

LEGISLATIVE COUNCIL BRIEF

Prevention of Cruelty to Animals Ordinance
(Chapter 169)

PROPOSAL TO INCREASE THE PENALTIES FOR CRUELTY TO ANIMALS

INTRODUCTION

A At the meeting of the Executive Council on 13 June 2006, the Council ADVISED and the Chief Executive ORDERED that the Prevention of Cruelty to Animals (Amendment) Bill 2006, at Annex A, should be introduced into the Legislative Council to increase the penalty level of offences under the Prevention of Cruelty to Animals Ordinance (Cap. 169) (“the Ordinance”).

JUSTIFICATIONS

2. Under the Ordinance, any person who causes unnecessary suffering to any animal shall be liable on conviction to a maximum fine of \$5,000 and imprisonment of six months. Acts of cruelty towards animals, such as beating, kicking, torture, etc. constitute offences under the Ordinance. The level of fine in the Ordinance was first prescribed in 1935 and amended subsequently in 1950 and 1979. In the Prevention of Cruelty to Animals Regulations (Cap. 169A) (“the Regulations”), it is provided that any person who contravenes any provisions set out therein, such as keeping animals in substandard baskets/cages or failing to provide adequate supply of clear fresh water to animals, etc. shall be liable to a fine of \$2,000 or in case of a continuing offence, the sum of \$200 for every day during which the

offence continues.

3. It is believed that the present penalty level under the Ordinance does not reflect the seriousness of the crime concerning cruelty to animals nowadays and does not serve the purpose of deterring persons from committing acts of cruelty towards animals. Moreover, previous court cases show that penalties imposed by the court for offences concerning cruelty to animals were usually on the low side.

4. Taking into account the public concerns about animal abuse in recent years, especially the call for more stringent measures against animal abuses by local animal welfare groups, it is necessary for the Government to increase the penalty level of offences under the Ordinance in order to reflect the gravity of such offences in the present day context. The proposed increase will also bring the penalty level in line with other developed countries. A list of overseas penalty is provided at Annex B.

B

THE BILL

5. The main provisions of the Bill are as follows-

- (a) Clauses 2 and 3 increase the maximum penalty in the Ordinance from a fine of \$5,000 and imprisonment for 6 months to a Level 6 fine (i.e. \$100,000) and imprisonment for 12 months.
- (b) Clause 4 amends the regulation making power in the Ordinance to increase the maximum penalty that may be prescribed under the Regulations. The penalty is amended from a fine of \$2,000 to a Level 4 fine (i.e. \$25,000).

C

The existing provisions being amended are at Annex C.

LEGISLATIVE TIMETABLE

6. The Legislative Timetable is as follows

Publication in the Gazette

23 June 2006

First Reading and Commencement of 5 July 2006
Second Reading debate

Resumption of Second Reading debate, to be notified
committee stage and Third Reading

IMPLICATIONS OF THE PROPOSAL

7. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the current binding effect of the Ordinance (including its subsidiary legislation). It has no financial and civil service, economic, productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

8. We presented the proposal to the Legislative Council Panel on Food Safety and Environmental Hygiene held on 11 April 2006. The proposal received support from all attending members. We have also considered the views of the animal welfare groups.

PUBLICITY

10. A press release will be issued. A spokesman from the Health, Welfare and Food Bureau will be made available to answer media enquiries.

ENQUIRIES

12. Any enquiry on this brief can be addressed to Miss Sally Kan, Assistant Secretary for Health, Welfare and Food at 2973 8295 or Dr. Thomas Sit, Assistant Director (Inspection and Quarantine) of Agriculture, Fisheries and Conservation Department at 2150 6613.

Health, Welfare and Food Bureau

21 June 2006

A BILL

To

Amend the Prevention of Cruelty to Animals Ordinance and the Prevention of Cruelty to Animals Regulations to increase the penalty for cruelty to animals.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Prevention of Cruelty to Animals (Amendment) Ordinance 2006.

2. Penalty for cruelty to animals

Section 3(1) of the Prevention of Cruelty to Animals Ordinance (Cap. 169) is amended by repealing “of \$5,000 and to imprisonment for 6 months” and substituting “at level 6 and to imprisonment for 12 months”.

3. Orders by magistrate

Section 5(4) is amended by repealing “of \$5,000 and to imprisonment for 6 months” and substituting “at level 6 and to imprisonment for 12 months”.

4. Power to make regulations

(1) Section 8(1) is amended by repealing everything after “such place” and substituting a full stop.

(2) Section 8 is amended by adding –

“(1A) Regulations made under subsection (1) may provide that a contravention of a specified provision of the regulations is an offence punishable by a fine not exceeding level 4 and, in the case of a continuing offence, a further fine not exceeding \$200 for every day during which the offence continues.”.

Prevention of Cruelty to Animals Regulations

5. Regulation amended

Regulation 21(1) of the Prevention of Cruelty to Animals Regulations (Cap. 169 sub. leg. A) is amended –

- (a) by repealing “of \$2,000 or” and substituting “at level 4 and”;
- (b) by repealing “the sum” and substituting “to a further fine”.

Explanatory Memorandum

The purpose of this Bill is to increase the maximum penalty for the offences under the Prevention of Cruelty to Animals Ordinance (Cap. 169) and the Prevention of Cruelty to Animals Regulations (Cap. 169 sub. leg. A).

- 2. Clauses 2 and 3 increase the maximum penalty for the offences under the Ordinance to a fine at level 6 and to a term of imprisonment of 12 months.
- 3. Clause 4 increases the maximum penalty that may be prescribed under the Regulations and clarifies the fine imposed in respect of a continuing offence.
- 4. Clause 5 increases the maximum penalty for the offences under the Regulations to a fine at level 4.

Penalties against the Cruelty to Animals in Other Countries/State

Country/State	Law	Maximum Penalty for Individuals	Maximum Imprisonment
New South Wales	Prevention of Cruelty to Animal Act 1979	200 penalty units (AUD110 per penalty unit) (HKD126,060 in total)	2 years
Victoria	Prevention of Cruelty to Animal Act 1986	120 penalty units (AUD 104.81 per penalty unit) (HKD 72,067 in total)	12 months
Western Australia	Animal Welfare Act 2002	AUD 50,000 (HKD 286,500)	5 years
New Zealand	Animal Welfare Act 1999	NZD 25,000 (HKD 128,750)	6 months
UK	Protection of Animals Act	GBP 5,000 (HKD 67,900)	6 months
Washington	Prevention of Cruelty to Animals	USD 10,000 (HKD 77,700)	5 years
New York	Agriculture and Markets Law	USD 5,000 (HKD 38,850)	4 years
Singapore	Animals and Birds Act	SGD 10,000 (HKD 47,900)	1 year
Japan	Law Concerning Protection and Control of Animals	JPY 1,000,000. (HKD 65,000)	1 year

Existing Provisions of Prevention of Cruelty to Animals Ordinance being Amended

Chapter:	169	PREVENTION OF CRUELTY TO ANIMALS ORDINANCE	Gazette Number	Version Date
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Section:	3	Penalty for cruelty to animals	65 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 65 of 1999 s. 3

- (1) Any person who-
- (a) cruelly beats, kicks, ill-treats, over-rides, over-drives, overloads, tortures, infuriates, or terrifies any animal, or causes or procures or, being the owner, permits any animal to be so used, or, by wantonly or unreasonably doing or omitting to do any act, causes any unnecessary suffering or, being the owner, permits any unnecessary suffering to be so caused to any animal; or
 - (b) being in charge of any animal in confinement or captivity or in the course of transport from one place to another, neglects to supply such animal with sufficient food and sufficient fresh water; or
 - (c) conveys or carries, or causes or procures or, being the owner, permits to be conveyed or carried, any animal in such a manner or position or in a case, crate or basket of such construction or such small dimensions as to subject it to unnecessary pain or suffering; or
 - (d) loads any animal into or discharges any animal from any vessel or railway truck on to another vessel or railway truck or on to a wharf or on to the shore, or on to any platform in such a way or with such appliances as to subject such animal to needless or avoidable suffering; or
 - (e) causes, procures or assists at the fighting or baiting of any animal, or keeps, uses, manages, or acts or assists in the management of any premises or place for the purpose, or partly for the purpose, of fighting or baiting any animal, or permits any premises or place to be so kept, managed or used, or receives, or causes or procures any person to receive, money for the admission of any person to such premises or place; or
 - (f) employs, or causes or procures or, being the owner, permits to be employed, in any work or labour any animal which, in consequence of any disease, infirmity, wound or sore, or otherwise, is unfit to be so employed; or
 - (g) brings into Hong Kong, or drives, carries, transports, removes, or has or keeps, or knowingly suffers to be had or kept under his control or on his premises, any animal in any way which may cause it needless or avoidable suffering, (Amended 65 of 1999 s. 3)

shall be liable on summary conviction to a fine of \$5000 and to imprisonment for 6

months. (Amended 22 of 1950 Schedule; 53 of 1979 s.3)

(2) For the purposes of this section, an owner shall be deemed to have permitted cruelty if he shall have failed to exercise reasonable care and supervision in respect of the protection of the animal therefor:

Provided that where an owner is convicted of permitting cruelty within the meaning of this Ordinance by reason only of his having failed to exercise such care and supervision, he shall not be liable to imprisonment without the option of a fine.

(3) Nothing in this section shall apply to the commission or omission of any act in the course of the destruction, or the preparation for destruction, of any animal as food for mankind, unless such destruction or such preparation was accompanied by the infliction of unnecessary suffering.

Section:	5	Orders by magistrate	30/06/1997
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(1) When any person has been convicted of an offence under section 3 or of any regulations made under this Ordinance, the magistrate may order that any animal in respect of which the offence has been committed-

(a) shall not be used; or

(b) shall be removed to and detained in such place and for such time as is stated in the order.

(2) Any order that an animal shall not be used or shall be detained in any place may, instead of stating any period of time, direct that the animal shall not be used or shall be detained until it recovers, and such animal shall not be used or shall be detained, as the case may be, until a senior veterinary officer certifies in writing that it may properly be used or released.

(2A) (a) If the owner of any animal is convicted of an offence under section 3 the magistrate may, in addition to any other penalty or order he may impose or make, make an order depriving such owner of the ownership of the animal and may make such order as to the disposal of the animal as he may think fit.

(b) No order shall be made under paragraph (a) unless it is shown by evidence as to a previous conviction or as to the character of the owner that the animal, if left with the owner, is likely to be exposed to further cruelty. (Added 53 of 1979 s.5) [cf. 1911 c.27 s.3 U.K.]

(3) If any animal has been taken to any place in pursuance of an order made under this section any person who has been convicted of an offence in respect of such animal shall be liable to pay the prescribed fees for its maintenance and treatment for so long as it shall remain therein, and such fees may be recovered as a fine:

Provided that, if the owner of any such animal shall request the officer in charge of the animal to destroy it, such officer shall forthwith cause the animal to be destroyed, and no fees shall be payable in respect of the maintenance or treatment of such animal for any time subsequent to such request.

(4) Any person who acts in contravention of any order made under this section shall be liable on summary conviction to a fine of \$5000 and to imprisonment for 6

months. (Amended 22 of 1950 Schedule ; 53 of 1979 s.5)

Section:	8	Power to make regulations	65 of 1999	01/07/1997
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Remarks:

Adaptation amendments retroactively made - see 65 of 1999 s. 3

(1) For the purpose of preventing cruelty the Chief Executive in Council may make regulations prescribing the conditions under which animals may be kept in confinement in any place, vessel, train, tram, aircraft or vehicle, including the licensing, construction and proper sanitary maintenance of any such place and may by such regulations prescribe offences and penalties therefor: (Amended 65 of 1999 s. 3)

Provided that no penalty so prescribed shall exceed the sum of \$2000 or in the case of a continuing offence the sum of \$200 for every day during which the offence continues. (Amended 16 of 1939 s.2; 22 of 1950 Schedule; 53 of 1979 s.7)

(2) The master of any vessel shall (in addition to the actual offender) be deemed to be guilty of any contravention of any regulation which may occur while he is on board his ship and shall be liable to be proceeded against and punished accordingly.

Chapter:	169A	PREVENTION OF CRUELTY TO ANIMALS REGULATIONS	Gazette Number	Version Date
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Regulation:	21			30/06/1997
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PART III

CONTRAVENTIONS AND PENALTIES

(1) Any person who contravenes regulations 2 to 19 shall be liable to a fine of \$2000 or, in the case of a continuing offence, the sum of \$200 for every day during which the offence continues.

(2) The master of any vessel shall (in addition to the actual offender) be deemed to be guilty of any contravention of the regulations mentioned in paragraph (1) which may occur while he is on board his ship and shall be liable to be proceeded against and punished accordingly.

(G.N.A. 79 of 1951; G.N.A. 125 of 1960; L.N. 136 of 1980)