

For information

Legislative Council
Panel on Food Safety and Environmental Hygiene

**Proposed Compensation and Ex-gratia Payments
to Poultry Operators Affected by Avian Influenza**

PURPOSE

This paper briefs Members on the proposed compensation and ex-gratia payments (EGPs) to poultry operators affected by the H7N9 avian influenza (AI) incident dated 27 January 2014.

BACKGROUND

2. Owing to the detection of H7 AI in an imported consignment of poultry in Hong Kong on 27 January 2014, the Administration has taken immediate measures to cull the birds in the Cheung Sha Wan Temporary Wholesale Poultry Market (the wholesale market). In this regard, some 22 604 birds were slaughtered by order of the Director of Agriculture, Fisheries and Conservation (DAFC) under the Public Health (Animals and Birds) Regulations (Cap. 139A). With a view to conducting thorough cleansing and disinfection at the wholesale market, we closed it for 21 days during which time all trading activities of live poultry have to be suspended. The exercise is hereinafter referred to as “the operation”. We need to pay statutory compensation as appropriate and see a case for providing EGPs to local chicken farmers, wholesalers, retailers, transport operators and self-employed workers at the wholesale market¹ to alleviate their financial difficulties as a result of the operation.

THE PROPOSED COMPENSATION AND EX-GRATIA PAYMENTS

Statutory compensation

3. Under the Public Health (Animals and Birds) Ordinance (the Ordinance)

¹ There have been some self-employed workers providing wholesalers/transporters with loading/ unloading and cage cleansing services at the wholesale market, whom were not covered in the previous compensation and EGP packages. The current closure of the wholesale market which comes at the time when market demand for live poultry peaks in the run-up to the Lunar New Year deals a severe blow to these workers. They are paid on job-basis and have lost the chance of earning “double service charges” during the Lunar New Year. Their livelihood thus has been adversely affected. Against this background, we propose to provide them with EGP grants to help these workers meet their financial hardship during the suspension of trading.

(Cap. 139), the Government has to make statutory compensation to owners for the birds slaughtered by order of DAFC. According to the Ordinance, the value of a bird slaughtered shall be determined by DAFC but shall not exceed \$30 per bird. For the purpose of the current operation, we propose to follow the provisions stipulated in the Ordinance. Wholesalers whose poultry were slaughtered by order of DAFC would receive the statutory compensation of \$30 per bird².

Ex-gratia Payments

4. To better manage the risks posed by AI, the Government launched the Voluntary Surrender Scheme in 2004-05 and then the Buy-out Scheme in 2008 whereby the number of retail outlets was reduced from over 800 to 132 at present, wholesalers down from 87 to 23, and poultry farms from 192 to 30. In 2008, the Government made it clear to those operators who chose to stay in the live poultry trade that they had to bear the risks of any further AI incidents in Hong Kong. No EGP was offered after 2008 when the live poultry trade was interrupted by the emergence of AI cases. In the recent case dated December 2011 where a dead chicken in the wholesale market was tested positive for H5 AI, poultry in the wholesale market were culled. Only statutory compensation was offered to the affected bird owners.

5. On this occasion, we propose to provide a one-off EGP on an exceptional basis to alleviate the particular financial hardship shouldered by different groups of live poultry operators. The justifications are set out in paragraphs 6 to 10 below.

Justifications

6. Ever since the first outbreak of AI cases in Hong Kong in 1997, we have remained vigilant. We last reviewed the overall AI risk in Hong Kong in 2012 before the onset of the outbreak of H7N9 AI in the Mainland. It was then our assessment that the risk of AI in Hong Kong had stabilised at a relatively low level. The comprehensive preventive and surveillance measures that we had developed over the years and put in place in collaboration with the relevant Mainland authorities turned out to be effective and generally fit for purpose. At that time, we saw no grounds to change the status quo, including the scale of the local live poultry trade.

7. To the extent that no surveillance system, however elaborate, could attain zero risk, it was well understood throughout the years since 1997 that whenever the wholesale market is declared an infected area, we would, with reference to guidelines promulgated by the World Organisation on Animal Health (OIE), close it for 21 days to facilitate cleansing and disinfection. On public health grounds, trading activities for both local and imported poultry would be suspended across the board, irrespective of whether the infected poultry which cause the closure of the wholesale market are local or imported. There is no question of stakeholders in the live poultry

² The market value of all the poultry in question exceeds the cap of \$30 per bird at the time of being slaughtered.

trade who had chosen to stay in business since 2008 not being aware of the risk.

8. The H7N9 outbreak³ in the Mainland since the second quarter of 2013 served as a harsh reminder of the threat posed by AI. Not only does it revive concerns about the possible mutation of AI viruses into even more deadly strains, the H7N9 virus adds a new dimension to the challenges facing us. Unlike say H5N1 which is highly pathogenic to both poultry and humans (if infected), the H7N9 strain bears low pathogenicity in poultry and does not necessarily induce any clinical symptoms that may provide early alert to human beings. Tests against H7 are required to detect the virus. To manage the threat, we started in April 2013 to put local and imported live poultry through Polymerase Chain Reaction (PCR) tests against H7 at the farm level and at the Man Kam To boundary control point. We supplemented that with serological tests with effect from 24 January 2014 after a number of human infection cases came to light both locally (since 2 December 2013) and in Shenzhen and Guangdong (since the onset of the winter season). A summary of the preventive and control measures against AI that have been put in place by the Government in the years since 1997 are summarised in the paper submitted to the Panel on 19 November 2013 (LC Paper No. CB(2)277/13-14(03)) and updated in the paper submitted to the Panel on 29 January 2014 (LC Paper No. CB(2)777/13-14(01)).

9. As a surveillance measure, the PCR tests at the boundary control point prove their worth. On 27 January 2014, a number of samples from one consignment of imported poultry were found carrying the H7N9 virus. It rekindles debates in the community as to whether Hong Kong should stop the trading of live poultry altogether as a more fool-proof safeguard against the ever-changing threats posed by AI. Meanwhile, we had to close our poultry wholesale market for 21 days to facilitate thorough disinfection and cleansing.

10. The resultant interruption to the live poultry trade and operations in Hong Kong, coming as it did at a time when market demand for and price of live poultry peaked⁴ in the immediate run-up to (three days prior to) the Lunar New Year, dealt a particularly severe blow to live poultry operators. This has come on the heels of a notably sluggish sale period when live poultry trading was adversely affected by the H7N9 threat⁵, further exacerbating the financial hardship caused to them. In these circumstances, we see a special case for granting a one-off EGP to operators in the live poultry trade.

Details of the Ex-gratia Payments

11. We propose to offer EGPs of \$30 per bird at or above the best

³ As it turned out, there are over 300 cases of human infection with influenza A (H7N9) reported to the Mainland authorities over a time-span of less than a year since Q2 2013, relative to some 650 cases of human infection with H5N1 reported to the World Health Organisation over a time-span of 11 years (since 2003).

⁴ Live chickens fetch the highest price in this period of the year. In the Lunar New Year period in 2013, for example, the wholesale price of live chickens (\$41.2 per catty) was two folds of the yearly average (\$20.9 per catty).

⁵ The average daily supply of local chickens in December 2013 was 10 067, relative to the average daily supply of 12 285 in December 2012. This represented an 18% decrease in sale.

marketable age (i.e. 80-day-old)⁶ as at 28 January 2014 to local chicken farmers for meeting their operational expenses and alleviation of their financial hardship during the closure of the wholesale market and suspension of trading activities. The local chicken farms could not sell their chickens for 21 days since the wholesale market was declared as an infected place. When trading activities resume on 19 February 2014, around 289 100 chickens⁷ on farms would have grown beyond the best marketable age. While these chickens could be sold through the normal sale channels starting from 19 February 2014, they will likely fetch a lower market price, after passage of the Lunar New Year peak season. Moreover, these live chickens (which should have been sold before or around the Lunar New Year) would have to be kept under satisfactory conditions with food for an extra 21-day period while trade is suspended. These local farmers thus would face considerable financial hardship during the trade suspension period.

12. We also propose lump-sum EGPs to wholesalers, retailers, transport operators and self-employed workers at the wholesale market to help alleviate the financial hardship caused by the suspension of trade during the Lunar New Year peak, including paying wages to their workers and other additional prior commitments especially incurred in the Lunar New Year season.

13. The proposed EGP package is formulated with reference to those approved by the Finance Committee (FC) on 1 June 2001 (FCR(2001-02)10) (the 2001 package), on 26 March 2004 (FCR(2003-04)67) (the 2004 package) and on 4 July 2008 (FCR(2008-09)39) (the 2008 package), taking into account the unique circumstances of the present case, which took place in the immediate run-up to the Lunar New Year.

Additional Relief Measures

14. Since the wholesalers, retailers and transport operators have to suspend their business operation during the closure of the wholesale market, we propose to offer a waiver of one-month rental for –

- (a) poultry market stalls in markets managed by the Food and Environmental Hygiene Department (FEHD) (inclusive of rates and air-conditioning charges);
- (b) stalls and ancillary facilities in the wholesale market and vehicle parking spaces (inclusive of rates) of tenants of these stalls; and
- (c) vehicle parking spaces in the wholesale market (inclusive of rates) of poultry transport operators.

⁶ Farmers and traders usually refer to chicken age in a 10-day-range. We therefore propose to adopt 80-89 days old as the range of best marketable age, and set the marker at 80-day-old.

⁷ AFCD keeps a log sheet on the age profile of chickens in all local chicken farms.

The Housing Authority (HA) would also consider waiving the rent, the rates and air-conditioning charges for affected poultry stalls in their markets, subject to the approval of the Commercial Properties Committee under the HA.

SUMMARY OF THE PROPOSED PACKAGE

15. The following is a summary of the proposed financial assistance available to various groups of live poultry operators –

Parties affected	Compensation, Ex-gratia Payments and Other Relief Measures
Chicken farmers	- EGP at \$30 per bird for broiler chickens at or over the age of 80 days old as at 28 January 2014.
Live poultry wholesalers	- Statutory compensation of \$30 for each bird slaughtered; - Waiver of one-month rental for market stalls, ancillary facilities and vehicle parking spaces in wholesale market covering the closure period of the wholesale market; and - Lump-sum EGP of \$30,000.
Live poultry retailers	- Waiver of one-month rental of market stalls of FEHD and of HA (the latter is subject to HA's consideration); and - Lump-sum EGP of <ul style="list-style-type: none"> • \$20,000 per retailer at FEHD or HA markets • \$40,000 per licensee for fresh provision shop (FPS) with permission to sell live poultry on private premises.
Live poultry transport operators	- Waiver of one-month rental for vehicle parking spaces in wholesale market covering the closure period of wholesale market; and - Lump-sum EGP of \$20,000.
Self-employed workers at the wholesale market	- Lump-sum EGP of \$7,000.

MECHANISM TO ENSURE EMPLOYERS DISCHARGE THEIR RESPONSIBILITIES

16. We are also aware that workers, apart from the operators, in the trade may also be affected in one way or another. As a matter of principle, the Government considers that it is the responsibility of an employer to meet his obligations to his workers. Furthermore, the employer has a legal responsibility to pay workers still in his employment or to pay any laid off employees the wages and other benefits provided for under the Employment Ordinance and the employment contract. The Comprehensive Social Security Assistance Scheme provides a further safety net. We expect employers in the live poultry trade to discharge their responsibilities to their employees having regard to the EGPs made available under the proposed package.

17. As with the previous arrangements, the role of the Government is to encourage employers to fulfil their obligations to their employees without interfering in any employer-employee relationship. Thus, we propose to retain 20% of the EGPs until the employers have discharged their responsibilities towards the employees. The retained portion of the EGPs would be paid to the chicken farmers, wholesalers, retailers and transport operators concerned if they satisfy either of the following conditions –

- (a) no labour claim associated with this proposal has been lodged with the Labour Department by their employees within 30 days after approval of this proposal by the FC; or
- (b) in case there is a labour claim lodged within the period mentioned in (a) above –
 - (i) the worker does not pursue the claim further within 30 days after lodging the claim; or
 - (ii) the claim has been resolved.

FINANCIAL IMPLICATIONS

18. The total amount required for paying compensation and EGPs to chicken farmers, wholesalers, retailers, transport operators and self-employed workers at the wholesale market under the proposed package is estimated to be about \$17.7 million, broken down as follows –

Items	\$'000	\$'000
Statutory compensation to wholesalers for culling of birds by order of DAFC	679	679
EGP to chicken farmers for chickens at or over the best marketable age	8,673	8,673
Lump-sum EGP		6,740
- Wholesalers	630	
- Retailers	3,500	
- Transport operators	2,400	
- Self-employed workers at the wholesale market	210	
Contingency (10%)	1,609	1,609
Total	-	17,701

19. The revenue loss to Government as a result of the rental waivers to the wholesalers, retailers and transport operators is around \$630,000, i.e. \$213,690 for the wholesale market and \$416,079 for market stalls under FEHD and FPS under HA.

PUBLIC CONSULTATION

20. On 28 January 2014, shortly after the announcement of the detection of H7 AI virus in a consignment of imported poultry, we met with representatives of the trade. They requested compensation and EGPs, and a separate holding area for imported poultry awaiting testing results in the medium term.

21. At the Panel on Food Safety and Environmental Hygiene (FSEH Panel) meeting held on 29 January 2014, the Secretary for Food and Health (SFH) stated that the Administration would pursue the following measures –

- (a) as short-term relief, examine the case for alleviating the financial hardship caused by the suspension of live poultry operations to the trade;
- (b) as a relief measure for the medium term, explore a separate holding area for imported poultry before AI testing results are available, such that it may create room for us to keep live poultry trading activities at the Cheung Sha Wan wholesale market in operation even when individual consignments of live poultry in the holding area are tested positive to the H7N9 virus; and
- (c) looking ahead, engage the public in addressing the question of whether or not we should, in present-day circumstances, keep the consumption of live poultry as part of our culinary culture, having regard to the AI risks posed by the selling of live poultry in Hong Kong, and the cost to

society.

22. Legislative Council Members attending the FSEH Panel meeting also passed a motion to request the Government to offer compensation to relevant parties in respect of this AI incident, as well as providing other appropriate support to them.

IMPLEMENTATION PLAN

23. Subject to the funding approval by FC, we will provide the proposed financial assistance to those affected immediately.

24. In the long run, we should consider on grounds of public health whether Hong Kong, being a place with scarce land resources and a densely populated city, should continue to allow the trading of live poultry (a practice that entails close contact between humans and live poultry). The Government would consider engaging a consultant to study and make recommendation in this regard.

ADVICE SOUGHT

25. Members are invited to note the content of the paper. The compensation and EGP package has been scheduled for discussion at the FC meeting on 21 February 2014.

Food and Health Bureau
14 February 2014