

**Extracts from the Executive Summary of
the Office of The Ombudsman's report on direct investigation on monitoring
of cases with statutory time limit for prosecution by the Food and
Environment Hygiene Department issued on 22 March 2007
and the minutes of the regular meeting on 10 April 2007 on the proposal to
amend the relevant legislation in relation to unauthorised alteration to
approved layout of licensed premises**

Extract from the Executive Summary of the Office of The Ombudsman's report on
direct investigation on monitoring of cases with statutory time limit for prosecution
by the Food and Environment Hygiene Department issued on 22 March 2007

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Observations and Opinions

12. **Mistaken calculation of time limit.** According to legal advice, in case of unauthorised alteration to premises for licensing, the time limit should normally count from the date the approved plan was last checked, not the date the breach was detected. **Case III** was time-barred because of unawareness of this, resulting in wrongful calculation of time limit. In three years, three cases were time-barred for this reason. FEHD should consider amending the law to enable FEHD staff to initiate prosecution within six months from the unauthorised alteration being discovered or coming to their notice.

Concluding Comments

26. **Extension of Time Limit**

- (10) to consider amending the law for prosecuting offences in relation to unauthorised alteration: para. 12.

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Extract from the minutes of the regular meeting on 10 April 2007

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96. On the proposal to amend the relevant legislation in relation to unauthorised alteration to approved layout of licensed premises, the Chairman enquired about the justifications for extending the time-bar to more than six months.

97. PS(FEH)(Ag) explained that prosecution against unauthorised alteration is subject to a six-month statutory time limit under the Magistrates Ordinance. According to legal advice for cases of unauthorised alteration to approved layout of licensed premises, the time limit should normally count from the date the approved plan was last checked and not the date the breach was detected. In view that inspection to licensed food premises was conducted in every five months, there would not be sufficient time for FEHD staff to initiate prosecution as there would be less than six months from the date of detection of unauthorised alteration. He said that, as recommended by The Ombudsman's Report, the Administration proposed to amend the relevant legislation to remove the deficiency. It was hoped that the amendment would enable FEHD staff to initiate prosecution within six months from the unauthorised alteration being discovered or coming to their notice.

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