

立法會

Legislative Council

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Report of the Subcommittee on Waste Disposal Ordinance (Amendment of Fourth Schedule) Notice 2006 and Public Health (Animals and Birds) (Licensing of Livestock Keeping) (Amendment) Regulation 2006

Purpose

This paper reports on the deliberations of the Subcommittee on Waste Disposal Ordinance (Amendment of Fourth Schedule) Notice 2006 and the Public Health (Animals and Birds) (Licensing of Livestock Keeping) (Amendment) Regulation 2006.

Background

2. Since 2004, there have been increasing incidents of avian influenza outbreaks in poultry in the Mainland, Asia and other parts of the world. Some outbreaks have resulted in human infection. According to reports, many of these outbreaks started in backyard farms where there were little or no effective means in biosecurity measures such as preventing wild birds (which could be infected with avian influenza viruses) from indirect contacts with domestic poultry.

3. The laws in Hong Kong provided exemptions for persons who kept no more than 20 poultry in or on his premises. Therefore there were households in Hong Kong keeping poultry without the need to have licence or authorisation. Unlike licensed farms, there was no biosecurity arrangement or systematic vaccination for chicken to prevent the outbreak of avian influenza. On 1 February 2006, a dead chicken kept by an individual household in Yuen Tuen Shan Village of Sha Tau Kok was tested to be H5N1 positive. Recent surveillance on dead birds by the Administration also detected H5N1 in different species of wild birds, and this increased the chance of cross infection with live poultry reared at backyards of households.

4. Since 6 February 2006, officers of the Agriculture, Fisheries and Conservation Department (AFCD) have called on backyard farms in 36 villages within a 5 km area of Yuen Tuen Shan Village to appeal to the villagers to hand in their backyard poultry voluntarily with a view to reducing such backyard poultry keeping activities. Many villagers refused to hand in these poultry and the Government had no legislative power to stop such backyard poultry keeping activities.

5. The Panel on Food Safety and Environmental Hygiene had previously urged the Administration to regulate or prohibit backyard poultry farming, when discussing the comprehensive plan of action to deal with the global problem of avian influenza in October 2005. The Panel had also expressed concern about the risk of spreading avian influenza by wild birds and other types of birds. During the motion debate on “Preventing avian influenza” on 30 November 2005, the Secretary for Health, Welfare and Food stated that legislative amendments to ban private poultry keeping were under consideration.

6. As the public health threat posed by backyard poultry keeping activities has become imminent, the Administration considered it necessary to stop backyard poultry keeping activities immediately. The Administration decided to adopt the straightforward approach of removing the exemption for people keeping not more than 20 poultry presently provided for under the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation (Cap. 139 sub. leg. L) and sections 15, 15A and 15AA of the Waste Disposal Ordinance (Cap. 354). Under the Waste Disposal Ordinance, the term “poultry” means chickens, ducks, geese, pigeons and quails.

The legislative amendments

7. The Administration gazetted the Waste Disposal Ordinance (Amendment of Fourth Schedule) Notice 2006 and Public Health (Animals and Birds) (Licensing of Livestock Keeping) (Amendment) Regulation 2006 on 8 February 2006. The Notice and the Amendment Regulation are subject to the negative vetting procedure of the Legislative Council (LegCo), and they came into operation on 13 February 2006.

8. The Notice amends the Fourth Schedule to the Waste Disposal Ordinance by repealing item 7 and in effect removing item 8(b) of the Schedule so that a person who owns or keeps not more than 20 poultry in or on his premises in any livestock waste prohibition area (mainly urban area), livestock waste control area (mainly rural area) or livestock waste restriction area (mainly new towns) is no longer an exempt person under the Waste Disposal Ordinance.

9. The Amendment Regulation amends the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation (Cap. 139 sub. leg. L) by adding a new section 4(2A) to provide that the Director of Agriculture, Fisheries and Conservation (DAFC) shall not grant licences to, inter alia, those keeping 20 or less poultry in or on premises in livestock waste control areas (i.e. rural area).

10. Following the coming into effect of the Notice and the Amendment Regulation, illegal poultry keeping in livestock waste control areas under the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation will be subject to a fine of \$50,000, while illegal poultry keeping in livestock waste restriction and prohibition areas under the Waste Disposal Ordinance will be subject to a fine of \$100,000. Details of the penalties are given in paragraph 15 of the Legal Service Division report (LC Paper No. LS 30/05-06) for the House Committee meeting on 10 February 2006.

11. According to the LegCo Brief on the legislative amendments, the Administration acknowledges that there are inconsistencies in respect of the enforcement and sanctions against illegal poultry keeping under the Public Health (Animals and Birds) Ordinance (Cap. 139) and the Waste Disposal Ordinance (Cap. 354). It is the Administration's intention to remove such inconsistencies by amending Cap. 139 and other relevant legislation where necessary. The Administration will introduce an amendment bill into LegCo within 2006 to achieve this.

The Subcommittee

12. At the House Committee meeting on 10 February 2006, Members agreed to form a subcommittee to examine the Notice and the Amendment Regulation. Chaired by Hon Fred LI, the Subcommittee has held four meetings, including one meeting to gauge public views. The membership list of the Subcommittee is in **Appendix I**. The list of organisations and individuals who have provided views to the Subcommittee is in **Appendix II**.

13. To allow more time for the Subcommittee to examine the Notice and the Amendment Regulation, the scrutiny period has been extended to 29 March 2006, by resolution of LegCo on 8 March 2006.

Deliberations of the Subcommittee

Justifications for the legislative amendments to take effect at short notice

14. The Subcommittee is generally in support of the policy of banning backyard poultry keeping as a measure to prevent avian influenza infection in local live poultry. Nevertheless, members have expressed reservations about the arrangements for the legislative amendments to take effect from 13 February 2006, i.e. only five days after its gazettal.

15. The Subcommittee has asked the Administration to explain the reasons for introducing and implementing the legislative amendments with such short notice. Some members have criticised the Administration for not allowing a longer grace period for the affected households to dispose of their poultry, as it is unreasonable to expect each of these households to consume up to 20 chickens in five days. These members have pointed out that some poultry owners who do not want to slaughter or surrender their poultry have either hidden their poultry or released them. Such actions have increased the risk of cross infection among local birds and pose threat to public health, which is contrary to the legislative intention.

16. The Administration has explained that avian influenza is a highly pathogenic virus and there will be unthinkable consequences if it spreads in Hong Kong. According to World Health Organisation (WHO), the mortality rate for human infected with avian influenza is higher than 50% and even reaches 70% in certain areas. Apart from the overall high fatality rate, avian influenza also poses a very high risk to the population segments that are younger and generally in good health. Hong Kong has also recorded casualties arising from the disease since the first known human avian influenza case in 1997. Since then, the Government has acted vigorously to prevent avian influenza from recurring.

17. The Administration has stressed that the banning of backyard poultry farming has to take effect immediately, as there is imminent threat to public health posed by the increased risk of live poultry being infected with H5N1 through direct contacts with wild birds. In Hong Kong, H5N1 virus has been found in 14 wild birds since October 2005. The statistics from WHO also reveal that most of the recent human cases recorded in the Mainland, Vietnam, Indonesia and Turkey are related to backyard poultry. Since backyard poultry are not protected by biosecurity measures or systematic vaccination, international experts consider such poultry more vulnerable for avian influenza outbreaks, and they pose a very grave hazard to public health. In the face of such a threat, some countries have already acted to prohibit rearing poultry outdoor or in backyards.

18. The Administration estimates that in Hong Kong, there are about 1 800 local households keeping several thousand poultry, and there is also no biosecurity arrangement or systematic vaccination for poultry in these backyard farms. Before the legislative amendments were introduced, free vaccination had been provided for backyard chickens. In view of the lukewarm response, the Administration considered that the measure could not effectively reduce the threat posed by backyard poultry keeping activities.

19. The Administration has advised that the intention to introduce the legislative amendments to ban backyard poultry keeping was announced on 30 November 2005, when the Secretary for Health, Welfare and Food delivered his speech during the debate on the motion on avian influenza moved by Hon Fred LI Wah-ming at the LegCo meeting held on that day. Following gazettal of the legislative amendments on 8 February 2006, and before their coming into force, AFCD staff had visited more than 360 villages or 27 000 households keeping live poultry to advise these households to dispose of their poultry or surrender them to the public authorities. Announcements of Public Interest were also made to remind the public to surrender their poultry with the legislative amendments soon coming into force.

20. The Administration has stressed that in the event of an avian influenza outbreak in humans, it would not only jeopardise public health but would also deal a severe blow to Hong Kong's economy. The tourism industry and the financial sector would be affected, economic growth would shrink by more than half, and share prices would plunge by about 30% according to the estimation made by an overseas institute.

Scope of the legislative amendments

21. Hon Fred LI (Subcommittee Chairman), Hon Andrew CHENG, Hon Emily LAU and Hon WONG Yung-kan have expressed concern that the legislative amendments do not deal with other types of poultry or birds (such as turkey, swans, pet birds and wild birds). Given that there were reports of H5N1 infection in some of these birds, these members are concerned that the keeping of turkey and swans at backyards/fish ponds will also increase the risk of avian influenza infection in poultry. These members have urged the Administration to close the loophole by including birds other than poultry in the legislation. They also urge the Administration to step up surveillance of birds and take precautionary measures against the spread of avian influenza among these birds.

22. The Administration has responded that the legislative amendments aim to ban backyard poultry keeping which involves not more than 20 poultry. The definition of "poultry" used in the legislative amendments is based on that provided in the Waste Disposal Ordinance, i.e. "poultry" means chickens, geese, ducks, pigeons and quails. At present, there is no strong scientific basis to include pet birds in the scope of the present legislative amendments. The

Administration also believes that few people actually keep turkey or swans in their backyards. Nevertheless, the Administration has stepped up surveillance of wild birds and tests of H5N1 virus in dead birds and bird droppings, and will continue to maintain vigilance on infection of avian influenza in birds. The Administration will consider the need for extending regulation to birds other than poultry, where necessary, based on scientific evidence.

23. Some organisations and individuals have reflected to the Subcommittee that pigeons, including racing pigeons, should not be banned because there have not been reports of pigeons infected with H5N1. Moreover, some poultry are being kept as pets, and the owners concerned are willing to comply with the necessary biosecurity requirements so that they can continue to keep their poultry as pets. In some of these cases, the pet birds are housed in extremely low density environments and they have little or no contact with wild birds. These birds should therefore pose relatively less risk than livestock kept in backyards.

24. These deputations have urged the Administration to consider providing special arrangements or exemptions for keeping pet birds and racing pigeons, so that such birds will not need to be surrendered or slaughtered. Some deputations have also pointed out that although it may be possible in some cases for owners of pet birds and pigeons to apply for “animal/birds exhibition licence”, under the Public Health (Animals and Birds) (Exhibitions) Regulations (Cap. 139 sub. leg. F), the licence fee of over \$10,000 is too expensive to some persons who keep only a few birds.

25. Most members of the Subcommittee share the concerns raised by the deputations. These members have requested the Administration to consider granting exemptions to those poultry or birds which are kept as pets, and which do not pose serious risks to public health. They have suggested that the Administration may impose conditions for granting such special approvals or exemptions, to ensure that such birds will not pose threat to public health.

26. The Administration has advised that following the coming into effect of the legislative measure to ban backyard poultry keeping, AFCD has received about 240 applications for “animal/birds exhibition licence” from owners of pet poultry and racing pigeons. These applications are under consideration.

27. After discussion with the Subcommittee, the Administration has advised that to cater for the needs of a few number of people who keep poultry as pets, the Administration will move a motion at the LegCo meeting on 29 March 2006, to amend the Notice and the Amendment Regulation to exempt those persons who have kept poultry as pets immediately before the coming into effect of the legislative amendment on 13 February 2006. Discussion of the proposed exemption system is detailed in paragraphs 49 to 56 below.

28. For racing pigeons, the Administration has agreed to consider on a case-by-case basis whether to issue “animal/birds exhibition licence” to owners who wish to continue to keep racing pigeons. To address the concern about the high fee charged for the exhibition licence, the Administration will amend the Public Health (Animals and Birds) (Exhibitions) Regulations (Cap. 139 sub. leg. F) to stipulate a separate licence fee for persons who keep a small number, say, 20 or less, of racing pigeons. The formulation of fee for the separate licence fee will, same as other fee formulation policies, follow the principle of total cost recovery. As the resources required for regulating exhibition of such racing pigeons will be less than that for the large-scale animal/bird exhibitions such as those held by the Ocean Park, the Administration will further examine the level of the licence fee. The Administration will specify the licence fee in the subsidiary legislation to be introduced into LegCo shortly.

29. The Subcommittee has requested the Administration to expedite the introduction of the subsidiary legislation to specify the separate licence fee for racing pigeons. The Administration has subsequently agreed to inform Members of the proposed licence fee and the timetable for introducing the subsidiary legislation, before expiry of the extended scrutiny period (i.e. before 29 March 2006).

Protection of property rights under Article 105 of the Basic Law

30. Hon CHEUNG Hok-ming and Hon Daniel LAM have queried that the legislative amendments to ban backyard poultry keeping are inconsistent with Article 105 (BL105) of the Basic Law. BL105 provides that the Hong Kong Special Administrative Region (HKSAR) shall, in accordance with law, protect the right of individuals and legal persons to the acquisition, use, disposal and the inheritance of property and their right to compensation for lawful deprivation of their property. It also provides that such compensation shall correspond to the real value of the property concerned at the time and shall be freely convertible and paid without undue delay. These members have pointed out that many poultry owners regard the poultry they keep as their property, and the surrender of their poultry to public authorities following the coming into effect of the legislative amendments constitutes a deprivation of property. Therefore, the households concerned should be provided with compensation in accordance with BL105.

31. The majority of members of the Subcommittee express support for providing compensation to those people who have surrendered their poultry to the Government before commencement of the Order and the Amendment Regulation on 13 February 2006. The Subcommittee passed the following motion moved by Hon CHEUNG Hok-ming at the meeting on 16 February 2006 –

“That, as the implementation of the Regulation causes economic loss to those who are affected; this Subcommittee strongly requests that the Government make reasonable compensation to them for the sake of equity and rationality.”

32. The Department of Justice (DoJ) and the legal adviser to the Subcommittee have separately provided legal opinion on the issue. DoJ considers that BL105 does not impose any legal obligation on HKSAR Government to pay compensation under the legislative amendments. The issue is rather on the meaning of “deprivation” under BL105. DoJ has advised that, in the light of local and comparative constitutional jurisprudence, deprivation of property could take place under the following two situations –

- (a) where property is formally expropriated, i.e. where there is a transfer of the title to the property; and
- (b) where the measure complained of affects the substance of the property to such a degree that there has been a de facto expropriation or where the measure complained of “can be assimilated to a deprivation of possessions”.

33. DoJ has also advised that it appears from comparative constitutional jurisprudence (European and the United States) that a de facto deprivation would not arise, unless the property affected is left without any “meaningful alternative use”, or the restrictions had denied all “economically viable use” of the property. DoJ considers that in the present case, there is no deprivation in the formal sense. The legislative amendments do not by themselves effect any transfer of the title of the poultry to the HKSAR Government; nor do they extinguish the title of poultry owners to their property.

34. On the test of whether there is any meaningful alternative use of the property in question, DoJ is of the opinion that in respect of backyard poultry farming, the small quantity of poultry (less than 20) kept by a particular owner could be slaughtered for private consumption in anticipation of the commencement of the legislative amendments. Given the availability of this option, it is considered that neither the voluntary surrender of the poultry by owners to the Government before the commencement of the amendment legislation, nor the seizure of poultry kept by persons reasonably suspected to be in breach of such amendments after their coming into effect, would amount to de facto deprivation.

35. DoJ has also provided its opinion on whether the legislative amendments satisfy the fair balance test in respect of interference with or control of property rights under BL105 in non-deprivation cases. DoJ has advised that although local courts so far have not formally embraced the fair balance test developed under European jurisprudence, it would be prudent to apply this test as an implicit requirement of BL105 for interference with private

property rights. Under this test, any interference with property rights must strike a fair balance between the demands of the general interest of the society and the requirements of the protection of the individual's rights. There must be reasonable relationship of proportionality between the means employed and the aim sought to be realised.

36. The Administration is of the view that the legislative amendments satisfy the fair balance test because the legislation serves to control a possible source of the H5N1 virus and this is in the interest of safeguarding public health. Given the imminent threat of an avian influenza outbreak arising from backyard poultry keeping in Hong Kong, it is necessary for the Administration to take swift action to reduce the risk factor.

37. In relation to "deprivation of poultry", the legal adviser to the Subcommittee has advised that it appears that the court would unlikely hold there is deprivation of property because the legislative amendments do not by themselves require the transfer of the title of the poultry to the Government. The legal adviser to the Subcommittee has also advised that whether the legislative measures in the present case do or do not amount to a de facto expropriation is a matter of degree for the court to assess. In the absence of a formal extinction of the owner's rights, the court would be cautious about accepting that a de facto expropriation of property qualifies as a "deprivation". If the court holds that there is neither deprivation nor de facto expropriation of property, the legal adviser to the Subcommittee has further advised that the court may find that there is a control of use of property in the sense that a person keeping not more than 20 poultry in premises had to dispose of the poultry before the commencement of the legislative amendments. For applying the fair balance test to the present case, the court will consider whether the prohibition against the keeping of not more than 20 poultry in premises is proportionate to the aim of prevention of the outbreak of avian influenza in Hong Kong. The legal adviser to the Subcommittee is of the view that, in the present case –

- (a) there appears to be no deprivation of property;
- (b) it appears that a case of de facto expropriation may not be easily made out; and
- (c) subject to the acceptance of the justifications for introducing the legislative measures as provided by the Government, it is probable that the court may hold the legislative measures to be reasonable and proportionate.

38. Hon Alan LEONG considers that the issue of providing compensation to owners of backyard poultry who are affected by the legislative amendments is a public administration issue rather than a legal one. Mr LEONG is of the view that the Government should not rely on the court to decide on matters which are clearly within its responsibility. He does not consider it reasonable for the Administration to give only five days' notice for the backyard poultry owners to dispose of their poultry. He urges the Administration to adopt a sensible and reasonable approach in implementing the legislative measure to ban backyard poultry keeping. Mr LEONG also opines that there is no legislation preventing the Government from providing compensation to poultry owners, and the Government has discretion to offer compensation to persons affected by the legislative measure of banning backyard poultry keeping.

39. Most members of the Subcommittee have urged the Government to reconsider providing compensation to the affected households, given that the amount of compensation involved should not be substantial as only a few hundred poultry were surrendered before 13 February 2006.

40. The Administration has responded that the monetary amount of compensation is not the main consideration for the Government not to offer ex-gratia payment to affected backyard poultry keepers. The considerations are to forestall delay in implementation arising from any possible controversy over the amount of compensation. There is also the worry that the offer of compensation may induce more poultry smuggling activities or delay of surrender of poultry pending payment by the Government. These possible disputes will delay the banning of backyard poultry keeping as soon as possible.

41. Members of the Subcommittee do not agree that providing compensation to affected poultry owners will encourage smuggling of poultry from across the border. They have pointed out that some villagers have the tradition of raising chickens in their backyard for private consumption or for sale to other villagers. The legislative measure to ban such activities will cause economic loss to these people, and the Government should provide compensation to those affected.

42. The Administration reiterates that it has no intention to offer compensation to affected backyard poultry keepers. As an application for judicial review on whether the legislative amendments have breached BL105 has subsequently been filed with the court, the Subcommittee considers it inappropriate to continue discussion on the issue.

Enforcement of the Notice and the Amendment Regulation

43. The legal adviser to the Subcommittee has requested the Administration to clarify whether a person will commit an offence in taking a chicken bought from retail market on his way home and "keeping" it in premises for a short

period of time before killing it for consumption. The Administration has advised that whether or not an offence is committed will depend on the individual facts and circumstances of a particular case. The expression “keep” is defined as including breed, house, tend, look after or control. 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, the Administration will discourage the public from taking live poultry back home.

44. In response to a query raised by Hon Alan LEONG, the Administration has clarified that currently there is no Livestock Keeping Licence for 20 or less birds, as such Licence has only been issued to farms having over 20 birds for commercial farming purposes. As a matter of policy, the Administration will not issue any licence to those keeping 20 or less poultry in or on his premises within a livestock waste restriction area upon the coming into operation of the Amendment Regulation.

45. As banning backyard poultry keeping involves enforcement under two Ordinances, the Subcommittee has sought clarification on the division of enforcement responsibilities among government departments. Hon Emily LAU considers that the relevant bureaux and departments should maintain close communication over the enforcement of the legislation.

46. The Administration has advised that DAFC is responsible for granting exemptions for keeping poultry and breaches of such exemption conditions will be followed up by AFCD. The Environmental Protection Department (EPD) is responsible for enforcing Cap. 354, and enforcement actions may be taken against backyard poultry keeping activities without DAFC’s exemption in waste restriction area and waste prohibition area. The Administration acknowledges that there are certain inconsistencies concerning the enforcement of Cap. 139 and Cap. 354, and an amendment bill will be introduced to remove such inconsistencies.

47. Concerning the enforcement of the Notice and Amendment Regulation upon their coming into effect of on 13 February 2006, the Administration has advised that during the period from 13 to 23 February 2006, AFCD staff had inspected 780 villages in rural areas, while EPD staff had inspected 394 villages/places and over 10 000 households in new towns and urban areas. About 240 poultry were surrendered during these inspections. According to the Administration’s response dated 2 March 2006, about 330 staff from AFCD and EPD (or 32 200 man-hours) had been deployed to carry out enforcement actions after the banning of backyard poultry keeping has come into effect.

48. The Subcommittee has expressed concern that prosecution may be taken against those persons who have not surrendered their poultry before 13 February 2006. The Subcommittee considers that this will discourage these people to surrender their poultry for fear of prosecution, and it will pose higher

risk to public health. To allay members' concerns, the Administration has advised that it will adopt a sensible and flexible approach in dealing with voluntary surrender of backyard poultry after 13 February 2006.

Proposed amendments to provide exemptions for keeping of specified poultry

49. In response to the concerns raised by deputations and members, the Administration has proposed that DAFC may grant exemption permits to persons who have kept 20 or less specified poultry before 13 February 2006. In order to be considered for exemption by DAFC, a person must prove to the satisfaction of DAFC that the poultry concerned has been kept as pet immediately before the legislation to ban backyard poultry keeping came into effect. Such proof may include photographs taken with the pet poultry, vaccination record of the poultry, or other proof (such as Statutory Declarations) acceptable to DAFC. Any person who provides false or inaccurate information to obtain the exemption commits an offence and is liable to a maximum fine of \$10,000. No fee will be charged for issuing an exemption permit.

50. Under the proposed amendment, DAFC may impose conditions on the granting of exemption and send staff to inspect the relevant premises to ensure, amongst other things, that the relevant biosecurity requirements are met and relevant conditions are complied with. Any contravention may lead to revocation of the permit.

51. The Subcommittee has sought clarification on whether the exemption permit will specify the number of pet poultry being kept, the premises for keeping the pet poultry, and the owner's name. Members have also asked whether the permit is transferable, and whether the premises for keeping pet birds may be changed.

52. The Administration has explained that the objective of granting exemptions is to enable persons who have kept the specified poultry (20 or less) as pets before 13 February 2006 to continue keeping them until their death. To prevent any possible abuse, the exemption permit will be granted in respect of the keeping of the specified bird by the person on the premises as specified in the permit. Under exceptional circumstances, DAFC may grant special approval to amend the particulars in the permit. The exemption will cease to be valid upon the death of the specified birds.

53. Hon Emily LAU is of the view that if the exemption is to cease upon the death of the specified bird, there should be specific requirement for owners of exempted pet poultry to notify the authorities upon the death of their pets and surrender the permit. The Administration has agreed to incorporate such requirement in the conditions for granting exemption permits for specified pet birds.

54. In response to concerns raised by Subcommittee members, the Administration has advised that permanent identification device, such as leg band, must be attached to the specified bird at all times. The exemption permit will also not cover offsprings of the specified bird. AFCD staff will inspect the premises to ensure compliance with the biosecurity conditions, and carry out tests on the specified bird to ascertain that it receives regular vaccination against avian influenza. As regards the concern about the keeping of specified bird together with some other birds which are currently not subject to control, the Administration has advised that DAFC may refuse to grant an exemption permit, or revoke any such permit granted, if the specified bird is to be kept together with other birds which may pose risk of avian influenza infection.

55. The Administration has also clarified that AFCD staff will need to enter the premises concerned to carry out inspections before issuing an exemption permit. If the inspection officer is not allowed to enter the premises, he cannot ascertain whether the biosecurity requirements and other conditions have been complied with, hence a permit cannot be issued. At the request of Hon Emily LAU and Hon Alan LEONG, the Administration agrees to clearly spell out the consequences of refusal of entry in the conditions for granting the exemption permit. A copy of the revised exemption conditions (**Appendix III**) has been provided to the Subcommittee for reference.

56. As regards those persons who have surrendered their poultry to the public authorities before 13 February 2006, the Administration has responded that as the policy is not to encourage keeping poultry as pets, there is no intention to grant exemption for these persons to buy or obtain new birds for keeping as pets.

Other proposed amendments

57. Hon WONG Yung-kan and Hon Alan LEONG have queried the need for adding the new section 4(5)(aa) to the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation. Hon WONG Yung-kan is concerned that the Administration may invoke this section to impose a lesser number of livestock originally allowed to be kept in a licensed farm. The Administration has clarified that the new section 4(5)(aa) is targeted at the keeping of no more than 20 poultry. For the keeping of more than 20 poultry, a licence is required and DAFC already has power under the Principal Ordinance, Cap. 139 and the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation (Cap. 139 sub. leg. L), to impose control on livestock farms and specify the number of livestock allowed to be kept, having regard to the conditions of individual farms, and to revoke the licence for breach of the licence conditions.

58. Hon WONG Yung-kan and Hon Alan LEONG are of the view that if DAFC already has powers to specify the number of poultry kept in any premises, it is not necessary to add the new section 4(5)(aa) to the Public Health (Animals and Birds)(Licensing of Livestock Keeping) Regulation. After consideration, the Administration has informed the Subcommittee that the new section 4(5)(aa) and the related section 8(ba), which were added to provide better clarity of the powers of DAFC, will be deleted from the Amendment Regulation. The proposed repeal will be incorporated in the motion to amend the Amendment Regulation. A copy of the revised proposed resolution is in **Appendix IV**.

Follow up actions required of the Administration

59. The Administration has undertaken to –
- (a) introduce an amendment bill within 2006 to remove the existing inconsistencies in respect of the enforcement and sanctions against illegal poultry keeping in the Public Health (Animals and Birds) Ordinance and the Waste Disposal Ordinance (paragraphs 11 and 46); and
 - (b) provide response on the proposed licence fee for keeping racing pigeons and the timetable for introducing the subsidiary legislation to specify such licence fee (paragraph 28).

Recommendation of the Subcommittee

60. Most members of the Subcommittee support the Notice and the Amendment Regulation. The Subcommittee has not raised objection to the proposed amendments to be moved at the Council meeting on 29 March 2006 (paragraphs 49 to 58 refer).

Consultation with the House Committee

61. The Subcommittee consulted the House Committee on 17 March 2006 and obtained its support for the Administration to move amendments to the Notice and Amendment Regulation at the Council meeting on 29 March 2006.

**Subcommittee on
Waste Disposal Ordinance (Amendment of Fourth Schedule)
Notice 2006 and Public Health (Animals and Birds)
(Licensing of Livestock Keeping) (Amendment) Regulation 2006**

Membership list

Chairman Hon Fred LI Wah-ming, JP

Members Hon CHEUNG Man-kwong
Hon WONG Yung-kan, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon Tommy CHEUNG Yu-yan, JP
Hon Vincent FANG Kang, JP
Hon Daniel LAM Wai-keung, BBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Dr Hon KWOK Ka-ki
Hon CHEUNG Hok-ming, SBS, JP
Hon Albert Jinghan CHENG

(Total : 13 Members)

Clerk Mrs Constance LI

Legal adviser Mr Stephen LAM

Date 16 February 2006

**Organisations / individuals that have given views to the
Subcommittee on
Waste Disposal Ordinance (Amendment of Fourth Schedule) Notice 2006
and Public Health (Animals and Birds)
(Licensing of Livestock Keeping) (Amendment) Regulation 2006**

1. Society for the Protection of Cruelty to Animals (HK)
2. Ms Rowena Hawkins
3. Mr LEUNG Wai-hay
4. Hong Kong Racing Pigeon Association
5. 救救寵物禽鳥大聯盟
- * 6. A group of bird owners and bird lovers and Ms Candy TONG
- * 7. 梁婉貞女士
- * 8. Mr SHUM Wing-ho
- * 9. Mr Peter
- * 10. 莫思瑋女士
- * 11. Ms Joey NG
- * 12. 孫永麗女士
- * 13. 葵青區議會議員梁偉文先生
- * 14. 西貢區議會議員劉慶基先生、成漢強先生及何民傑先生
- * 15. Ms Dorothy SCHWARZ

(* written submissions only)

Conditions for keeping 'Specified bird'

1. No other specified bird (except the one described in the permit) or other animals or birds that may in the opinion of the Director cause risk to the 'specified bird' can be kept in the same premises.
2. The 'specified bird' must be kept under solid roof and surround with bird proof facilities, in order to prevent the 'specified bird' from contacting wild birds, public and other 'specified bird' from wholesale and retail market.
3. Feed, feeders and drinking water containers must be properly placed to avoid contact with wild birds and contaminants.
4. Permanent identification device such as leg band or other identification device as may be approved by the Director must be placed on the 'specified bird' at all times.
5. Permittee/keeper of the 'specified bird' must report and surrender the 'exemption permit' to Agriculture, Fisheries and Conservation Department within 7 days if his/her 'specified bird' have passed away or found lost, and dispose of the same in such manner as the Director may direct.
6. *'Specified bird' must be vaccinated against avian flu regularly.
7. The exemption permit is granted in respect of the keeping of the 'specified bird' by the person at the premises as are respectively described in the exemption permit until such times as the 'specified bird' dies. If due to exceptional circumstances (such as the passing away, ill health or relocation of the permittee/keeper) there is a need to amend the permitted/keeper or the premises for keeping the 'specified bird', the permittee/keeper can apply to the Director to amend the relevant details. The Director may make appropriate decision after reviewing the circumstances of each individual application. The exemption is non-transferable and non-amendable except under exceptional circumstances.
8. The permittee/keeper must comply with all these conditions, the Prevention of Cruelty to Animal Ordinance, Cap 169, the Public Health and Municipal Services Ordinance, Cap 132, the Public Health (Animals and Birds) Ordinance, Cap 139 and/or tenancy agreement of the Housing Department in respect of the keeping of the 'specified bird'.
9. This exemption permit is subject to such further or amended conditions, as may be imposed by the Director on the ground of protecting public health. The Director reserves all rights of sampling, testing and disease investigation in the 'specified bird' and premises in which it is being kept.
10. Acting under the direction of the Director, authorized AFCD officers may make reasonable request to enter and inspect premises in which the 'specified bird' is being kept to ensure that all conditions are complied with. If the reasonable request of such officers is rejected, on the basis that the Director has no access to the premises to ascertain if the conditions for keeping the 'specified bird' have been fulfilled, the Director may refuse to issue the exemption permit or, if an exemption permit has been issued, may revoke the same.
11. Further hatching of eggs of or by the 'specified bird' is not allowed.
12. The Director may revoke the exemption permit if any of the above conditions are contravened.

* Paragraph 6 of the above condition is only applicable to the keeping of pet chicken.

INTERPRETATION AND GENERAL CLAUSES
ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

PUBLIC HEALTH (ANIMALS AND BIRDS)
(LICENSING OF LIVESTOCK KEEPING)
(AMENDMENT) REGULATION 2006

Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on [29] March 2006.

RESOLVED that the Public Health (Animals and Birds) (Licensing of Livestock Keeping) (Amendment) Regulation 2006, published in the Gazette as Legal Notice No. 20 of 2006 and laid on the table of the Legislative Council on 8 February 2006, be amended –

(a) by adding –

“1A. Interpretation

Section 2 of the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation (Cap. 139 sub. leg. L) is amended by adding –

““specified bird” (指明禽鳥) means a chicken, duck, goose, pigeon or quail;”.

(b) in section 2(1), by repealing “of the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation (Cap. 139 sub. leg. L)”;

- (c) in section 2(1), in the new section 4(2A), by repealing “a licence is applied for” and substituting “a licence in respect of the keeping of specified birds is applied for”;
- (d) in section 2(1), in the new section 4(2A)(a) and (b), by repealing “livestock keeping” and substituting “the keeping of specified birds”;
- (e) in section 2(1), in the new section 4(2A)(c), by repealing “poultry, if any,” and substituting “specified birds”;
- (f) by repealing section 2(2);
- (g) by repealing section 3;
- (h) by adding –

“4. Section added

The following is added –

**“9A. Power of Director to
issue exemption
permit in respect of
specified bird kept as
pet, etc.**

(1) In this section, “exemption permit” (豁免許可證) means a permit issued by the Director under subsection (2).

(2) Subject to this section, the Director may issue a permit in respect of the keeping of any specified bird that has been kept as a pet immediately before 13 February 2006.

(3) The Director may issue an exemption permit only if –

(a) evidence to his satisfaction is furnished to establish that the relevant specified bird has been kept as a pet immediately before 13 February 2006; and

(b) he is satisfied that the total number of specified birds (including the relevant specified bird) kept in or on the premises where the relevant specified bird will be kept does not exceed 20.

(4) The Director may impose such conditions as he sees fit in respect of an exemption permit.

(5) The Director may revoke an exemption permit if any condition imposed in respect of the exemption permit under subsection (4) has been contravened.

(6) A person who, for the purpose of obtaining an exemption permit, furnishes any evidence or information which he knows or reasonably ought to know to be false or incorrect in a material particular commits an offence and is liable to a fine at level 3.”.”;

(i) by adding –

“5. Specified fees

Item 1(*b*) of Schedule 2 is amended by repealing “Poultry” and substituting “Specified birds”.”.

Clerk to the Legislative Council

xx March 2006

INTERPRETATION AND GENERAL CLAUSES
ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

**WASTE DISPOSAL ORDINANCE (AMENDMENT OF
FOURTH SCHEDULE) NOTICE 2006**

Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on [xx] March 2006.

RESOLVED that the Waste Disposal Ordinance (Amendment of Fourth Schedule) Notice 2006, published in the Gazette as Legal Notice No. 19 of 2006 and laid on the table of the Legislative Council on 8 February 2006, be amended, in section 2, by adding –

“(2A) The Fourth Schedule is amended by adding –

“13A. Any person who keeps poultry pursuant to a valid exemption permit issued under section 9A of the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation (Cap. 139 sub. leg. L).”.”.

Clerk to the Legislative Council

xx March 2006