

立法會
Legislative Council

LC Paper No. CB(2)497/01-02

(These minutes have been
seen by the Administration)

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**Subcommittee on Public Health (Animals and Birds) (Chemical Residues) Regulation
& Harmful Substances in Food (Amendment) Regulation 2001**

**Minutes of the 2nd meeting
held on Friday, 21 September 2001 at 4:30 pm
in Conference Room B of the Legislative Council Building**

Members Present : Dr Hon LO Wing-lok (Chairman)
Hon Cyd HO Sau-lan
Hon WONG Yung-kan
Hon TAM Yiu-chung, GBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung

Member Absent : Hon Fred LI Wah-ming, JP

Public Officers Attending : Dr Les SIMS
Assistant Director (Agriculture, Quarantine and Inspection)
Agriculture, Fisheries and Conservation Department

Mrs Ingrid YEUNG
Principal Assistant Secretary for the Environment and Food (A) 1

Dr Mabel YEUNG
Acting Assistant Director (Food Surveillance & Control)
Food and Environmental Hygiene Department

Ms Betty CHEUNG
Acting Senior Assistant Law Draftsman, Department of Justice

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Clerk in Attendance : Ms Doris CHAN
Chief Assistant Secretary (2) 4

Staff in Attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Ms Dora WAI
Senior Assistant Secretary (2) 4

I. Confirmation of minutes of meeting held on 23 July 2001
(LC Paper No. CB(2)2279/00-01)

The minutes of the meeting held on 23 July 2001 were confirmed.

II. Meeting with the Administration

The Administration's response to the questions raised by the Legal Adviser to the Subcommittee

(LC Paper No. CB(2)2258/00-01(01))

2. At the invitation of the Chairman, Principal Assistant Secretary for the Environment and Food (A) 1 (PAS(EF)(A)1) briefed members on the above paper.

Question 3(c)

3. In response to Mr TAM Yiu-chung, PAS(EF)(A)1 said that if farmers fed any of the 37 agricultural and veterinary chemicals specified under the Public Health (Animals and Birds) (Chemical Residues) Regulation (the Regulation) at recommended dosage and withheld these chemicals from the animals for the specified period before slaughter, the concentration level of these chemicals in the specified tissues and milk of the food animals should be within the prescribed "Maximum Residue Limits" (MRLs).

4. Replying to a further question from Mr TAM Yiu-chung, PAS(EF)(A)1 said that a food animal farmer who supplied any food animal which contained any of the seven prohibited chemicals or the 37 agricultural and veterinary chemicals in excess of the prescribed MRLs would commit an offence. The penalty for such offence was a maximum fine of \$100,000.

5. As regards the impact on human health, PAS(EF)(A)1 said that although a small quantity of the 37 agricultural and veterinary chemicals would not cause

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immediate harm to humans, the accumulation of the chemicals in human bodies through food consumption would have a detrimental health impact over a long period of time.

6. Acting Assistant Director (Food Surveillance & Control) of the Food and Environmental Hygiene Department (Ag AD(FSC)/FEHD) supplemented that if a certain chemical, e.g. an antibiotic, was used on food animals for non-medical purpose for a long period of time, there might be a possibility that the medical effect of such chemical on a person, who had consumed food animals containing excessive residues of such chemical, would be diminished over time.

7. Mr Tommy CHEUNG asked whether the residues of the 37 agricultural and veterinary chemicals in food animals would automatically vanish after a certain period of time; and whether the withholding periods for different types of chemicals and animals were different.

8. Assistant Director (Agriculture, Quarantine and Inspection) of the Agriculture, Fisheries and Conservation Department (AD(AQI)/AFCD) responded that the withholding periods for the 37 chemicals were different as they were worked out on an animal by animal and chemical by chemical basis. He pointed out that a lot of research work had been conducted around the world on the proper withholding periods for these chemicals. He invited members to note the labelling requirement under the Regulation. A feed supplier was required to furnish information on the content and the use of the feed, including the proper withholding periods, if the feed contained any of the 37 chemicals.

9. AD(AQI)/AFCD added that the Agriculture, Fisheries and Conservation Department (AFCD) had been working closely with livestock farmers to ensure that the 37 chemicals were used on farms in an appropriate and proper manner. Farmers were being trained to use these chemicals in a way that did not leave excessive residues in food animals, e.g. by withholding the chemicals from animals for the requisite period before slaughter. If a farmer had fed his food animals with an overdose of certain chemicals and had doubts about the proper withholding period, AFCD could render assistance to the farmer by providing advice on the length of the withholding period before the animals were sent for slaughter.

10. Mr Tommy CHEUNG asked whether a farmer who supplied any food animal which contained any of the 37 chemicals exceeding the prescribed MRLs would commit an offence regardless of whether he had observed the requisite withholding period for these chemicals; and, if so, whether he would be provided with a defence.

11. PAS(EF)(A)1 said that if any prohibited chemical or any of the 37 chemicals exceeding the prescribed MRL was found in the tissue or other specified parts of a food animal, the farmer concerned would be liable under the Regulation. However, he could raise a defence to prove that he did not know and had no reason to suspect the existence of the circumstances giving rise to the contravention. She explained

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that although inspections of farms would be carried out from time to time, it would be extremely difficult for the prosecution to gather evidence on improper feeding of chemicals to food animals on farms as chemical residue would not accumulate in the body of a food animal after a single feeding and it was not possible for the prosecution or the enforcement agency to stay in a farm over a long period of time to gather evidence. The burden of proof was therefore put on farmers.

12. PAS(EF)(A)1 further said that the MRLs prescribed in the two Regulations followed the international standards. The concentration levels of the 37 agricultural and veterinary chemicals in food animals should not exceed the prescribed MRLs if the feeding instructions, e.g. recommended dose rates and withholding periods, were strictly followed.

Question 5

13. Mr Tommy CHEUNG said that the Liberal Party had grave reservations about the proposed arrangement that a farmer would be strictly liable if the food animals supplied from his farm contained any of the prohibited chemicals or agricultural and veterinary chemicals in excess of the prescribed MRLs. He pointed out that it was difficult in practice for a farmer to convince the court that he did not know and had no reason to suspect the existence of the circumstances giving rise to the contravention. He considered that the burden of proof should not be shifted to the farmer simply on the ground that the prosecution would not be able to gather evidence to support a charge.

14. PAS(EF)(A)1 explained that the prosecution would not take any legal action unless it could prove that any food animal supplied by a farmer contained prohibited chemicals or excessive level of agricultural and veterinary chemicals. She pointed out that as a farmer was the one who actually raised the food animals on the farm, it was unlikely that he had no knowledge about the feeding of prohibited chemicals or inappropriate feeding of other chemicals to his food animals.

15. Mr WONG Yung-kan pointed out that as training and support to farmers on proper use of chemicals on food animals were inadequate, a farmer might easily be caught under the Regulation as the unlabelled fodder now available in the market might contain the 37 chemicals or prohibited chemicals. To facilitate compliance with the Regulation, he considered that clear guidance should be provided on how to feed animals with chemicals properly. He also expressed the view that food animals or meat imported from other countries should be subject to the same level of control as that for food animals from local farms.

16. PAS(EF)(A)1 clarified that, as explained earlier by AD(AQI)/AFCD, AFCD would continue to work closely with farmers and provide them with proper guidance on the feeding of chemicals to food animals. Information such as recommended dose rates and requisite withholding periods for different types of chemicals would also be provided to farmers. AD(AQI)/AFCD supplemented that relevant training

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for farmers on the proper use of animal feed and chemicals had already commenced. He said that the system to be introduced was simple and well accepted by farmers in many other parts of the world. Regulation on chemical residues had also been put in place for some 10 to 15 years in many other countries.

17. PAS(EF)(A)1 further said that farmers would be made well aware of the ban on the use of the seven prohibited chemicals in livestock production. She added that under the Regulation, a fodder supplier who supplied fodder containing any of the 37 agricultural and veterinary chemicals would be required to furnish information on the content and the use of the chemicals. Such labelling requirement would enable farmers to learn how to feed animals in an appropriate way. AD(AQI)/AFCD supplemented that any chemical which was used in fodder must be registered under the Pharmacy and Poisons Ordinance (Cap. 138). Farmers would be well-advised to purchase fodder from reputable suppliers.

18. Ms Cyd HO asked how a defendant who was charged with an offence under the Regulation could effectively prove that he did not know and had no reason to suspect the existence of the circumstances giving rise to the contravention. PAS(EF)(A)1 said that it would depend on the circumstances of each case. However, if a defendant could prove that he had taken necessary actions to prevent the occurrence of the circumstances giving rise to the contravention, it might be useful in raising a defence to the charge. The necessary actions included the keeping of proper records of the activities on a farm, e.g. invoices for fodder purchased and work schedules of feeding animals, etc.

19. Assistant Legal Adviser 1 (ALA1) pointed out that a strict liability would not usually be imposed unless the matter in question was of social concern and the creation of strict liability would promote the objects of the legislation by encouraging greater vigilance. Public health had been characterised by the courts as an area of social concern. She invited members to note that one more condition was included in the defence under the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566), which was passed by the Council earlier in the session. Under that Ordinance, in addition to the defence of proving no knowledge and no reason to suspect the circumstances giving rise to the contravention, a defendant was also required to prove that he had exercised reasonable diligence to prevent the occurrence of such circumstances. She said that the defence provided under the Regulation was in fact more relaxed than that in Cap. 566.

20. Ms Cyd HO pointed out that Cap. 566 mainly dealt with building and fire safety of drug treatment and rehabilitation centres, therefore its nature was different from that of the Regulation. She further pointed out that as a food animal farmer would not be able to supervise the operation of his farm 24 hours a day, there might be circumstances where the animals were fed with chemicals improperly by other people working on the farm without the knowledge of the farmer. It would be extremely unfair if the farmer was prosecuted under such a situation. In order to

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better protect a food animal farmer, she suggested that "due diligence" be added to the defence under section 17(4) of the Regulation. PAS(EF)(A)1 undertook to consider the suggestion.

21. Mr Tommy CHEUNG reiterated the liberal Party's concern about imposing strict liability on a food animal farmer under the Regulation. He considered that it would be more reasonable if legal action would be taken only when the prosecution had gathered sufficient evidence that a farmer had committed an offence knowingly and wilfully. He suggested that the criteria of "knowingly and wilfully" should also be introduced in sections 3(1), 5(1), 6, 11(1) and 11(2) of the Regulation. PAS(EF)(A)1 said that based on the reasons set out in paragraph 11 above, the Administration was unable to accept Mr CHEUNG's suggestion.

22. Mr TAM Yiu-chung said that although he was in support of the spirit of the two Regulations, he shared members' worry that some innocent people might be caught. He suggested that the Subcommittee should invite concerned parties to attend a meeting to give their views on the proposals.

23. Mr TAM Yiu-chung shared Mr WONG Yung-kan's concern that the control on local live food animals seemed to be more stringent than that for imported meat. PAS(EF)(A)1 stated that local live food animals and imported meat would be subject to the same control. She explained that the Regulation made under the Public Health (Animals and Birds) Ordinance (Cap. 139) would provide control on feeding of chemicals to live food animals whereas the Amendment Regulation made under the Public Health and Municipal Services Ordinance (Cap. 132) would provide control on food, such as imported meat and carcass. She pointed out that the controls proposed under the Regulation and the Amendment Regulation, i.e. the prohibition of use of the seven prohibited chemicals and the prescribed MRLs for the 37 agricultural and veterinary chemicals, were exactly the same.

24. PAS(EF)(A)1 added that similar legislation to control the use of chemicals on food animals had been in place in many other countries including Thailand. She said that before Thailand was allowed to export pork to Hong Kong, the Hong Kong Government had sent officials to Thailand to examine their testing facilities and inspection procedures at slaughterhouses. In Thailand, only pork from several registered slaughterhouses was allowed to be exported to Hong Kong. The Hong Kong Government had requested these slaughterhouses to conduct the same type of ante-mortem urine tests on live pigs as that conducted in Hong Kong. In addition, the pork to be imported to Hong Kong had to be accompanied by a health certificate issued by the relevant authority of Thailand certifying that the pork had passed the requisite test and was fit for human consumption. The above example showed that the Government exercised the same stringent control on imported meat from other countries as that for local live food animals.

Question 10

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25. ALA1 invited members to note that no compensation would be paid in respect of any food animal forfeited under the Regulation in accordance with section 9 of Cap. 139.

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Question 12

26. Mr WONG Yung-kan asked about the timetable for the implementation of the two Regulations. PAS(EF)(A)1 responded that the first phase implementation (involving seven prohibited chemicals and 10 agricultural and veterinary chemicals) would come into effect shortly after the enactment of the Regulations. The control would be exercised on both live food animals and local or imported food. The second phase implementation would come into force about one year later as more time was required for the Government Laboratory to develop the testing methods for the remaining 27 agricultural and veterinary chemicals.

27. In reply to a further question from Mr WONG Yung-kan, PAS(EF)(A)1 said that the time required for obtaining the result of a test would depend on the type of test to be conducted and the substance to be tested. The Government Laboratory would keep abreast of the world-wide development in laboratory testing and would adopt advanced testing methods as soon as these methods were validated.

Animal Health certificate

(LC Paper No. CB(2)2327/00-01(02))

28. PAS(EF)(A)1 said that live pigs imported from other places would also be subject to the same testing procedures as that for local live pigs before slaughter, i.e. urine samples of imported live pigs would also be taken for testing of prohibited chemicals.

29. Mr WONG Yung-kan pointed out that the actual number and category of animals imported to Hong Kong sometimes differed from the specifications set out in a health certificate issued by the exporting country. He suggested that the Government should adopt more effective measures to verify the information on a health certificate.

30. Ms Cyd HO enquired about the usual time gap between the date of inspection of live food animals and the date of arrival at the importing country. PAS(EF)(A)1 said that it would depend on the distance between the two places. Ms HO asked whether there would be circumstances where the time gap between the inspection date and the arrival date would be up to one or two weeks. Ag AD(FSC)/FEHD undertook to provide more information in this regard at the next meeting.

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31. At the request of the Chairman, PAS(EF)(A)1 agreed to provide to the Subcommittee a copy of the Administration's reply to the submission from Ng Fung Hong Limited once it was ready.

III. Date of next meeting

32. ALA1 reminded members that the two pieces of subsidiary legislation were

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tabled in the Council on 27 June 2001 and the scrutiny period would expire on the date of the second Council meeting in 2001-02 session, i.e. 17 October 2001. The scrutiny period could be extended by resolution to the third Council meeting, which would be 31 October 2001, subject to the agreement of the House Committee at its meeting on 5 October 2001 that the debate on the Policy Address to be held on 17, 18, 19 and 24 October 2001 should be considered as one Council meeting.

33. In addition to the meeting already scheduled for 26 September 2001, members agreed to hold a further meeting on 11 October 2001 at 4:30 pm to meet with deputations from concerned organisations, such as associations of food animal farmers, traders and fodder suppliers. Members also agreed that Ng Fung Hong Limited, which had made a written submission to the Administration with a copy to the Subcommittee, should also invited to attend the meeting.

34. There being no other business, the meeting ended at 6:20 pm.

Legislative Council Secretariat

26 November 2001