

**Legislative Council Subcommittee on
Employees' Compensation Ordinance
(Amendment of Second Schedule) Order 2004 and
Occupational Safety and Health Ordinance
(Amendment of Schedule 2) Order 2004**

The Administration's Response

Introduction

This paper provides the Administration's response to the points raised by Members in the meeting on 22 December 2004 of the Legislative Council Sub-committee on the Employees' Compensation Ordinance (Amendment of Second Schedule) Order 2004 and the Occupational Safety and Health Ordinance (Amendment of Schedule 2) Order 2004 ("the gazetted Orders").

The Administration's response

(A) To review the drafting of the proposed items concerning avian influenza A in both Orders

2. Members requested the Administration to review the proposed provisions concerning avian influenza A to clearly reflect the Administration's intent of safeguarding the interests of the groups of employees referred to in paragraph 14 of the Administration's paper to the Sub-committee in December 2004, and its intent of covering workers engaged in handling live or uncooked poultry or birds, remains, residues or untreated products, but not cooked poultry.

3. The purpose of prescribing avian influenza A as an occupational disease is to safeguard the interests of employees employed in specific trades, industries or processes which are recognised as high-risk as far as their close and frequent contacts with a source of avian influenza A is concerned. In prescribing avian influenza A in the gazetted Orders, the nature of trade, industry or process is specified to cover any occupation

involving close and frequent contacts with a source or sources of avian influenza A infection by reason of employment as a worker employed to handle certain things as elaborated in (a) to (c) under that column. As medical researches indicate that only live poultry or birds, their remains or residues or untreated poultry products may carry such a risk, the types of high-risk occupations intended to be covered by the gazetted Orders will be the handling of poultry or birds in poultry farms, poultry transportation, wholesale or retail of poultry, and research and laboratory work in connection with the avian influenza viruses.

4. We note Members' concern on whether workers handling food made from cooked poultry might inadvertently fall within the scope of the gazetted Orders. Currently, there is no evidence of transmission of avian influenza A viruses through cooked or undercooked poultry. Therefore, we propose to add a clarifying phrase to the descriptions under "Nature of trade, industry or process" or "Occupations" in the respective orders to make it clear that among those types of workers who are employed to handle the remains or residues of poultry or birds, only workers who are employed to handle uncooked remains or residues would be covered. The draft Resolution enlisting the proposed amendments is at Annex A. To facilitate Members' reading, we have drafted at Annex B the whole texts of the two provisions integrating the proposed amendments into the original Orders and have the changes marked in bold.

5. Members have also expressed concerns over employees of other industries and trades who may, in the course of employment, handle poultry or birds from time to time and who may inadvertently fall within the scope of the gazetted Orders. Our view is that for an employee to fall within the scope of the gazetted Orders, he has to fulfill the two over-riding criteria of (i) by reason of employment he is engaged as a worker in the types of work specified in the Order; and (ii) he has close and frequent contacts with poultry or birds in employment, in addition to having suffered incapacity arising from avian influenza A. For example, a domestic helper who, apart from his/her daily housework, frequently prepares dishes of chicken will not be able to meet the test under (i) since he/she is not engaged in poultry handling as such. In the event that this domestic helper contracts avian influenza A and suffers incapacity, he/she may claim employee's compensation under section 36(1) of the

Employees' Compensation Ordinance (ECO) if he/she could prove that the disease is a personal injury by accident arising out of and in the course of employment.

(B) To consider amending the Chinese counterpart of "frequent" as "經常" in the two Orders

6. Members' views are accepted and amendments will be made accordingly as per Annexes A and B.

(C) To explain whether avian influenza A viruses could be transmitted through undercooked poultry, for example, those with traces of residual blood

7. According to studies by the World Health Organisation (WHO), cooking of poultry products can effectively kill avian influenza A viruses. To further address Members' concern about poultry not fully cooked, the Administration has consulted experts of the Department of Microbiology of the University of Hong Kong. Their advice is that there is so far no evidence of transmission of avian influenza to humans through the consumption of undercooked poultry products. The United States Center for Disease Control and Prevention also indicates that there is no evidence that humans would acquire avian influenza by eating poultry products.

8. Given the above, people eating poultry, even less well-cooked ones, face a very low risk of being infected by avian influenza virus. Similarly, the risk is very low for workers responsible for cleaning food leftovers which occasionally contain parts of cooked poultry with traces of residual blood.

(D) To step up publicity on the two Orders and, in particular, on how the prescribed employment period would work in the Second Schedule of the ECO

9. We will prepare publicity materials giving details of the coverage

of the two newly prescribed occupational diseases, together with illustrations to explain how the prescribed employment period would work under the ECO. When the subsidiary legislation comes into operation, we will send the publicity material with enquiry telephone numbers to the relevant employers' and workers' groups to ensure that they properly understand the legislative provisions. Such information will also be uploaded to the Labour Department's homepage on the internet.

Economic Development and Labour Bureau
Labour Department
January 2005

Draft

INTERPRETATION AND GENERAL CLAUSES
ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

**EMPLOYEES' COMPENSATION ORDINANCE
(AMENDMENT OF SECOND SCHEDULE) ORDER 2004**

Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on [2 February 2005].

RESOLVED that the Employees' Compensation Ordinance (Amendment of Second Schedule) Order 2004, published in the Gazette as Legal Notice No. 213 of 2004 and laid on the table of the Legislative Council on 15 December 2004, be amended –
in section 2 –

- (a) in the new item B11, by repealing “頻繁地” and substituting “經常”;
- (b) in the new item B12, by repealing “頻繁地” and substituting “經常”;
- (c) in the new item B12, in paragraph (a), by repealing “remains, residues or” and substituting “uncooked remains or residues, or their”.

Clerk to the Legislative Council

[2 February 2005]

Draft

INTERPRETATION AND GENERAL CLAUSES
ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

OCCUPATIONAL SAFETY AND HEALTH
ORDINANCE (AMENDMENT OF SCHEDULE 2)
ORDER 2004

Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on [2 February 2005].

RESOLVED that the Occupational Safety and Health Ordinance (Amendment of Schedule 2) Order 2004, published in the Gazette as Legal Notice No. 214 of 2004 and laid on the table of the Legislative Council on 15 December 2004, be amended –
in section 2 –

- (a) in the new item 50, by repealing “頻繁地” and substituting “經常”;
- (b) in the new item 51, by repealing “頻繁地” and substituting “經常”;
- (c) in the new item 51, in paragraph (a), by repealing “remains, residues or” and substituting “uncooked remains or residues, or their”.

Clerk to the Legislative Council

[2 February 2005]

Text of Relevant Provisions if Passed

(Second Schedule to the Employees' Compensation Ordinance (Cap. 282))

"B11	Severe acute respiratory syndrome	Any occupation involving close and frequent contacts with a source or sources of severe acute respiratory syndrome infection by reason of employment – (a) in the medical treatment or nursing of a person suffering from severe acute respiratory syndrome, or in a service ancillary to that treatment or nursing; (b) in attending to a person suffering from severe acute respiratory syndrome, where the need for attendance arises by reason of the person's physical or mental infirmity; (c) in identifying, detecting, tracing, isolating, detaining, supervising or surveillance of a person suffering from	1 month.
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severe acute respiratory
syndrome;

- (d) as a research worker engaged in research in connection with severe acute respiratory syndrome, or in a service ancillary to that research; or
- (e) as a laboratory worker, pathologist, post-mortem worker or funeral services worker, where the employment involves the handling of any human body or other materials that are a source of severe acute respiratory syndrome infection, or in a service ancillary to that handling.

B12	Avian influenza A	Any occupation involving close and frequent contacts with a source or sources of avian influenza A infection by reason of employment –	14 days.”.
		(a) as a worker engaged in the handling of poultry or birds	

or their **uncooked remains**
or residues or their
untreated products, that are a
source of avian influenza A
infection, or in a service
ancillary to that handling;

(b) as a research worker engaged
in research in connection
with avian influenza A, or in
a service ancillary to that
research; or

(c) as a laboratory worker
engaged in the handling of
materials that are a source of
avian influenza A infection,
or in a service ancillary to
that handling.

Text of Relevant Provisions if Passed

(Schedule 2 to the Occupational Safety and Health Ordinance (Cap. 509))

- “50. Severe acute Any occupation involving close and frequent
respiratory contacts with a source or sources of severe acute
syndrome respiratory syndrome infection that is attributable
to employment –
- (a) in the medical treatment or nursing of a
person suffering from severe acute
respiratory syndrome, or in a service
ancillary to that treatment or nursing; or
 - (b) in attending to a person suffering from
severe acute respiratory syndrome, where
the need for attendance arises because of
the person’s physical or mental infirmity;
or
 - (c) in identifying, detecting, tracing, isolating,
detaining, supervising or surveillance of a
person suffering from severe acute
respiratory syndrome; or
 - (d) as a research worker engaged in research
in connection with severe acute respiratory
syndrome, or in a service ancillary to that
research; or
 - (e) as a laboratory worker, pathologist,

post-mortem worker or funeral services worker, where the employment involves the handling of any human body or other materials that are a source of severe acute respiratory syndrome infection, or in a service ancillary to that handling.

51. Avian
influenza A

Any occupation involving close and frequent contacts with a source or sources of avian influenza A infection that is attributable to employment -

- (a) as a worker engaged in the handling of poultry or birds or their **uncooked remains or residues** or **their** untreated products, that are a source of avian influenza A infection, or in a service ancillary to that handling; or
- (b) as a research worker engaged in research in connection with avian influenza A, or in a service ancillary to that research; or
- (c) as a laboratory worker engaged in the handling of materials that are a source of avian influenza A infection, or in a service ancillary to that handling.”.