

**Business Facilitation Advisory Committee  
Food Business and Related Services Task Force**

***Proposed Simplification of Appeal Mechanism for  
Suspension/Cancellation of Food Business Licence -  
Analysis of Increase in Suspension and Cancellation  
of Food Business Licences***

**Background**

At the last Food Business and Related Services Task Force (FRSTF) meeting held on 6 June 2014, the Convenor requested the Food and Environmental Hygiene Department (FEHD) to analyze the reasons for the sharp increase in both the number of suspension and cancellation of food business licences under the Demerit Points System<sup>1</sup> (DPS) in 2012 when the department briefed Members on the proposed simplification of the appeal mechanism, vide FRSTF Paper 31. This paper presents the latest statistics and the analysis findings for discussion with FRSTF.

**Latest Statistics**

2. Tables 5 and 6 of the Ombudsman's direct investigation report on regulatory measures and enforcement actions against illegal extension of business area by restaurants are updated at Annex 1 to reflect the conclusion of the pending hearing cases in 2012 after the report was published in May 2013. Statistics on suspension and cancellation of food business licences in 2013 are also provided at the annex.

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<sup>1</sup> DPS is an administrative regulatory regime operated by FEHD to deter licensed food business operators from breaching legislative provisions on food safety and environmental hygiene under the Public Health and Municipal Services Ordinance (PHMSO), Cap. 132 and its subsidiary legislation. Under DPS, a pre-determined number of demerit points ranging from five to 15 (depending on the nature and severity of the offence) will be registered against a licensee upon conviction of an offence in relation to food safety and environmental hygiene under PHMSO and its subsidiary legislation. A licence will be suspended for 7 days if 15 points are accumulated within a period of 12 months (first suspension) and 14 days if another 15 points are accumulated within 12 months from the date of the last offence that led to the first suspension (second suspension). If another 15 points are accumulated within 12 months from the date of the last offence that led to the second suspension, the licence will be cancelled.

## **Analysis Findings**

3. **Annex 1** shows that there was a substantial increase of licence suspension and cancellation cases from 2011 to 2012 but only a slight and moderate increase from 2012 to 2013. An analysis of the licence suspension and cancellation cases by type of offences under DPS over the past 3 years at **Annex 2** reveals that 85% of the licence suspension cases and all the licence cancellation cases are related to illegal extension of food business.

4. Due to proliferation of illegal extension of food business to public place in recent years, FEHD has been vigilant about tackling illegal extension of business area by food premises and has implemented various targeted measures to tackle the problem, including :

- (a) stepping up inspections and enforcement actions, and speeding up the prosecution process;
- (b) conducting blitz prosecution from time to time on top of regular inspection to combat such irregularities;
- (c) strengthening prosecutions against illegal extension of business area by restaurants in accordance with section 34C of Food Business Regulation (FBR) so that restaurant licensees convicted of the offence would be subject to the penalties under DPS; and
- (d) setting up a task force on pilot basis for taking enhanced enforcement actions by increasing the number of prosecutions as appropriate in May 2013.

5. Although there is no change in the policy and the sanction mechanism of DPS, the increase in the number of licence suspension and cancellation cases has a direct correlation with increased convictions of offences under the Public Health and Municipal Services Ordinance, Cap. 132 and its subsidiary legislation, in particular contravention of section 34C of FBR. It is obvious that the rising trend of licence suspension and cancellation cases under DPS is due to the implementation of targeted measures to tackle the problem at para. 4 above.

## Way Forward

6. The Administration has reviewed and streamlined the existing appeal processes such as applying Chinese or English for the statements instead of the bilingual statements, speeding up the arrangement of hearing where practicable etc. with a view to shortening the appeal time. As regards the follow-up to the Ombudsman's recommendations on amending the relevant legislation to simplify the current three-tier appeal mechanism<sup>2</sup>, FEHD is now consolidating the views on the proposal to streamline the appeal system by removing the Municipal Services Appeals Board from the trade as well as reviewing the effectiveness on the enhanced measures in tackling the illegal extension of seating area by food premises for taking the matter forward. FEHD would like to take the opportunity to consult the FRSTF for their further views, if any.

7. FEHD will continue to closely review the effectiveness of various measures and will roll out new ones as and when necessary to combat illegal extension of business area by food premises more effectively. FEHD will take firm actions against recalcitrant offenders illegally extending their food business to public place and will exercise more stringent control by further tightening measures on the issue, suspension and cancellation of licences. For law-abiding food business operators, the business facilitation measures already put in place by FEHD will remain in force.

8. Members are invited to note the content of this paper and offer comments, if any.

**Food and Environmental Hygiene Department**  
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<sup>2</sup> If the licensee is dissatisfied with FEHD's decision to suspend or cancel its licence, he/she may –  
(a) make a representation to FEHD, as an administrative procedure, in seven days, or in four days for a serious breach;  
(b) appeal to the Licensing Appeals Board (LIAB) against FEHD's decision within 14 days under PHMSO; and  
(c) in case LIAB upholds or varies FEHD's decision, appeal to the Municipal Services Appeals Board against LIAB's decision within 14 days under PHMSO.

**Number and Outcome of Appeals against  
Licence Suspensions and Cancellations**

**Licence Suspensions**

		<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Number of licence suspensions under DPS		150	145	236	242
Number of reviews by FEHD upon requests made in accordance with administrative arrangements		9	18	28	16
Review outcome	Dismissed	9	18	28	16
	Suspension period shortened	0	0	0	0
	Allowed	0	0	0	0
Number of appeals lodged with the Licensing Appeals Board		19	35	50	40
Appeal outcome	Dismissed	14	27	22	12
	Suspension period shortened	3	5	17	23
	Allowed	0	0	0	0
	Hearing cancelled upon withdrawal of appeal	2	3	11	5
Number of appeals lodged with the Municipal Services Appeals Board		11	10	23	14
Appeal outcome	Dismissed	8	8	18	9
	Suspension period shortened	0	0	0	1
	Allowed	1	1	0	0
	Hearing cancelled upon withdrawal of appeal	2	1	5	4

**Licence Cancellations**

		<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Number of licence cancellations under DPS		13	12	23	29
Number of reviews by FEHD upon requests made in accordance with administrative arrangements		3	3	14	8
Review outcome	Dismissed	3	3	14	8
	Licence cancellation replaced with licence suspension	0	0	0	0
	Allowed	0	0	0	0
Number of appeals lodged with the Licensing Appeals Board		11	8	20	17
Appeal outcome	Dismissed	7	4	8	7
	Licence cancellation replaced with licence suspension	3	3	9	7
	Allowed	0	0	0	0
	Hearing cancelled upon withdrawal of appeal	1	1	3	3
Number of appeals lodged with the Municipal Services Appeals Board		6	7	4	13
Appeal outcome	Dismissed	6	6	2	8
	Licence cancellation replaced with licence suspension	0	0	1	1
	Allowed	0	0	0	0
	Hearing cancelled upon withdrawal of appeal	0	1	1	4

**Suspension and Cancellation of Food Business Licences  
by Type of Offences under DPS  
(2011 to 2013)**

Year	Suspension			Cancellation		
	Illegal extension of business	Other offences *	Total	Illegal extension of business	Other offences *	Total
<b>2011</b>	112	33	145	12	0	12
<b>2012</b>	198	38	236	23	0	23
<b>2013</b>	221	21	242	29	0	29
<b>Total</b>	<b>531 (85%)</b>	<b>92 (15%)</b>	<b>623</b>	<b>64</b>	<b>0</b>	<b>64</b>

\* Suspension and cancellation of licences related to prosecutions taken out under PHMSO and its subsidiary legislation (other than illegal extension of food business) such as dirty food premises, exposure of open food, use of open space for food preparation/scullery, sale of unfit food, sale of food to the prejudice of a purchaser and unauthorized alterations/additions to the approved layout etc.