

立法會

Legislative Council

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Meeting of the Panel on Food Safety and Environmental Hygiene on 19 February 2008

Background Brief prepared by Legislative Council Secretariat

Penalty for offences relating to cruelty to animals

Purpose

This paper summarises the issues relating to cruelty to animals raised by members when the Panel on Food Safety and Environmental Hygiene (the FSEH Panel) was briefed on the legislative proposal of amending the Prevention of Cruelty to Animals Ordinance (Cap. 169) and the Prevention of Cruelty to Animals Regulations (Cap. 169A) (the Regulations), and gives an account of the relevant deliberations made by the Bills Committee on Prevention of Cruelty to Animals (Amendment) Bill 2006 (the Bills Committee).

Background

2. Cap. 169 is the primary legislation for safeguarding animal welfare by prohibiting and punishing cruelty to animals, and the Regulations made under Cap. 169 specifies the conditions under which animals may be kept in confinement or during import or export. The level of penalty provided in Cap. 169 and the Regulations was last amended in 2006. Upon the enactment of the Prevention of Cruelty to Animals (Amendment) Ordinance 2006, the maximum fine for offences against the prohibited acts under Cap. 169 has been increased from \$5,000 to \$200,000 and the maximum imprisonment from six months to three years. The maximum penalty for offences in contravention of the requirements set out in the Regulations has been increased from \$2,000 to \$50,000.

3. When the Administration briefed the FSEH Panel on its legislative proposal to increase the maximum penalty for offences under Cap. 169 and the Regulations on 11 April 2006, members were supportive of the legislative proposal. They, however, were concerned about the scope of cruelty acts under Cap. 169 and public education.

4. The Administration introduced the Prevention of Cruelty to Animals (Amendment) Bill 2006 ("the Bill") into the Legislative Council (LegCo) on 5 July 2006. A Bills Committee was formed to study the Bill. While the Bills Committee was supportive of the need to increase the penalty levels under both Cap. 169 and the Regulations to address public concerns about animal abuse, members expressed concern as to whether the proposed penalty levels were adequate to deter animal abuse and whether the existing provisions in Cap. 169 and the Regulations to protect animal welfare were appropriate in the present day circumstances.

Issues raised by the FSEH Panel at its meeting held on 11 April 2006

Scope of cruelty acts

5. Dr KWOK Ka-ki expressed concern about the scope of cruelty acts to animals and whether negligence in taking care of animals would amount to an offence under Cap. 169. According to the Administration, Cap. 169 provided for a definition on acts of cruelty against animals, which covered cruel beating, kicking and torturing of any animal; negligence in supplying sufficient food and fresh water to any animal in confinement or captivity; causing the fighting or baiting of an animal; and transporting any animal in such a manner as to subject it to needless or avoidable suffering, etc. The Administration also pointed out that it had successfully prosecuted some pet shop owners and animal owners for not providing proper care to animals, such as insufficient fresh water or poor cage design.

Public education

6. Mr WONG Yung-kan expressed concern that pet owners would abandon their pets in the event of an outbreak of animal-to-human infectious diseases. He urged the Administration to introduce legislation to prohibit abandonment of animals, and step up public education in this respect.

7. The Administration explained that, under the Rabies Ordinance (Cap. 421), abandonment of animals was punishable by a fine of \$10,000 and imprisonment for six months. If pet owners decided not to keep their pets, they could hand their pets over to the Agriculture, Fisheries and Conservation Department's (AFCD) Animal Management Centres or other animal charity organisations, such as Hong Kong Society for Prevention of Cruelty to Animals. As regards public education, the Administration advised that two sets of Announcements in Public Interest for television and radio had been produced to promote responsible pet ownership and advise those who intended to keep pets to think carefully whether they could provide proper care to the pets.

Relevant deliberations made by the Bills Committee

Original proposal under the Bill

8. Under the Bill introduced by the Administration, it was proposed that the maximum fine of \$5,000 and imprisonment for six months for offences against the prohibited acts under Cap. 169 be increased to a fine at Level 6 (i.e. \$100,000) and imprisonment for 12 months, and the maximum penalty that might be prescribed under the Regulations from a fine of \$2,000 to a fine at Level 4 (i.e. \$25,000).

Penalty levels

Maximum fine and imprisonment

9. The Bills Committee noted that the maximum period of imprisonment for similar offence in some overseas countries, including the United States, the United Kingdom, Canada, Australia, New Zealand, Japan and Singapore, ranged from six months to five years, and the maximum fine was in the range of HK\$38,850 to HK\$286,500. Members shared the concern of the organisations and individuals submitting views to the Bills Committee that the proposed levels of penalty could not reflect adequately the severity of animal abuse nor achieve a deterrent effect. They considered that heavier penalties should be provided for an aggravated offence, and proposed to the Administration for consideration a maximum fine of \$250,000 and imprisonment for three years for an aggravated offence under Cap. 169.

10. The Administration pointed out that, should the Bill be enacted, the maximum fine for conviction of animal cruelty offences in Hong Kong would be higher than those in Singapore and Japan which were HK\$47,900 and HK\$65,000 respectively. The proposed penalties were no lighter than the levels of penalty for other serious criminal offences, such as drink driving which attracted a maximum fine of \$20,000 and assaulting police the maximum imprisonment for which was two years.

11. On the suggestion of adding an aggravated offence, the Administration considered it 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 proposed to raise the maximum penalty in Cap. 169 from \$100,000 to \$200,000, and the maximum imprisonment from one year to two years. It also proposed to increase the maximum fine in the Regulations from \$25,000 to \$50,000. The Administration stressed that a penalty of maximum imprisonment for two years was severe. The Administration informed the Bills Committee that the penalty under the Offences Against Persons Ordinance (Cap. 212) for common assault was imprisonment for one year, and for wounding and inflicting grievous bodily harm a maximum imprisonment for three years; and that no fine was imposed in either case.

12. While the Bills Committee accepted the Administration's explanation for not providing an aggravated offence in Cap. 169 and its proposal to increase

the maximum fine to \$200,000 in Cap. 169 and \$50,000 in the Regulations, it maintained the view that the maximum imprisonment should be three years. The Administration finally agreed to move Committee Stage amendments to increase the maximum imprisonment accordingly.

Minimum fine and imprisonment

13. Many depositions had expressed the view to the Bills Committee that the penalties imposed by the court for cruelty to animal offences were too light. Some animal welfare groups suggested that a minimum penalty for cruelty acts should be prescribed in Cap. 169. The Administration explained that the court would 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 sentencing discretion that was normally given to the independent Judiciary. If the sentencing for an offence was considered manifestly inadequate, the Secretary for Justice might apply for a review of the sentence. The Administration also pointed out that if the proposal to increase the maximum penalty was enacted, this would send a clear message to the court about the severity of animal abuse. The court would take into account the increase in the maximum penalty in determining the appropriate sentence.

Review of animal laws

14. The Bills Committee observed that matters relating to animal welfare were covered currently under different pieces of legislation -

- (a) Cap. 169 to prohibit and punish cruelty to animals;
- (b) the Public Health (Animals and Birds) (Animal Traders) Regulations (Cap. 139B) to regulate animal traders;
- (c) Rabies Ordinance (Cap. 421) to prohibit abandoning animals without reasonable excuse; and
- (d) the Animals (Control of Experiments) Ordinance (Cap. 340) to regulate the use of animals in experiments.

15. The Bills Committee shared the view of the depositions that the existing legislation concerning animal welfare was outdated and ineffective to combat acts of cruelty to animals. Given that the policies relating to animal welfare were provided in different pieces of legislation, they were not readily made known to members of the public. They considered it necessary to conduct a comprehensive review of Cap. 169 as well as all other related laws. Taking into account the time required for conducting a comprehensive review, the Bills Committee agreed that the review could be conducted after the enactment of the Bill so that the proposal to increase the penalty levels for cruelty acts to animals could be put into effect expeditiously.

16. At the Bills Committee's request, the Administration undertook to conduct a comprehensive review of Cap. 169 and the related laws and report the outcome to the FSEH Panel in one year's time. The Administration also undertook to cover in the review the maximum daily fine (i.e. currently at the level of \$200) for a continuing offence in the Regulations. The Administration also noted the Bills Committee's request to cover in the review issues relating to provision of end-of-life services to animals.

Regulation of pet shops/animal breeders

17. Some animal concern groups held the view that excessive breeding of animals amounted to an act of cruelty to animals and should be prohibited. They considered that, apart from desexing animals, it was very important to put in place an effective system for monitoring the artificial breeding of animals. The Administration pointed out that animal breeders were presently regulated under Cap. 139B, and Cap. 169 also covered cruelty acts to animals in pet shops or breeders. As regards regulation of pet shops, all pet shops must obtain an animal traders licence under Cap. 139B and fulfill requirements, such as size of cages, in the licensing condition for pet shops. The selling of unweaned animals was also prohibited. Moreover, any illegal practice of veterinary surgery would be investigated. If there were cases of cruelty in animal traders, they should be reported. ACFD would investigate and consider prosecution if there were sufficient evidence.

Latest developments

18. At the Council meeting on 16 January 2008, Members passed a motion on "Protecting the rights and interests of animals" moved by Mr Albert HO and amended by Mr WONG Kwok-hing, Ms Audrey EU and Ms CHOY So-yuk urging the Government to adopt various measures to ensure that animals are protected under the law. The wording of the motion passed is in **Appendix I**.

19. The Administration will brief the Panel on 19 February 2008 on the progress report on the proposed amendments to Cap. 169 and the Public Health (Animals & Birds) (Animal Traders) Regulations.

Relevant papers

20. A list of relevant documents and relevant questions raised at Council meetings is in **Appendix II** for members' easy reference. The documents and Council questions are available on the Council's website at <http://www.legco.gov.hk/english/index.htm>.

Relevant Documents/Council Questions

| <u>Meeting</u> | <u>Meeting Date</u> | <u>Documents/Council Questions</u> |
|---|---------------------|---|
| Legislative Council | 8 February 2006 | Oral question on "Measures dealing with animal abuse" raised by Hon Margaret NG |
| | 30 May 2007 | Written question on "Treating of animals by the animal management centres under the Agriculture, Fisheries and Conservation Department" raised by Hon CHOY So-yuk |
| | 19 December 2007 | Written question on "Regulating the sources of animals for sale in pet shops" raised by Hon Jasper TSANG Yok-sing |
| Panel on Food Safety and Environmental Hygiene | 11 April 2006 | Administration's paper on "Proposed amendments to the Prevention of Cruelty to Animals Ordinance (Cap. 169)" [LC Paper No. CB(2) 1663/05-06(07)] Minutes of meeting [LC Paper No. CB(2) 2114/05-06] |
| Bills Committee on Prevention of Cruelty to Animals (Amendment) Bill 2006 | 21 July 2006 | Background paper prepared by LegCo Secretariat [LC Paper No. CB(2) 2802/05-06(02)] |
| | 26 September 2006 | Summary of views submitted by organisations/individuals and the Administration's response prepared by LegCo Secretariat [LC Paper No. CB(2) 3061/05-06(01)] Minutes of meeting [LC Paper No. CB(2) 3157/05-06] |

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| | 10 October 2006 | Letter from the Administration in response to issues raised at the meeting on 26 September 2006 [LC Paper No. CB(2) 3156/05-06(02)] Updated summary of views raised by organisations/individuals and the Administration's response prepared by LegCo Secretariat [LC Paper No. CB(2) 3156/05-06(03)] Minutes of meeting [LC Paper No. CB(2) 201/06-07] |
| | 2 November 2006 | Letter from the Administration in response to issues raised at the meeting on 10 October 2006 [LC Paper No. CB(2) 216/06-07(02)] Minutes of meeting [LC Paper No. CB(2) 327/06-07] |
| | 10 November 2006 | Minutes of meeting [LC Paper No. CB(2) 439/06-07] |

(Translation)

**Motion on
“Protecting the rights and interests of animals”
moved by Hon Albert HO Chun-yan
at the Legislative Council meeting
of Wednesday, 16 January 2008**

Motion as amended by Hon WONG Kwok-hing, Hon Audrey EU Yuet-mee and Hon CHOY So-yuk

“That, although the Prevention of Cruelty to Animals (Amendment) Bill 2006 was passed by this Council last year to increase the penalty for cruelty to animals, incidents of animal cruelty still continue to occur; in order to protect the rights and interests of animals, this Council urges the Government to adopt various measures to ensure that animals are protected under the law; the relevant measures should include:

- (a) comprehensively reviewing and amending the Prevention of Cruelty to Animals Ordinance, including reviewing the definition of cruelty to animals and making abandonment of animals an offence of animal cruelty;
- (b) improving the licensing and regulatory system for the sale and breeding of pets and consulting the public before amending the Public Health (Animals and Birds) Ordinance and the relevant regulations, extending the animal registration system to cover cats and other kinds of animals that are commonly kept as pets, improving the licensing and regulatory system for pet shops and breeding farms, introducing legislation to regulate the sources of animals for sale in pet shops, requiring that all such animals should come from licensed breeding farms, and stepping up enforcement actions against unlicensed breeding, so as to stop the entry of animals from unknown sources into the pet market;
- (c) enhancing the transparency of the Agriculture, Fisheries and Conservation Department in its handling of stray dogs and cats, treating the animals kindly, abandoning the ‘Trap-and-Kill’ method, cooperating with community organizations in jointly promoting the ‘Trap-Neuter-Return’ programme, and using humane means to deal with the problem of stray dogs and cats, with a view to reducing their number in the community;
- (d) requiring law enforcement officers to actively handle the reports on cruelty to animals from the public, considering drawing on overseas experience to set up ‘animal police’ teams specially tasked to investigate cases of animal cruelty and abandonment, and rigorously enforcing the law to curb the situation of animal cruelty and abandonment from becoming prevalent;
- (e) studying the provision of places at suitable locations for animals to move around, including providing more parks and leisure venues which are accessible to dogs and cats;

- (f) actively identifying suitable locations for the provision of public toilets for dogs, so as to make available suitable places for dogs to toilet and improve the environmental hygiene of streets;
- (g) actively identifying suitable locations for placing dog excreta collection bins in areas or streets where public toilets for dogs cannot be provided, and increasing the frequency of cleaning and washing to improve environmental hygiene;
- (h) regulating by licensing hospice service for animals;
- (i) improving the situation of fragmentation of responsibilities in dealing with the rights and interests of animals, and clearly designating a responsible department to avoid confusion over the implementation of policies;
- (j) advising pet shops and private/domestic pet breeders that when selling pets to prospective pet keepers, the former should follow the practice of animal groups in dog adoption by confirming that the deeds of mutual covenant of the buildings where the dog keepers live state that the keeping of dogs is not objected to, so as to reduce the chance of the dogs concerned being abandoned in the future;
- (k) further educating the public on the concept of animal care and responsible pet ownership, and providing incentives to encourage people to arrange their pets to undergo sterilization and regular physical examinations;
- (l) ensuring that all dogs are implanted with microchips to fully implement the existing statutory requirements, thereby enabling the relevant authorities to track down the owners of the abandoned dogs according to the stored information and enforcing the penalties; and
- (m) further educating the public to, before proceeding to keep dogs, carefully consider and ascertain that the deeds of mutual covenant of the buildings where they live state that the keeping of dogs is not objected to and to truly behave as responsible pet owners, so as to reduce the chance of the dogs concerned being abandoned in the future.”