

LEGISLATIVE COUNCIL BRIEF

The Secretary for Food and Health submits the following note for Members' information:

Title of the Note

Food Business
(Amendment) Regulation 2008

Date of Gazette

27 June 2008

LEGISLATIVE COUNCIL BRIEF

Public Health and Municipal Services Ordinance (Cap 132)

FOOD BUSINESS (AMENDMENT) REGULATION 2008

Introduction

In exercise of the power under section 56 of the Public Health and Municipal Services Ordinance (Cap. 132), the Director of Food and Environmental Hygiene (DFEH) has made the Food Business (Amendment) Regulation 2008 (“the Amendment Regulation”), at Annex, to require that there should be no live poultry at retail outlets overnight in order to protect public health and further reduce the risk posed by avian influenza.

Background and Justifications

2. Since 1998, the Government has put in place a comprehensive preventive and surveillance programme to reduce the risk of avian influenza outbreaks in Hong Kong. These measures included tightened biosecurity measures at local farms, enhanced import control and hygiene requirements for wholesale and retail markets, etc. In 2003, we introduced a vaccination programme for all local chicken farms and we also required all imported live chickens to be vaccinated against the disease. The World Health Organisation has publicly commented that our preventive and surveillance programme is one of the most advanced systems that they have seen.

3. However, these measures are not foolproof. The recent detection of H5N1 avian influenza virus in environmental swabs from four retail markets in Hong Kong on 7 and 11 June 2008 indicated that despite all the preventive and control measures that we have put in place, they are inadequate in containing the public health risks posed by avian influenza, especially at the retail level. Immediately following detection of the virus at the four retail markets, the Director of Agriculture, Fisheries and Conservation declared on 11 June 2008 all retail outlets where live poultry were sold as infected places and ordered the culling of all poultry in these retail outlets. We have also

decided to suspend temporarily live chicken imports from the Mainland for 21 days with effect from 11 June 2008, with reference to the guidelines of the World Organisation for Animal Health. At the same time, local farms would stop dispatching chickens to the market.

4. Whilst we are actively tracing the source of the virus, we may not be able to pinpoint any one particular reason to account for the detection of the virus in the retail markets. Whatever is the cause, the reality is we are still subject to the menace of avian influenza outbreak in Hong Kong. There is therefore an imperative need to enhance our ability to arrest any possible spread of avian influenza virus in Hong Kong in future, thereby reducing the risks of human infection of avian influenza.

5. Past experience has shown that the principal mode of transmission of the avian influenza virus from poultry to human is through contact with live poultry or their faeces. Hence, the most effective way to minimize the health risk posed by avian influenza is to reduce as much as possible the contact between human and live poultry.

No live poultry at the retail level overnight

6. Scientific research showed that when a chicken is infected by the avian influenza virus, there is an incubation period of one to five days when the virus would multiply to a sufficient number to be detectable in the excreta. If we require that there should be no live poultry at retail outlets overnight, the chicken will be slaughtered to avoid accumulation of virus in the environment of the retail outlets. Furthermore, prohibition of overnight stocking of live poultry at retail level will make it easier for the Administration to monitor whether there are smuggled chickens at the retail level. Retailers will be discouraged to sell smuggled chickens as any unsold chicken at the end of the day has to be slaughtered and the value of a dressed chicken is much diminished. We therefore propose to require all live poultry retailers to slaughter any live poultry in their premises by 8:00 p.m. each day. To allow adequate time for thorough cleansing and disinfection, we further require retail outlets to be free of any live poultry between 8:00 p.m. each day and 5:00 a.m. the next day. This has taken account of the opening hours and operational requirements of poultry retail outlets. Whilst this proposed new measure will have an adverse impact on the trade's operation, we consider it feasible and should be put in place if live poultry is allowed to be sold again at retail outlets.

7. We have considered other alternatives, such as increasing the markets rests days from two per month to once every week, to reduce the health

risks posed by avian influenza at the retail level. However, we consider that such measure is not an effective way to arrest the possible spread of avian influenza. In the avian influenza incident in June 2008, the second market rest day in May was 25 May 2008 whereas the environmental samples tested positive of H5N1 virus were collected on 3 June 2008, i.e. about one week from the market rest day. This indicated that merely increasing the number of market rest days to once per week might not be able to significantly reduce the amount of virus load in the environment. Besides, when a chicken is infected by avian influenza virus, it may only take a couple of days or less for the virus to multiply to a sufficient number to be detectable in its excreta. The close proximity between the chickens at the retail outlets and their excreta allow the rapid spread of avian influenza from one infected chicken to others. Similar incremental arrangement of increasing market rest days, for example twice a week, would not be sufficient to safeguard public health.

8. Apart from the no overnight stocking of live poultry, we will also enhance other preventive measures at the retail end. These include requiring the retailers to thoroughly cleanse and disinfect the retail premises every night and strict enforcement of existing measures like requiring retailers to wear protective gears. Not observing these requirements shall result in cancellation of the licence or tenancy.

9. In the wholesale market, we will closely monitor its daily throughput to ensure there is no over-stocking which poses a public health risk and environmental hygiene problem. We will liaise with the poultry importers and local farmers to appropriately adjust the number of poultry channelled to the wholesale market, if there is evidence to support that the live poultry trade has shrunk further because of this new requirement at the retail level and the reduction of retailer in the trade.

The Amendment Regulation

10. Live poultry (except those on a poultry farm or in a wholesale market) is listed as “restricted food” in Schedule 2 to the Food Business Regulation (Cap 132X), and the sale of which is prohibited save with DFEH’s written permission given under section 30 of Cap 132X.

11. A total of 469 permittees are given permission to sell live poultry, of which 260 are tenants of public markets run by the Food and Environmental Hygiene Department (FEHD) while the remaining 209 are holders of fresh provision shop licences issued by FEHD.

12. The Amendment Regulation provides that permittees with permission under section 30 of the Food Business Regulation to sell live poultry (including public market stall tenants and fresh provision shop licensees) must slaughter any live poultry remaining in their stalls/shops by 8:00 p.m. everyday. Moreover, live poultry would not be allowed at such premises from 8:00 p.m. to 5:00 a.m. daily. Offenders will be subject to cancellation of the permission, a maximum penalty of level 5 (i.e. a fine of \$50,000) and imprisonment for six months.

Legislative Timetable

13. The legislative timetable is as follows -

Publication in the Gazette	27 June 2008
Tabling in the Legislative Council and commencement of operation of the amendment regulation	2 July 2008

14. The amendment regulation will have to commence operation on 2 July 2008 because of public health reasons. We need to put in place this enhanced safeguard measure when live poultry is allowed to be sold at retail outlets again on that day. The 21-day period subsequent to the declaration of all retail outlets where live poultry were sold as infected places would end on 1 July. Subject to the poultry stalls and shops being properly cleansed and disinfected, the Director of Agriculture, Fisheries and Conservation shall declare the premises to be free from infection.

Public Consultation

15. Following the recent avian influenza incident in Hong Kong and finding itself difficult to adapt to the “no live poultry overnight” requirement, the live poultry retailers have expressed a strong wish for the Government to buy out their business so that they can leave the live poultry trade for good. Given the position of the retailers, the other traders in the live poultry trade will also be affected. Given the above, we are now negotiating a buyout package with all the different sectors of the live poultry trade. Provided around 90% of the retailers would leave the trade, we would offer a chance for local poultry framers, wholesalers, retailers, transporters and workers to take up the buyout package. We intend to seek funding approval from the Finance Committee of the Legislative Council on 4 July 2008 for the proposed buyout package.

Implications of the Proposal

16. The Amendment Regulation is in conformity with the Basic Law, including the provisions concerning human rights.

17. The Amendment Regulation will not affect the current binding effects of the existing provisions of the Cap. 132. Financial and civil service implications arising from the enforcement of the Amendment Regulation will be absorbed by FEHD through redeployment of existing resources.

Enquiry

18. Enquiries on this brief may be directed to Mr Francis HO, Principal Assistant Secretary (Food) 2 of the Food and Health Bureau, at 2973 8232 or Ms CHU Lan-ying, Assistant Director (Operations) 3 of the Food and Environmental Hygiene Department, at 2867 5288.

Food and Health Bureau
June 2008

**FOOD BUSINESS (AMENDMENT)
REGULATION 2008**

(Made by the Director of Food and Environmental Hygiene under section 56 of the Public Health and Municipal Services Ordinance (Cap. 132))

1. Commencement

This Regulation shall come into operation on 2 July 2008.

2 Restriction on sale, etc. of specified articles

(1) Section 30(2)(a) of the Food Business Regulation (Cap. 132 sub. leg. X) is amended by adding “, subject to section 30AA(2),” before “be valid”.

(2) Section 30(2)(b) is amended by adding “, subject to section 30AA(2),” before “be valid”.

(3) Section 30(2)(c) is amended by adding “subject to section 30AA(2),” before “be valid”.

3. Section added

The following is added after section 30 –

“30AA. No live poultry at retail premises overnight

(1) A permittee shall ensure that –

(a) each day, before 8:00 p.m., all live poultry remaining at the relevant permitted premises (whether sold or unsold) is slaughtered; and

(b) there is no live poultry at the permitted premises between 8:00 p.m. each day and 5:00 a.m. the next day.

(2) Without limiting any other powers the Director has in respect of the revocation of a permission, the Director may revoke the relevant permission if subsection (1) is contravened.

(3) In this section –

“permission” (准許) means a permission granted under section 30(1)(a) in respect of any food specified in item 4(a) and (b) of Schedule 2;

“permitted premises” (獲准許處所), in relation to a permission, means the premises at which the relevant permittee is permitted to sell or offer or expose for sale, or possess for sale or for use in the preparation of any article of food for sale, any food specified in item 4(a) and (b) of Schedule 2;

“permittee” (獲准許人士) means a person who has been granted a permission.”.

4. Offences and penalties

(1) Section 35(1)(a) is amended by adding “30AA(1),” before “30A”.

(2) Section 35(3)(a) is amended, in the English text, by repealing “31(1)” and substituting “31(1),”.

(3) Section 35(3) is amended by adding after paragraph (a) –

“(aaa) in the case of an offence under section 30AA(1), a fine at level 5 and imprisonment for 6 months;”.

(4) Section 35(3)(aa) is amended, in the English text, by repealing “30C(1)” and substituting “30C(1),”.

5. Restricted foods

Schedule 2 is amended, within the square brackets, by adding “, 30AA” after “ss. 30”.

Director of Food and Environmental
Hygiene

2008

Explanatory Note

This Regulation amends the Food Business Regulation (Cap. 132 sub. leg. X)
to –

- (a) require the slaughtering of all live poultry remaining at retail premises before 8:00 p.m. each day; and
- (b) require that there is no live poultry at retail premises between 8:00 p.m. each day and 5:00 a.m. the next day.