

Public Health (Animals and Birds) (Chemical Residues) Regulations

1. A broad definition for “*food animal farmer*” was created to cover all parties who are involved in the rearing of food animals on food animal premises. In Hong Kong, livestock farms are largely family-run, although some do employ workers. There are cases where the occupiers of food animal premises are involved in the rearing and trading of the food animals kept on the premises but are not the holders of livestock keeping licences in respect of those premises.

We do not believe that we should confine the responsibility to persons who actually feed the food animals. Occupiers of the food animal premises may not actually feed animals but may well know the content of the feed given to the animals and may even determine the composition of the feed.

The relevant sections, as presently worded, will not render responsible for malpractice a person who is totally unrelated to the rearing or trading of the food animals on a food animal premise. For example, a food animal farmer is only liable under section 3(1) *if* he “keeps any food animal which contains any prohibited chemical”. Under section 5(1), a food animal farmer is only liable *if* he “supplies any food animal the tissue of which contains any agricultural and veterinary chemical in excess of the maximum residue limit” to a food animal trader for human consumption, a slaughterhouse or a retail or wholesale market.

Furthermore, even for an occupier who is actually involved in the keeping or supplying of food animals, if he proves that he did not know and had no reason to suspect that the food animals are fed with contaminated fodder, he will have a defence under section 17(4).

2. *“Places other than food animal rearing premises”* are places where live food animals are kept but are not farmed. These can be any places outside the farm to which food animals are taken prior to slaughtering. Examples are slaughterhouses, lairages, markets and fresh provision shops.

3. The answer to the three questions are as follows:

(a) There is no internationally recognized standard for maximum residue limit of agricultural and veterinary chemicals for body fluid of any food animal except for milk, which is regarded as a separate food item. Moreover, if the level of agricultural and veterinary chemicals residues in specified tissues of food animals is under the prescribed maximum residue limits, the level of chemicals in other non-specified tissues and body fluid will be within acceptable limits as well.

(b) We will take samples of body fluids such as urine or blood for testing for prohibited chemicals. We will also take samples of body fluids for investigatory purpose as regards the other chemicals. However, any enforcement action will be supported by evidence from specified tissues of food animals tested to

contain chemical residues exceeding the prescribed maximum residue limits.

- (c) If farmers feed the agricultural and veterinary chemicals to food animals at recommended dose rates and withhold these chemicals from the animals for the specified period before slaughter, the concentration of these chemicals in the specified tissues and milk of food animals should be within the prescribed maximum residue limit. If farmers do not follow the recommended dose rates or do not withhold the animals for the specified period, it is possible that the concentration of these chemicals in the specified tissues and milk will exceed the prescribed maximum residue limit.

4. We propose that a food animal farmer should have strict liability under sections 3, 5, 6 and 11 because the farmer is the one who actually raises the animals on the farm and decides on how to feed the animals. It is highly unlikely that he has no knowledge about the feeding of prohibited chemicals or the in appropriate feeding of other chemicals to food animals on his farm. Moreover, a farmer should have the ultimate responsibility for the quality and conditions of the food animals he supplies to the slaughterhouse or market. In cases where the defendant proves that he did not know and had no reason to suspect that the animals or fodder contain prohibited chemicals or excessive agricultural and veterinary chemicals, he will have a defence under section 17(4).

Our experience in the past shows that it is extremely difficult to gather sufficient evidence to prove that a farmer has purchased prohibited chemicals and has fed the chemicals to food animals on his farm. Thus unless we create strict liability offences, it will be very difficult, if not impossible, to secure a conviction against an unscrupulous farmer.

Animal traders are a step away from the actual rearing, especially the feeding, of food animals on the farm. There are traders who encourage farmers to use prohibited chemicals through offering attractive price for livestock fed with these chemicals. These traders know that the animals they trade are contaminated and we believe these traders should be prosecuted. However, those traders who genuinely have no knowledge of the malpractice of farmers should not be held responsible. Therefore we believe that, in the case of traders, the burden of proof for the act (*actus reus*) and mental element (*mens rea*), i.e. the knowledge and willfulness, should rest with the Prosecution.

5. It is not uncommon to find statutory provisions requiring the defendant to prove only the absence of knowledge e.g. section 5 of United Nations Sanctions (Angola) Regulation (Cap. 537 sub. leg. F). Section 17(4) or (5) provides the necessary defence for suspects committing offences of strict liability while striking a balance in ensuring the effectiveness of prosecution against the genuine offenders.

6. The persons to bring or cause to be brought into any slaughterhouse or wholesale market the specified food animals referred to in section 7 can be livestock transporters, traders or even farmers themselves.

7. Section 17(8) provides exemption for farmers or traders in respect of offences under sections 11(2) and (4) to cater for the remote scenario where a veterinary surgeon issues a prescription requiring farmers or traders to mix prohibited chemical with feed for treatment of their animals. In practice, no veterinary surgeon is likely to issue such a prescription. We have not provided a similar exemption for fodder suppliers because this group, who usually prepare large quantities of fodder for different customers, should not be allowed to mix prohibited chemicals into fodder. If they are allowed to do so, the risk of cross contamination of fodder by prohibited chemicals will be increased. In the remote scenario that a veterinary surgeon prescribes a prohibited chemical for treatment of animals, the farmer or trader will have to mix the prohibited chemical with the fodder himself.

8. Our certification requirements on chemical residues in imported live food animals are within the ambit of the World Trade Organisation (WTO)'s Sanitary and Phytosanitary Services (SPS) Agreement. Countries engaging in export trade of food animals should have no problem in complying with the certification requirement. At present, our largest supplier of live food animals is the Mainland. The State General Administration for Quality Supervision and Inspection and Quarantine (AQSIQ) is the relevant competent authority. They are well informed of this requirement and do not have any problem with the required certification.

9. The power given under sections 9(3) and 14(1)(a)(iii) provides a "safety net" against the continued supply of food animals or fodder which contain harmful substances to the market.

An example of such a case is the dioxin contamination incident in Belgium two years ago. Dioxin is a highly poisonous substance harmful to both animal and human health. In this case, there was widespread contamination of animal feed with dioxin. The information provided by Belgian and EU health authorities suggested that both food animals and fodder were likely to be contaminated. Without any power to suspend the supply of contaminated fodder at the time, we had to rely on the co-operation of the trade to prevent contaminated animal fodder from being sold in Hong Kong. This is clearly undesirable. It is necessary for the Director of Agriculture, Fisheries and Conservation to have the power to suspend the supply of animals or fodder containing harmful substances. This power would only be used when there is a genuine and immediate threat to public or animal health.

Where there is sound scientific evidence, we will consider amending the schedules to the Regulation to bring more chemicals under the Regulation's control. The examples in paragraph 12 of the LegCo Brief were given in this context. Nevertheless, we still need a power for the Director to act promptly to suspend the supply of contaminated animals and/or fodder in emergency situations, where harmful substances not yet listed in the schedules, are involved.

10. A farmer or trader against whom the Director has made a suspension order and/or recall order has the right to appeal to the Chief Executive in Council under section 11 of the main Ordinance. Section 9 of the main ordinance will apply to forfeiture made under sections 9(2) or 14(2).

11. For the first phase implementation, we aim to bring the Regulation into effect in respect of all the seven prohibited chemicals in Schedule 1, and the following 10 agricultural and veterinary chemicals in Schedules 2 and 3:-

amoxicillin, ampicillin, benzylpenicillin, chlortetracycline, cloxacillin, dicloxacillin, doxycycline (not listed in Schedule 3), oxytetracycline, sulfonamides and tetracycline

When bringing the Regulation into effect, the Secretary for the Environment and Food (SEF) will specify on the commencement notice the item numbers of the chemicals in Schedules 1, 2 and 3 to be included in the first phase implementation. When we are ready to bring the other chemicals under the scope of the Regulation's control, SEF will specify on the second commencement notice the item numbers of the rest of the chemicals in Schedules 2 and 3.

12. The adaptation, development and validation process of testing methods is a technical matter and will have no impact on the legal provisions of the Regulation. As mentioned in the LegCo Brief, the second phase will begin when the related testing methods are fully developed or adapted. We estimate that the second phase will come into effect about one year after the first phase has come into effect.

13. The trade is generally in support of the introduction of tighter control over the use of chemicals in feeding food animals. Farmers

generally agree that there is a need for tighter control as set out in the Regulation as long as the system is fair and that they are given clear guidelines. We are prepared to provide free training to farmers and traders to facilitate compliance with the Regulations.

Harmful Substances in Food (Amendment) Regulation 2001

1. (a) The existing Regulation 3 is effective and will remain to be so until the amendment regulation comes into force.

(b) For the first phase implementation, a commencement notice will be made to the effect in respect of :-

- items 1 and 17 of the amended First Schedule (i.e. items 1 and 2 of the existing First Schedule); and
- the other ten chemicals intended for first phase implementation.

2. The two principal Ordinances were designed to achieve different objectives and provide for control over different matters. It is thus not surprising that the definitions of the same term in the two Ordinances are different. We do not see a need to standardize the definitions of “animal” and “bird” under the two principal Ordinances or the two principal Regulations which provide for separate control regimes on live animals and birds, and food, respectively. Our policy intention in amending the Harmful Substances in Food Regulations is to make the control against chemicals applicable to food animals also applicable to food, especially food derived from food animals. We can effectively do so without standardizing the definitions of “animal” and “bird”.

3. Same as (2).

4. Control on chemical residues in live poultry will be provided for in the Public Health (Animals and birds) (Chemical Residues) Regulation. The inclusion of live poultry under Regulation 3A of the Harmful Substances in Food Regulations will therefore become superfluous. Hence the repealing of “poultry (including live poultry)” in Regulation 3A. The understanding that dressed poultry is considered as meat is correct.

5. Regulation 3 and Regulation 3A were designed to control the presence of *different substances* in food. Whilst the substances listed in the Second Schedule may be found and should be prohibited in fish, meat and milk, the same does not necessarily apply to the substances listed in the First Schedule. The latter is appropriately controlled in the manner set out in the First Schedule.

6. Oestradiol is a naturally occurring hormone found in humans and animals. The Joint Food and Agriculture Organization/World Health Organization Expert Committee on Food Additives has reviewed the need for prescribing an acceptable residue level for Oestradiol and concluded that there was no need to do so. We would therefore like to take this opportunity to update the Harmful Substances in Food Regulations in this respect.

7. The answers to the various parts of the question are as follows :

- (a) Except for the defence given under Regulation 3B(2), there is no express defence available to persons contravening Regulation 3 before or after the current amendment exercise. However, the defences in Sections 70 and 71 of Cap. 132 are applicable to the

offences created under Part V of Cap. 132. Harmful Substances in Food Regulations (Cap. 132 sub. leg. AF) is a Regulation made under Section 55(1), Part V of Cap. 132.

(b) There is no express defence available to persons contravening Regulation 3A before or after the current amendment exercise. However, the defences in Sections 70 and 71 of Cap. 132 are applicable to the offences created under Part V of Cap. 132. Harmful Substances in Food Regulations (Cap. 132 sub. leg. AF) is a Regulation made under Section 55 (1), Part V of Cap. 132.

(c) The defence in Section 70 of Cap. 132 is applicable to the offences created under Part V of Cap. 132. Therefore, it applies to the Harmful Substances in Food Regulations because it is a regulation made under Section 55(1), Part V of Cap. 132.

(d) As set out in the answer to Question 2, our policy intention in amending the Harmful Substances in Food Regulations is to make the control against chemicals applicable to food animals also applicable to food, especially food derived from food animals. It is not necessary to have complete uniformity in the defence provisions between the two Regulations concerned as the common purpose of relieving the innocent parties from liability can be achieved in both cases.

8. An authorized public officer may exercise the power granted to him under Section 59 of Cap. 132 if it appears to him that any of the provisions

in the Regulation made under Section 55 or 56 of Cap. 132 has been contravened. Thus Section 59 applies as described in the question.