

Advisory Council on Food and Environmental Hygiene

Demerit Points System for Licensed Food Premises

PURPOSE

This paper briefs Members on the implementation of the Demerit Points System (“DPS”) for licensed food premises by the Food and Environmental Hygiene Department (“FEHD”).

BACKGROUND

2. FEHD has been operating a DPS in respect of licensed food premises, which aims to deter food business operators from breaching legislative provisions on food safety and environmental hygiene under the Public Health and Municipal Services Ordinance (Cap. 132) (“PHMSO”) and its subsidiary legislations.

3. Under the DPS, a pre-determined number of demerit points ranging from 5 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 seven 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.

4. The classification under the DPS reflects the nature and degree of the food safety or hygiene risks. While higher demerit points would be

awarded to offences which pose higher risks, offences with lower risks would attract lower demerit points. The offence schedule of the DPS is at Annex.

5. To complement the DPS, FEHD has adopted the following measures to enhance food safety as well as protection of public health –

- (a) FEHD has enhanced publicity and education to encourage food operators to exercise self-discipline to comply with the requirements under PHMSO and its subsidiary legislations, as well as to improve and upgrade their standards;
- (b) with a view to encouraging the trade to obtain ISO 22000 certification¹ thereby improving food safety and hygiene standard, FEHD has since 2007 implemented a policy whereby licensed food premises that have fully implemented the food safety management system under ISO 22000 and obtained the ISO 22000 certification from an certification body (“the Scheme”) will be excluded from the DPS and be subject to an alternative inspection regime. Food premises recognised under the Scheme will be inspected by FEHD at intervals of at least once every five months.² As at November 2016, some 120 licensed food premises have voluntarily applied to join the Scheme and with approval granted by FEHD; and

¹ ISO 22000 is the certification or registration by an accredited body in respect of a licensed food premises to plan, implement, operate, maintain and update a food safety management system aimed at providing products that are safe for the consumer and demonstrate compliance with applicable statutory and regulatory food safety requirements in accordance with the requirements specifies by the International Organization for Standardization.

² While food premises recognised under the Scheme are excluded from the DPS, the relevant licensee / operator will still need to comply with all applicable legislation and licence requirements and conditions. Where a breach of any legislation, licensing requirements or conditions is detected, FEHD will take appropriate enforcement actions and also consider disqualifying the food premises concerned from the Scheme.

ISO 22000-certified food premises are also subject to audits by independent certification body every six to 12 months. Any deviation from the food safety management system detected would be recorded by the certification body and referred to the certified food premises for rectification. If any major deviation likely to affect food safety is detected, the certification body may withdraw the certification issued to the food premises immediately.

- (c) to enhance food safety supervision, large catering establishment and those selling high risk foods were required to appoint both a Hygiene Manager (“HM”) and a Hygiene Supervisor (“HS”), and other small scale food premises either a HM or HS, to oversee the daily operation and management of the food premises to ensure that the food they produced are safe and fit for human consumption.

STATISTICS

6. In the past five years, the number of food premises with licences suspended and cancelled due to the accumulation of demerit points under the extant DPS is tabulated below.

Table 1 : Statistics on number of food licences suspended/cancelled

Year	Number of licences suspended	Number of licences cancelled	Sub-total
2012	236	23	259
2013	242	29	271
2014	208	11	219
2015	191	2	193
2016	107	4	111

7. A majority of the offences involved in these suspension and cancellation cases are related to unauthorised extension of food business outside the licensed area (section 34C of the Food Business Regulation (Cap 132X) (“FBR”)). Other offences included use of open space for preparation/storage of open food or washing of utensils (section 13 of FBR), failure to store open food in a proper manner (section 11 of FBR), dirty premises and dirty food room (section 5 and 15 of FBR), unauthorised alterations/additions to the matters specified in the approved plan and sale of food not of the substance, nature or quality demanded by the purchaser (section 52 of PHMSO).

8. As reflected in Table 1 above, there has been a gradual decrease in the number of cases involving licence suspension and cancellation since 2013, which was mainly attributable to the implementation of the following strategies by FEHD, resulting in fewer offences relating to the illegal extension of food business by licensed food premises –

- (a) the implementation of enhanced enforcement and administrative measures against licensed food premises with illegal outside seating accommodation (“OSA”); and
- (b) deployment of squads of the Food Business Extension Control Task Force to closely monitor various illegal OSA blackspots in targeted districts, which have effectively contained the illegal OSA problem in these districts.

9. The statistics in Table 1 shows that the current application of enforcement strategy coupled with the administration sanction under DPS are effective tools which the trade is conversant with to deter food business operators from breaching offences in relation to food safety and environmental hygiene. The decrease in the number of complaints and food poisoning outbreak in licensed food premises in the past few years, as shown in Tables 2 and 3 below, bears testimony to the above statement.

Table 2 : Complaint statistics against licensed food premises

Year	Complaint against licensed food premises relating to OSA
2012	7 468
2013	8 246
2014	5 413
2015	4 463
2016	3 966

Table 3 : Number of food poisoning outbreak involving licensed food premises

Year	No. of food poisoning outbreak involving licensed food premises
2012	269
2013	227
2014	159
2015	151
2016	113

ADVICE SOUGHT

10. Members are invited to note the content of this paper.

**Food and Health Bureau
Food and Environmental Hygiene Department
April 2017**

Schedule of Demerit Points

Group A

VERY SERIOUS OFFENCES

Penalty : 15 demerit points

Public Health & Municipal Services Ordinance (Cap. 132)

- (1) Sale of food rendered injurious to health by adulteration (Section 50).
- (2) Sale of adulterated milk (Section 51).
- (3) Sale of meat adulterated with water or other fluid (Section 51A).
- (4) Sale of food unfit for human consumption (Section 54).
- (5) Sale of or interference with seized or detained food (Section 59(3)).

Food Business Regulation (Cap. 132 sub. leg. X)

- (1) Sale of the following item of prohibited food (Section 29 and Schedule 1)
 - (a) Chinese dishes of Yu Sang (魚生); and
 - (b) Shell fish which have been collected in contravention of Section 28 of this Regulation.

Frozen Confections Regulation (Cap. 132 sub. leg. AC)

- (1) Failing to comply with any direction given to stop supply of frozen confections to the danger of public health (Section 38).

Milk Regulation (Cap. 132 sub. leg. AQ)

- (1) Failing to comply with any direction given to stop supply of milk to the danger of public health (Section 37).

Group B

SERIOUS OFFENCES

Penalty : 10 demerit points

Food Business Regulation (Cap. 132 sub. leg. X)

- (1) Employment of persons likely to spread disease (Section 24).
- (2) Unauthorized extension of food business outside the licensed area (Section 34C).

Frozen Confections Regulation (Cap. 132 sub. leg. AC)

- (1) Employment of persons likely to spread disease (Section 35).

Milk Regulation (Cap. 132 sub. leg. AQ)

- (1) Employment of persons likely to spread disease (Section 35).

Group C

OTHER OFFENCES

Penalty : 5 demerit points

Public Health and Municipal Services Ordinance (Cap 132)

- (1) Sale of food not of the substance, nature or quality demanded by the purchaser (Section 52)
- (2) False labelling and advertisement of food (Section 61)
- (3) Failing to comply with any demand or requisition by an authorized public officer to take sample for analysis, bacteriological or other examinations (Section 62)

Miscellaneous Subsidiary Legislation under Cap.132

- (1) Regulation 3, 4, 5(1) or 5(3) of the Colouring Matter in Food Regulations (Cap. 132 sub. leg. H)
- (2) Regulation 3(1) or 3(2) of the Sweeteners in Food Regulations (Cap. 132 sub. leg. U)
- (3) Regulation 3(1)(a), (b) or (c) of Food Adulteration (Metallic Contamination) Regulations (Cap. 132 sub. leg. V)
- (4) Regulation 5 of the Food and Drugs (Composition and Labelling) Regulations (Cap. 132 sub. leg. W)
- (5) Regulation 3 or 3A of the Harmful Substances in Food Regulations (Cap. 132 sub. leg. AF)
- (6) Regulation 3 of the Mineral Oil in Food Regulations (Cap. 132 sub. leg. AR)
- (7) Section 3, 4, 5 or 6 of the Preservatives in Food Regulations (Cap. 132 sub. leg. BD)

Food Business Regulation (Cap. 132 sub. leg. X)

- (1) Failing to maintain premises clean (Section 5(1))
- (2) Placing furniture/equipment as to obstruct cleaning (Section 5(2))
- (3) Knowingly suffering or permitting the presence of rats or insects on the premises and the presence of live birds or animals in food room (Section 5(3))
- (4) Failing to heed notice to cleanse, disinfest, or repair food premises (Section 5(5))

- (5) Failing to maintain equipment, utensils clean (Section 6)
- (6) Giving out food for preparation on domestic premises (Section 7)
- (7) Storing non-permitted colouring matter for use on food premises (Section 7A)
- (8) Using food room for dwelling purpose or using dwelling place as a food room (Section 8)
- (9) Failing to maintain spittle receptacles in the proper manner and to display no spitting notices (Section 9)
- (10) Failing to protect open food from risk of contamination (Section 10)
- (11) Keeping live fish or shell fish in water of a quality below standard (Section 10A(1))
- (12) Knowingly suffer or permit the presence of dog on food premises (Section 10B(2))
- (13) Failing to store open food in proper manner (Section 11)
- (14) Failing to transport open food in proper manner (Section 12)
- (15) Transporting dressed poultry carcass or offal not in the approved type goods vehicle (Section 12A(1))
- (16) Using open space for preparation of food/storage or washing of utensils (Section 13)
- (17) Failing to keep bottled drinks in wet refrigerator or immersion cooler properly (Section 14)
- (18) Failing to maintain food room clean/in good repair (Section 15)
- (19) Failing to maintain any sanitary fitment clean and in good repair (Section 15A)
- (20) Allowing the accumulation of refuse in food rooms (Section 16)
- (21) Failing to render the surface of food preparation tables, etc. impervious (Section 17)
- (22) Failing to sterilize/store eating utensils properly (Section 19)
- (23) Failing to sterilize wet towels before serving to customers (Section 20)
- (24) Employment of persons not properly immunized against certain diseases (Section 23A)
- (25) Selling horse flesh which has not been properly labelled (Section 27)
- (26) Sale of restricted food without permission (Section 30(1))
- (27) Sale of live water bird and other live poultry in the same premises (Section 30A)

- (28) Operating other class of unlicensed food business on the premises (Section 31(1))
- (29)
 - (a) Unauthorized alteration(s) or addition(s) in respect of the premises to which the licence relates resulting in deviation from the plan approved under Section 32 (Section 34(a));
 - (b) Unauthorized alteration(s) to matters as specified in the licensing conditions (Section 34(b));
 - (c) Unauthorized alteration(s) of any part of heating equipment or any change in the type of fuel used therein (Section 34(c));
 - (d) Unauthorized alteration(s) and addition(s) to the matters already specified in the plan approved under Section 32 (Section 34D(1));
 - (e) Unauthorized addition of space(s) to be used for such purpose(s) as particularized in Section 32 within the licensed premises but the said unauthorized addition of space(s) is not originally specified in the approved plan (Section 34D(2)(a); and
 - (f) Unauthorized addition of matter(s) of the kind as particularized in Section 32 within the licensed premises but the said unauthorized addition of matter(s) is not originally specified in the approved plan (Section 34D(2)(b)).

Frozen Confections Regulation (Cap. 132 sub. leg. AC)

- (1) Sale of frozen confections without permission (Section 5)
- (2) Sale of frozen confections which do not comply with bacteriological standard (Section 6)
- (3) Sale of frozen confections obtained from unapproved source of manufacture (Section 7(1))
- (4) Sale of frozen confections which have not been heat-treated (Section 8)
- (5) Failing to take precautions against contamination of frozen confections pending sale (Section 9)
- (6) Keeping frozen confections for sale at temperature exceeding -2°C (Section 10)
- (7) Storing frozen confections with other articles in the same refrigerator (Section 11)
- (8) Failing to keep refrigerators for the storage of frozen confections clean (Section 12)
- (9) Failing to keep utensils clean (Section 13)
- (10) Failing to keep ice cream cones and wafers in dust proof containers

(Section 14)

- (11) Effecting unauthorized alteration of premises (Section 20)
- (12) Failing to comply with requirements relating to heat-treatment apparatus (Section 21)
- (13) Using water from an unapproved source and non-permitted ingredients for the purpose of manufacturing frozen confections (Section 23)
- (14) Failing to maintain premises/equipment clean (Section 24)
- (15) Failing to sterilize vessels/utensils properly (Section 25)
- (16) Allowing frozen confections factory for dwelling purposes (Section 27)
- (17) Failing to prevent contamination of frozen confections by contact with clothing (Section 28)
- (18) Failing to maintain spittle receptacles in proper manner and to display no spitting notices (Section 29)
- (19) Failing to prevent vermin in a frozen confections factory (Section 30)
- (20) Using open space for manufacture or storage of frozen confections (Section 31)
- (21) Failing to cleanse water tanks (Section 32)
- (22) Failing to take precautions against contamination of frozen confections during manufacture and distribution (Section 33)
- (23) Failing to mark containers of soft ice cream with the date and time of manufacture (Section 34)
- (24) Employment of persons not properly immunized against certain diseases (Section 36)

Milk Regulation (Cap. 132 sub. leg. AQ)

- (1) Sale of milk without permission (Section 5)
- (2) Sale of milk imported from unapproved source of manufacture (Section 5A)
- (3) Sale of milk which does not comply with bacteriological standard (Section 6)
- (4) Sale of milk which has not been properly heat-treated (Section 7)
- (5) Sale of cream with added ingredient other than thickening substance (Section 8)
- (6) Sale of milk in an unapproved type of containers (Section 9)
- (7) Sale of beverages resembling milk in an unapproved container

- (Section 11)
- (8) Failing to take precautions against contamination of milk pending sale (Section 12)
 - (9) Keeping milk for sale at temperature exceeding 10oC (Section 13)
 - (10) Failing to take precautions against contamination of milk in the course of transportation (Section 13A)
 - (11) Effecting unauthorised alteration of premises (Section 17)
 - (12) Distribution of contaminated or adulterated milk (Section 18)
 - (13) Failing to comply with requirements relating to heat-treatment apparatus (Section 19)
 - (14) Unauthorised heat-treatment of milk produced outside Hong Kong (Section 20)
 - (15) Using ingredients from unapproved sources for re-constitution of milk (Section 21)
 - (16) Processing milk from unlicensed dairies (Section 21A)
 - (17) Failing to maintain premises/equipment clean (Section 22)
 - (18) Using vessels/containers the material/design of which have not been approved (Section 23)
 - (19) Failing to sterilize vessels/utensils properly (Section 24)
 - (20) Allowing utensils used in the processing of milk to be used for drinking (Section 25)
 - (21) Using milk factory for dwelling purposes (Section 27)
 - (22) Failing to prevent contamination of milk by contact with clothing (Section 28)
 - (23) Failing to maintain spittle receptacles in proper manner and to display no spitting notices ((Section 29)
 - (24) Failing to prevent vermin in a milk factory (Section 31)
 - (25) Using open space for processing or for storage of milk (Section 32)
 - (26) Failing to cleanse water tank (Section 33)
 - (27) Failing to take precautions against contamination of milk during processing/ distribution (Section 34)
 - (28) Employment of persons not properly immunized against certain diseases (Section 36)

Hawker Regulation (Cap. 132 sub. leg. AI)

- (1) Failing to maintain the fixed pitch and the adjacent area clean (Section 39(2))
- (2) Failing to maintain equipment in safe and clean condition (Section 50)
- (3) Failing to provide sufficient number of refuse bins and to use them properly (Section 51)
- (4) Failing to ensure stall, equipment and food/drink to be provided by licensees dealing in drink or cooked food to be kept in clean and hygienic condition (Section 52)