

**For discussion
on 28 January 2003**

LegCo Panel on Food Safety and Environmental Hygiene

**Ex-gratia Allowance to Pig and Poultry Farmers
Affected by Land Resumption and Clearance**

INTRODUCTION

This paper seeks Members' views on the proposal to extend the eligibility criteria of the ex-gratia allowance (EGA) to pig and poultry farmers legitimately¹ operating on private agricultural land and affected by land resumption and clearance exercises to cover their business loss².

BACKGROUND

2. People whose legal interests in land are affected by the Government's land resumption or clearance operations can make statutory claims under the relevant Ordinance. As the process of making statutory claims is often time-consuming, it has all along been the Government's practice, with the Finance Committee's approval, to make monetary offers to the affected persons in the form of a non-statutory EGA to enable them to receive payment early and to facilitate clearance work. If an affected person does not accept Government's offer, he/she may lodge a statutory claim with the Government. If no agreement can be reached on the claim, either party may refer the case to the Lands Tribunal for a decision. In cases where the affected persons have no

¹ This refers to pig and poultry farmers who are operating under valid livestock keeping licences issued by the Agriculture, Fisheries and Conservation Department and whose farm structures have been or should have been approved by the Lands Department under normal circumstances.

² The formula of the EGA comprises two components, namely, the loss of profit during the period required to re-establish their business and half of the average replacement cost of fixtures required for production, excluding farm building element.

legal interests in the land to be cleared, Government may offer EGAs to the eligible persons in accordance with criteria approved by the Finance Committee (FC). Again, these EGAs are non-statutory in nature and they serve to provide a kind of financial relief to the eligible clearers. There is a total of 29 types of EGAs which FC has approved over the years.

3. One of the EGAs approved over the years is the EGA for pig and poultry farmers affected by resumption and clearance. When Government resumes land for development purposes, pig and poultry farmers operating on illegally occupied Government land and on private agricultural land with structures surveyed in 1982 by the Housing Department (HD) are eligible for EGA to cover their business loss. Their counterparts operating on private agricultural land or on Government land under Government land licences/short term tenancies (STTs) whose structures are not covered in the 1982 survey are **not** eligible for the EGA.

4. The Deep Bay Link project requires the clearance of 12 licensed and active pigeon farms operating on private agricultural land. These farmers are not eligible for the EGA for pig and poultry farmers under the existing practice because their structures are not covered in the 1982 survey. They have complained that it is unfair not to grant them the EGA. We have looked into their complaint and found that the eligibility criteria of the EGA in respect of pig and poultry farmers warrant a review.

THE PROPOSAL

5. We propose that in land resumption and clearance exercises affecting pig and poultry farmers legitimately operating on private agricultural land whose structures are not covered in HD's 1982 squatter control survey should also be eligible for EGA to cover their business loss. The reasons for the change are as follows –

- (a) These farmers are operating a legitimate business on private land. They should not be treated less favourably than their

counterparts who illegally occupied Government land for such use more than twenty years ago.

- (b) Some of these farmers may be able to establish that they have legal interests (e.g. with a valid tenancy agreement) in the land to be resumed hence could theoretically make statutory claims for compensation. It is therefore in line with our practice to grant them EGA to obviate the need for both parties to go through the cumbersome process of claiming statutory compensation and to facilitate clearance. Some may not be able to establish that they have legal interests in the land due to the lack of documentary proof of a valid tenancy agreement as it is not uncommon for farmers to make verbal contracts with landowners, especially where the land is not of high value. It is still in line with our practice of providing some financial relief to clearers who are not eligible for statutory compensation because of lack of documentary evidence but whose cases are equally deserving as those who are.

6. We propose that the new eligibility criteria should apply to all on-going and future Government land resumption and clearance exercises. Currently, the Deep Bay Link project is the only on-going land resumption and clearance exercise involving pig and poultry farmers legitimately operating on private agricultural land whose structures are not covered in HD's 1982 squatter control survey.

7. We have also looked into the case of pig and poultry farmers operating on Government land under Government land licences or STTs but not covered in HD's 1982 squatter control survey. It should be noted that there is a condition in Government land licences/STTs stating that the Government may terminate the licences/STTs and re-enter the land concerned at any time by giving a three-month prior notice. These farmers are not eligible for statutory compensation as they have no legal interest in the land. They have full knowledge of the limitation of their right before accepting such licences/STTs. We therefore consider that these farmers should continue to be not eligible for the EGA.

NEXT STEP

8. Subject to any comments from Members, the Administration will put forward the proposed change in eligibility criteria to the FC as soon as possible.

Health, Welfare and Food Bureau
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