

LEGISLATIVE COUNCIL BRIEF

**Waste Disposal Ordinance (Amendment of Fourth Schedule)
Notice 2006
(Cap. 354)
Public Health (Animals and Birds)(Licensing of Livestock Keeping)
(Amendment) Regulation 2006
(Cap. 139L)**

BANNING OF BACKYARD POULTRY KEEPING IN HONG KONG

INTRODUCTION

At the meeting of the Executive Council on 7 February 2006, the Council ADVISED and the Chief Executive ORDERED that –

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- (a) under section 37 of the Waste Disposal Ordinance, the Waste Disposal Ordinance (Amendment of Fourth Schedule) Notice 2006, at Annex A, should be made; and
 - (b) under section 3 of the Public Health (Animals and Birds) Ordinance, the Public Health (Animals and Birds)(Licensing of Livestock Keeping) (Amendment) Regulation 2006, at Annex B, should be made.
- B

2. Both subsidiary legislation come into operation on 13 February 2006 upon gazettal on 8 February 2006. They will be subject to negative vetting by the Legislative Council

JUSTIFICATIONS

3. 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 to prevent wild birds (which could be infected with avian influenza viruses) from direct contacts with domestic poultry.

4. In Hong Kong, the law provides exemptions for any person who owns or keeps no more than 20 poultry in or on his premises. Hence there are

households in Hong Kong keeping poultry without licence or authorisation. 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. The public health threat posed by such backyard poultry keeping activities has become extremely imminent. Recent surveillance has detected H5N1 in different species of wild birds which increase the chance of cross infection with live poultry reared at backyards of households. Unlike licensed farms, there is no biosecurity arrangement nor systematic vaccination for poultry to prevent the outbreak of avian influenza. Since 2 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 reduce such backyard poultry keeping activities. Many villagers refused to hand in their poultry and the government has no legislative power to stop such backyard poultry keeping activities.

5. We need to stop backyard poultry keeping activities immediately to reduce the risk of having poultry infected with avian influenza. The straightforward approach is to remove 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. 139L) and sections 15, 15A and 15AA* of the Waste Disposal Ordinance (Cap. 354). Such legislative amendments would have the effect of banning backyard poultry keeping in Hong Kong.

6. We note that there are inconsistencies in respect of the enforcement and sanctions against illegal poultry keeping in the Public Health (Animals and Birds) Ordinance, which relates to the public and animal health dimension with enforcement actions being taken by AFCD, and the Waste Disposal Ordinance which targets at the waste disposal aspect of livestock keeping activities, amongst others. It is our intention to remove such inconsistencies by amending Public Health (Animals and Birds) Ordinance (the primary Ordinance) and, where necessary, other relevant Ordinances/Regulation but such amendment process would likely be time consuming. We are of the view that the immediate need to ban backyard poultry keeping activities takes precedence and we should proceed with amending the subsidiary legislation for this to take immediate effect. Our target is to introduce an amendment Bill into the legislature within 2006 to achieve consistency, where necessary.

* Sections 15, 15A, 15AA refer to livestock waste control area (mainly rural area), livestock waste restriction areas (mainly new town) and livestock waste prohibition area (mainly urban area).

Enforcement

7. We estimate there are about 1,800 households keeping several thousand poultry which requires disposal either by the households themselves or through voluntary surrender to the public authorities. A new Announcement of Public Interest message is being broadcast recently to remind the public to surrender their poultry with the new amendment legislation soon in force. Patrol teams will be formed targeted at rural areas to ensure effective enforcement of the new law.

THE AMENDMENT LEGISLATION

8. The Chief Executive in Council exercised his power under section 37 of Cap. 354 to delete items 7 and 8(b) of the Fourth Schedule to Cap. 354, by notice published in the Gazette. As a result, any person who owns or keeps not more than 20 poultry in or on his premises, will not be exempted from the licencing requirement under the Public Health (Animals and Birds)(Licensing of Livestock Keeping) Regulation (see Annex A). Furthermore, to disallow backyard poultry keeping, the Public Health (Animals and Birds)(Licensing of Livestock Keeping) Regulation has been amended to the effect that DAFC shall not grant licences to those keeping 20 or less poultry in livestock waste control areas (see Annex B).

9. The Public Health (Animals and Birds)(Licensing of Livestock Keeping)(Amendment) Regulation 2006 and the Waste Disposal Ordinance (Amendment of Fourth Schedule) Notice 2006 shall come into operation on 13 February 2006. After the effective date, the relevant authorities may seize poultry kept by any person in or on any premises in a livestock waste control area without a licence. Under the Waste Disposal Ordinance, EPD may seize poultry kept in Hong Kong in contravention of the relevant provisions of that Ordinance. Illegal poultry keeping in livestock waste control area under the Public Health (Animals and Birds)(Licensing of Livestock Keeping) Regulation will be subject to a fine of \$50,000 and illegal poultry keeping in livestock waste restriction and prohibition areas under the Waste Disposal Ordinance will be subject to a fine of \$100,000.

LEGISLATIVE TIMETABLE

10. The legislative timetable is as follows: -

Publication in the Gazette	8 February 2006
Tabling at LegCo	8 February 2006

Both subsidiary legislation will come into operation on 13 February 2006.

IMPLICATIONS OF THE AMENDMENT LEGISLATION

Basic Law and Human Rights Implications and Binding Effect

11. The Department of Justice advises that the amendment legislation are in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the binding effect of the relevant Ordinance.

Financial and Civil Service Implications

12. AFCD and EPD will take enforcement action against illegal backyard poultry keeping activities using existing staff resources, before Cap. 139 is amended later in 2006.

Economic Implications

13. The amendment legislation enhance public health safety and protects economic activities from being paralysed by the avian influenza risks.

Environmental Implications

14. The amendment legislation will not have any significant waste implications.

Sustainability Implications

15. The amendment legislation would help reduce the potential risk of an influenza outbreak and is in line with the sustainability principle of providing a living and working environment and pursuing policies which promote and protect the health and safety of the people of Hong Kong.

PUBLIC CONSULTATION

16. The Chairman and Deputy Chairman of the LegCo Panel on Food Safety and Environmental Hygiene (FSEH Panel) have urged the government to introduce legislation to ban backyard poultry keeping activities immediately. In view of the urgent need to ban backyard poultry keeping activities so as to reduce the risk of a local avian influenza outbreak, we have not conducted a formal exercise to consult the public on the amendment legislation.

PUBLICITY

17. A spokesman will be available to answer enquiries.

ENQUIRY

18. Enquiries should be directed to Mr Wallace LAU, Principal Assistant Secretary (Food and Environmental Hygiene)¹ (telephone number: 2973 8297) of the Health, Welfare and Food Bureau.

**Health, Welfare and Food Bureau
Agriculture, Fisheries and Conservation Department
Environmental Protection Department
7 February 2006**

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

(Made by the Chief Executive in Council under section 37 of the Waste Disposal Ordinance (Cap. 354))

1. Commencement

This Notice shall come into operation on 13 February 2006.

2. Exempt Persons

(1) Item 7 of the Fourth Schedule to the Waste Disposal Ordinance (Cap. 354) is repealed.

(2) Item 8 of the Fourth Schedule is repealed and the following substituted –

“8. Any person who owns or keeps in or on his premises in any livestock waste control area 1 pig, including, in the case of a sow, the unweaned litter of that sow.”.

(3) The Note to the Fourth Schedule is amended by repealing “paragraphs 7 and 8” and substituting “item 8”.

Clerk to the Executive Council

COUNCIL CHAMBER

2006

Explanatory Note

This Notice amends the Fourth Schedule to the Waste Disposal Ordinance (Cap. 354) so that a person who owns or keeps poultry of not more than 20 in number in or on his premises in any livestock waste prohibition area, livestock waste control area or livestock waste restriction area is no longer an exempt person under the Ordinance.

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

(Made by the Chief Executive in Council under section 3 of the Public Health (Animals and Birds) Ordinance (Cap. 139))

1. Commencement

This Regulation shall come into operation on 13 February 2006.

2. Power of Director to grant licence, etc.

(1) Section 4 of the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation (Cap. 139 sub. leg. L) is amended by adding –

“(2A) Without prejudice to subsection (2), where any premises in respect of which a licence is applied for are within a livestock waste control 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 the Public Health (Animals and Birds) (Licensing of Livestock Keeping) (Amendment) Regulation 2006 (L.N. of 2006);
- (b) no ex gratia payment for cessation of livestock keeping in or on the premises has been made by the Government after that commencement; and
- (c) the number of poultry, if any, to be kept in or on the premises under the licence will be more than 20.”.

- (2) Section 4(5) is amended –
- (a) in paragraph (a), by repealing “and”;
 - (b) by adding –
 - “(aa) the number of livestock (either pigs or poultry) that may be kept in or on the premises in respect of which a licence is granted; and”.

3. Revocation of licence

Section 8 is amended –

- (a) in paragraph (b), by repealing “or”;
- (b) by adding –
 - “(ba) the licensee has contravened any terms or conditions imposed under section 4(5); or”.

Clerk to the Executive Council

COUNCIL CHAMBER

2006

Explanatory Note

This Regulation amends the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation (Cap. 139 sub. leg. L) (“the Regulation”) to provide that the Director of Agriculture, Fisheries and Conservation shall not grant a licence for the keeping of livestock in or on any premises in a livestock waste control area unless he is satisfied that the number of poultry, if any, to be kept in or on the premises will be more than 20. Other related amendments are also made to the Regulation.