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**Paper for the House Committee meeting
on 20 October 2006**

**Report of the Subcommittee on Public Health
(Animals and Birds) (Exhibitions) (Amendment) Regulation 2006**

Purpose

This paper reports on the deliberation of the Subcommittee on Public Health (Animals and Birds) (Exhibitions) (Amendment) Regulation 2006.

Background

2. Following the coming into operation of the Waste Disposal Ordinance (Amendment of Fourth Schedule) Notice 2006 and the Public Health (Animals and Birds) (Licensing of Livestock Keeping) (Amendment) Regulation 2006 on 13 February 2006, backyard poultry keeping was banned in order to reduce the risk of an avian influenza outbreak among backyard poultry in Hong Kong.

3. As the definition of poultry stipulated in the relevant legislation covers, inter alia, pigeons, local pigeon racing activities would be significantly affected. The local pigeon racing owners appealed to the Administration for special consideration. Having regard to overseas experience and the veterinary assessment that the risk of an avian influenza outbreak in pigeons is low, the Administration considers that it would not be inappropriate to continue to allow the keeping of racing pigeons provided that the racing pigeons are being kept in accordance with the necessary biosecurity requirements which may be imposed by the Director of Agriculture, Fisheries and Conservation (DAFC) from time to time.

4. To tackle the problem from a public health perspective, the Administration has proposed to treat the racing pigeon activity as a form of exhibition such that an exhibition licence could be issued under the existing legislative framework. After reviewing the resources required for regulating exhibition of racing pigeons and traditional keeping and exhibition of animals and birds, e.g. in circus and amusement parks, as well as making reference to the full cost recovery principle, the

Administration proposes to revise the fee for a licence issued under the Public Health (Animals and Birds) (Exhibitions) Regulations (Cap. 139 sub. leg. F) (the Principal Regulations).

The Amendment Regulation

5. The main aim of the Principal Regulations is to regulate the exhibitions of animals and birds so as to protect public safety and to ensure that the animals/birds involved in these exhibitions are being taken care of from animal welfare perspective. Under regulation 3 of the Principal Regulations, no person shall hold an exhibition of animals and birds to which the public are admitted on payment of a fee save under and in accordance with a licence granted or a permit issued under the Principal Regulations. The licence will be granted by DAFC for a period of 12 months at a fee of \$10,720.

6. The Administration has proposed to change the structure of the fee for a licence issued under the Public Health (Animals and Birds) (Exhibitions) (Amendment) Regulation 2006 (the Amendment Regulation) as follows –

- (a) if the total number of animals and birds does not exceed 20, the fee shall be \$2,720; and
- (b) if the total number of animals and birds exceeds 20, the fee shall be \$9,700 (as opposed to the original fee of \$10,720).

7. The Amendment Regulation has come into operation upon gazettal on 7 July 2006. It is subject to negative vetting by the Legislative Council (LegCo).

The Subcommittee

8. At the House Committee meeting on 21 July 2006, Members formed a Subcommittee to scrutinize the Amendment Regulation. Under the chairmanship of Hon Fred LI Wah-ming, the Subcommittee has held three meetings, including one meeting to receive views from deputations. The membership list of the Subcommittee is in **Appendix I**. The list of organizations and individuals who have provided views to the Subcommittee is in **Appendix II**.

9. To allow more time for the Subcommittee to examine the Amendment Regulation, the scrutiny period has been extended to 8 November 2006, by resolution of LegCo on 18 October 2006.

Deliberation of the Subcommittee

Withholding actions by the Administration pending deliberation of the Subcommittee

10. The Amendment Regulation has taken effect since the date of gazettal on 7 July 2006. Pursuant to the decision of the Subcommittee at its first meeting on 2 August 2006, the Chairman wrote to request the Administration to withhold the processing of licence applications from keepers of racing pigeons and taking enforcement actions against the keeping of racing pigeons, pending the deliberation of the Subcommittee.

11. The Administration has replied that when the legislation for banning the keeping of backyard poultry, including pigeons, came into operation on 13 February 2006, it has been entrusted with the duties to enforce the law. Since then, the Administration has come across cases where the place for keeping racing pigeons formed part of an illegal building structure. There were also cases where the keeping of racing pigeons violated the Deed of Mutual Covenant of some premises. The Administration has taken necessary enforcement action in these cases in order to protect public health and maintain environmental hygiene. Separately, the Administration has come across cases where an applicant has already fulfilled all necessary criteria under the Principal Regulations and is willing to pay the revised fee for the grant of an exhibition licence. The Administration finds no legal basis to withhold the grant of an exhibition licence.

Regulation of racing pigeons

Exhibition licence for animals and birds

12. In response to the Subcommittee, the Administration has explained the differences between the regulation of traditional animals/birds exhibitions such as circus, amusement parks and dog shows and that for keeping and exhibition of racing pigeons as follows –

- (a) the focus of traditional exhibition licence is on safeguarding the health and welfare of animals and birds kept for exhibition, with particular emphasis on their husbandry and veterinary requirements. The regulatory approach addresses a larger number/wide variety of animals and birds involved in a relatively larger area so as to ensure these animals and birds are kept in satisfactory condition; and
- (b) the licensing conditions for pigeons (including racing pigeons) cover matters such as biosecurity measures against contact with wild birds and prevention of nuisance to neighbourhood, etc. Each application usually involves a small number of birds housed within a single place.

13. The Administration has also advised that before the coming into operation of the Amendment Regulation, no exhibition licence had been issued to local racing pigeon owners under the Principal Regulations. However, licences have been granted for exhibitions at the following venues –

- (a) Hong Kong Jockey Club;
- (b) Hong Kong Ocean Park;
- (c) Hong Kong Country Club; and
- (d) Kardoorie Farm and Botanical Garden.

14. The legal adviser has requested the Administration to explain the legal basis for granting an exhibition licence to keepers of racing pigeons as the term "exhibition of animals and birds" is defined under the Principal Regulations to mean an exhibition of animals or birds to which the public are admitted on payment of a fee or other money consideration.

15. The Administration has explained that the mode of operation is that keepers of racing pigeons will "keep" and "exhibit" racing pigeons at the same place in accordance with the licensing requirement to be imposed by DAFC. Biosecurity requirements such as those set out in the Principal Regulations would also have to be complied with by the licensee. With the prior approval of DAFC, keepers of racing pigeons will arrange for exhibition of the racing pigeons (which will fly out of and back to the place of "keeping" and "exhibition") to the public for a fee or other money consideration. It is not difficult for the "exhibition" requirement to be met as the Principal Regulations have not stipulated specific requirement on the number of members of public who must attend the exhibition or the amount of admission fees which are payable by them.

16. Some keepers of racing pigeons have told the Subcommittee that according to information gathered from some overseas countries and places outside Hong Kong, there had not been reports of pigeons infected with avian influenza. They consider that racing pigeon activities should be treated as a sport in Hong Kong as in many overseas countries. They do not consider it appropriate for racing pigeon activities to be regulated by an exhibition licence which is meant for traditional large scale animals/birds exhibitions.

17. The Administration has pointed out that it is inaccurate to say that no pigeon had been found infected with avian influenza. The Administration has provided information on documented cases, both reported locally and outside Hong Kong, in which pigeons were found infected with H5N1 avian influenza, for reference of the Subcommittee. The Administration has advised that there are overseas research reports which confirm that pigeons are susceptible to avian influenza. In view of this, governments around the world have adopted measures to regulate pigeon racing

activities. The Standing Committee on the Food Chain and Animal Health of the European Union made a statement at its meeting in March 2006 that cited cases in some countries that proved pigeons were susceptible to avian influenza as grounds for advocating regulation of pigeon racing activities. It recommended, inter alia, that pigeons should be kept indoor and that pigeon racing activities might only be allowed after risk assessment by the competent authorities concerned.

18. The Administration has further advised that as Hong Kong had experienced a number of avian influenza outbreaks and avian influenza virus was found in a pigeon during the avian outbreak in Kowloon Park in December 2002, it is necessary to properly regulate pigeon racing activities in order to protect public health and safeguard environmental hygiene. The exhibition licence for animals and birds is considered the most appropriate licence for regulating racing pigeons under the existing legislative framework, i.e. Cap 139. To treat racing pigeon activities as a form of exhibition such that an exhibition licence could be issued would not only enable the existing racing pigeon community to continue to keep their pigeons, it also brings the keeping and exhibition of pigeons under proper biosecurity conditions as required by statute, such as measures against contact with wild birds and prevention of nuisance to neighbourhood.

19. Some members have requested the Administration to consider the grant of a Livestock Keeping Licence (LKL), instead of an exhibition licence for animals and birds, for the purpose of regulating racing pigeons.

20. The Administration has explained that under the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation (Cap 139. sub. leg. L), no person shall keep livestock (i.e. pigs, chickens, ducks, geese, pigeons and quail) unless he is exempted or granted a LKL. The LKL cannot be a substitute for exhibition licence for animals and birds in regulating pigeons. Under the terms of LKL, poultry may not leave the farms except for delivery to wholesale poultry market and poultry that has already left may not be returned to the farms to prevent avian influenza in case they become infected through contact with wild birds. Therefore, LKL is not appropriate for regulating racing pigeons which have to take frequent flying exercises. In fact, the Government has decided not to issue any new LKL when it launched the voluntary surrender scheme for local poultry farms in August 2005.

21. The Subcommittee remains of the view that it is inappropriate to issue a licence for animals/birds exhibitions for the purpose of regulating racing pigeon activities, and unreasonable for the Administration to regulate racing pigeons under the existing legislative framework for the sake of administrative convenience. The Subcommittee has requested the Administration to consider implementing a new regulatory regime for racing pigeons.

Treating racing pigeon activity as a sporting exhibition or contest

22. According to the LegCo Brief, from the legal perspective, exhibitions of racing pigeons are not "entertainment" within the meaning of the term in Schedule 1 to the Places of Public Entertainment Ordinance (Cap. 172), and therefore do not require a licence under the Ordinance. The legal adviser has requested the Administration to explain why racing pigeon activity is not considered to be within the meaning of the term "entertainment" which is defined to mean, inter alia, a sporting exhibition or contest.

23. The Administration has explained that according to information revealed by the racing pigeon groups, the "exhibition" of racing pigeons is a very unique activity which only appeals to a limited number of people. It mainly involves the keeping and training of pigeons to fly a specific route to and from a specific place. The time of exhibition is therefore rather short. It could hardly be regarded as "a sporting exhibition or contest" under paragraph 1(f) of Schedule 1 to the Places of Public Entertainment Ordinance (Cap. 172), the essence of which is to impose controls on the place of public entertainment where a large group of audience will be present, rather than the "activity" per se, and the main objectives of which are to safeguard public safety and ensure effective crowd control.

Licence fees

24. The Administration has advised that the licence fee under the Principal Regulations was \$10,720. Having made reference to the full cost recovery principle and taking into account the enforcement activities involved in regulating animals/birds as set out in **Appendix III**, the licence fee has been revised to \$2,720 if the number of animals and birds does not exceed 20, and \$9,700 if the total number of animals and birds exceeds 20.

25. An estate owners' committee which gave views to the Subcommittee on the Amendment Regulation considers that racing pigeon activities should be regulated by a licensing system so as to ensure that keepers of racing pigeons will comply with the biosecurity conditions under the legislation, thus reducing the risk of an outbreak of avian influenza. It objects the proposed two-level fee structure and considers that the original fee of \$10,720 should be maintained for an exhibition licence. It also objects the grant of any licence by DAFC to owners of multi-storey buildings for keeping racing pigeons as these pigeons pose environmental nuisance and health threat to the nearby residents. It suggests that DAFC should consult owners' committees and take into account their views before granting approval to such licence applications.

26. The racing pigeon groups point out that some overseas countries and places outside Hong Kong impose no fee or a nominal fee on racing pigeon activities which are promoted as a sport. As a token to support racing pigeon activities in Hong Kong, the Government should do the same.

27. The Subcommittee considers that the proposed licence fees are on the high side. Some members point out that the enforcement activities involved in regulating exhibition licences for racing pigeons should be different from that for traditional large scale animals/birds exhibitions. In addition, the percentage of increase in the second-level fee over the first-level fee is not commensurate with the scale of enforcement activities covered by the two set of fees, as provided by the Administration in **Appendix III**. Some members consider that the adoption of a threshold of 20 for the two-level fee structure appears to be arbitrary, and a single fee structure is easier to administer and more cost-effective. Some members consider that there is scope for lowering the licence renewal fees as a licensee who is successful in his application for renewal should have a good track record and frequent inspections by the relevant authorities may not be necessary.

28. The Administration has advised that the purpose of the Amendment Regulation is to revise the fee policy of the Principal Regulations with a view to setting two levels of fee to cater for different types of animals/birds exhibitions, so as to respond to the request of the racing pigeon groups for special consideration following the coming into operation of the ban on backyard poultry keeping in February 2006. Most of the additional workload generated from the Amendment Regulation will be absorbed by existing staff and does not require increase in manpower. The calculation of the proposed licence fees is based on the minimum manpower resources required for inspection and enforcement of the licensing conditions. Of the 187 applications received, 80% had applied for a licence for keeping less than 20 racing pigeons. As at 28 September 2006, 27 applicants were granted licences for keeping less than 20 racing pigeons and had paid the revised fee of \$2,720.

29. The Administration has explained that the threshold of 20 was stipulated in the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation (Cap. 139 sub. leg. L) and the Waste Disposal Ordinance (Cap. 354), i.e. a person keeping not more than 20 heads of poultry was not required to obtain a licence. However, total banning of backyard poultry keeping, including pigeons, has been in operation since 13 February 2006. As there are views in the community against the keeping of racing pigeons in multi-storey buildings or densely populated areas, the threshold has to be kept at a low number in order to balance public interest.

30. Despite the Administration's explanation, the Subcommittee remains of the view that the proposed licence fees are unreasonably high and has requested the Administration to consider lowering the fee levels.

31. In view of the concerns of the Subcommittee on the licence fee levels, the Administration has agreed to enlist the cooperation of applicants for exhibition licence by furnishing the requisite information, such as the number and size of cages, to the Agriculture, Fisheries and Conservation Department (AFCD) for processing. This will save the time AFCD staff spend on processing the applications and reduce the licence fee as a result. Pursuant to the change, the Administration proposes to

lower the exhibition licence fees for animals and birds as follows –

- (a) the licence fee for not more than 20 animals and birds to be lowered from \$2,720 to \$2,190; and
- (b) the licence fee for more than 20 animals and birds to be lowered from \$9,700 to \$7,790.

To implement the above fee revision, the Administration will prepare appropriate forms for applicants to submit the required information to AFCD to facilitate verification by the department.

32. The Administration has advised that subject to members' views, it will move a motion to amend the Amendment Regulation to effect the fee revision. If the motion is carried, the Administration will refund the difference between the old and new fees to those who have paid the old licence fees.

33. Although some members are still dissatisfied with the revised fees, they note that if LegCo repeals the Amendment Regulation, the original licence fee of \$10,720 under the Principal Regulations will be reinstated. While the Subcommittee has no objection to the Administration proceeding with the motion to effect the fee revision, it has requested the Administration to take follow up actions as set out in paragraph 34 below.

Follow up actions by the Panel on Food Safety and Environmental Hygiene

34. In response to the request of the Subcommittee, the Administration has agreed –

- (a) to undertake a study on the regulatory regime of racing pigeon activities in overseas countries/places (including those which had an outbreak of avian influenza in the past) and report the findings to the Panel on Food Safety and Environmental Hygiene in December 2006. The study will include information such as whether racing pigeon activities are regulated by a statutory licensing system and if so, the nature of the licence and the amount of fees payable;
- (b) to consider whether a new regulatory regime should be established for racing pigeon activities in Hong Kong, in the light of the study on overseas practices and in the context of an overall review of the licensing regime under Cap. 139, and report the outcome to the Panel on Food Safety and Environmental Hygiene in due course; and
- (c) to review the fees for application for an exhibition licence for animals and birds and licence renewal fees in the context of the general review

of Government's fees and charges, and report the outcome to the Panel on Food Safety and Environmental Hygiene in due course.

Amendment to Amendment Regulation

35. The Administration will give notice to move a motion to amend the Amendment Regulation to effect the fee revision as set out in paragraph 31 above at the Council meeting on 8 November 2006.

Advice sought

36. Members are invited to note the deliberation of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
19 October 2006

**Subcommittee on
Public Health (Animals and Birds) (Exhibitions)
(Amendment) Regulation 2006**

Membership List

Chairman Hon Fred LI Wah-ming, JP

Members Hon LEUNG Yiu-chung
Hon WONG Yung-kan, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon WONG Kwok-hing, MH
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon CHEUNG Hok-ming, SBS, JP

(Total : 8 Members)

Clerk Mrs Percy MA

Legal Adviser Mr Stephen LAM

Date 2 August 2006

《 2006 年公眾衛生(動物及禽鳥)(展覽)(修訂)規例 》小組委員會
Subcommittee on Public Health (Animals and Birds)
(Exhibitions) (Amendment) Regulation 2006

曾向委員會表達意見的團體/個別人士名單
List of organizations/individuals who have
submitted views to the Subcommittee

團體/個別人士名稱

Names of organizations and individuals

- | | |
|---------------|---|
| * 1. 全港養鴿人士代表 | |
| * 2. 香港賽鴿會 | The Hong Kong Racing Pigeon Association |
| * 3. 賞湖居業主委員會 | Sherwood Court Estate Owner's Committee |
- * 曾向小組委員會口頭申述意見的團體代表
Deputations who have made oral representations to the Subcommittee

Annex

Regulation of Animal/Bird Exhibition Licences by Agriculture, Fisheries and Conservation Department

Exhibition Licence for 20 or Less Animals/Birds

Site visit every 4 months

Take environmental swab sample every 4 months

3 regular inspections per year

1 surprise inspection per year

Veterinary inspection per year during yearly licence renewal

Exhibition Licence for more than 20 Animals/Birds

Site visit every 2 months

Take environmental swab sample every 2 months

6 regular inspections per year

2 surprise inspections per year

Veterinary inspection per year during yearly licence renewal

漁農自然護理署就動物/禽鳥展覽牌照的規管工作

為 20 隻或以下動物 / 雀鳥

而設的展覽牌照

每四個月實地視察一次

每四個月採集環境拭樣

每年三次定期檢查

每年一次突擊檢查

每年續牌時進行一次獸醫檢查

為 20 隻以上動物 / 雀鳥

而設的展覽牌照

每兩個月實地視察一次

每兩個月採集環境拭樣

每年六次定期檢查

每年兩次突擊檢查

每年續牌時進行一次獸醫檢查