

立法會
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**Paper for the House Committee meeting
on 30 November 2001**

**Report of the Subcommittee on
Public Health (Animals and Birds) (Amendment) Regulation 2001,
Public Health (Animals and Birds) (Animal Traders) (Amendment)
Regulation 2001 and Food Business (Amendment) Regulation 2001**

Purpose

This paper reports on the deliberations of the Subcommittee formed to study the Public Health (Animals and Birds) (Amendment) Regulation 2001, the Public Health (Animals and Birds) (Animals Traders) (Amendment) Regulation 2001 and the Food Business (Amendment) Regulation 2001.

The Regulations (Legal Notices 218-220 of 2001)

2. The Public Health (Animals and Birds) (Amendment) Regulation 2001 (L.N. 218 of 2001) and the Public Health (Animals and Birds) (Animals Traders) (Amendment) Regulation 2001 (L.N. 219 of 2001) are made under section 3 of the Public Health (Animals and Birds) Ordinance (Cap. 139). The Public Health (Animals and Birds) (Amendment) Regulation 2001 (L.N. 218 of 2001) requires live quails imported for food be brought in by a carrier carrying no other birds, be taken to specified premises and be transported within Hong Kong separately from other birds. Contravention of the Regulation is subject to a fine at level 4 (\$10,001 to \$25,000). The Public Health (Animals and Birds) (Animals Traders) (Amendment) Regulation 2001 (L.N. 219 of 2001) prohibits possessing quails for sale together with other birds at the same premises, and contravention is subject to a fine at level 3 (\$5,001 to

\$10,000). The Regulation also increases the penalties in respect of certain existing provisions under the principal Regulation from \$1,000 to level 3 (\$5,001 to \$10,000).

3. The Food Business (Amendment) Regulation 2001 (L.N. 220 of 2001) is made under section 56 of the Public Health and Municipal Services Ordinance (Cap. 132) to give effect to the proposals of -

- (a) segregating live quails from other live birds at retail outlets; and
- (b) requiring carcass of water birds to be dressed and packed separately from offal of water birds, and offal of water birds to be packed and sealed, for sale at and delivery to premises where live poultry are present, except in the Western Wholesale Food Market.

Contravention of these provisions is subject to a fine at level 5 (\$25,001 to \$50,000), imprisonment of six months and a daily fine of \$900 for each day during which it is proved to the satisfaction of the court that the offence has continued.

Background and justifications

Segregation of live quails from other birds

4. According to the Legislative Council (LegCo) Brief on the Regulations and the information provided to the Panel on Food Safety and Environmental Hygiene, recent scientific research has revealed that genetic material from H9 and H6 influenza viruses commonly carried by quail when mixed with a mild goose H5N1 virus may form the lethal 1997 H5N1 chicken influenza virus. It is known that quails in markets still carry H9 and H6 viruses, and in May 2001, there was an incursion of a reassortant goose-type H5N1 virus into the retail markets. Experts are of the view that if these viruses are allowed to co-exist, reassortment of genetic material could happen leading to the emergence of a virus similar to the 1997 strain in local markets. Although necessary measures have been taken to remove the H5 virus carried by water birds from the markets and to minimise the chance of its returning, segregation of live

quails from other live birds will further reduce the risk of reassortment of viruses to develop new strains which affect humans.

5. The Administration proposes that live quails for consumption should be segregated from other live birds at all levels from transportation to sale, i.e. from import to retail for imported quails and from local farms to retail for local quails. Local quail farms are already rearing quails alone and the Administration will also amend the relevant licence conditions to prohibit the keeping of quails with other poultry in the same farm.

6. At present, wholesaling of live quails takes place at Cheung Sha Wan Temporary Wholesale Poultry Market together with the wholesaling of other live land-based birds. With the implementation of the segregation measures for live quails from other live birds, live quails will no longer be allowed to be sold at this wholesale market. The Administration does not intend to provide a dedicated wholesale market or central slaughtering facility for live quails because the demand for such facility is likely to be very limited.

7. The Administration will still consider applications for licence or permission to sell live quails, taking into consideration, among other things, the vicinity of the proposed premises for selling quails.

Requiring offal of water birds and dressed water bird carcasses to be packed and/or sealed for sale

8. According to the LegCo Brief, water birds, including ducks and geese, are natural carriers of H5 avian influenza viruses and can pass on these viruses to other poultry. In the recent avian flu incident in May 2001, there was extensive infection of chickens at retail outlets caused by a genetically reassorted H5 goose-type virus. A decision was then taken by the Administration, based on expert advice, to slaughter all live chickens at retail outlets to break the infection cycle. After thorough cleansing and disinfection at the markets, retail sale of live poultry resumed on 16 June 2001.

9. The Administration has further reviewed the operational arrangements to segregate live water birds from other live birds and found that there is still room for improvement. The H5 virus carried by water birds is mostly found in their offal, especially the alimentary tract. At present, water bird offal is

allowed to be sold at live poultry stalls without any packaging, and there is a risk that workers at poultry stalls who do not wash their hands after handling offal of water birds may transmit the virus to live chickens.

10. The Administration proposes that water bird carcasses should be dressed and packed separately from offal of water birds, and the latter should be packed and sealed, if they are to be sold at premises where live poultry are kept. The only exception is the Western Wholesale Food Market where live water birds are slaughtered, dressed and packed. All offal of water birds will have to be packed and sealed before they are delivered to and sold at the retail outlets, and that such packaging and sealing should not be broken or tampered with until the offal has been sold and taken away from the retail shop. The requirement does not apply to retail outlets or restaurants where no live poultry are kept.

11. Most water bird offal available in the market is imported and is chilled or frozen. On implementation of the packing and sealing requirements, the offal from locally slaughtered water birds will also need to be chilled for preservation. The Administration also takes the opportunity to amend the Food Business Regulation to put it beyond doubt that both fresh food items and chilled food items are subject to the same control under the Regulation.

The Subcommittee

12. At the House Committee on 2 November 2001, Members agreed to form a subcommittee to study the three sets of Regulations. Under the chairmanship of Hon Fred LI, the Subcommittee has held four meetings, including one meeting to listen to the views of the trade and Professor Kennedy Shortridge, Chair Professor of the Department of Microbiology, University of Hong Kong.

13. The membership list of the Subcommittee is in **Appendix I**. A list of the organisations and persons who have given views to the Subcommittee is in **Appendix II**.

Deliberations of the Subcommittee

Segregation of live quails from other birds

Justifications for the segregation policy

14. While agreeing that it is important to take necessary measures to safeguard public health, members have expressed much concern about the impact of the segregation measures on the livelihood of the quail farmers, wholesalers, retailers and persons employed for the transportation of live quails. The Subcommittee has sought clarification on the recent scientific findings and whether it is absolutely necessary to segregate live quails from other live poultry. Some members have asked whether there is conclusive evidence that the viruses in quails had directly contributed to the outbreaks of avian flu in 1997 and 2001. These members are worried that the segregation measures for live quails will have the effect of "killing" the trade as in the case of the segregation of geese and ducks in 1998, and that the segregation measures will also be applied at a later stage to other birds which are sold for food. They are of the view that since the Administration has introduced further improvement measures after the recurrence of avian flu in 2001, the Administration should first evaluate the effectiveness of such measures before proposing further segregation arrangements for live quails or other game birds.

15. The Administration has stressed that to safeguard public health, it is necessary to segregate live quails from other live poultry at all levels, as there is clear scientific evidence that the genetic material from H9 and H6 viruses carried by quails can mix with a mild goose-type H5N1 virus to form the lethal 1997 avian flu virus. In response to members' enquiries, Professor Kennedy Shortridge of the University of Hong Kong has also advised that he sees no way that live quails may be allowed to be sold together with other live poultry in the same market where stalls are in close proximity and often share the same ventilation system.

16. As regards other game birds such as chukars, pheasants and guinea fowls, the Administration has advised that there is so far no conclusive evidence that they are likely carriers of H6 and H9 viruses that can reassort with H5 virus to develop into lethal avian flu viruses similar to the 1997 strain. The Administration does not propose that segregation measures be adopted for

these birds at the present stage, but it will closely monitor the scientific research findings in this respect.

17. Members have requested the Administration to consider alternative measures such as improving the hygiene conditions as well as the design and ventilation of public markets, in order to reduce the risk of viruses carried by live poultry from establishing in the markets. The Administration has explained that while the upkeep of hygiene conditions of markets, such as the Rest Day arrangement, has helped to break the infection cycle of the viruses, the segregation measures aim to minimise the risk of the viruses mixing and reassorting to form the lethal H5 N1 virus. The Administration also points out that as viruses can spread through the central ventilation system, improving the ventilation of the markets can only provide a more comfortable environment for these who work in/ patronize the markets, but not solve the problem.

Impact on the trade

18. Some representatives of the quail trade have also expressed worries that the segregation measures proposed in the Regulations will adversely affect the live quail trade at all levels. According to the trade, the live poultry trade has suffered a significant reduction in business after the implementation of the segregation policy for live geese and ducks in 1998. The number of poultry stalls has decreased from 800 in 1998 to some 200 stalls at present, and that the number of live geese and ducks sold each day has dropped from some 40,000 in 1997 to only 600 presently. The monthly sale volume of live quails has also reduced from 80,000 to 8,000 over the past years.

19. The trade representatives envisage that based on the experience of the 1998 segregation policy for geese and ducks, there will not be any more live quail trade after the implementation of the segregation measures for live quails. In view of the small business volume for live quails, the retailers will simply stop selling live quails, and without the retail outlets, there will be no more demand for the wholesale and transportation of live quails. The trade has estimated that this will result in loss of employment of about 12 persons in quail farming, 30-40 persons in quail wholesaling and about 100 persons in quail retailing.

20. The Administration does not agree with the trade's estimation on the loss of business and employment opportunities. The Administration has advised that there are now five licensed quail farms in Hong Kong; only three of them still rear quails in the recent months and none of them hire workers. Two of the farms are run by a couple and the remaining farm is managed by a farmer who handles all the farm work. Since the farmers will lose part of their business and encounter difficulties in continuing their business, the Administration proposes to offer ex-gratia allowance to these farmers if they choose to wind up their business. Since the practical effect of winding up their farms will be the same as if the land on which farms stand is resumed, the Administration proposes to offer ex-gratia allowance to the farmers as if in a land resumption case. The ex-gratia allowance payable will take into account of the quail raising and the agricultural structures built on poultry farms which have to be demolished on receipt of payment.

21. The Administration has also advised that the poultry wholesalers and retailers sell live quails as a sideline business. At present, only two poultry wholesalers are regularly trading quails in addition to live chickens and other live poultry. For the one who trades a larger amount of quails, the business volume of quail-trading is less than 10% of his total business turnover. Five other wholesalers also trade quails occasionally. The segregation policy will not lead to a "cut" in manpower of the poultry wholesale trade. Nevertheless, to help the wholesalers to make adjustments and restructure their business, the Administration intends to waive the rental of their stalls and vehicle parking spaces in the wholesale market for two months for the regular quail wholesalers, and for one month for the occasional wholesalers.

22. As regards retailing of quails, the Administration has advised that presently about 270 fresh provision shops or market stalls selling live chickens also sell quails. The average number of quails sold by a retailer each day is about 40 and the retail price is about \$4 per quail. This represents no more than 2% of the business turnover of each retail outlet. The segregation policy will not lead to a "cut" in manpower in the poultry retail trade. As the impact on the retailers is minimal, the Administration does not intend to provide financial assistance to the retailers.

23. The Administration has advised that as a large quantity of live quails consumed in Hong Kong are imported from the Mainland, it has informed the

relevant authorities in the Mainland of the legislative proposal and the possibility that there may not be any market for live quails from the Mainland. The Mainland authorities have responded positively and have undertaken to do their best to cooperate with Hong Kong to implement the new legislative measures.

24. Members of the Subcommittee have strongly urged the Administration to consider measures to assist the trade so that live quails can still be sold at markets or fresh provision shops. The Administration has responded that traders and farmers can sell live and dressed quails in Hong Kong so long as they can find a suitable site to sell their quails and meet the relevant licensing considerations for "animal traders" and fresh provision shops. Provided that quails can be segregated from other live birds and the relevant licensing requirements are met, the Administration will consider licence applications from anyone proposing suggestions for sale of live or dressed quails on a case by case basis. In this regard, the Administration has suggested some possible options, including retail sale of live or dressed quails on premises directly associated with farms, retail sale at dedicated outlets or at outlets where non-poultry food items such as vegetables and dry groceries are sold.

25. The Administration has advised that in considering future licence applications for the sale of live quails under the segregation policy, the Administration will take into account the location, the loading and unloading arrangements and the environment of the premises concerned.

26. The Administration has stressed that quail trade only represents a small volume of the total business turnover of the existing wholesalers and retailers. It will be a commercial consideration for these operators to decide whether to stay in business. The Administration also points out that chilled or frozen quails will still be available for sale in public markets after the proposed Regulations have come into effect.

27. Most members are of the view that the trade will suffer a loss in business at all levels after the Regulations have come into operation, and the Administration should provide compensation to the retailers and transportation workers as well. These members also suggest the Administration to reduce the licence fees for the Animal Trader Licence.

28. The Administration has responded that its assessment is that while the number of retail outlets selling live quails may be greatly reduced, the impact on the overall business volume of these retail outlets will be minimal. As there are still many possible ways of operating live quail trade, it is difficult to quantify the effect on the cost in each alternative mode. The Administration maintains the view that it will not provide financial assistance to retailers and transportation workers. Nevertheless, the Administration will consider the suggestion of reducing the Animal Trader Licence fee.

Transportation of live quails to specified premises (L.N. 218 of 2001)

29. In examining the Public Health (Animals and Birds) (Amendment) Regulation 2001 (L.N. 218 of 2001), members have pointed out that the trade will have practical difficulties, for example, due to traffic congestion, to comply with the requirement in the proposed section 9B that live quails have to be delivered "forthwith by the most direct route" to the specified premises. The Administration has explained that the purpose of the requirement is to reduce the chance of spreading the viruses carried by live quails to other live poultry if the carrier also stops at other poultry markets or stalls before unloading the quails at specified premises. The Administration also explains that a similar requirement exists in the law for the transportation of other live poultry. However, members are of the view that the requirement is not enforceable as the prosecution will have difficulty to prove what "the most direct route" is. As no prosecution has ever been taken under similar provisions in the principal Regulation, members suggest that the reference to "forthwith by the most direct route" should be deleted. The Administration has agreed to consider moving amendments to this effect.

30. The Administration also accepts members' views that it is highly unlikely for live quails to be transported by aircraft within Hong Kong as the business is not profitable. The Administration has agreed to delete the reference to "an aircraft" in the proposed section 9C(b) in the Regulation.

Public Health (Animal and Birds) (Animal Traders) (Amendment) Regulation 2001 (L.N. 219 of 2001)

31. The Subcommittee has expressed reservations that the Administration has included an increase in penalties for certain existing offences under the

principal Regulation that are unrelated to the present legislative amendment exercise. The Administration has explained that the existing penalties for these offences are outdated, and a separate exercise is being carried out to amend the penalty for all such offences under Cap. 139 in order to provide sufficient deterrent effect. The opportunity has been taken in this exercise to update the penalty for certain existing offences, such as non-compliance with the husbandry and sanitation requirements under section 9 of the Public Health (Animal and Birds)(Animal Traders) Regulation. However, in view of members' concern, the Administration has agreed that existing offences not related to the current legislative amendments should not be included in this exercise.

32. As regards the new offence under the Regulation, some members have suggested that the level of fine should be reduced from level 3 to level 1(\$1 to \$2,000). The Administration has advised that given the public health risk posed by the contravention of the provision of prohibiting possession of live quails for sale with other birds, it is necessary to pitch the fine at level 3 to provide sufficient deterrence.

33. The Subcommittee has suggested that the transitional period should be lengthened from 30 days to 60 days to allow time for holders of Animal Trader Licences and, in particular, for local quail farmers, to sell/dispose of their stocks before the commencement of the Regulation. The Administration has agreed to the proposed amendment.

Food Business (Amendment) Regulation 2001 (L.N. 220 of 2001)

34. Some trade representatives have pointed out that the requirement to separately pack and/or seal offal of water birds and dressed water bird carcasses for sale will pose extra financial burden on wholesalers. They suggest that the offal of water birds be allowed to be packed by type of organs, instead of requiring the offal of each water bird to be packed separately.

35. The Administration has clarified that the proposal only requires the wholesalers to pack and seal the offal of water birds for sale at premises where live poultry are sold, and that there should be no breaking or tampering with the packaging and sealing at such premises. There is no particular requirement that the offal of each bird should be packed separately. The

Administration also points out that wholesalers have already acquired the necessary chilling facilities to meet the requirements and the packaging machinery is not costly.

36. Members have sought clarification on the requirements for packing and sealing of dressed carcasses and offal of water birds in section 3 of the Regulation. Members note that the sealing requirement only applies to the offal of water birds so that the fluid inside the package would not seep out. As regards the packing method, the Administration has advised that plastic bags and rubber bands may be used for the purpose of securely packing dressed water bird carcasses.

37. As regards the meaning of “premises” in the new section 30(1A)(a), (1C)(a), (1E)(a) and (1G)(a), the Administration has clarified that it does not refer to the whole building or public market. It refers to the “food premises” to which a fresh provision shop licence has been issued or which is covered by a public market tenancy with permission to sell restricted food. No one is allowed to legally sell live poultry and water bird dressed carcasses or offal beyond the confines of these premises. The Administration has also advised that it is highly improbable for a live poultry to exist or to be brought into “the premises” without control or prior knowledge of the operator/seller concerned. Moreover, the Administration is unlikely to prosecute any person when the offending act is committed beyond his control or knowledge.

38. The Subcommittee has also noted the definition of “fresh” in the Regulation and the requirement that “chilled” counterparts of restricted fresh food items is also subject to the control regime on restricted food under the Food Business Regulation.

39. Hon Cyd HO, Hon WONG Yung-kan, Hon TAM Yiu-chung and Hon Tommy CHEUNG are of the view that the penalty for offences under the Regulation is too severe given the low profit of the live quail trade and the minor nature of offences. They suggest that the level of fine should be lowered from level 5 to level 4 and that the imprisonment terms and daily fine for a continuing offence be abolished. The Administration has advised that the level of penalty for such offences is proposed to maintain consistency with the penalty for similar offences in Cap. 132 and to achieve the same deterrent effect. At the Subcommittee meeting on 23 November 2001, the majority of

members present voted in favour of lowering the level of penalty for such offences.

40. As the Administration does not agree to amend the penalties concerned, the Subcommittee has decided that the Chairman of the Subcommittee should move the amendments on behalf of the Subcommittee.

41 Dr Hon LO Wing-lok also suggests that the Administration should conduct an overall review on the levels of penalty in Cap. 132 and Cap. 139 to ensure that the penalty is appropriate having regard to the nature of offences and consistency with similar offences in the legislation. The Subcommittee agrees that the matter should be followed up by the Panel on Food Safety and Environmental Hygiene.

42. The Administration has accepted the Subcommittee's suggestion that the transitional period for holders of fresh provision shop licences should also be lengthened from 30 days to 60 days to enable them to sell/dispose of their stocks.

Extension of the scrutiny period of the three sets of Regulations

43. To allow time for the Subcommittee to examine the three sets of Regulations, the Chairman of the Subcommittee moved a motion at the Council meeting on 28 November 2001 to extend the scrutiny period of the three sets of Regulations to the Council meeting on 5 December 2001. The motion was passed by the Council.

Recommendation

44. Members have different views on the need for segregation measures for live quails and the packing/sealing requirements for the dressed carcasses and offal of water birds. The Administration has agreed to move amendments to certain provisions in the Regulations to address members' concerns as discussed in paragraphs 29, 30, 31, 33 and 42 above.

45. The Subcommittee agrees that Hon Fred LI should also move amendments on behalf of the Subcommittee to reduce the penalty for the

offences under the Public Health (Animals and Birds) (Animals Traders) (Amendment) Regulation 2001 and Food Business (Amendment) Regulation 2001, as discussed in paragraphs 32 and 39 above.

Advice sought

46. Members are invited to note the Subcommittee's deliberations.

Council Business Division 2
Legislative Council Secretariat
28 November 2001

**Subcommittee on
Public Health (Animals and Birds) (Amendment) Regulation 2001,
Public Health (Animals and Birds) (Animal Traders) (Amendment)
Regulation 2001 and Food Business (Amendment) Regulation 2001**

Membership list

Chairman Hon Fred LI Wah-ming, JP

Members Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Hon Mrs Selina CHOW LIANG Shuk-yee, JP
Hon WONG Yung-kan
Hon TAM Yiu-chung, GBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Hon Albert CHAN Wai-yip
Dr Hon LO Wing-lok

(Total : 10 Members)

Clerk Mrs Constance LI

Legal Adviser Mr Arthur CHEUNG

Date 7 November 2001

《2001 年公眾衛生(動物及禽鳥)(修訂)規例》、
《2001 年公眾衛生(動物及禽鳥)(動物售賣商)(修訂)規例》及
《2001 年食物業(修訂)規例》小組委員會

**Subcommittee on
Public Health (Animals and Birds) (Amendment) Regulation 2001,
Public Health (Animals and Birds) (Animal Traders) (Amendment)
Regulation 2001 and Food Business (Amendment) Regulation 2001**

曾向小組委員會表達意見的機構及人士的名單

**List of organizations and persons
who have given views to the Subcommittee**

1. 香港大學微生物學系講座教授
邵力殊教授
Professor Kennedy Francis Shortridge, Chair Professor,
Department of Microbiology
The University of Hong Kong
2. 港九新界家禽批發零售商會
3. 九龍鷄鴨欄同業商會
4. 港九雞鴨行職業公會
5. 九龍家禽營運同業商會
6. 巫振漢先生
7. 陳淦培先生
8. 梁富文先生

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