

LCQ20: Food safety issues concerning online food ordering platforms

Following is a question by the Hon Jimmy Ng and a written reply by the Secretary for Food and Health, Professor Sophia Chan, in the Legislative Council today (November 21):

Question:

In July this year, the Centre for Health Protection announced that seven persons had fallen ill after consuming takeaway food from a food premises. It was reported that the food in question was bought from that food premises by an online food ordering platform upon receiving orders from its customers, and then collected by the customers within a specified time at a designated pickup point set up by the platform on the street. Some members of the public are concerned that as online food ordering platforms are currently not subject to regulation, it is difficult to ensure that the food is stored at a proper temperature and free from contamination during transportation and while awaiting collection. In this connection, will the Government inform this Council:

(1) whether it has compiled statistics on the respective current numbers of (i) operators selling non-prepackaged food online without physical premises and (ii) online food ordering platforms;

(2) of the number of complaints received by the Government in the past three years concerning the quality of food sold by online food ordering platforms;

(3) given that currently food factories selling restricted food online must obtain relevant permits, and the licensing conditions include certain regulations about food safety (e.g. the food must be obtained from lawful sources and stored at a proper temperature at all times, and the permittees must take measures to prevent the food from cross-contaminating during transportation), whether the Government has plans to expand the scope of such permit system to cover (i) online food ordering platforms and (ii) the various types of non-prepackaged foods in order to ensure food safety; if so, of the details; if not, the reasons for that;

(4) whether it will use the Measures for the Supervision and Administration of Food Safety in Online Catering Services promulgated by the China Food and Drug Administration as a blueprint for regulating issues relating to food safety of online food ordering platforms; if so, of the details; if not, the reasons for that; and

(5) given that currently various online food ordering platforms have posted on their websites limitation of liability clauses (e.g. they are not liable for the quality of food supplied by a third party, and the amount of compensation payable to a customer is capped at the value of the order),

rendering it difficult for customers to seek reasonable compensation, whether the Government will consider establishing a mechanism to protect the consumer rights and interests of those customers; if so, of the details; if not, the reasons for that?

Reply:

President,

E-commerce is getting more and more popular, including food transaction through the Internet, mobile applications or social media platforms (hereafter referred to as "online food sale").

Currently, food safety and food trade operations are regulated in various aspects under the laws of Hong Kong. Any person who undertakes business relating to producing, trading, importing or distributing food must meet the requirements of relevant legislation, irrespective of whether the business is conducted in physical premises, or through any means of transactions (including face-to-face, phone, electronic media, etc.).

The Public Health and Municipal Services Ordinance (Cap. 132) stipulates that all food for sale for human consumption in Hong Kong, whether imported or locally produced, must be fit for human consumption.

Under the Food Business Regulation (Cap. 132X) (the Regulation), any person who carries on any business which involves the preparation of food for sale for human consumption outside the premises, including online sale of the food concerned, must obtain a food factory license issued by the Food and Environmental Hygiene Department (FEHD). In addition, depending on the circumstances, modes of operation and the types of food for sale, operators of online food sale business must obtain relevant licenses or permits issued by FEHD. Any person operating online food sale business shall not sell any restricted food specified in the Regulation (including sashimi, sushi, oysters to be eaten in raw state, etc.) unless the Director of Food and Environmental Hygiene has granted written permission to the person to do so.

FEHD currently adopts the following licensing requirements to further safeguard the food safety of online food sale:

(a) FEHD requires that, with effect from February 2016, operators who do not have physical premises have to apply for permits if they sell restricted food online. Permits are issued on the conditions that the operators must provide particulars, such as the permit number, the type(s) of restricted food permitted for sale and the business address, on their websites and printed promotional materials for consumers' reference and verification on FEHD's website. In addition, the restricted food must be obtained from lawful sources and prepackaged by the suppliers before delivering to customers, the packages shall not be tampered with during transportation to prevent cross-contamination, and the food shall be stored at a safe and proper temperature at all times; and

(b) Operators of food premises which are holders of food business licenses or permits (except for Factory Canteen License, Cold Store License, Fresh Provision Shop License with endorsement(s) for sale of live poultry and/or processed fresh poultry carcasses and offal, and Permit to Sell Food by means of Vending Machine) must comply with the conditions stated in paragraph (a) above if they also carry out online food sale.

The list of food premises issued with food business licenses or permits, as well as operators without physical premises issued with permits for online sale of restricted food, are available on FEHD's website for public inspection.

Our reply to the various parts of the question is as follows:

(1) As at October 31, 2018, FEHD has issued 351 permits for online sale of restricted food. FEHD does not keep statistics on food premises issued with food business licenses or permits which are also involved in online food sale.

FEHD has been closely monitoring online food sale activities, including online traders that are not involved in food production and do not have physical premises. If FEHD suspects that any online food sale activity involves unlicensed business, or has doubts on the source and safety of the food concerned, it will conduct investigations, including decoy operations to collect evidence and information, and take appropriate actions.

(2) From 2016 to October 31, 2018, the Centre for Food Safety (CFS) of FEHD has received seven food complaints concerning ordering food through mobile applications and two cases of food poisoning referred by the Centre for Health Protection of the Department of Health concerning ordering food through mobile applications. CFS has taken follow-up actions immediately, including seizing food exhibits, taking food samples for testing, and taking appropriate actions.

(3) and (4) As mentioned above, food safety and food trade operations are regulated by the laws of Hong Kong in various aspects. We will continue to make reference to the practices of other places in monitoring and regulating online food sale, and consider further improving our regulation of online food sale platforms.

(5) According to the Commerce and Economic Development Bureau, existing laws in Hong Kong already impose controls on contracts relating to consumer transactions. For instance, section 7(1) of the Control of Exemption Clauses Ordinance (Cap. 71) stipulates that a person cannot by reference to any contract term or any notice given to persons generally or particular persons, exclude or restrict his liability for personal injury or death resulting from negligence. In addition, the Supply of Services (Implied Terms) Ordinance (Cap. 457) (the Ordinance) imposes terms to be implied in contracts for the supply of services. For example, section 5 of the Ordinance provides that where the supplier is acting in the course of a business, the supplier shall carry out the service with reasonable care and skill. Section 8(1) of the

Ordinance stipulates that if a party to a contract is a consumer, the other party cannot, by reference to any contract term, exclude or restrict any of his liability arising under the contract by virtue of that Ordinance. Depending on the actual circumstances of the cases concerned (including contract terms), consumers may lodge claims under the contract law and/or any other relevant laws.

Consumers may also seek assistance from the Consumer Council. The Consumer Council acts as a conciliator in handling disputes between consumers and traders. It assists traders and complainants to resolve their disputes, for instance, by trying to contact the traders with a view to helping both parties reach a mutually satisfactory settlement through conciliation.