

The Administration's Response to Comments and Questions raised at the Bills Committee on the Protection of Endangered Species of Animals and Plants Bill meeting held on 20 December 2005

Arrangements during appeal

At the Bills Committee meeting on 20 December 2005, Members expressed concern that a third party may not be aware of whether a possession licence is under appeal and is only returned to the licensee during the appeal period under clause 26(4). To address Members' concern, the Agriculture, Fisheries and Conservation Department (AFCD) will mark such licences as "under appeal" before they are returned to the licensee. If any third party has doubt about the validity of a licence, he can seek clarification from AFCD. AFCD will introduce the same arrangement for export and re-export licences.

Functions of the Administrative Appeals Board

2. The Administrative Appeals Board (AAB) is established under the Administrative Appeals Board Ordinance (Cap. 442) (AABO), and currently, one Chairman, four Deputy Chairmen and a panel of 46 members of the AAB have been appointed pursuant to section 6 of AABO. The membership list is attached at **Annex A**. Under section 6 of AABO, the Chairman and Deputy Chairman of the AAB shall be persons who are qualified for appointment as District Judges under section 5 of the District Court Ordinance (Cap. 336).

3. To lodge an appeal, an appellant should complete an appeal form and forward it to the Secretary to the AAB. After an appeal has been accepted by the AAB, the respondent (i.e. the deciding authority whose decision has been appealed against) will be required to lodge with the AAB and the appellant within 28 days a statement setting out, amongst others, the reasons and policy for the decision. The appellant can make representations on the statement to the AAB within a specified period.

4. The AAB comprising the Chairman or the Deputy Chairman together with two panel members will normally hear the case within four

months after an appeal is lodged. Parties to the appeal will be invited to make representations or be represented by a barrister or a solicitor. They may request the AAB to call witnesses to give evidence if needed. Parties to the appeal will be informed of the AAB's decision in writing and of the reasons of its decision.

Liaison with the trades

5. We advised Members at the last meeting that the trade in general does not have any objection to section 29(1). AFCD will nevertheless hold further meetings with the trades to explain to them again about the requirements under the new Ordinance, including the requirement to provide scientific names and common names of the specimens concerned. To address Members' concern about the use of the word "state" in clause 29(1) (which requires a person to "state" the scientific name and common name of a specimen under his possession), we suggest to replace the word "state" with "give".

Forfeiture of seized things

6. To address Members' concern regarding forfeiture in relation to an offence prosecuted under clause 38, we have reviewed the relevant provisions and suggest to delete the reference to clause 38 in clauses 41 and 42. The proposed deletion ensures that the forfeiture of things seized will not be based on the offence of obstruction proposed under clause 38.

Interpretation of "commercial purposes"

7. At the Bills Committee meeting on 29 November 2005, Members asked about the difference between the existing Ordinances, in particular, the Animals and Plants (Protection of Endangered Species) Ordinance (Cap 187) and the Bill regarding the interpretation of the terms "commercial purpose" and "non-commercial purpose".

8. There are only two existing Ordinances in local legislation where the term "commercial purpose" is defined. They are the Wild Animals

Protection Ordinance (Cap 170)¹ and the Animals and Plants (Protection of Endangered Species) Ordinance (Cap 187).

9. The term “commercial purpose” in section 13A(5) of Cap 187 is defined as-

“(a) any purpose relating to trade or business;

(b) the buying, selling or exchange for benefit, gain, profit or reward of any scheduled species or controlled medicine, or any article or medicine which, by virtue of section 2B is deemed to be a scheduled species or a controlled medicine, as the case may be.”

Taking into account the literal meaning of the terms “trade”² & business³ and the intention for introducing section 13A of Cap 187 in 1995, it is considered that subsections (a) and (b) of section 13A(5) should be read disjunctively, i.e. “commercial purpose” in section 13A(5) of Cap 187 should mean to cover not only buying, selling or exchange for benefit, gain, profit or reward of any scheduled species or controlled medicine, but also any act the purpose of which is related to trade or business.

10. As regards the definition of “commercial purposes” in the Bill, it is modelled on paragraph 2 of the CITES Resolution 5.10 and is defined to mean:

“a purpose of obtaining profit or other economic benefit (whether in cash or in kind) and directed towards resale, exchange, provision of a service or other form of economic use or benefit, whether direct or indirect.”

Comparing the definition of “commercial purposes” in the Bill and the definition of “commercial purpose” in section 13A of Cap 187, it appears

¹ “Commercial purpose” means any purpose relating to trade or business (See section 2 of Cap 170)

² “Trade” is defined in the New Shorter Oxford English Dictionary as including buying and selling or exchange of commodities for profit, specifically between nations; commerce, trading, originally conducted by passage or travel between trading parties; the habitual practice of an occupation, business, or profession, esp. as a means of livelihood or gain.

³ “Business” is defined in the New Shorter Oxford English Dictionary as including trade; commercial transactions or engagements; total bookings, receipts, etc; a habitual occupation, a profession, a trade

that they have broadly the same meaning.

11. Regarding the definition of “non-commercial purpose”, such term is not defined in any Ordinance under our local legislation. As a definition is given in the Bill to the term “commercial purposes”, and it is mentioned in the definition that “non-commercial purposes” shall be construed accordingly, the term “non-commercial purpose” as appeared in the Bill should be construed to mean any purpose other than commercial purposes as defined in Item V of Part I of Schedule 3 to the Bill (e.g. private use/education/scientific study).

12. Some examples of commercial and non-commercial cases are listed out at **Annex B**.

Environmental Protection Department
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Membership Lists of the Administrative Appeals Board

Chairman

Mr Arthur LEONG Shiu-chung, G.B.S.

Deputy Chairmen

Mr Anderson CHOW Ka-ming, S.C.

Mr Ambrose HO, S.C.

Mr JAT Sew-tong, S.C.

Mr Andrew MAK Yip-shing

Panel Members

Professor Alfred CHAN Cheung-ming, J.P.

Mr Paul CHAN Kam-cheung, J.P.

Mr CHAN Kin-por, J.P.

Mrs Rosalind CHAN

Mr Jimson CHAN Wing-tai, J.P.

Dr Anissa CHAN WONG Lai-kuen, M.H.

Mrs Lina CHENG TANG Ho-kuen

Mr Hector CHEUNG Yuk-kwan

Ms Ann CHIANG Lai-wan

Ms Sansan CHING Teh-chi

Mr Nicholas CHIU Sai-chuen, B.B.S., J.P.

Miss Anna CHOW Suk-han

Ms Wailee CHOW, J.P.

Mr Hanson JAY Wang-kit

Professor JIM Chi-yung, J.P.

Mr Lester KWOK Chi-hang, J.P.

Mr KWONG Chi-keung

Mr Daniel LAM Chun, B.B.S., J.P.

Mr David LAM Tai-wai

Dr Teresa LAM LEUNG Yin-ting, J.P.

Mr LAU Chi-keung, J.P., M.H.

Mr Stephen LAU Man-lung, J.P.

Mrs LAU YU Po-kwan, J.P.

Ir Edmund LEUNG Kwong-ho, , J.P.

Mrs Mary LEUNG LING Tien-wei
Mr Frederick LUI Lai-cheung, J.P.
Mr Willie LUI Pok-shek, J.P.
Mr Francis LUI Yiu-tung
Ms Gidget LUN Kit-chi
Miss Winnie LUN Pong-hing
Mr Stephen NG Chi-wing, J.P.
Mr Almon POON Chin-hung, J.P.
Ms Elle SHUM Mun-ling, J.P.
Mrs Dianthus TONG LAU Mui-sum
Dr TSE Tsun-him
Mr Thomas TSUI Chun-man
Mr Vincent WAN Shui-tong
Mr Christopher WONG Ching-lok
Mr Ronny WONG Fook-hum, S.C., J.P.
Mrs WONG MAK Kit-ling
Ms WONG Mee-chun, J.P.
Miss Mary Teresa WONG Tak-lan
Dr Philip WU Po-him, B.B.S., J.P.
Mr YAU Chung-wan
Mr William YIP Che-man
Mrs Kathleen YIP HO Tsang-yue, J.P.

Examples of Commercial and Non-commercial Cases

(A) Commercial :

- (1) The possession or control of giant clam shells for sale in a local sea shell shop is commercial.
- (2) The import of live parrots by a pet shop for local sale is commercial.
- (3) The possession or control of captive-bred live turtles for sale by a pet shop is commercial.
- (4) The temporary keeping of live specimens for private owners of their pet animals at a charge is commercial.
- (5) The export of specimen to an overseas biomedical industry for the production of products for sale is commercial.

(B) Non-commercial :

- (1) The keeping of giant clam shells as personal collection is non-commercial.
- (2) The import of live parrots by the Zoological and Botanic Gardens to be used for display to the public is non-commercial.
- (3) A private collector gives the offspring of the live turtles he kept to friends at no charge is non-commercial.
- (4) The temporary keeping of abandoned live specimens by a charity body or non-governmental organization (e.g. SPCA and Kadoorie Farm and Botanic Garden) is non-commercial.
- (5) The export of specimen to an overseas research centre to determine the geographical population of the species from which the specimen was originated is non-commercial.