

立法會
Legislative Council

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**Report of the Bills Committee
on Prevention of Cruelty to Animals (Amendment) Bill 2006**

Purpose

This paper reports on the deliberations of the Bills Committee on Prevention of Cruelty to Animals (Amendment) Bill 2006.

Background

2. The Prevention of Cruelty to Animals Ordinance (Cap. 169) is the main legislation in safeguarding animal welfare by prohibiting and punishing cruelty to animals. Any person who is guilty of the prohibited acts shall be liable on conviction to a maximum fine of \$5,000 and imprisonment for six months. The level of penalty provided in the Ordinance was first prescribed in 1935 and last amended in 1979.

3. The Prevention of Cruelty to Animals Regulations (Cap. 169A) specifies the conditions under which animals may be kept in confinement or during import or export. Any person who contravenes the requirements set out in the Regulations shall be liable to a fine of \$2,000 or, in the case of a continuing offence, the sum of \$200 for every day during which the offence continues.

4. According to the Administration, the present penalty levels under the Ordinance and the Regulations do not reflect the seriousness of the crime concerning cruelty to animals or serve the purpose of deterring persons from committing acts of cruelty to animals. Taking into account public concerns about animal abuse in recent years and the call for more stringent measures against animal abuse by local animal welfare groups, the Administration considers it necessary to increase the penalty levels of the offences in order to reflect their gravity in the present day context.

The Bill

5. The Bill seeks to -

- (a) increase the maximum fine of \$5,000 and imprisonment for six months under the Ordinance to a fine at Level 6 (i.e. \$100,000) and imprisonment for 12 months; and
- (b) increase the maximum penalty that may be prescribed under the Regulations from a fine of \$2,000 to a fine at Level 4 (i.e. \$25,000).

The Bills Committee

6. At the House Committee meeting on 7 July 2006, Members formed a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

7. Under the chairmanship of Hon James TIEN Pei-chun, the Bills Committee held five meetings. The Bills Committee received 63 written submissions and met with 13 organisations and five individuals. A list of the organisations and individuals who have given oral views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

8. The Bills Committee is supportive of the need to increase the penalty levels under both the Ordinance and the Regulations to address public concerns about animal abuse in recent years and bring home the severity of such offence. While welcoming the introduction of the Bill, members are concerned-

- (a) whether the proposed penalty levels are adequate to deter animal abuse; and
- (b) whether the existing provisions in the Ordinance and the Regulations to protect animal welfare are appropriate in the present day circumstances.

9. The deliberations of the Bills Committee are set out in the ensuing paragraphs.

Penalty levels

Maximum fine and imprisonment

10. The majority of organisations and individuals who have submitted views to the Bills Committee consider the proposed levels of penalty insufficient to have deterrent effect. Reference has been made to the penalties for similar offence in overseas countries, including the United States, the United Kingdom (UK), Canada, Australia, New Zealand, Japan and Singapore. The maximum period of imprisonment in these countries ranges from six months to five years, and the maximum fine is in the range of HK\$38,850 to HK\$286,500. Members note that Canada and the United Kingdom are reviewing their relevant laws. Canada proposes a maximum imprisonment for five years on indictment and 18 months on summary conviction, whereas UK proposes to increase the maximum imprisonment from six months to 51 weeks. Members have sought information on the basis for the proposed penalty levels in the Bill.

11. The Administration has pointed out that the proposed levels of fine and imprisonment terms are in line with the penalties for cruelty acts to animals in other developed countries. Should the Bill be enacted, the maximum fine for conviction of animal cruelty offences in Hong Kong will be higher than those in Singapore and Japan which are HK\$47,900 and HK\$65,000 respectively. The proposed penalties are no lighter than the levels of penalty for other serious criminal offences, such as drink driving which attracts a maximum fine of \$20,000 and assaulting police the maximum imprisonment for which is two years.

12. Notwithstanding the Administration's explanations, members are not convinced that the proposed levels reflect adequately the severity of animal abuse nor achieve the intended deterrent effect. Members are unanimously of the view that heavier penalties should be provided for an aggravated offence. After considering the views of deputations and the penalties for cruelty acts to animals in other countries, the Bills Committee has proposed to the Administration for consideration a maximum fine of \$250,000 and imprisonment for three years for an aggravated offence under the Ordinance.

13. The Administration considers the addition of an aggravated offence neither necessary nor desirable on the ground that the appropriate sentence of a case should be left to the court having regard to the gravity of the act committed and other circumstances of the case. To address members' concern, the Administration proposes to raise the maximum penalty in the Ordinance from \$100,000 to \$200,000, and the maximum imprisonment from one year to two years. It also proposes to increase the maximum fine in the Regulations from \$25,000 to \$50,000. The Administration has stressed that a penalty of maximum imprisonment for two years is severe. The penalty under the Offences Against Persons Ordinance (Cap. 212) for common assault is

imprisonment for one year, and for wounding and inflicting grievous bodily harm a maximum imprisonment for three years; no fine is imposed in either case.

14. Members accept the Administration's explanation for not providing an aggravated offence in the Ordinance. The Administration's proposal to increase the maximum fine to \$200,000 in the Ordinance and \$50,000 in the Regulations is also agreeable to members. However, members maintain that the maximum imprisonment should be three years. Many animal welfare organisations have written to the Bills Committee to express support for this proposal. After further deliberations with the Bills Committee, the Administration finally agrees to take on board members' proposal and will move Committee Stage amendments (CSAs) to increase the maximum fine to \$200,000 and the maximum imprisonment to three years in the Ordinance. It will also move CSAs to increase the maximum fine prescribed in the Regulations to \$50,000.

Minimum fine and imprisonment

15. Many organisations have pointed out that the penalties imposed by the court for cruelty to animal offences are too light in the past. The statistics on the outcome of prosecutions from 2003 to June 2006 in this regard are in **Appendix III**. Some animal welfare groups are concerned that the mere proposal to increase the maximum fine and imprisonment will not serve the intended purpose if the court continues to hand down light penalties. They consider it necessary to prescribe the minimum penalty for cruelty acts in the Ordinance.

16. The Administration considers it inappropriate to set a minimum penalty for offences. In the Administration's view, the court will determine the appropriate penalty having regard to factors such as background of the case and the offender. It would be wrong for the Executive, through legislation, to take away the discretion on sentencing that is normally given to the independent Judiciary. If the sentencing for an offence is considered manifestly inadequate, the Secretary for Justice may apply for a review of the sentence. The Administration has also pointed out that if the proposal to increase the maximum penalty is enacted, this will send a clear message to the court about the severity of animal abuse. The court will take into account the increase of the maximum penalty in determining the appropriate sentence. Members accept the Administration's explanations.

Review of animal laws

17. Members note that matters relating to animal welfare are currently covered by different legislation. Cap. 169 prohibits and punishes cruelty to animals. The Public Health (Animals and Birds) (Animal Traders)

Regulations (Cap. 139B) regulates animal traders. Abandoning animals without reasonable excuse is prohibited under the Rabies Ordinance (Cap. 421). The use of animals in experiments is regulated under the Animals (Control of Experiments) Ordinance (Cap. 340).

18. Many organisations and individuals are of the view that the existing legislation concerning animal welfare are outdated and ineffective to combat acts of cruelty to animals. Since the policies relating to animal welfare are provided in different pieces of legislation, they are not readily known to members of the public. For example, few people are aware that abandoning animals constitutes an offence under the Rabies Ordinance. Members share the view that it is necessary to conduct a comprehensive review of not only Cap. 169 but also all other related laws. Since a comprehensive review will take time, members agree that the review can be conducted after the enactment of the Bill so that the proposal to increase the penalty levels for cruelty acts to animals can be put into effect expeditiously. Notwithstanding, members consider it important to have a specific timetable for the review.

19. At members' request, the Administration has undertaken to conduct a comprehensive review of Cap. 169 and the related laws and report the outcome to the Panel on Food Safety and Environmental Hygiene (FSEH Panel) in one year's time. The Administration has also undertaken to cover in the review the maximum daily fine for a continuing offence in the Regulations which now stands only at \$200. The Administration has noted members' request to cover in the review issues relating to end-of-life services to animals.

20. The Secretary for Health, Welfare and Food (SHWF) will affirm at the resumption of the Second Reading debate on the Bill, the undertaking to review Cap. 169 and related laws and report the outcome to the Panel. SHWF has also undertaken to state at the debate that enforcement actions against cruelty to animal cases will be strengthened.

Committee Stage amendments

21. The CSAs to be moved by the Administration have been agreed by the Bills Committee.

Follow-up actions

22. The Bills Committee has referred to the Panel on Environmental Affairs and the FSEH Panel for follow up issues relating to the regulation of end-of-life services to animals. The Bills Committee has also referred to the FSEH Panel for discussion the subject of treatment of stray cattle. Members note that the FSEH Panel has discussed the issue of control of stray cattle at its

meeting on 14 November 2006.

Resumption of the Second Reading debate

23. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting on 6 December 2006.

Consultation with the House Committee

24. The Bills Committee consulted the House Committee on 24 November 2006 and obtained its support for the resumption of the Second Reading debate on the Bill.

Council Business Division 2
Legislative Council Secretariat
27 November 2006

**Bills Committee on
Prevention of Cruelty to Animals (Amendment) Bill 2006**

Membership list

| | |
|----------------------|--|
| Chairman | Hon James TIEN Pei-chun, GBS, JP |
| Members | Hon LEE Cheuk-yan Hon Fred LI Wah-ming, JP Hon Margaret NG (up to 4 October 2006) Hon CHOY So-yuk, JP Hon Audrey EU Yuet-mee, SC, JP Hon WONG Kwok-hing, MH Hon Daniel LAM Wai-keung, SBS, JP (Total : 7 Members) |
| Clerk | Miss Odelia LEUNG |
| Legal Adviser | Miss Kitty CHENG |
| Date | 5 October 2006 |

**Bills Committee on
Prevention of Cruelty to Animals (Amendment) Bill 2006**

**List of organisations and individuals
who have given oral views to the Bills Committee**

1. Concern Group for Pets
2. Society for the Prevention of Cruelty to Animals (Hong Kong)
3. Animal Earth
4. Hong Kong Alleycat Watch
5. BagMeHome
6. Civic Party
7. Hong Kong Kennel Club
8. The Hong Kong and Kowloon Kennel Association
9. Yau Tsim Mong District Council
10. World Animal Rights (Charity) Association Ltd
11. Animals Asia Foundation
12. Hong Kong No Kill City Forum
13. Hong Kong Licensed Pat Traders Association
14. Ms Charlotte TSUI
15. Ms Althea TAN
16. Dr Anthony JAMES
17. Mr CHIK Wing-keung
18. Mr Nelson LAM

Prosecution Statistics and Sentencing Outcome (2003 to June 2006)

a) By sentencing outcome

| Sentence pattern | 2003 | 2004 | 2005 | 2006 (Jan- June) | Total |
|---|-----------|-----------|-----------|------------------------|------------------|
| Not convicted | 3 | 3 | 0 | 1 | 7 (12%) |
| Immediate imprisonment | 0 | 1 | 1 | 1 | 3 (5%) |
| Community service order | 0 | 0 | 1 | 1 | 2 (3%) |
| Bound-over/Conditional discharge | 1 | 0 | 0 | 0 | 1 (2%) |
| Fine | 13 | 14 | 12 | 5 | 44 (76%) |
| Caution/ Absolute discharge | 0 | 0 | 0 | 1 | 1 (2%) |
| Total number of successful prosecution | 14 | 15 | 14 | 8 | 51 (88%) |
| Total number of prosecution | 17 | 18 | 14 | 9 | 58 (100%) |

b) Number of prosecutions by prosecuting department

| Prosecuting Department | 2003 | 2004 | 2005 | 2006 (Jan-June) | Total |
|---|-----------|-----------|-----------|------------------------|------------------|
| Police | 9 | 9 | 11 | 5 | 34 (59%) |
| Agriculture & Fisheries Department | 8 | 9 | 3 | 4 | 24 (41%) |
| Total number of successful prosecution | 14 | 15 | 14 | 8 | 51 (88%) |
| Total number of prosecution | 17 | 18 | 14 | 9 | 58 (100%) |

c) Defendants sentenced with immediate imprisonment by duration of imprisonment

| Duration of imprisonment | 2003 | 2004 | 2005 | 2006 (Jan-June) | Total |
|---|----------|----------|----------|------------------------|-----------------|
| Less than 1 month | 0 | 1 | 1 | 0 | 2 (67%) |
| 3 months | 0 | 0 | 0 | 1 | 1 (33%) |
| Total | 0 | 1 | 1 | 1 | 3 (100%) |
| Average duration of imprisonment | | | | | 37 days |

d) Defendants sentenced with fine by fine amount (HK\$)

| Fine Amount(HK\$) | 2003 | 2004 | 2005 | 2006 (Jan-June) | Total |
|---------------------------------------|-----------|-----------|-----------|---------------------|-----------------|
| Less Than 1,000 | 6 | 5 | 2 | 4 | 17 (39%) |
| 1,000 – 1,999 | 4 | 5 | 6 | 1 | 16 (37%) |
| 2,000 – 2,999 | 1 | 2 | 4 | 0 | 7 (16%) |
| 3,000 – 3,999 | 1 | 1 | 0 | 0 | 2 (5%) |
| 4,000 | 0 | 1 | 0 | 0 | 1 (3%) |
| Total | 13 | 14 | 12 | 5 | 44(100%) |
| Overall Average Amount of Fine | | | | | \$1170 |