

立法會
Legislative Council

LC Paper No. LS96/05-06

**Paper for the House Committee Meeting
on 21 July 2006**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 7 July 2006**

Date of Tabling in LegCo : 10 July 2006

Amendment to be made by : 18 October 2006 (or the 8 November 2006 if extended by resolution)

PART I SCHEDULES OF BUS ROUTES

**Public Bus Services Ordinance (Cap. 230)
Schedule of Routes (Citybus Limited) Order 2006 (L.N. 161)**

This Order repeals the Schedule of Routes (Citybus Limited) Order 2004 (L.N. 201 of 2004) to update the schedule of bus routes operated by the Citybus Limited (other than for north Lantau and the airport at Chek Lap Kok).

**Public Bus Services Ordinance (Cap. 230)
Schedule of Routes (Citybus Limited) (North Lantau and Chek Lap Kok Airport)
Order 2006 (L.N. 162)**

2. This Order repeals the Schedule of Routes (Citybus Limited) (North Lantau and Chek Lap Kok Airport) Order 2004 (L.N. 202 of 2004) to update the schedule of bus routes operated by the Citybus Limited for north Lantau and the airport at Chek Lap Kok.

**Public Bus Services Ordinance (Cap. 230)
Schedule of Routes (Kowloon Motor Bus Company (1933) Limited) Order 2006
(L.N. 163)**

3. This Order repeals the Schedule of Routes (Kowloon Motor Bus Company (1933) Limited) Order 2004 (L.N. 203 of 2004) to update the schedule of bus routes operated by the Kowloon Motor Bus Company (1933) Limited.

Public Bus Services Ordinance (Cap. 230)
Schedule of Routes (Long Win Bus Company Limited) Order 2006 (L.N. 164)

4. This Order repeals the Schedule of Routes (Long Win Bus Company Limited) Order 2004 (L.N. 204 of 2004) to update the schedule of bus routes operated by the Long Win Bus Company Limited.

Public Bus Services Ordinance (Cap. 230)
Schedule of Routes (New Lantao Bus Company (1973) Limited) Order 2006 (L.N. 165)

5. This Order repeals the Schedule of Routes (New Lantao Bus Company (1973) Limited) Order 2004 (L.N. 205 of 2004) to update the schedule of bus routes operated by the New Lantao Bus Company (1973) Limited.

Public Bus Services Ordinance (Cap. 230)
Schedule of Routes (New World First Bus Services Limited) Order 2006 (L.N. 166)

6. This Order repeals the Schedule of Routes (New World First Bus Services Limited) Order 2004 (L.N. 206 of 2004) to update the schedule of bus routes operated by the New World First Bus Services Limited.

7. In relation to the above six Orders, Members may refer to the LegCo Brief (File Ref.: ETWB(T)2/4/115) issued by the Environment, Transport and Works Bureau in July 2006 for background information.

8. The above six Orders will come into operation on 8 November 2006.

PART II MISCELLANEOUS

Public Health (Animals and Birds) Ordinance (Cap. 139)
Public Health (Animals and Birds) (Exhibitions) (Amendment) Regulation 2006 (L.N. 167)

9. At the subcommittee formed to scrutinise the subsidiary legislation to ban backyard poultry keeping, the Administration has agreed to consider on a case-by-case basis whether to issue “animal/birds exhibition licence” to owners who wish to keep racing pigeons.

10. This Regulation amends the Public Health (Animals and Birds) (Exhibitions) Regulations (Cap. 139 sub. leg. F)—

- (a) To adjust the fee for a licence (the existing licence fee is \$10,720 without distinguishing the number of animals or birds) to hold a permanent exhibition of animals or birds to—
 - (i) \$2,720 if the total number of animals or birds to be exhibited (the animals and birds to be counted together where there is a combination of both) does not exceed 20; or
 - (ii) \$9,700 if the total number of animals or birds to be exhibited (the animals and birds to be counted together where there is a combination of both) exceeds 20; and
- (b) to correct a clerical mistake that appears in the heading of regulation 8.

The licence fees are formulated on a full cost recovery basis.

11. Members may refer to the LegCo Brief (File Ref.: HWF(F) 5/6/1) issued by the Health, Welfare and Food Bureau on 5 July 2006 for background information.

12. The Administration consulted the Panel on Food Safety and Environmental Hygiene on 9 May 2006 on the proposed licence fees. Some members considered that the proposed licence fees were on the high side.

13. In response to Legal Service Division's enquiries, the Administration has explained the legal basis for granting an exhibition licence to racing pigeons keepers, its policy of granting an exhibition licence to racing pigeons keepers who wish to keep more than 20 racing pigeons, its policy of granting an exemption from holding a licence under section 9 of the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation (Cap. 139 sub. leg. L) and the reasons for not considering exhibitions of racing pigeons to be "entertainment" within the meaning of the term in the Places of Public Entertainment Ordinance (Cap. 172). A copy of the Administration's letter is at **Annex I**.

14. The Secretariat has received a letter from a member of the public opposing to the Regulation. A copy of the letter is at **Annex II**.

The Ombudsman Ordinance (Cap. 397)

The Ombudsman Ordinance (Amendment of Schedule 1) Order 2006 (L.N. 168)

15. The Ombudsman Ordinance (Cap. 397) ("the Principal Ordinance") empowers The Ombudsman to investigate any action taken by or on behalf of an organization specified in Part I of Schedule 1 to the Principal Ordinance in the exercise of its administrative functions.

16. This Order amends Schedule 1 to the Principal Ordinance by—
- (a) deleting the following organizations, which no longer exist or have been merged with or incorporated into other Government departments, from the Schedule—
 - (i) Civil Service Training and Development Institute;
 - (ii) Hospital Services Department;
 - (iii) Information Technology Services Department;
 - (iv) Management Services Agency;
 - (v) Official Languages Agency;
 - (vi) Registry of Trade Unions; and
 - (vii) Technical Education and Industrial Training Department;
 - (b) updating the titles of the Hong Kong Observatory (in the English text) and Hong Kong Housing Authority (in the Chinese text);
 - (c) adding the Student Financial Assistance Agency to the Schedule; and
 - (d) correcting the section references listed in the top right-hand corner of the Schedule.

17. Members may refer to the LegCo Brief (File Ref.: CSO/ADM CR4/3231/92) issued by the Director of Administration on 6 July 2006 for background information.

Public Health and Municipal Services Ordinance (Cap. 132)
Food Business (Amendment) Regulation 2006 (L.N. 169)

18. At present, fresh provision shops and stalls in public markets are allowed to sell both fresh beef, mutton or pork and imported chilled beef, mutton or pork subject to compliance of a set of licensing requirements and conditions/tenancy clauses.

19. This Regulation amends the Food Business Regulation (Cap. 132 sub. leg. X) for the following purposes—

- (a) to prohibit the sale, or offer or exposure for sale, or possession for sale fresh beef, mutton or pork and chilled beef, mutton or pork at the same market stall or premises on which the business of a fresh provision shop

is carried on unless the chilled beef, mutton or pork is pre-packaged and the package is marked and labelled in the prescribed manner (new section 30D and new Schedule 6);

- (b) to make it an offence for a person to open or in any other way tamper with the package (new section 30F);
- (c) to provide that the Director of Food and Environmental Hygiene may grant permission under section 30 to sell, or offer or expose for sale, or possess for sale at the same premises either fresh meat or chilled meat that is not pre-packaged but not both (new section 31A); and
- (d) to impose penalty on any person who contravenes new section 30D or 30F (a fine at level 5 (\$50,000), imprisonment for 6 months and \$900 for each day for a continuing offence).

20. Members may refer to the LegCo Brief (File Ref.: HWF(F) 5/1/4/2) issued by the Health, Welfare and Food Bureau in July 2006 for background information.

21. The Panel on Food Safety and Environmental Hygiene has discussed on many occasions the need for separation of the sale of fresh pork and chilled pork, and the arrangements for importation of chilled pork from the Mainland. The Administration briefed the Panel on the legislative proposal on 26 May 2006. The Panel held a special meeting on 6 June 2006 to gauge the views of the affected trades and the Consumer Council. The affected trades and some Panel members expressed grave concern about the implementation of the legislative proposal.

22. The Legal Service Division has written to the Administration to seek clarification on legal and drafting aspects of the Regulation. We are still awaiting the Administration's reply. A copy of our letter is at **Annex III**.

23. The Regulation will come into operation on the expiry of the period of 6 weeks (i.e. 18 August 2006) commencing on the day on which this Regulation is published in the Gazette.

PART III COMMENCEMENT NOTICES

Import and Export (Strategic Commodities) Regulations (Amendment of Schedule 1) Order 2006 (L.N. 95 of 2006)

Import and Export (Strategic Commodities) Regulations (Amendment of Schedule 1) Order 2006 (Commencement) Notice (L.N. 170)

Import and Export (Strategic Commodities) Regulations (Amendment of Schedule 1) Order 2006 (Amendment) Order 2006 (L.N. 131 of 2006)

Import and Export (Strategic Commodities) Regulations (Amendment of

Schedule 1) Order 2006 (Amendment) Order 2006 (Commencement) Notice (L.N. 171)

24. L.N. 170 specifies 18 July 2006 as the day on which the Import and Export (Strategic Commodities) Regulations (Amendment of Schedule 1) Order 2006 (L.N. 95 of 2006) (“the Order”) will come into operation. The Order amends Schedule 1 to the Import and Export (Strategic Commodities) Regulations (Cap. 60 sub. leg. G) by repealing and adding provisions to the Munitions List, Dual-Use Goods List and the Definitions of Terms.

25. Members may recall that in the further report issued by the Legal Service Division on 24 May 2006 on the Order (LC Paper No. LS77/05-06), we informed Members that the Administration had identified a number of printing errors concerning the Chinese names of certain chemicals in the Import and Export (Strategic Commodities) Regulations (Amendment of Schedule 1) Order 2006 and it had indicated that such errors would be removed in the next legislative exercise. The Import and Export (Strategic Commodities) Regulations (Amendment of Schedule 1) Order 2006 (Amendment) Order 2006 (L.N. 131 of 2006) effects the legislative amendments.

26. L.N. 171 specifies 17 July 2006 as the day on which the Import and Export (Strategic Commodities) Regulations (Amendment of Schedule 1) Order 2006 (Amendment) Order 2006 will come into operation. Therefore, when the Import and Export (Strategic Commodities) Regulations (Amendment of Schedule 1) Order 2006 comes into operation on 18 July 2006, it will incorporate the amendments as effected by the Import and Export (Strategic Commodities) Regulations (Amendment of Schedule 1) Order 2006 (Amendment) Order 2006.

CONCLUSION

27. Except for L.N. 169 for which we are still awaiting the Administration’s reply to our enquiry on technical issues, there are no difficulties identified in relation to the legal or drafting aspects for the subsidiary legislation gazetted on 7 July 2006.

Encl

Prepared by

LAM Ping-man, Stephen
Assistant Legal Adviser
Legislative Council Secretariat
19 July 2006

Annex I

本函檔號 Our ref.:
來函檔號 Your ref.:

電話號碼 Tel. No.: 2973 8297
傳真號碼 Fax No.: 2136 3281

18 July 2006

Mr Stephen Lam
Assistant Legal Advisor
Legislative Council,
Legislative Council Building,
8 Jackson Road,
Central
Hong Kong.

Dear Mr. Lam,

Public Health (Animals and Birds) (Exhibitions) (Amendment) Regulation 2006 (L.N. 167)

Thank you for your letter dated 12 July 2006. Our replies to the questions raised in your letter are set out below -

- Q1. The Regulation amends the Public Health (Animals and Birds) (Exhibitions) Regulations (Cap. 139 sub. leg. F) ("the Principal Regulations"). The term "exhibition of animals or 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. In paragraph 5 of the LegCo Brief, the Administration says that "... we would treat the racing pigeon activity as a form of exhibition such that an exhibition licence could be issued under the existing legislative framework". Would you explain, from a legal perspective, as to how you treat racing pigeon activity as a form of exhibition so as to be within the scope of the Principal Regulations?*
- A1. The usual 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 as set out in Cap. 139F 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 no specific requirement has been stipulated in Cap. 139F as to the number of members of public who must attend the exhibition or the amount of admission fees which are payable by them.

- Q2. *Would the Administration grant a licence to a person who intends to keep more than 20 pigeons for racing purpose?*
- A2. We will, provided that DAFC is satisfied that the person concerned is able to comply with all necessary requirements and pay the relevant fee.
- Q3. *It is noted in section 9 of the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation (Cap. 139 sub. leg L) that the Director of Agriculture, Fisheries and Conservation may exempt any person from applying for or from holding a licence if he is satisfied that the person keeps or intends to keep livestock solely for the purpose of exhibition. In relation to a local racing pigeon owner, instead of applying for a licence under regulation 4 of the Principal Regulations, could he apply for an exemption under section 9 of the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulation?*
- A3. As set out in paragraph 5 of the LegCo Brief, we will allow the keeping of racing pigeons provided that they are being kept in accordance with the necessary biosecurity requirements and subject to other licence conditions which may be imposed by DAFC from time to time. Whilst it is possible for a local racing pigeon owner to apply for an exemption under section 9 of the Public Health (Animals and Birds) (Licensing of Livestock Keeping) Regulations, it is for DAFC as the licensing authority to carefully consider the merits of any such application after taking into account all relevant factors prevailing at the time. Since we have to apply these biosecurity requirements via a licensing regime, it is unlikely that an exemption under section 9 of Cap. 139L would be granted to any racing pigeon owners..
- Q4. *In paragraph 8 of the LegCo Brief, the Administration says that “exhibitions of racing pigeons are not “entertainment” within the meaning of the term in Schedule 1 to the Places of Public Entertainment Ordinance”. In paragraph 1(f) of Schedule 1 to the Places of Public Entertainment Ordinance, it provides that the definition of “entertainment” means, inter alia, a sporting exhibition or contest. In light of the meaning of “entertainment” in paragraph 1(f), would you explain your reasons for not considering exhibitions of racing pigeons to be “entertainment” within the meaning of the term in the Places of Public Entertainment Ordinance?*
- A4. 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" (rather than the "activity" per se) of public entertainment (where a large group of audience will be present), and the main objectives of which are to safeguard public safety and ensure effective crowd control.

Q5. *In paragraph 15 of the LegCo Brief, the Administration says that “[t]he local racing pigeon owners have also been informed of the fee levels”. Would you elaborate on the response of the local racing pigeon owners to the proposed fee levels?*

A5. When we sounded out the racing pigeon keepers on the proposed licensing arrangement and its fee levels, the majority of them agreed to pay a fee for a licence to keep their birds, although some expressed that the licence fees should be lowered.

Yours Sincerely,

(Wallace Lau)
for Secretary for Health, Welfare and Food

c.c. DoJ (Attn: Mrs Emme Waller)
(Attn: Miss Leonora Ip)
DAFC (Attn: Dr. Thomas Sit)

敬啟立法會內務委員會主席劉健儀議員台鑒：

您好！有關調整動物/禽鳥展覽牌的費用

檔案：HWF (F) 5/6/1

就以上規例提出反對要求成立小組委員會
討論。

本人連啟元有支持人數，有壹佰叁拾人簽名
支持，未簽名還有很多，反對原因如下。

反對(1) 本人連啟元正進行法律的司法覆核，工作仍
在進行中，如在之前急於通過法例有欠公道、公平。

反對(2) 附件中反對 2

反對(3) 附件中反對 3

反對(4) 附件中反對 4

其實賽鴿乃是國際性運動，其操練及衛生程度遠超肉食鴿。歷史證明賽鴿(和平鴿)對人類有很大貢獻，更代表和平自由。第一次及第二次世界大戰以及近如香港97回歸時，賽鴿都發揮了其通訊作用以及被用作和平的象徵。1948年FCK國際鴿協聯盟)成立，而香港賽鴿會是FCI國際組織的會員已很久，而且是推動中國加入FCI國際組織的重要策動支持者。成功擊敗台灣之反對勢力使中國成為FCI重要會員。

中國官方刊物“中華信鴿”上海全國運動會，賽鴿列入運動
比賽項目，賽鴿是運動員，不是禽畜，中國官方每年不收牌
費，反過來每年在金錢上有明顯支助。
而香港政府就用這巨額牌費來迫殺這體育運動。

反對2 (附件)

公民抗命. 司法覆檢

政府一意孤行. 堅持採用這巨型昂貴而又法律錯誤的牌照於香港普通市民身上. 等同強搶私人財產. 剝奪普通市民飼養動物和禽鳥的權利. 換句說話. 香港的普通市民. 為了保護自己的寵物財產. 每年都要付出其他地方沒有的昂貴費用. 香港政府是否“發錢寒”. 向窮人瞪眼“發錢沒得養”?

5個國家及地區收費比較

國家及地區	收費	數量
① 美國賽鴿聯盟	\$0 或 25 美元 或 100 美元	數量不限
② 英國 歐盟	\$0 元	數量不限
③ 香港	\$2720 元 或 9700 港元	20 隻或以上
④ 澳門 鴿會	\$0 元	數量不限
⑤ 中國 廣東	\$0 元	數量不限
⑥ 歐盟	\$0 元	數量不限

反對了 (附件)

張
文

漁農自然護理署
漁農自然護理署
九龍長沙灣道三零三號
長沙灣政府合署五至七樓



THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION
Agriculture, Fisheries and Conservation
DEPARTMENT

Chang She Wan Government Office, 5F-7F,
38 Chang She Wan Road, Kowloon, Hong Kong

本署接獲 Our Ref: () 為 A1306
來函接獲 Your Ref
電話 九七 2362 8588
傳真號碼 Fax: 2774 0246

連先生:

對於您在二零零二年四月十六日申請獲准暫准牌照一事，本署職員已在五月十八日在電話中向您作出通知，您的申請已被取消。

取消原因是，在法例第一三九章第三條，公眾衛生(動物及禽鳥)條例中列明，白鴿並不包括在條例的管轄內；因此，本署不會處理上述牌照。

如有任何相關查詢，請在辦公時間內聯絡陳孝國先生(電話：2362 3746)。

漁農自然護理署署長

(陳孝國 代行)

二零零二年五月二十五日

根據附件一漁農自然護理署署長簽署

2002年5月25日(陳孝國代行)

致連敬元先生的回函中寫明在法例一三九章第三條
公眾衛生(動物及禽鳥)條例中列明白鴿並不包括
在條例的管轄內

基於以上這點為何衛生福利及食物局2006年5月
又引用同樣一三九章內又列明白鴿(賽鴿)又包括
在條例的管轄內。問法律一三九章面前有否人人平等?
有否双重標準?有否政府大晒?

連敬元

第
四
頁

反駁4 (附件)

關於賽鴿的 H5N1 風險極低，到現在仍未有在賽鴿身上發生 H5N1。

① 2006年5月9日香港立法會文件第三條提及本港獸醫認為鴿爆發禽流感風險很低。
(附件A1)

② 農業部北京市科委再次研究和証實鴿子對 H5N1 禽流感不易感。

③ 美國農業部 (康農處) 曾經用約 50 萬港元研究及証實鴿子對 H5N1 禽流感不易感。

盧啟文

LS/S/35/05-06
2869 9468
2877 5029

Secretary for Health, Welfare and Food
(Attn : Mr Vincent LIU, Ag. DS(FEH))
Health, Welfare and Food Bureau
20/F, Murray Building
Garden Road
Hong Kong

19 July 2006

BY FAX
Fax No. : 2136 3281

Dear Mr LIU,

Food Business (Amendment) Regulation 2006 (L.N. 169)

We are scrutinising the legal and drafting aspects of the Food Business (Amendment) Regulation 2006 (L.N. 169 of 2006) (“the Regulation”). We should be grateful if you would clarify the following queries in relation to the Regulation.

Section 1 of the Regulation

Would you explain the policy reason for appointing the day of commencement of the Regulation to be on the expiration of the period of 6 weeks commencing on the day on which the Regulation is gazetted?

New section 30D

The term “premises” is defined in new section 30D(3) to mean the premises on which the business of a fresh provision shop is carried on. Does it exclude the application to the provision of the definition of the term in section 2(1) of the Principal Ordinance?

It is noted that a licence is required under sections 31, 32 and 33 of the Food Business Regulation (Cap. 132 sub. leg. X) for the operation of a fresh provision shop. However, it appears that those provisions are silent on the structural requirements of a fresh provision shop. Upon coming into effect of the new section 30D, what will be the criteria, from the structural requirements perspective, for the Director of Food and Environmental Hygiene to approve a place as “premises” for the granting of a licence under section 31 to an applicant?

In both new section 30D(1) and (2), they refer to chilled beef, etc. In the definition of “fresh provision shop”, it refers to chilled or frozen beef, etc. Would you explain the reasons for referring to chilled beef, etc. but not chilled and frozen beef, etc. in new section 30D and other relevant provisions in the Regulation as well?

Is the term “market stall” defined?

In the event of contravention of new section 30D(1) or (2), who would be guilty of selling, etc., for example the licensee or shop attendant?

New section 30F

Would you illustrate with examples satisfying the requirement of “reasonable excuse”?

Amendments to section 35 of the Food Business Regulation – offences and penalties

The amendments provide that contravention of the new section 30D(1) or (2) or 30F would incur a fine at level 5 (\$50,000), imprisonment for 6 months and \$900 for each day for a continuing offence. However, no offence of selling chilled meat as fresh meat is created. In this respect, it is noted that under section 7 of the Trade Descriptions Ordinance (Cap. 362), it provides for an offence in respect of trade description. Under section 18 of the Trade Descriptions Ordinance, it provides that a person who commits an offence under section 7 shall be liable—

- (a) on conviction on indictment, to a fine of \$500,000 and to imprisonment for 5 years; and
- (b) on summary conviction, to a fine of \$100,000 and to imprisonment for 2 years.

Would you consider a person who sells chilled meat as fresh meat commits an offence under section 7 of the Trade Descriptions Ordinance?

Amendments to Item 1, Schedule 2 to the Food Business Regulation

Why is the reference to “excluding meat specified in Schedule 1” in the existing Item 1 not included in the amended Item 1?

We should be grateful for your reply, in both languages, at your earliest convenience.

Yours sincerely,

(Stephen LAM)
Assistant Legal Adviser

c.c. LA
SALA1