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Paper for the House Committee

**Report of the Subcommittee on
Food Business (Amendment) Regulation 2008**

Purpose

This paper reports on the deliberations of the Subcommittee on Food Business (Amendment) Regulation 2008 (the Amendment Regulation).

Background

2. Following the detection of H5N1 avian influenza virus in the faecal samples taken from four local retail markets in June 2008, 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 live poultry in these retail outlets. To protect public health and further reduce the risk posed by avian influenza, the Director of Food and Environmental Hygiene (DFEH) exercised his power under section 56 of the Public Health and Municipal Services (Cap. 132) to make the Amendment Regulation to require that there should be no live poultry at retail outlets overnight. The Amendment Regulation was gazetted on 27 June 2008 and came into operation on 2 July 2008.

3. A buyout scheme for the farmers, wholesalers, retailers and transporters of the live poultry trade was launched by the Government following the implementation of the Amendment Regulation. According to the Administration, the scheme was made in response to a strong wish expressed by a majority of the poultry trade retailers who considered that it would be very difficult to adapt to the "no live poultry overnight" arrangement. By the deadline of application for the scheme on 24 September 2008, 29 applications were received from farmers (including 27 chicken and two pigeon farmers, representing about 56% of the total number of farmers), 50 applications from wholesalers (representing about 70% of the total number of wholesalers), 333 applications from retailers (representing about 72% of the total number of retailers), 199 applications from transporters (representing about 80% cent of the total number of transporters) and 835 applications from affected local workers.

The Amendment Regulation

4. The Amendment Regulation amends the Food Business Regulation (Cap. 132 sub. leg. X) -

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

Upon conviction, the permission to sell live poultry issued by DFEH may be revoked and the offender is liable to a fine at level 5, i.e. \$50,000, and imprisonment for six months.

5. The scrutiny period of the Amendment Regulation has been extended from 15 October 2008 to 5 November 2008 by a resolution of the Council.

The Subcommittee

6. At the meeting of the House Committee on 10 October 2008, members agreed that a subcommittee should be formed to study the Amendment Regulation. Under the chairmanship of Hon WONG Yung-kan, the Subcommittee held a total of three meetings, including two meetings with the Administration. The membership list of the Subcommittee is in the **Appendix**.

Deliberations of the Subcommittee

Scientific evidence of banning live poultry overnight at retail outlets in reducing the risk of avian influenza outbreaks

7. Some members, including Hon WONG Yung-kan, Hon LEUNG Yiu-chung and Hon Cyd HO, questioned the scientific evidence of banning live poultry overnight at retail outlets in reducing the risk of avian influenza outbreaks, having regard to the fact that H5N1 virus had been found in dead wild birds and house crow in the past. These members considered that a more practical approach to prevent avian influenza outbreaks was to enhance biosecurity measures at all levels of the supply chain.

8. The Administration pointed out that biosecurity measures were not foolproof, as seen from the repeated avian influenza outbreaks in the past 10 years. Scientific research showed that the introduction of rest day was an effective means to break the virus cycle and reduce the virus load in the environment. Moreover, when a chicken was infected by the avian influenza

virus, there would be an incubation period of one to five days when the virus would multiply to a sufficient number to be detectable in the excreta. If overnight presence of live poultry at all retail outlets was prohibited, i.e. the introduction of a daily rest night, any unsold poultry would be slaughtered and the cages could be thoroughly cleansed and disinfected to avoid accumulation of virus in the environment of the retail outlets.

9. Hon Cyd HO asked why banning of overnight presence of live poultry was not imposed at the wholesale market. The Administration explained that this was because a far greater number of people could have close contacts with live poultry, which were sold at retail outlets, than at the wholesale market. Having said this, any overstocking of live poultry at the wholesale market was undesirable as there remained a risk that the avian influenza virus might infect humans. The Administration would liaise with the wholesalers to enhance the biosecurity measures in the wholesale market and contain the number of live poultry to be kept overnight at the wholesale market with a view to keeping the risk of avian influenza at an acceptable level.

Supply of live chickens

10. Hon Vincent FANG pointed out that Government's control of the supply of live chickens had made it difficult for the trade to continue business and had pushed the retail price of live chickens up. Mr FANG refuted the Administration's explanation that the fact that there was stocking of some 3 000 live chickens in the wholesale market meant that the current daily supply of live chickens at around 10 000 could meet demand. The reason why wholesalers left some live chickens in the wholesale market overnight was an operational need to ensure that they had enough live chickens to deliver to retailers on the following day. To address the concern of cross infection among chickens left overnight in the wholesale market, consideration could be given to segregating these chickens in different areas in the market.

11. Some members, including Hon LEE Cheuk-yan, Hon LEUNG Yiu-chung, Hon Tommy CHEUNG, Hon WONG Kwok-hing and Hon Audrey EU, were of the view that the Administration should let the market decide the level of supply of live chickens, which in turn would determine the right wholesale and retail prices of live chickens. Mr LEE further pointed out that to do so would not increase the risk of avian influenza outbreaks, as retailers were required to slaughter all live chickens before 8:00 pm each day under the Amendment Regulation.

12. The Administration considered that the current level of supply of live chickens could meet demand, as evidenced by the fact that the average number of live chickens left at retail outlets by the end of the trading day averaged about 1.5. The Secretary of Food and Health had met with the representatives of the live poultry trade on 20 October 2008 to listen to their concerns about the supply of live chickens. The Administration fully understood their

requests and was exploring practicable ways to address their concerns while keeping the risk of avian influenza at an acceptable level. The Administration also clarified that subject to the requirement that the number of live chickens at local farms did not exceed the maximum rearing capacity specified in the livestock keeping licences, no limit was imposed on the number of live chickens which local farms could supply to the wholesale market, albeit there being a fixed daily supply of live chickens from the Mainland.

13. Hon Vincent FANG, Hon Tommy CHEUNG, Hon LI Fung-ying and Hon WONG Ting-kwong were of the view that to better help retailers adapt to the new operating environment, these retailers should be allowed to have live poultry overnight at their retail outlets during adverse weather, say, when typhoon signal no. 8 was hoisted or in times of black rainstorm warning, having regard to the fact that poultry were prohibited from being sent back to the wholesale market after leaving the market.

14. Having considered members' views and the implications on avian influenza risks, the Administration will amend the Amendment Regulation to stipulate that if a black rainstorm warning or a gale warning (i.e. typhoon signal no. 8, 9 or 10) was in force at any time between noon and 8:00 pm on a day, then the live poultry retailers, including public market stall tenants and fresh provision shop licensees, would be exempted from compliance with: (a) the requirement to slaughter all live poultry remaining at their retail premises before 8:00 pm on that day; and (b) the requirement that there is no live poultry at retail premises between 8:00 pm that day and 5:00 am the next day.

15. Hon Cyd HO raised a query on the appropriateness of setting the time range between noon and 8:00 pm on a day when a black rainstorm warning or a gale warning was in force to dispense live poultry retailers with the requirement of no live poultry overnight. The Administration explained that the time range was set having regard to the operation of the trade, and the proposal should be reasonable as the retailers should still have relatively long business hours to sell their stock should the gale/black rainstorm warning be cancelled before noon.

16. Whilst welcoming the Administration's proposed amendment to the Amendment Regulation, Hon WONG Kwok-hing and Hon WONG Ting-kwong hoped that DFEH could be provided with a general discretion to exempt retailers from the requirement of no live poultry overnight in case of unforeseen circumstances, such as the occurrence of a fire at the retail stall. The Administration pointed out that it would be very difficult, if not impossible, to define what would constitute an unforeseen circumstance to warrant an exemption. Moreover, if the proposal was to give general discretion to DFEH, there would be difficulty in implementing it, having regard to the fact that if DFEH was empowered to grant exemption from the requirement, he had to do so by publishing a notice in the Gazette under section 56(3A) of Cap. 132. The Administration, however, pointed out that in the event of an occurrence of,

say, a fire at a retail stall, the affected retailer could either divert the live poultry to other retail outlets through commercial arrangements or seek permission to slaughter the live poultry at communal scaling rooms in a public market.

17. After discussion, the Subcommittee expressed support for the resolution to be moved by the Administration to amend the Amendment Regulation.

Penalty level

18. Hon Cyd HO expressed concern that the penalty level for violating the Amendment Regulation was too high. The Administration advised that the penalty level was on par with that for illegal sale of live poultry as provided under Cap. 132. Although the maximum fine for having live poultry overnight at retail outlets was set at \$50,000, the fine handed down by the court in a recent case was \$1,500.

Review on the prohibition of live poultry overnight at retail outlets

19. The Administration did not see the need to conduct a review on the “no live poultry overnight” arrangement suggested by Hon WONG Yung-kan, as implementation in the past three months confirmed that the trade had adapted quite well to the new statutory requirement. The Administration would, however, closely monitor the effect of the arrangement on meeting public demand for live chickens on the one hand and without compromising public health on the other. Mr WONG remained of the view that the Administration should conduct a review on the “no live poultry overnight” arrangement, say, six months, after implementation.

Advice sought

20. Members are invited to note the deliberations of the Subcommittee.

Subcommittee on Food Business (Amendment) Regulation 2008

Membership list

Chairman Hon WONG Yung-kan, SBS, JP

Members Hon LEE Cheuk-yan
Hon Fred LI Wah-ming, JP
Hon LEUNG Yiu-chung
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon Alan LEONG Kah-kit, SC
Hon WONG Ting-kwong, BBS
Hon Cyd HO Sau-lan

(Total : 12 Members)

Clerk Miss Mary SO

Legal Adviser Mr Stephen LAM

Date 22 October 2008