

立法會
Legislative Council

LC Paper No. CB(2)2279/00-01

(These minutes have been
seen by the Administration)

Ref : CB2/SS/13/00

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

**Minutes of the 1st meeting
held on Monday, 23 July 2001 at 10:45 am
in Conference Room B of the Legislative Council Building**

Members Present : Dr Hon LO Wing-lok (Chairman)
Hon Cyd HO Sau-lan
Hon Fred LI Wah-ming, JP
Hon WONG Yung-kan
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung

Member Absent : Hon TAM Yiu-chung, GBS, JP

Public Officers Attending : Mrs Ingrid YEUNG
Principal Assistant Secretary for the Environment and Food (A) 1

Dr Les SIMS
Assistant Director (Inspection and Quarantine)
Agriculture, Fisheries and Conservation Department

Dr Gloria TAM
Assistant Director (Food Surveillance & Control)
Food and Environmental Hygiene Department

Miss Frances HUI
Senior Government Counsel, 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. Election of Chairman

Dr LO Wing-lok was elected Chairman of the Subcommittee.

II. Meeting with the Administration
(LC Paper No. CB(2)2136/00-01(01))

Briefing by the Administration

2. Principal Assistant Secretary for the Environment and Food (A) 1 (PAS(EF)(A)1) briefed members on the background of the Public Health (Animals and Birds) (Chemical Residues) Regulation (the Regulation) and the Harmful Substances in Food (Amendment) Regulation 2001 (the Amendment Regulation) as detailed in the Legislative Council (LegCo) Brief issued to Members in June 2001.

Issues raised by members

3. Mr WONG Yung-kan pointed out that chemicals such as antibiotics were used by some farmers in Hong Kong in feeding pigs, chickens, pigeons, quails and fish. He said that the trade was in support of introducing controls on feeding of chemicals to food animals as proposed under the Regulation. He asked whether imported meat would also be covered by the Regulation and enquired about the concentration limits of the specified chemicals permitted in meat.

4. PAS(EF)(A)1 said that the Regulation made under the Public Health (Animals and Birds) Ordinance (Cap. 139) would prohibit the feeding of seven chemicals (prohibited chemicals) to food animals. In addition, "Maximum Residue Limits" (MRLs) for 37 other chemicals (agricultural and veterinary chemicals) were also established under the Regulation. The Amendment Regulation made under the Public Health and Municipal Services Ordinance (Cap. 132) would prohibit the existence of the same seven prohibited chemicals and the same 37 agricultural and veterinary chemicals exceeding the MRLs in food. She explained that the Regulation

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would provide controls on feeding of chemicals to live food animals whereas the Amendment Regulation would provide control on food, such as meat and carcass. Therefore, imported meat would be subject to the controls stipulated in the Amendment Regulation. Responding to a question from Dr LO Wing-lok, PAS(EF)(A)1 said that live pigs imported from the Mainland would be subject to control under the Regulation.

5. In response to Mr WONG Yung-kan's earlier question concerning the concentration limits of specified chemicals permitted in meat, PAS(EF)(A)1 said that MRLs for the 37 agricultural and veterinary chemicals were set out in the First Schedule to the Amendment Regulation. As the tests conducted on live food animals and meat were different, Mr WONG Yung-kan asked whether MRLs of specified chemicals in live food animals and meat would be different. PAS(EF)(A)1 replied that there were different MRLs for different parts of a food animal (such as muscle, liver and kidney) as specified under Schedule 2 to the Regulation but the limits for live food animals and food are the same. She also invited members to note that there were seven chemicals which were totally banned in livestock and meat.

6. Referring to paragraph 6 of the LegCo Brief, Mr Fred LI asked whether the storage of any of the seven prohibited chemicals on a farm would constitute an offence; and whether there would be control on fish which was excluded from the Regulation. He noted that both the Regulation and the Amendment Regulation would be implemented in two phases. The first phase would cover the seven prohibited chemicals including clenbuterol and 10 agricultural and veterinary chemicals while the second phase would cover the remaining 27 chemicals. He asked for the reasons for this proposed arrangement.

7. Responding to Mr Fred LI's first question, Assistant Director (Inspection and Quarantine) of the Agriculture, Fisheries and Conservation Department (AD(IQ)/AFCD) said that a food animal farmer who possessed any prohibited chemical or fodder containing or mixed with any prohibited chemical would commit an offence.

8. As regards the control on fish, AD(IQ)/AFCD said that the issue would be addressed at a later stage as the Administration did not have the power to introduce control on fish under the main Ordinance (Cap. 139). The Administration might amend the main Ordinance in the future and, during the process of amendment, it would consider whether control on fish should be introduced. He added that there was no known significant problem with fish at present and the Administration was not aware of widespread use of chemicals on fish.

9. As to the implementation of the Regulation and the Amendment Regulation, AD(IQ)/AFCD explained that as the testing methods for all the chemicals specified under the two Regulations could not be developed in one go, the Administration therefore proposed to implement the two Regulations in two phases having regard to the varying degrees of public health concerns over the various chemicals. He

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pointed out that the seven prohibited chemicals had an acute toxic effect on public health whereas a small quantity of the 37 agricultural and veterinary chemicals would not cause immediate harm to humans, therefore the controls on 27 of these 37 chemicals could come into effect at a later date when the testing methods for them were fully developed. He added that the Administration had been in close contact with the livestock farmers to ensure that the chemicals were used on farms in an appropriate and proper manner. Farmers were being educated to use these chemicals in a way that did not leave excess residues in food animals, e.g. by withholding these chemicals from animals for the requisite number of days before the animals were sent for slaughter.

10. As the accumulation of the 37 agricultural and veterinary chemicals in human bodies through food consumption would pose detrimental health impacts in time, Mr Fred LI considered that the control on these chemicals should take effect as soon as possible. He was dissatisfied that the Administration did not provide a timetable for the second phase implementation of the two Regulations. He also expressed dissatisfaction that the Administration had no definite plan to introduce control on feeding of chemicals to fish. Mr WONG Yung-kan said that the trade shared the view of Mr LI and urged the Administration to put forward the legislative proposal as soon as possible.

11. PAS(EF)(A)1 explained that the main reason for not implementing controls on the 37 chemicals in one batch was that the Government Laboratory would need some time to develop or adapt the testing methods for these chemicals, including the purchase of the required apparatus. She said that resources had been obtained and the development work had commenced. It was expected that it would take approximately one year to proceed to the second phase implementation.

12. PAS(EF)(A)1 informed members that the Administration's proposal to amend Cap. 139, which included extending the provisions under the Ordinance to cover fish, was discussed by the Panel on Food Safety and Environmental Hygiene at its meeting on 10 July 2001. She said that the Administration had also consulted the trade on the matter and the feedback received was positive.

13. Mr Fred LI asked whether overseas experience could be drawn on the control of use of chemicals on food animals and the testing methods for these chemicals; and whether laboratories in the private sector could offer these testing services so that the whole process could be expedited. AD(IQ)/AFCD said that the Administration had made reference to overseas practices in this aspect and most countries also had some degree of phasing in controls on different chemicals subject to the testing methods. As regards testing services in the private sector, he said that no private laboratory in Hong Kong was able to carry out these types of tests at present and we needed to rely on the testing work of Government Laboratory as the Public Analyst for prosecution purpose.

14. Dr LO Wing-lok expressed the view that private laboratories should be

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encouraged to install facilities to carry out these tests so that farmers or traders who disagreed with the testing results of the Government Laboratory would be able to obtain a second opinion from private laboratories.

15. Ms Cyd HO pointed out that there were many parties involved in the food chain, such as farmers, wholesalers, importers, transport workers and retailers. As all of them would be considered as food animal traders, she expressed worry about the liabilities of these persons in the food chain. She considered that each category of these persons should be subject to a different level of responsibility as, for example, it was unfair to penalise a retailer or meat stall owner if the meat was procured from an approved source but was subsequently found to be problematic. In order to facilitate compliance with the Regulation, she requested the Administration to provide detailed information on the responsibilities and liabilities of different categories of persons in the food chain.

16. PAS(EF)(A)1 pointed out that each operator in the food chain had the responsibility to ensure that the food to be supplied to the public was safe for human consumption. She said that a retailer could purchase food animals or the related products from reputable wholesalers or importers, or other legitimate source of supply. As the main objective of the Regulation was to address the problem of improper use of chemicals on food animals at source, farmers would be strictly liable if they were found to possess any of the seven prohibited chemicals. They would also be strictly liable if their food animals were found to contain the prohibited chemicals or the 37 agricultural and veterinary chemicals exceeding MRL. PAS(EF)(A)1 added that in Hong Kong there was a blurring or overlapping of roles in the supply chain of food animals and the related products. A single person could wear many different hats at different times in the flow of food animals from farms to retail.

17. Senior Government Counsel (SGC) pointed out that section 3(1) of the Regulation was an example of a provision which imposed strict liability on food animal farmers. This provision was different from section 3(2) which did not impose strict liability on food animal traders. Under section 3(2), the prosecution was required to prove that the food animal trader concerned knowingly and wilfully kept any food animal containing any prohibited chemical.

18. Referring to sections 7(3)(a) and 17(3)(c) of the Regulation which provided that a person who marked on or affixed to any specified food animal any letters, marks, numbers or other means of identifications which he knew to be false would commit an offence, Ms Cyd HO questioned how a retailer could distinguish whether the identification mark on a food animal was true or false. As responsible retailers would normally purchase meat from reputable suppliers in order to avoid selling meat which was unfit for human consumption, she asked whether the Administration would publicise a list of recognised reputable suppliers for public guidance.

19. Referring to the offences and penalties under section 17 of the Regulation, Ms Cyd HO requested the Administration to prepare a table to show all categories of

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persons with direct responsibilities against each offence and the recommended actions to be taken by these persons to avoid commission of the offence. She asked the Administration to take the opportunity to rectify any unreasonable levels of responsibilities currently imposed under the Regulation, if any. PAS(EF)(A)1 undertook to provide members with the requested table before the next meeting. In response to the first point made by Ms Cyd HO concerning the identification of food animals, PAS(EF)(A)1 explained that retailers would not be involved in the identification system of food animals as section 7(2) of the Regulation provided that all food animals specified in Schedule 4 (i.e. pigs, cattle and goats) had to be labelled or identified before they were brought into any slaughterhouse or wholesale market. She added that this was an example that this Regulation was not intended to catch all parties without discrimination in every offence provision. She then pointed out that as the use of clenbuterol on pigs would increase the proportion of lean meat in pork and since retailers were generally willing to pay higher prices for pork with more lean meat, farmers were therefore enticed to feed pigs with clenbuterol. The Administration therefore wished to make all concerned parties in the food chain aware of their responsibility and liability on food safety through the introduction of the Regulation.

20. Mr WONG Yung-kan asked how the Government would carry out enforcement actions on farms after the enactment of the Regulation, especially the control on fodder; and how the Government would educate farmers to comply with the Regulation. He also queried whether the financial resources of some \$15 million would be sufficient to cope with the work arising from the implementation of the Regulation.

21. PAS(EF)(A)1 explained that a voluntary system to collect urine samples of local and imported live food animals for laboratory tests for chemical residues was already in place at slaughterhouses. She pointed out that although the subsidiary legislation made under Cap. 132 did not provide control on the use of prohibited chemicals, the main Ordinance of Cap. 132 already provided for control against food that was unfit for human consumption. The Administration had been taking enforcement actions against sellers of food tested to contain prohibited chemicals and was unfit for human consumption. Therefore, no additional staff would be required to deal with the seven prohibited chemicals after the enactment of the Regulation. The resources earmarked for implementing the Regulation would mainly be deployed to deal with control measures on the other chemicals.

22. As regards the enforcement of the Regulation on farms, AD(IQ)/AFCD said that the screening tests currently in place in slaughterhouses would continue and be enhanced with the introduction of the Regulation. If the screening test results showed that chemicals were being used improperly or prohibited chemicals were used in food animals, the farm of origin could be identified through the tracing system and the animal identification system so that the fodder in the farm of origin in question could also be examined. Under the Regulation, there was also a labelling requirement for fodder. A fodder supplier had an obligation to furnish information

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on the content and the use of fodder if the fodder contained any agricultural and veterinary chemicals so as to enable farmers to use it in a proper way. He added that the Government would work closely with farmers to address their problems and help them improve the quality of their products. However, the Administration would strictly enforce the Regulation against the use of prohibited chemicals as these chemicals would have a major impact on public health and farmers had been made well aware of the implications of using these chemicals on food animals.

23. Mr WONG Yung-kan commented that the tests conducted on imported meat did not have any practical effect as the meat would often be distributed to retailers straight after arrival at the airport. The Government might not be able to trace back the meat if the screening test results, which would only be available in several days' time, showed that the meat was contaminated. He asked whether any measures would be adopted by the Administration to ensure that imported chilled and frozen meat was safe for human consumption.

24. Assistant Director (Food Surveillance & Control) of the Food and Environmental Hygiene Department (AD(FSC)/FEHD) said that before local live pigs were slaughtered, pig urine samples would be taken for testing of prohibited chemicals. If prohibited chemicals were found in the samples, the entire consignment of pigs would be withheld from slaughtering. Slaughtering would not take place until the tests showed negative results on prohibited chemicals. However, the pig offal of that consignment would be destroyed. Having regard to local people's preference for hot meat and the time required for obtaining the urine test results, this ante-mortem inspection process was adopted to ensure the supply of hot meat.

25. As regards imported chilled meat, AD(FSC)/FEHD said that the Hong Kong Government had a requirement for the meat to be accompanied by a health certificate issued by the relevant authority of the country of origin certifying that the meat had passed the required tests and was fit for human consumption. Sample tests on imported meat would be conducted locally. As the time required for obtaining the screening test results was three to five days and the consumption period of imported chilled meat would normally expire in three days, it was not possible to hold the meat until the screening test results were available. Therefore, the meat would be distributed to the market before the screening test results were available; otherwise the meat would have to be frozen. She said that the Government would trace back and destroy the meat which had been distributed to the market if the meat was subsequently found to be contaminated. She further said that some of the contaminated meat would have been sold and consumed when the screening test results were known. One way to address the problem was to inform the country concerned to stop the problematic supplier from exporting meat to Hong Kong and, in more serious cases, Hong Kong might ban the import of meat from that country until the cause of the problem had been identified and effective rectification measures had been taken.

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26. In response to Dr LO Wing-lok's question regarding the inspection system in Thailand before pork was exported, AD(FSC)/FEHD said that the Hong Kong Government had held many discussions with the Thai Government on the subject since the occurrence of the first clenbuterol food poisoning case in 1998. The inspection procedures for live pigs in Thailand were similar to that in Hong Kong, which followed the international practices. In Thailand, only pork from registered farms could be exported to Hong Kong. Two rounds of urine tests would be conducted, one taken in the farm of origins and one in slaughterhouses. If testing results indicated problems, the pigs concerned would not be slaughtered. Moreover, sample tests would also be conducted after slaughtering.

27. Noting that resources for the second phase implementation of the Regulation would be obtained through normal procedures, Mr Fred LI expressed worry that the second phase implementation might be deferred if the required resources could not be obtained at an appropriate time. In addition, he asked about the whole regulatory process after the enactment of the Regulation.

28. PAS(EF)(A)1 said that the relevant departments would require resources to carry out the second phase implementation of the Regulation within this year. She pointed out that the Administration attached great importance to the issue and the Environment and Food Bureau (EFB) was confident that the bid for resources would be successful. EFB would re-deploy its resources to cover work relating to public health as far as possible in accordance with the planned timetable in case the bid was unsuccessful.

29. As to the regulatory process after the enactment of the Regulation, PAS(EF)(A)1 said that the Government would exercise regulatory control throughout the entire food chain, from the farm of origin to retailer. After the Regulation was passed by LegCo, the Government would enforce the existing animal identification system and urine testing for livestock at slaughterhouses that were already implemented now on a voluntary basis. The Government would also step up the existing regular and irregular inspections on retailers to check whether the meat contained any of the prohibited chemicals and the 37 agricultural and veterinary chemicals exceeding MRLs. The only new area of enforcement work would be inspections on farms against farmers' possession of any prohibited chemical and their feeding of such chemicals to their food animals.

30. As regards additives and preservatives, AD(FSC)/FEHD said that the use of such substances was prohibited under another existing Regulation.

31. Mr Michael MAK questioned why MRLs listed under items 18, 19 and 25 of Schedule 1 to the Regulation was "0" and queried why these chemicals were not classified as prohibited chemicals. AD(IQ)/AFCD pointed out that these chemicals had significant uses in livestock production, such as providing treatment for serious diseases and therefore should be allowed to be used on livestock provided that they were used in a careful and proper way. However, the existence of residues of these

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chemicals would do harm to human beings over a long period of time. Since there was no safe level over long term, a strict MRL of “0” was necessary.

32. Replying to Mr Michael MAK’s further question, AD(IQ)/AFCD said that urine tests were conducted to indicate whether the food animals had been fed with chemicals improperly. Such tests would only provide an indication of whether there was a problem and, if so, the problem would be traced back and addressed as appropriate. Prosecution would take place if the level of any of the 37 chemicals found in the tissue or other specified parts of a food animal exceeded the stipulated MRL.

Adm 33. The Chairman invited members to note Assistant Legal Adviser's letter of 20 July 2001 to the Administration seeking clarifications on certain parts of the Regulation. PAS(EF)(A)1 undertook to reply to the letter before the next meeting.

Clause by clause examination of the Regulation

Section 1 – Commencement

34. Ms Cyd HO asked how the Administration would inform food animal traders of their responsibilities under the Regulation. PAS(EF)(A)1 responded that food animal farmers and traders had already been consulted and had expressed support for the proposal under the Regulation. After enactment of the Regulation, staff of the Food and Environmental Hygiene Department and the Agriculture, Fisheries and Conservation Department would approach farmers and traders through well established channels to brief them on the Regulation. She pointed out that suppliers and retailers should be well aware of their responsibilities. The Government had made a number of successful prosecutions against retailers in respect of clenbuterol contaminated food on grounds that the food was unfit for human consumption.

Adm 35. Ms Cyd HO requested the Administration to provide the judgment of the unsuccessful cases for members’ reference. PAS(EF)(A)1 undertook to provide the requested information to members, if available.

Section 2 – Interpretation

36. In reply to Ms Cyd HO, PAS(EF)(A)1 said that “food animals” only referred to live animals and birds, i.e. before they were slaughtered. Live animals, including poultry, would be prohibited from entering Hong Kong unless they were accompanied by recognised health certificates issued by the country of origin.

37. In reply to Mr WONG Yung-kan, AD(FSC)/FEHD said that random inspections would be conducted on cooked food, such as roast goose, carried by people entering Hong Kong from Lo Wu. Large-scale inspections were carried out at Man Kam To, which was a major channel for importing food from the Mainland to Hong Kong.

Section 3 – Presence of prohibited chemicals in food animals

38. Referring to section 3(2), Ms Cyd HO said that detailed discussion on the issue could be held after the Administration had provided members with the requested table. She expressed worry that the Administration did not clearly spell out in the Regulation the responsibilities and liabilities of the different categories of persons in the food chain. Instead, they were all grouped under “food animal traders”. This might give rise to a situation that some innocent parties might be caught under the Regulation.

39. AD(IQ)/AFCD said that the Administration was well aware of the different roles and responsibilities of the different players in the trades and that it had designed the Regulations to account for these differences. In drafting the Regulation, the Administration had taken care to ensure that innocent people would not be prosecuted, such as drivers of vehicles who did not know that the animals being transported were contaminated. The Regulation was made to empower the Administration to take legal action against those who knowingly kept or traded food animals which contained the prohibited chemicals to gain financial benefits.

40. Assistant Legal Adviser 1 (ALA1) pointed out that section 3(1) imposed strict liability on food animal farmers. Legal action could be taken if the prosecution was able to prove that the food animal contained any prohibited chemical. Section 17(4) provided that in any proceedings for an offence against section 3(1), it shall be a defence for the defendant to prove that he did not know and had no reason to suspect the existence of the circumstances giving rise to the contravention. In contrast, under section 3(2), the burden of proof to show that the food animal trader had knowingly and wilfully kept any food animal containing any prohibited chemical rested with the prosecution.

41. Noting that there were six categories of persons who were classified under “food animal farmer”, Ms Cyd HO asked whether all of them would be prosecuted for an offence under section 3(1). AD(IQ)/AFCD said that the objective of including the six categories of persons as “food animal farmer” was to make sure that each type of situation which currently existed in Hong Kong was covered under the Regulation. For example, an owner of the food animals, who was not present on farm, would also be legally liable if he was found responsible for the offences committed.

42. SGC explained that although six categories of persons were considered as “food animal farmer” under section 2, the prosecution, before taking any legal action, would consider whether the concerned persons had actually performed the act of keeping the food animal as set out in section 3. The prosecution would consider evidences of each case on an individual basis.

43. ALA1 agreed to the points made by SGC. Given that the interpretation of “keep” under section 2 included “breed, house, tend, look after and control” of a food animal, she pointed out that any of the six categories of persons who had actually

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performed any of these acts might be prosecuted. However, the defendant might raise a defence against the charge as provided under section 17(4).

44. Ms Cyd HO said that there might be circumstances where a worker, who had been instructed to feed food animals in a farm without being informed of the content of the fodder, would be prosecuted in accordance with section 3(1) if the animals fed by him were found to contain prohibited chemicals. She considered such situation extremely unfair.

45. ALA1 confirmed that this worker might be prosecuted as he had actually performed the act of “keeping” the animals. Whether the worker would be convicted depended on whether he would be able to raise the defence under section 17(4). Having regard to the word “includes” in the interpretation of “keep” under section 2, ALA1 pointed out that there might be some other actions which would also be considered as “keeping”. The meaning of “keep” was intended to be wider than that as stipulated under the Regulation.

46. As to the concern expressed by Mr WONG Yung-kan, PAS(EF)(A)1 pointed out that the landlord of a farm in question who simply rented out the land would not be prosecuted. She said that only those who were involved in the management of a farm, such as the occupant, the management and the licensee of the farm of origin, might be liable. She stressed that the prosecution would consider the circumstances and evidences of each case before initiating any legal action.

47. ALA1 pointed out that section 21 provided that where an offence under the Regulation had been committed by a body corporate, the directors or the officers concerned in the management of the body corporate would also be guilty of such offence. However, the defendant might raise a defence under sections 21(a) and (b).

Section 5 – Restricting presence of agricultural and veterinary chemical residues in tissues

48. In response to Ms Cyd HO, ALA1 said that under sections 3, 5, 6 and 11, strict liabilities were imposed on food animal farmers whereas the prosecution was required to prove that food animal traders knowingly and wilfully committed the offence.

Section 7 – Identification of specified food animals

49. Responding to the question asked by Mr Fred LI, PAS(EF)(A)1 said that the labelling requirement under section 7(1) was not applicable to chicken.

50. Mr WONG Yung-kan asked whether the Administration would consider introducing a foot ring system for chicken for identification purpose. PAS(EF)(A)1 said that it might not be cost-effective to do so having regard to the large number of chickens involved and the feasibility of asking farms to comply with this procedure. Moreover, she pointed out that a chicken with an identification leg

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band might not help in identifying the cause and source of virus found in that chicken. Therefore, the Administration would not consider such identification requirement for chicken at this stage. AD(IQ)/AFCD supplemented that a cage labelling system was currently in place which would enable the tracing of poultry up to the wholesale market level.

51. ALA1 pointed out that “food animal” under section 2 meant an animal or bird commonly kept for the purpose of providing food for human consumption. The definitions of “animal” and “bird” were already provided under Cap. 139. She further pointed out that the labelling requirement under section 7 only applied to the three kinds of animals as set out in Schedule 4 to the Regulation, viz pig, cattle and goat.

Section 8 – Imported food animals to be accompanied by certificates

52. Mr WONG Yung-kan asked what information would be required in a health certificate for live food animals issued by the authority of the exporting country/place. PAS(EF)(A)1 said the information required under the Regulation was set out in section 8(a). She undertook to provide members with more information in this regard after the meeting.

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III. Date of next meetings

53. Members agreed that the next meeting be held on 12 September 2001 at 10:45 am to continue discussion with the Administration.

(Post-meeting note : Subsequent to the meeting, a further meeting was scheduled for 21 September 2001 at 4:30 pm.)

54 . There being no other business, the meeting ended at 12:45 pm.

Legislative Council Secretariat

20 September 2001