine inspections	Total point-score of accompanied routine inspections	Difference between highest total point-score of previous routine inspections and accompanied routine inspections	
			(Note)	(Note)		(c) = (b) - (a)	(d) = $\frac{(c)}{(a)} \times 100\%$
				(a)	(b)		(Percentage)
Central and Western	Low-risk	6	—	9	67	58	644%
Mongkok	High-risk	4	20	23	34	11	48%
Sham Shui Po	Medium-risk	6	0	39	21	(18)	(46%)
Shatin	High-risk	6	14	31	50	19	61%
Tuen Mun	Low-risk	3	—	10	14	4	40%
Wanchai	Medium-risk	5	5	39	101	62	159%

Source: FEHD records

Note: The highest total point-score registered in the previous three inspections with the same inspection package was selected for comparison with the total point-score registered in the accompanied routine inspection.

Three cases with late payment or non-payment of licence fees

- (A) **Case 1.** The issue of a full licence for a period of one year for a food factory (low-risk) in the Central and Western District was approved on 8 February 2005. However, up to October 2005, the licence fee remained outstanding. The FEHD did not take follow-up action on this issue. During the nine-month period from February to October 2005, the FEHD conducted four inspections (3 routine inspections and 1 external inspection) on this food premises. Audit noted that a “tick” was marked on the inspection item “licence not yet expired; licence and licence sign conspicuously displayed” in the Inspection Report although the licensee did not possess a valid licence. On 3 November 2005, Audit enquired whether the FEHD had taken any follow-up action on the outstanding licence fee of this food premises. The outstanding licence fee was settled on 4 November 2005.
- (B) **Case 2.** The licence of a general restaurant (medium-risk) in the Wanchai District was due for renewal on 28 November 2004. Three months before the licence expiry date, the FEHD notified the licensee that his licence would expire and payment of the licence fee should be made before the issue of a new licence. Up to 31 July 2005, the licence fee remained outstanding. During the eight-month period from 28 November 2004 to 31 July 2005, the FEHD conducted three routine inspections on this food premises. A “tick” was marked against the inspection item “licence not yet expired; licence and licence sign conspicuously displayed” in each Inspection Report. As far as could be ascertained from FEHD records, no reminder was sent and no follow-up action was taken to recover the outstanding licence fee. The licence fee was paid on 10 August 2005 (i.e. over 8 months after the due date of the licence fee).
- (C) **Case 3.** The applications for two temporary food factory licences (one for 7 days from 29 October to 4 November 2004 and one for 3 days from 5 to 7 November 2004) for a booth in the Kwun Tong District were approved on 28 October 2004. On the same date, the applicant was notified that his applications were approved. However, Audit noted that, up to the end of December 2005, the temporary licence fees remained outstanding.

Source: FEHD records

Appendix E
(para. 2.30 refers)

**Non-compliance with the Hygiene Manager and Hygiene Supervisor Scheme
(August 2005)**

Requirement	Number of licensed food premises		Percentage of non-compliance
	Total	Non-compliance	
	(a)	(b)	(c) = $\frac{(b)}{(a)} \times 100\%$
Hygiene manager and hygiene supervisor	3,084	143	4.6%
Hygiene manager	82	10	12.2%
Hygiene supervisor	17,051	194	1.1%
Overall	<u>20,217</u>	<u>347</u>	1.7%

Source: FEHD records

Requirement of site inspection before the issue of provisional licence

Case 4. The key events are as follows:

- (a) the issue of provisional licences to a food factory located in the Mongkok District is summarised below:

Application	Date of application of provisional licence	Date of issuing provisional licence	Expiry date of provisional licence	Date of withdrawing full licence application
1st	28.10.2003	2.12.2003	1.6.2004	28.5.2004
2nd	29.5.2004	6.7.2004	5.1.2005	25.12.2004
3rd	28.12.2004	18.1.2005	17.7.2005	5.7.2005
4th	7.7.2005	26.7.2005	25.1.2006	28.12.2005

The food factory was previously covered by a full licence from 27 January 2003 to 26 January 2004. The licence was transferred from licensee A to licensee B on 15 April 2003. Up to August 2003, 30 demerit points under the Demerit Points System (Note) were registered against this food factory. In October 2003, the former licensee A of the food factory applied for provisional and full licences. The provisional licence was issued to the licensee A on 2 December 2003. Licensee B surrendered the full licence for the period from 27 January 2003 to 26 January 2004 for cancellation on 10 December 2003. As a result, the licensee successfully avoided suspension or cancellation of licence under the Demerit Points System as the demerit points would not be carried forward to a different licensee of the same premises; and

Appendix F
(Cont'd)
(para. 2.35 refers)

- (b) during the first provisional licence period, 15 demerit points were registered against this food factory and the provisional licence was suspended for seven days. The licensee avoided further suspension or cancellation of licence under the Demerit Points System by applying for another provisional licence. On 4 June 2004, the FEHD noticed that the licensee of the food factory had made no genuine effort to comply with the licensing requirements of a full licence as no food room had been constructed and no renovation works had been carried out since the issue of the first provisional licence. The district environmental hygiene office requested the Licensing Office to conduct site inspection before issuing another provisional licence. The staff of the Licensing Office conducted an inspection to confirm whether the applicant had complied with licensing requirements prior to the issue of the second provisional food factory licence. However, no further inspection was conducted by the staff of the Licensing Office before the third and the fourth provisional licences were issued to the same food premises trading under the same shop sign. Audit noted that the applicant of the first and the fourth provisional licences was the former Licensee A, and the applicant of the third provisional licence was the former Licensee B of the full licence of the food factory, trading under the same shop sign.

Source: FEHD records

Note: The FEHD operates the Demerit Points System to enforce the provisions of the Public Health and Municipal Services Ordinance and its subsidiary legislations. Licensees found guilty of breaching the regulations are registered with demerit points (see para. 3.3).

**Suspension of licences
(January 2000 to June 2005)**

Year	Licences suspended under DPS		Licences suspended under warning system (Note)		Total
	(a)	(b) = $\frac{(a)}{(e)} \times 100\%$	(c)	(d) = $\frac{(c)}{(e)} \times 100\%$	(e) = (a) + (c)
	(Number)	(Percentage)	(Number)	(Percentage)	(Number)
2000	311	97%	9	3%	320
2001	271	94%	17	6%	288
2002	224	95%	12	5%	236
2003	185	98%	3	2%	188
2004	165	100%	–	–	165
2005 (Up to June)	46	100%	–	–	46

Source: FEHD records

Note: With the implementation of the new warning system in November 2003, the licence or permit is cancelled instead of suspended after the issue of three warning letters within six months.

**Cancellation of licences
(January 2000 to June 2005)**

Year	Number of licences cancelled			Total
	DPS	Warning system	Sale of meat from unapproved source (Note)	
2000	2	0	–	2
2001	2	2	–	4
2002	1	1	–	2
2003	1	2	–	3
2004	0	1	1	2
2005 (Up to June)	1	2	0	3

Source: FEHD records

Note: The licensing requirement for the sale of meat from an approved source was imposed in November 2003.

Appendix I
(para. 3.14 refers)

**Enforcement action taken against licensed food premises
(January 2000 to June 2005)**

Year	Number of licensed food premises as at year end	Number of summonses taken out	Number of licences suspended	Number of licences cancelled	Number of applications for closure orders (Note)
2000	17,634	5,489	320	2	–
2001	18,311	4,411	288	2	–
2002	18,819	3,675	236	2	–
2003	19,307	3,897	188	3	–
2004	20,229	3,296	165	2	8
2005 (Up to June)	20,441	1,515	46	3	0

Source: FEHD records

Note: Under the Public Health and Municipal Services (Amendment) Ordinance 2002, effective from 14 February 2003, the Director of Food and Environmental Hygiene is empowered to apply for a closure order to close unlicensed food premises and any food premises which pose an immediate health hazard to the public.

Removal of unlicensed food premises from the target list

Case 5. The key events are as follows:

- (a) on 14 July 1989, the FEHD received a complaint from a member of the public about an unlicensed food factory in the Mongkok District. During the first inspection on 18 July 1989, the premises were found locked. Thereafter, from 1989 to 1994, the proprietors of the unlicensed food premises were prosecuted for 26 times. Although a prohibition order was served in August 1994, unlicensed food business was still found in the premises. From August 1994 to October 1999, the proprietors were prosecuted 8 times for breaching the prohibition order; and
- (b) since November 1999, no unlicensed food business activities had been found. During the inspections conducted from March to August 2000, a notice “For Lease” was found posted at the metal gate of the premises. During the 56-month period from November 1999 to June 2004, more than 40 inspections were conducted. It was only in June 2004 when the premises were found being used for selling computer accessories that the premises were removed from the target list of unlicensed food premises.

Source: FEHD records

Appendix K
(para. 4.13 refers)

**Enforcement action taken against unlicensed food premises
(January 2000 to June 2005)**

Year	Number of unlicensed food premises as at year end	Number of summonses taken out	Number of applications for prohibition orders (Note 1)	Number of applications for closure orders
2000	518	4,912	527	27
2001	431	2,818	307	0
2002	405	2,306	149	1
2003	260	1,493	19	16
2004	435	1,558	–	4
2005 (Up to June)	434	649	–	3 (Note 2)

Source: FEHD records

Note 1: Under the Public Health and Municipal Services (Amendment) Ordinance 2002, effective from 14 February 2003, the Director of Food and Environmental Hygiene is empowered to apply for a closure order to close unlicensed food premises and any food premises which pose an immediate health hazard to the public.

Note 2: In addition to these 3 closure orders (executed in May and June 2005), there were another 4 applications of closure orders in the second half of 2005. The hearing dates had been fixed but no closure orders were issued due to the granting of provisional licence to the premises or cessation of illegal food business activities before the court hearing.

Execution of a closure order to close an unlicensed food factory

Case 6. The key events are as follows:

- (a) a food factory in the Mongkok District, under application for a full licence, was found operating without a valid licence by the district Health Inspector. From December 2001 to August 2002, the FEHD instituted 16 prosecutions against the food factory and a total fine of \$27,690 (on average \$1,730 for each conviction) was imposed;
- (b) a prohibition order, granted in October 2002, was served to the proprietor in November 2002. For the 3-month period from November 2002 to January 2003, the food factory was found in operation during two summary arrests. The Health Inspector applied for a closure order on 21 February 2003. The closure order, granted in March 2003, was executed in April 2003. Thereafter, the premises were visited weekly and found locked; and
- (c) in July 2003, the owner of the premises applied for rescission of the closure order. The court approved the application in September 2003. In November 2003, it was found that the premises were used for engineering business. This unlicensed food factory case was closed in January 2004.

Source: FEHD records

Persistent operation of unlicensed food business

Case 7. The key events are as follows:

- (a) in August 2003, a food factory, with a gross floor area of 70 square metres located in the Shatin District and under application for provisional and full licences, was included in the target list of unlicensed food premises. The food factory was first found operating without a valid licence on 26 September 2003. The proprietor was prosecuted and fined \$3,000, and had to pay a daily fine of \$150 (totalling \$7,200) for operating unlicensed food business. The provisional licence was issued on 28 October 2003 and was valid for 6 months; and
- (b) on the expiry date of the provisional licence, the food factory did not meet all the licensing requirements and conditions. During the 13-month period from 28 April 2004 to 23 May 2005, the food factory was found operating without a valid licence. During this period, 12 prosecutions were made against the proprietor of the food factory. A total fine of \$78,950 with a daily fine of \$150 on each conviction was imposed (an average fine of about \$6,600 for each conviction). The full licence was issued on 24 May 2005.

Source: FEHD records

Appendix N
(para. 4.16 refers)

**Summary arrest against operators of unlicensed food premises
(January 2000 to June 2005)**

Year	Number of raids carried out	Number of persons arrested	Percentage of persons arrested to number of raids	Number of convictions
	(a)	(b)	(c) = $\frac{(b)}{(a)} \times 100\%$	
2000	960	510	53%	418
2001	579	260	45%	196
2002	583	176	30%	140
2003	480	140	29%	118
2004	420	91	22%	75
2005 (Up to June)	193	40	21%	38

Source: FEHD records

Appendix O
(para. 4.20 refers)

**Execution of closure orders for 3 unlicensed food premises
in the blitz operation mounted in January 2005**

Description	Siu mei and lo mei shop	Food factories
Number of unlicensed food premises	1	2
Date of execution of closure order	27 May 2005	2 June 2005
Number of closure orders executed	1	2
Time taken from confirming the operation of unlicensed food business to the execution of closure order	47 days	85 days
Number of staff required for executing the closure order	26	15

Source: FEHD records

Remarks: Both food factories were located in the same shopping centre.

Acronyms and abbreviations

Audit	Audit Commission
DPS	Demerit Points System
EHSIS	Environmental Hygiene Statistical Information System
FEHD	Food and Environmental Hygiene Department
FIRMS	Food Incidents Response and Management Section
FPRS	Food Premises Record System
LMIS	Licensing Management Information System
LPS	Licences/Permits System
OLA	Office of Licensing Authority
RBIS	Risk-based Inspection System