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the Administration)

Panel on Food Safety and Environmental Hygiene

Minutes of Special Meeting
held on Tuesday, 7 February 2006 at 2:30 pm
in the Chamber of the Legislative Council Building

Members present : Hon Fred LI Wah-ming, JP (Chairman)
Hon WONG Yung-kan, JP (Deputy Chairman)
Hon Bernard CHAN, JP
Hon Andrew CHENG Kar-foo
Hon Tommy CHEUNG Yu-yan, JP
Hon Vincent FANG Kang, JP
Dr Hon Joseph LEE Kok-long
Hon Alan LEONG Kah-kit, SC
Dr Hon KWOK Ka-ki

Members attending : Hon LI Fung-ying, BBS, JP
Hon WONG Kwok-hing, MH

Member absent : Hon TAM Yiu-chung, GBS, JP

Public officers attending : Item I

Mrs Carrie YAU
Permanent Secretary for Health, Welfare and Food

Mr Vincent LIU
Acting Deputy Secretary (Food & Environmental Hygiene) /
Principal Assistant Secretary (Food & Environmental Hygiene) 2
Health, Welfare and Food Bureau

Mr Wallace LAU
Principal Assistant Secretary (Food & Environmental Hygiene) 1
Health, Welfare and Food Bureau

Mrs Stella HUNG
Director of Agriculture, Fisheries and Conservation

Dr Thomas SIT Hon-chug
Assistant Director (Inspection and Quarantine) (Ag)
Agriculture, Fisheries and Conservation Department

Dr Thomas TSANG
Consultant Community Medicine
(Communicable Disease)
Department of Health

Mr Edmond HO
Principal Environmental Protection Officer
(Waste & Water Science)
Environmental Protection Department

Mr C L KO
Chief Superintendent (Control Points Command)
Customs and Excise Department

Agenda item II

Mrs Carrie YAU
Permanent Secretary for Health, Welfare and Food

Mr Vincent LIU
Acting Deputy Secretary (Food & Environmental Hygiene) /
Principal Assistant Secretary (Food & Environmental Hygiene) 2
Health, Welfare and Food Bureau

Dr S P MAK
Deputy Director (Food and Public Health)
Food and Environmental Hygiene Department

Ms Annette LEE
Deputy Director (Environmental Hygiene)
Food and Environmental Hygiene Department

Dr Thomas TSANG
Consultant Community Medicine (Communicable Disease)
Department of Health

Agenda item III

Mrs Carrie YAU
Permanent Secretary for Health, Welfare and Food

Mr Vincent LIU
Acting Deputy Secretary (Food & Environmental Hygiene) /
Principal Assistant Secretary (Food & Environmental Hygiene) 2
Health, Welfare and Food Bureau

Dr S P MAK
Deputy Director (Food and Public Health)
Food and Environmental Hygiene Department

Clerk in Attendance : Mrs Constance LI
Chief Council Secretary (2)5

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Miss Betty MA
Senior Council Secretary (2)1

Ms Anna CHEUNG
Legislative Assistant (2)5

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I banning of backyard poultry keeping in Hong Kong
[LC Paper No. CB(2) 1042/05-06(01)]

The Chairman said that the special meeting was convened to discuss an urgent legislative proposal on banning backyard poultry keeping which would be gazetted on the following day, i.e. 8 February 2006.

2. Permanent Secretary for Health, Welfare and Food (PS(HWF)) briefed members on the Administration's plan to ban backyard poultry keeping activities. PS(HWF)

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said that the Executive Council had just approved before this meeting the gazettal of the Waste Disposal Ordinance (Amendment of Fourth Schedule) Notice 2006 and the Public Health (Animals and Birds) (Licensing of Livestock Keeping) (Amendment) Regulation on 8 February 2006, to ban backyard keeping of poultry. The term “poultry” included chickens, ducks, geese, pigeons and quails. The two pieces of subsidiary legislation would come into operation on 13 February 2006 and would be subject to negative vetting by the Legislative Council (LegCo). PS(HWF) advised that recent surveillance had detected H5N1 in different species of wild birds, which increased the risk of cross infection among live poultry reared at backyards of households. As the public health threat posed by backyard poultry keeping activities had become imminent, the Administration considered it necessary to stop backyard poultry keeping activities immediately. Following the coming into effect of the subsidiary legislation, illegal poultry keeping would be subject to a fine ranging from \$50,000 to \$100,000. PS(HWF) appealed to backyard poultry keepers to cease backyard poultry keeping activities in the next few days, i.e. before 13 February 2006.

3. PS(HWF) added that the Administration had stepped up enforcement against smuggling of poultry meat and poultry. Such smuggling activities were liable to a fine of \$50,000 and imprisonment of six months.

4. Mr WONG Kwok-hing said that while he supported banning backyard poultry keeping in Hong Kong, the current proposal was not comprehensive and was difficult to follow. For example, it would not be practicable for backyard poultry keepers to slaughter and consume all their poultry in just a couple of days. Moreover, if the poultry were already infected with H5N1 virus, slaughtering and consuming infected poultry would also spread the infection. Mr WONG also expressed concern about the inconsistencies in respect of the enforcement and sanctions against illegal poultry keeping under the two principal ordinances. Mr WONG suggested that the Administration should take stock of the backyard poultry being kept and make compensation to the owners for surrendering such poultry.

5. PS(HWF) responded that the Administration had considered the suggestion of providing compensation. The main consideration for not making compensation to affected backyard poultry keepers was to forestall delay in the surrender of poultry due to negotiations over the compensation payments, as the Administration did not have detailed information on the number and distribution of backyard poultry. The estimation that about 1 800 households were keeping backyard poultry was only based on the survey findings of the Census and Statistics Department (C&SD). PS(HWF) added that backyard poultry keeping was mainly for owners’ consumption and was not an economic activity. Since last week, the Administration had called on backyard farms and appealed to the villagers to cease keeping poultry. Though some of these households were reluctant to hand in their poultry initially, many of them were now willing to cooperate.

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6. PS(HWF) further said that the Administration was aware of the inconsistencies in respect of the enforcement and sanctions against illegal poultry keeping in the two principal ordinances. As some recent avian influenza outbreaks in backyard farms in other countries had resulted in human infection, the Administration considered it necessary to ban backyard poultry keeping activities immediately by way of subsidiary legislation. The Administration planned to remove the inconsistencies in legislation by amending the Public Health (Animals and Birds) Ordinance and other relevant Ordinances and Regulations at a later stage.

7. Ms LI Fung-ying declared that she was an indigenous resident of Sha Tau Kok village. Ms LI commented that it was unreasonable for the Administration to introduce and implement the legislative amendments with such short notice. She pointed out that some villagers had reared chickens in their backyard for private consumption or for sale to other villagers, and this was an economic activity. The legislative measure to ban such activities would cause economic loss to these people. It would be unreasonable to ban all backyard poultry keeping activities just for the sake of administrative convenience. She considered that the crux of the problem was whether the poultry keeping method was safe or not. She suggested the Administration to consider other options, for example, culling all backyard poultry within a radius of 5km area from the backyard farm where the poultry were tested positive for H5N1.

8. PS(HWF) explained that there was an imminent need to ban backyard poultry keeping in view of the recent human infection cases caused by backyard poultry in other places. She pointed out that unlike licensed farms, there was no biosecurity arrangement or systematic vaccination for backyard poultry to prevent the outbreak of avian influenza, and it would be too late to take segregation measures after confirmation of H5N1 infection in backyard poultry. She stressed that it was Government's responsibility to take precautionary measures to protect public health.

9. Assistant Director of Agriculture, Fisheries and Conservation (AD/AFCD) added that according to reports, many avian influenza outbreaks in poultry started in backyard farms where there were little or no effective means to prevent wild birds from direct contacts with domestic poultry. AFCD's recent surveillance had detected H5N1 in different species of wild birds which increased the risks of cross infection with live poultry reared at backyards of households where there was no biosecurity arrangement.

10. Mr Tommy CHEUNG expressed support for the legislative amendments as he had previously urged the Administration to take action to address the problem posed by backyard poultry farming. Mr CHEUNG said that he had no strong views on the proposal of providing compensation to individual households who kept live poultry just before the gazettal of the legislative amendments. Mr CHEUNG said that in view of the grave concern expressed by backyard poultry keepers, the Administration might consider allowing the keeping of a few live domestic chickens provided that the

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chickens must be vaccinated against H5 virus. Mr CHEUNG asked whether it would be an offence for a person to sell live chickens at retail market under the legislative proposal.

11. AD/AFCD said that vaccination alone was insufficient to prevent outbreaks of avian influenza. He pointed out that biosecurity measures and farm surveillance were also necessary to prevent outbreaks of avian influenza.

12. PS(HWF) said that under the legislative amendments, poultry retailers were “exempt person” and they would not commit an offence for selling live poultry at retail markets.

13. Mr Tommy CHEUNG enquired if live poultry retailers would be required to prevent their customers from taking away the live poultry brought from their stalls. Acting Deputy Secretary for Health, Welfare and Food (Food and Environmental Hygiene) (DS(FEH)(Ag)) said that under the legislative amendments, it would be an offence for a person to keep a live chicken in his premises. The Administration was seeking legal advice on whether it would be an offence for a person to carry live chickens back home after buying live chickens from retail outlet. PS(HWF) appealed to the public not to bring live chickens back home, as keeping poultry at home would be an offence under the legislative amendments.

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14. The Chairman advised that as the House Committee would consider at the next meeting on 10 February 2006 whether a subcommittee should be formed to study the subsidiary legislation, the Administration should provide the legal advice in writing before 10 February 2006. Mr Vincent FANG shared a similar view and said that the Administration should explain clearly to the poultry retailers their legal responsibility before the legislation came into effect.

15. Mr Andrew CHENG said that Members belonging to the Democratic Party supported the Administration’s decisive action to ban backyard poultry keeping in order to safeguard public health. Mr CHENG considered that the Administration should be consistent in its practice on providing compensation to persons affected by public policies. He pointed out that compensation had been provided to poultry farmers if their chickens were culled as a result of avian influenza outbreaks. He asked whether the Administration would consider providing compensation to owners of backyard poultry who surrendered their poultry before 13 February 2006.

16. PS(HWF) reiterated that the Administration had given careful consideration to the issue and decided that no compensation would be provided to owners of domestic poultry, so that the banning of backyard poultry farming could take effect immediately. Owners of domestic poultry were strongly urged to dispose of or surrender their poultry before the legislation came into effect.

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17. Mr Andrew CHENG said that some owners of racing pigeons had expressed grave concern that pigeon keeping would also be banned under the legislation. Some owners had indicated that they would release their pigeons and poultry instead, and such acts would increase the risk of cross infection among local birds and pose threat to public health. Given that there were reports of birds other than pigeons infected with H5N1, Mr CHENG considered that the Administration should consider whether other birds should be included in the legislation.

18. Director of Agriculture, Fisheries and Conservation (DAFC) said that AFCD had met with the racing pigeon associations on 6 February 2006, and explained to them the arrangements for banning backyard poultry keeping activities. DAFC said that owners of racing pigeons could apply for an exhibition licence if they wished to continue keeping racing pigeons. As for regulation of birds other than poultry, PS(HWF) said that imported birds were already subject to the inspection and quarantine requirements. The Administration had also stepped up surveillance of pet birds sold at the Bird Garden.

19. Mr Vincent FANG supported the Administration taking swift action to reduce the risk of cross infection of wild birds with live poultry reared at backyards. However, he expressed concern about the likely increase of poultry smuggling activities after the legislation came into effect. He asked whether the Administration would step up anti-smuggling actions at the border. He also asked whether the Administration would provide compensation to owners of domestic poultry if they could not consumed all their poultry before 13 February 2006.

20. PS(HWF) said that the Administration would strengthen publicity on the new legislation, and step up enforcement actions against poultry smuggling activities across the border. She stressed that the Administration would not provide compensation for the domestic poultry surrendered.

21. Mr WONG Yung-kan said that Members belonging to Democratic Alliance for the Betterment and Progress of Hong Kong supported banning backyard poultry keeping activities. Mr WONG agreed that there was higher risk in backyard poultry keeping activities because unlike licensed farms, there was no biosecurity arrangement or systematic vaccination for backyard poultry to prevent outbreaks of avian influenza. He further said that even if compensation was to be provided, the amount of compensation would not be significant given the limited number of domestic poultry involved. However, Mr WONG expressed concern about the illegal poultry importation activities across the border. He urged the Administration to improve communication with the Mainland authorities to step up enforcement against such illegal activities. Mr WONG further asked whether the Administration would seek expert advice on how to deal with the risk of wild birds spreading the H5N1 virus.

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22. PS(HWF) responded that the Administration had maintained close and direct communication with the Mainland authorities regarding enforcement against poultry smuggling activities and the contingency measures in case of an avian influenza outbreak. PS(HWF) added that there would be increased risk of cross infection among wild birds and live poultry as migratory birds would fly across Hong Kong in these few months. The Administration would take necessary measures to prevent wild birds from direct contacts with poultry.

23. Dr KWOK Ka-ki said that some members had urged the Administration to ban backyard poultry keeping activities at previous meetings. Dr KWOK supported the legislative amendments but expressed concern about its enforceability. Noting that some owners of backyard poultry had said that they would not surrender their backyard poultry, he asked whether the Administration would patrol all households keeping backyard poultry after the legislation came into effect.

24. PS(HWF) agreed that the effectiveness of the legislative amendment depended on the cooperation of owners of domestic poultry. The Administration would step up publicity to remind the public to surrender their backyard poultry with the legislative amendment coming in effect. PS(HWF) said that AFCD had started visiting the villages a week ago and allowed reasonable time for affected households to dispose of or surrender their domestic poultry. To enforce the new legislation, an inter-departmental action group had been formed, and patrol teams had started their patrol actions in Sha Tau Kok.

25. DAFC added that it was estimated that about 750 villages and 350 squatters were located in the livestock waste control area. It would take about five to six weeks to patrol these areas. AFCD was considering deploying more resources for the purpose.

26. Mr Alan LEONG asked whether a person who had a Livestock Keeping Licence before 1994 for keeping not more than 20 birds in a livestock waste restriction area could continue to have such a licence. Mr LEONG further asked whether the legislative amendments would have the effect of banning backyard poultry keeping activities in urban area, as the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation (Cap. 139L) was applicable to livestock waste control area only (i.e. mainly rural area).

27. DS(FEH)(Ag) explained that the subsidiary legislation sought to amend Cap. 139L and the Waste Disposal Ordinance. Under the existing legislation, those keeping 20 or less poultry were not required to apply for a licence. Licences would be granted to those keeping 20 or more poultry in the livestock waste restriction areas (mainly new town) and livestock waste control areas (mainly rural areas) subject to the legislative requirements being met. DAFC and Director of Environmental Protection would not grant licences to those who wished to keep poultry in livestock waste prohibition area (mainly urban area). DS(FEH)(Ag)

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further explained that the legislative amendments would have the effect of banning backyard poultry keeping throughout Hong Kong, i.e. livestock waste control area, livestock waste restriction area and livestock waste prohibition area. He agreed to provide a written response to the concerns raised by Mr LEONG.

28. Mr Alan LEONG asked whether keeping of racing pigeons would be allowed under the legislative amendment. DAFC advised that owners of racing pigeons could apply for the “animal/bird exhibition licence” under the Public Health (Animals and Birds) (Exhibitions) Regulations. The licence was presently issued for keeping of animals and birds for the purpose of exhibition, e.g. circus, amusement parks, etc. DAFC further said that the Administration had explained to pigeon keepers and advised them to file applications as early as possible.

29. The Chairman expressed support for the legislative amendments. Noting that recent surveillance had detected H5N1 in different species of wild birds including non-migratory birds, he asked whether it meant that the virus had spread among local birds. The Chairman also asked about the timetable for introducing the Amendment Bill to rectify the inconsistencies in respect of the enforcement and sanctions against illegal poultry keeping in the two principal ordinances. He also expressed concern about the enforcement against illegal importation of poultry across the border, in particular in the vicinity of Chung Ying Street.

30. PS(HWF) agreed that the discovery of H5N1 in different species of wild birds indicated a higher risk of avian influenza outbreaks. The Administration would conduct further studies and seek expert advice on the findings. She said that the surveillance of wild birds in Hong Kong was more stringent than other places, e.g. over 200 samples were collected from wild birds for testing in one week, as compared to the testing of 100 samples in a year in the United Kingdom. PS(HWF) further said that the Administration planned to introduce the Amendment Bill into LegCo within 2006.

31. Chief Superintendent (Control Points Command)/Customs and Excise Department said that Customs and Excise Department (C&ED) had conducted joint operations with AFCD, Food and Environmental Hygiene Department (FEHD) and the Police at the boundary control points against illegal importation of poultry. As a result of the stepped up actions, an increased amount of smuggled poultry and poultry meat was seized. The Police had deployed more manpower to man all the exits in Chung Ying Street.

32. Mr Tommy CHEUNG suggested that the Administration could consider setting up rewards for reports or intelligence on illegal importation of poultry and poultry meat across the border.

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33. Mr Tommy CHEUNG asked whether the Administration would issue licences for backyard poultry keepers to rear chickens if they could prove that they had been keeping domestic poultry for a long period. Mr CHEUNG also sought clarification on the definition of “keep” in the proposed subsidiary legislation, and whether it would be an offence for a person to keep a live chicken bought from retail outlet for some time in his premises before killing it.

34. PS(HWF) said that as the risk of infection of H5N1 was much higher in chickens than in pigeons, the Government had no intention to issue new licences for rearing chickens. DS(FEH)(Ag) supplemented that the term “keep” was defined in the legislation as including “breed, house, tend, look after or control”. It would be an offence for a person to keep a live chicken in his premises.

35. Mr WONG Yung-kan said that as unlicensed chicken farms were found during recent surveillance of AFCD, he urged the Administration to step up enforcement against such illegal activities which posed threat on public health. Mr WONG further said that there were increasing number of migratory birds moving from the Mainland and resided in Hong Kong due to the infrastructure projects in the Mainland. Such migratory birds not only ate up fish kept in fish ponds, but also increased the risk of cross infection with local live poultry. Mr WONG urged the Administration to improve communication with the Mainland about taking environmental protection measures in the Mainland, so as to prevent a large number of migratory birds from settling in Hong Kong.

36. DAFC said that the Administration would step up patrol against unlicensed farms. She also appealed to the public to report such illegal activities and not to feed wild birds. She added that AFCD staff would also appeal to fishermen not to rear chickens near fish ponds.

37. In concluding the discussion, the Chairman said that the Administration should provide its responses on outstanding issues before the House Committee considered the subsidiary legislation at its meeting on 10 February 2006.

(Post-meeting note : The Administration’s response were issued to members vide LC Paper No. CB(2)1083/05-06 on 9 February 2006.)

II Increase in food poisoning incidents

[LC Paper No. CB(2) 1042/05-06(02)]

38. Referring to paragraph 2 of the Administration’s paper, the Chairman asked the Administration to provide a breakdown of food poisoning incidents in 2004 and 2005 by type of cases.

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Admin 39. Consultant Community Medicine (Communicable Disease)/ Department of Health (CCM/DH) said that about 50% to 60% and 60% of food poisoning cases occurred in food premises in 2004 and 2005 respectively. He would provide the breakdown of food poisoning incidents in 2004 and 2005 by type of cases after the meeting. CCM/DH further said that an increase in food poisoning cases occurred in food premises was partly a result of more people dining out nowadays. Moreover, medical practitioners were now more vigilant in reporting food poisoning cases to the Centre for Health Protection.

(Post-meeting note : The supplementary information provided by the Administration was issued to members vide LC Paper No. CB(2) 1786/05-06(01) on 20 April 2006.)

40. Mr WONG Kwok-hing said that the recent food poisoning cases relating to “Poon Choi” produced by a food supplier in Yuen Long, which affected hundreds of people, had aroused public concern about the system of inspections to food premises. Mr WONG asked whether the food premises concerned had appointed a Hygiene Manager or Hygiene Supervisor to ensure safe and hygienic operation of the food business, and whether FEHD would reduce the frequency of inspections to food premises where a Hygiene Manager or Hygiene Supervisor had been appointed. Mr WONG further asked about the causes of food poisoning cases relating to consuming “Poon Choi”.

41. PS(HWF) explained that as “Poon Choi” contained numerous ingredients and involved complicated preparation steps, it was considered as high-risk food. If “Poon Choi” was not stored at appropriate temperature, there would be proliferation of bacteria to levels hazardous to human health. Moreover, consumption of “Poon Choi” without thorough reheating could result in food poisoning. PS(HWF) said that in view of the potential hazards of “Poon Choi” and its increasing popularity, the Administration had stepped up publicity to urge the consumers to pay particular attention to the food safety of “Poon Choi”.

42. Deputy Director (Environmental Hygiene)/Food and Environmental Hygiene (DD(EH)/FEHD) supplemented that all food premises which produced “Poon Choi” were subject to the same inspection system, and they were required to comply with the relevant licensing requirements/conditions as any other licensed food premises. At present, FEHD conducted inspections to all licensed food premises in accordance with the risk-based inspection system. The Hygiene Manager and/or Hygiene Supervisor Scheme was to reinforce rather than to substitute the existing inspection system. DD(EH)/FEHD said that the recent food incidents relating to “Poon Choi” were under investigation, and the results were pending.

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43. Mr Tommy CHEUNG said that the appointment of Hygiene Manager and/or Hygiene Supervisor could not ensure safe and hygienic operation of food business. Mr CHEUNG said that the record of 975 food poisoning outbreaks affecting about 3 500 persons should be analysed in the light of the number of people dining out during the year. Mr CHEUNG asked the Administration to confirm the number of persons affected in the recent “Poon Choi” incident.

44. CCM/DH responded that most of affected persons consumed the problematic “Poon Choi” produced on 29 January 2006. Some of the affected persons were located by DH through contact tracing. CCM/DH said that DH had verified each of the reported case by taking into account the volume and types of food consumed, the exhibited symptoms, incubation period, and also other evidence from the epidemiological perspective. So far, vibrio parahaemolyticus was found in the stool of three affected persons.

45. PS(HWF) said that the Administration would see whether C&SD had conducted survey on the dining out frequency of Hong Kong and would provide such statistics, if available.

46. Mr WONG Yung-kan asked whether there were guidelines on the consumption of “Poon Choi”. He said that reheating “Poon Choi” thoroughly before consumption was not sufficient. If “Poon Choi” was not stored at the appropriate temperature during production, transportation or before consumption, there would be proliferation of bacteria in “Poon Choi”. Mr WONG considered that FEHD should conduct thorough investigation with a view to identifying the causes for these food poisoning reports, especially the step(s) for preparation, the ingredients and the facilities/equipment used for food preparation.

47. Deputy Director (Food and Public Health)/FEHD (DD(F&PH)/FEHD) agreed that the steps for preparation of “Poon Choi” were complicated and that improper handling in any one step could result in food poisoning. Therefore, FEHD had published comprehensive guidelines, leaflets and articles on safe production and consumption of “Poon Choi”, organised workshops for “Poon Choi” suppliers involved in the recent food incidents and met with the trade to discuss ways to improve food safety of “Poon Choi”. DD(F&PH)/FEHD said that the “Poon Choi” supplier involved in the recent food incidents had attended one of such meetings. DD(F&PH)/FEHD further said that FEHD had inspected the food premises concerned twice after the incidents to ensure its compliance with the licensing requirements and conditions. She added that the food premises concerned would be allowed to re-open only when FEHD was fully satisfied that the immediate health hazard at the premises had been eliminated.

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48. Dr KWOK Ka-ki noted that FEHD had since 2004 organised promotion and education programmes on “Poon Choi” for both the trade and the general public, and also implemented the Hygiene Manager and Hygiene Supervisor Scheme since 2005. Dr KWOK asked why there was still a cluster of food poisoning cases related to “Poon Choi” recently, and whether the Administration had assessed the effectiveness of the Hygiene Manager and Hygiene Supervisor Scheme. Dr KWOK also asked about the number of inspections to food premises that produced “Poon Choi”, and what remedial actions had been taken after the recent incidents.

49. DD(EH)/FEHD said that the Hygiene Manager and Hygiene Supervisor Scheme had been launched for about nine months since May 2005 and the Administration would keep the effectiveness of the Scheme under review. If necessary, the Administration might consider extending the duration of training courses for Hygiene Managers and Hygiene Supervisors, and requiring attendance of refresher courses after a lapse of period of time. DD(EH)/FEHD further said that as a number of restaurants produced “Poon Choi” in addition to their normal range of food on a seasonal basis, FEHD did not have ready statistics on food premises that produced “Poon Choi”. In 2005, FEHD had conducted over 200 000 inspections to food premises, and “Poon Choi” was regarded as high-risk food under the inspection system. She added that food premises would be subject to enforcement actions for breaches of the legislative and licensing requirements/conditions.

50. Responding to the Chairman, DD(EH)/FEHD said that the “Poon Choi” supplier involved in the recent incidents had obtained the provisional food business licence in May 2005 and a food business licence in November 2005. The supplier concerned had a satisfactory record in the past.

III Labelling requirements for prepackaged food and the monitoring system
[LC Paper No. CB(2) 1042/05-06(03)]

51. The Chairman said that there was wide public concern about the recent reports that some prepackaged food was still being sold at retail markets after expiry of the “use by” date or “best before” date.

52. Mr WONG Kwok-hing commented that despite the media reports that some retail markets still sold prepackaged food after expiry of the “use by” date or “best before” date, the Administration did not seem to have taken any follow-up actions. He considered that there were grey areas in the existing legislation, as the sale of prepackaged food beyond the “best before” date was not an offence if the food concerned did not pose a risk to health. However, he noted that the Administration had also not taken adequate enforcement against the sale of food after the “use by” date. Mr WONG urged the Administration to amend the legislation regarding the use of “use by” or “best before” date on the labels of prepackaged food and increase the penalty for non-compliance, in order to achieve greater deterrence.

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53. DD(F&PH)/FEHD explained that the sale of food after the “use by” date was an offence under existing legislation, but the sale of prepackaged food after the “best before” date was not an offence. The “best before” date was to indicate the period when the food quality was guaranteed, while the “used by” date guaranteed the safety of food before a certain date. This principle was widely adopted in many countries. On the suggestion of amending the legislation regarding the use of “use by” or “best before” date on the labels of prepackaged food, the Administration would need to discuss with the food industry. DD(F&PH)/FEHD further said that regular inspections of food labels were now being carried out at retail outlets to ensure compliance with the statutory requirements on durability indication. In 2005, FEHD had inspected more than 50 000 food labels and instituted about 80 prosecutions against non-compliance with the food labelling requirements. She added that all complaints on food labels, including the recent findings of Kwai Tsing District Council, would be followed up by FEHD.

54. Dr KWOK Ka-ki commented that there were loopholes in the existing system whereby food manufacturers could choose to use “best before” date to indicate the durability of prepackaged food. To remove such grey area in the legislation and safeguard public health, Dr KWOK asked whether the Administration would review and amend the legislation.

55. DD(F&PH)/FEHD said that it was the responsibility of food manufacturers to inform consumers the durability periods of their food products. It was unlikely that food manufacturers and distributors would give an unduly long durability period for highly perishable food products such as milk, as the food would have deteriorated and become unfit for human consumption before the expiry date. The food trade would choose to use “best before” date and “use by” date according to the nature of food. If amendment was to be made to the legislation on the durability indication, the Administration would need to make reference to the international practice and discuss with the food industry the impact on the trade. The Administration would revert to the Panel if legislative amendments were proposed.

56. PS(HWF) added that although the sale of prepackaged food beyond the “best before” date was not an offence, food traders should adopt good management practices and remove such food from their shelves, in order to uphold their reputation as a responsible food seller. PS(HWF) said that the use of “best before” date was widely adopted in many countries. If amendments were to be made to the labelling requirements on durability indication, some overseas food suppliers might decide not to supply food products to Hong Kong which would reduce the choices of consumers.

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57. Responding to Dr Kwok Ka-ki's enquiry about the international practice on food labelling requirements on durability indication, DD(F&PH)/FEHD said that the durability indication of prepackaged food by "use by" date and "best before" date was in line with the classification of Codex Alimentarius Commission and adopted in most countries, notably the European Union countries, Australia and New Zealand.

58. Mr WONG Yung-kan commented that the Administration had not taken any follow-up action on the survey findings of the Democratic Alliance for the Betterment and Progress of Hong Kong and some district organisations regarding the sale of prepackaged food beyond the expiry date. Enforcement action was taken against the sale of such food only when the media had widely reported the problem. He considered that the Administration should step up its enforcement actions to allay public concern about the safety of such food products.

59. PS(HWF) assured members that the Administration would follow up all complaints concerning the sale of food beyond the expiry date, irrespective of the source of such complaints. DD(F&PH)/FEHD said that in 2004 and 2005, the Administration had instituted 50 prosecutions against the sale of food beyond the expiry date. She explained that under Schedule 3 to the Food and Drugs (Composition and Labelling) Regulations, any person who sold any food after the "use by" date committed an offence and was liable to a fine of \$50,000 and to imprisonment for six months. While the sale of food beyond the "best before" date was not an offence, if it was found that the food had deteriorated and was unfit for human consumption, the Administration could take enforcement action for sale of unfit food under section 54 of the Public Health and Municipal Services Ordinance, and the penalty was a fine up to \$50,000 and six-month imprisonment.

60. Mr Tommy CHEUNG agreed with PS(HWF) that imposing a statutory requirement for marking the "best before" on food labels could result in reduced food choices. Referring to the 50 prosecutions instituted against the sale of food beyond the expiry date in 2004 and 2005, Mr CHEUNG asked whether inspections of food labels, including the sale of food beyond "best before" date, were included under the regular food surveillance programme.

61. DD(F&PH)/FEHD responded that regular inspections of food labels to enforce compliance with the food labelling requirements were carried out at retail outlets, which was separate from the regular food surveillance programme. In 2004 and 2005, FEHD had inspected more than 100 000 food labels. Apart from prosecutions instituted against other breaches of the statutory labelling requirements of prepackaged food, 50 prosecutions were instituted against the sale of prepackaged food beyond the "use by" date.

62. Mr Vincent FANG asked whether FEHD would examine the quality of food as the "best before" date was determined by the food manufacturers.

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63. DD(F&PH)/FEHD said that while food tests would also be conducted for prepackaged foods showing the “best before” date, priority was given to those labels with “use by” date because of resource constraints. Enforcement action would be taken against the sale of food that had deteriorated and was unfit for human consumption.

64. The Chairman said that it was reported that the supermarket chains had put those prepackaged food beyond the “best before” date on bargain sale. He asked whether FEHD would conduct inspections on such food.

65. DD(F&PH)/FEHD said that if during regular inspections of food labels, FEHD staff found the sale of prepackaged food beyond the “best before” date, the store managers would be advised not to do so.

66. The Chairman said that many countries had adopted both the “use by” date and “best before” date for their food labels. He considered that food traders which sold food beyond the “best before” date gave a very bad impression to the public that they had little regard to the safety and quality of food sold to consumers. He urged the Administration to step up actions to ensure compliance of the food labelling requirements.

67. There being no other business, the meeting ended at 4:37 pm.

Council Business Division 2
Legislative Council Secretariat
30 June 2006