

立法會

Legislative Council

LC Paper No. LS30/05-06

Paper for the House Committee Meeting on 10 February 2006

Legal Service Division Report on Subsidiary Legislation Gazetted on 3 and 8 February 2006

Date of Tabling in LegCo : 8 February 2006

Amendment to be made by : 8 March 2006 (or 29 March 2006 if extended by resolution)

PART I COMMENCEMENT NOTICE

Road Traffic (Traffic Control) (Amendment) Regulation 2005 (L.N. 66 of 2005) Road Traffic (Traffic Control) (Amendment) Regulation 2005 (Commencement Notice) (L.N. 18)

The Secretary for the Environment, Transport and Works has appointed 1 April 2006 as the day on which sections 4 and 5 of the Amendment Regulation shall come into operation. The other sections of the Amendment Regulation such as those in relation to exempting a float in a parade from regulation commenced operation on 30 June 2005.

2. The two sections amend regulation 59(1) of, and Schedule 1 to the Regulation to reflect the changes regarding the “NO STOPPING” and “KEEP LEFT” traffic signs. Failing to comply with the prescribed traffic signs under regulation 59 is an offence. In May 2005, a Subcommittee to Study Four Items of Subsidiary Legislation under the Road Traffic Ordinance was formed to study this Amendment Regulation among others. The Subcommittee considered that the new signs were more user-friendly.

PART II BANNING OF BACKYARD POULTRY KEEPING

Waste Disposal Ordinance (Cap. 354)

Waste Disposal Ordinance (Amendment of Fourth Schedule) Notice 2006 (L.N. 19)

Public Health (Animals and Birds) Ordinance (Cap. 139)

Public Health (Animals and Birds) (Licensing of Livestock Keeping) (Amendment) Regulation 2006 (L.N. 20)

Background

Waste Disposal Ordinance (Cap. 354)

3. Section 15 of the Waste Disposal Ordinance (“WDO”) makes it an offence for any person (other than an exempt person) to keep livestock in any premises in a livestock waste prohibition area (which is defined under the WDO to effectively mean the urban area). The section also provides for the penalty of a fine of \$100,000 for a first offence; and a fine of \$200,000 for a second or subsequent offence; and where livestock has been kept continuously, a fine of \$5,000 for each day.

4. Section 15A of the WDO makes it an offence for any person (other than an exempt person) to keep livestock in any premises in a livestock waste control area (which is defined under the WDO to effectively mean the rural area). The section also provides for the penalty of a fine of \$50,000 and where livestock has been kept continuously, a fine of \$5,000 for each day.

5. Section 15AA of the WDO makes it an offence for any person (other than an exempt person) to keep livestock in any premises in a livestock waste restriction area (which is defined under the WDO to effectively mean the new towns, like Tsuen Wan, Tuen Mun) unless, among other things, he holds a valid licence so to do issued by the Director of Agriculture, Fisheries and Conservation (“the Director”) under the Public Health (Animals and Birds) Ordinance (Cap. 139). The section also provides for the penalty of a fine of \$100,000 and where livestock has been kept continuously, a fine of \$5,000 for each day.

6. The term “exempt person” is defined under the Fourth Schedule to the WDO to include, among other things, any person who keeps in his premises in any livestock waste prohibition area, livestock waste restriction area or livestock waste control area not more than 20 poultry (Items 7 and 8(b)).

7. The term “livestock” is defined under the WDO to mean pigs or poultry. The term “poultry” is further defined to mean chickens, ducks, geese, pigeons and quails.

8. The term “keep” is defined under the WDO to include breed, house, tend, look after or control.

Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation (Cap. 139 sub. leg. L)

9. Section 3(1) of the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation (“the Principal Regulation”) makes it an offence for a person to keep livestock (which has the same meaning as in the WDO) in any premises in a livestock waste control area unless:—

- (a) he is an exempt person (which has the same meaning as in the WDO);
- (b) he has been exempted under section 9 of the Principal Regulation (which means a licensee keeping livestock solely for the purpose of exhibition); or
- (c) he does so under a licence issued by the Director.

10. Section 3(2) of the Principal Regulation provides for the penalty of a fine of \$50,000 for a first offence; and a fine of \$100,000 for a second or subsequent offence; and where livestock has been kept continuously, a fine of \$1,000 for each day.

11. Section 4(1) of the Principal Regulation empowers the Director to issue a licence to a person to keep livestock in a premises in a livestock waste control area or livestock waste restriction area. Section 4(2) of the Principal Regulation also provides that where any premises in respect of which a licence is applied for are within a livestock waste restriction area, the Director shall not grant the licence unless he is satisfied that:—

- (a) the premises had been continuously used for livestock keeping for at least 12 months immediately before the commencement of section 2 of the Waste Disposal (Amendment) Ordinance 1994 (28 of 1994) (which commenced on 1 July 1994); and
- (b) no ex gratia payment for cessation of livestock keeping in the premises has been made by the Government after that commencement.

The Proposal

12. L.N. 19 amends the Fourth Schedule to the WDO by repealing Item 7 and in effect removing Item 8(b) so that a person who owns or keeps poultry of not more than 20 in number in his premise in any livestock waste prohibition area, livestock waste control area or livestock waste restriction area is no longer an exempt person under the WDO.

13. L.N. 20 amends the Principal Regulation by adding a new section 4(2A) to provide that the Director shall not grant a licence for the keeping of livestock in any premises in a livestock waste control area unless he is satisfied, among other things, that the number of poultry to be kept in the premises will be more than 20. Other related amendments are also made to the Principal Regulation.

14. Members may refer to LegCo Brief (File Ref.: HWF(F) CR 5/6/1) of 7 February 2006 from Health, Welfare and Food Bureau, Agriculture, Fisheries and Conservation Department and Environmental Protection Department for background information.

15. Upon the coming into operation of the items of subsidiary legislation, the penalties for illegal poultry keeping in a livestock waste prohibition area, livestock waste control area or livestock waste restriction area are summarised below:—

	WDO	Principal Regulation
Livestock waste prohibition area	1 st offence : \$100,000 2 nd or subsequent offence: \$200,000 Continuous offence: \$5,000 per day	Nil
Livestock waste control area	Fine: \$50,000 Continuous offence: \$5,000 per day	1 st offence : \$50,000 2 nd or subsequent offence: \$100,000 Continuous offence: \$1,000 per day
Livestock waste restriction area	Fine: \$100,000 Continuous offence: \$5,000 per day	Nil

16. Paragraph 6 of the LegCo Brief notes that there are inconsistencies in respect of the enforcement and sanctions against illegal poultry keeping in the WDO and Public Health (Animals and Birds) Ordinance. According to the same paragraph, it is the Administration's target to introduce an amendment Bill within 2006 to achieve consistency.

17. The Panel on Food Safety and Environmental Hygiene had previously urged the Administration to regulate or prohibit backyard poultry farming when discussing measures to prevent recurrence of avian influenza in Hong Kong. The Administration briefed the Panel at the special meeting on 7 February 2006 the two items of subsidiary legislation. The Panel expressed support for the proposal contained in the subsidiary legislation. Some Panel members also urged the Administration to take precaution against the risk of spreading avian influenza by other types of birds.

18. We have raised some questions about the subsidiary legislation with the Administration (**Annex I**). The reply of the Administration is attached (**Annex II**).

19. L.N.s 19 and 20 will come into operation on 13 February 2006.

Encl

Prepared by

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Lam Ping-man, Stephen (L.N.s 19 and 20)
Assistant Legal Advisers
Legislative Council Secretariat
9 February 2006

Annex I

LS/B/18/05-06
2869 9468
2877 5029

Secretary for Health, Welfare and Food
(Attn : Mr Wallace Lau, PAS (FEH) 1)
Health, Welfare and Food Bureau
Food and Environmental Hygiene Division
20/F, Murray Building
Garden Road
Hong Kong

8 February 2006

BY FAX
Fax No. : 2136 3281
Total no(s) of page(s) : 2

Dear Mr Lau,

Waste Disposal Ordinance
(Amendment of Fourth Schedule) Notice 2006 (L.N. 19)
Public Health (Animals and Birds)
(Licensing of Livestock Keeping) (Amendment) Regulation 2006 (L.N. 20)

We are scrutinising the legal and drafting aspects of the above items of subsidiary legislation. We have the following questions and should be grateful for your clarification.

General Question

- (1) Upon the coming into operation of the above items of subsidiary legislation, would it be an offence for a retailer of livestock selling any livestock at a retail market to a consumer?
- (2) Upon the coming into operation of the above items of subsidiary legislation, would it be an offence for a consumer to carry, for example a live chicken, on his way from the retail market to his home? If not, would you consider it a legislative loophole to be plugged?
- (3) Upon the coming into operation of the above items of subsidiary legislation, would it be an offence for a consumer, returning from the retail market, keeping a chicken for 24 hours in his premises before he kills it? Would you consider issuing a guideline on how long would a consumer keep a livestock in

his premises constituting an offence in this scenario upon the coming into operation of the above items of subsidiary legislation?

Waste Disposal Ordinance (Amendment of Fourth Schedule) Notice 2006 (L.N.19)

Would you confirm whether the total area of the livestock waste prohibition area, livestock waste control area and livestock waste restriction area (referred to in sections 15, 15A and 15AA of the Waste Disposal Ordinance (Cap. 354) respectively) is equivalent to the area of the HKSAR?

Public Health (Animals and Birds) (Licensing of Livestock Keeping) (Amendment) Regulation 2006 (L.N.20)

- (1) Assuming a person keeping 15 chickens in a livestock waste restriction area has been granted a licence under section 4(2) of the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation (Cap. 139 sub. leg. L) ("the Principal Regulation"), upon the coming into operation of the above items of subsidiary legislation, would the Administration consider renewing his licence under section 4(4) of the Principal Regulation?
- (2) Would the Director of Agriculture, Fisheries and Conservation grant a licence to a new applicant who has satisfied section 4(2)(a) and (b) to keep less than 20 poultry in his premises in a livestock waste restriction area upon the coming into operation of the above item of subsidiary legislation?

In facilitating us to report the above items of subsidiary legislation to the House Committee's meeting to be held on 10 February 2006, we should be grateful for your reply, in both languages, by **close of play today**.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

c.c. DoJ (Attn : Miss Leonora Ip, SGC) (Fax : 2845 2215)
Mrs Constance Li, CCS(2)5

Annex II

本函檔號 Our ref.:
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電話號碼 Tel. No.: (852) 2973 8297
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9 February 2006

Mr. Stephen Lam
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
(Fax : 2877 5029)

Dear Mr Lam,

**Waste Disposal Ordinance
(Amendment of Fourth Schedule) Notice 2006 (L.N. 19)
Public Health (Animals and Birds)
(Licensing of Livestock Keeping)(Amendment) Regulation 2006 (L.N.20)**

Thank you for your letter of 8 February. My replies are set out below for your reference.

- (1) *Upon the coming into operation of the above items of subsidiary legislation, would it be an offence for a retailer of livestock selling any livestock at a retail market to a consumer?*

The sale of live poultry is regulated by the Food Business Regulation, Cap. 132X. Provided that the retailer holds a licence issued under this Regulation (see item 5 of the Fourth Schedule to the Waste Disposal Ordinance, Cap. 354) or is an "exempt person" under item 2 of the Fourth Schedule to Cap. 354, he will not commit an offence.

- (2) *Upon the coming into operation of the above items of subsidiary legislation, would it be an offence for a consumer to carry, for example a live chicken, on his way from the retail market to his home? If not, would you consider it a legislation loophole to be plugged?*

Whether or not an offence has been committed will depend on the individual facts and circumstances of a particular case. It is not possible to state precisely whether an offence has been committed in the scenario described in this question. The Administration will continue its efforts to educate and inform the general public of the importance of avoiding any close contact with live poultry.

- (3) *Upon the coming into operation of the above items of subsidiary legislation, would it be an offence for a consumer, returning from the retail market, keeping a chicken for 24 hours in his premises before he kills it? Would you consider issuing a guideline on how long would a consumer keep a livestock in his premises constituting an offence in this scenario upon the coming into operation of the above items of subsidiary legislation?*

"Keep" is defined as including breed, house, tend, look after or control and "kept" and "keeping" are construed accordingly (see section 2 of the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation, Cap. 139 L and section 2 of the Waste Disposal Ordinance , Cap. 354). Again, whether or not an offence will be committed in the scenario described in this general question will depend on the individual facts and circumstances of a particular case. Some crucial elements of the offence are whether or not there is any "keeping" of live poultry by a person "in or on any premises". To reduce the risk of avian influenza, we would discourage the public from taking live poultry home.

Waste Disposal Ordinance (Amendment of Fourth Schedule) Notice 2006 (L.N. 19)

- (4) *Would you confirm whether the total area of the livestock waste prohibition area, livestock waste control area and livestock waste restriction area (referred to in sections 15, 15A, 15AA of the Waste Disposal Ordinance (Cap. 354) respectively is equivalent to the area of the HKSAR?*

All the prohibition, control and restriction areas, when added together, are equivalent to the entire land area of HKSAR and part of her waters.

Public Health (Animals and Birds)(Licensing of Livestock Keeping)
(Amendment) Regulation 2006 (L/N. 20)

- (5) *Assuming a person keeping 15 chickens in a livestock waste restriction area has been granted a licence under section 4(2) of the Public Health (Animals and Birds)(Licensing of Livestock Keeping) Regulation Cap. 139 sub. Leg. L) ("the Principal Regulation"), upon the coming into operation of the above items of subsidiary legislation, would the Administration consider renewing his licence under section 4(4) of the Principal Regulation?*

We would like to explain that there is no Livestock Keeping Licence (LKL) for less than 20 birds as LKLs have only been issued to farms having over 20 birds for commercial farming purposes. Farms with less than 20 birds are not regarded as being engaged in commercial farming.

- (6) *Would the Director of Agriculture, Fisheries and Conservation grant a licence to a new applicant who has satisfied section 4(2)(a) and (b) to keep less than 20 poultry in his premises in a livestock waste restriction area upon the coming into operation of the above item of subsidiary legislation?*

As a matter of policy, we will not issue any licence to those keeping less than 20 poultry in or on premises within a livestock waste restriction area upon the coming into operation of the above item of subsidiary legislation.

Yours sincerely,

(Wallace Lau)
for Secretary for Health, Welfare and Food