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Subcommittee on Public Health (Animals and Birds) (Animal Traders) (Amendment) Regulation 2016 and Specification of Public Offices (Amendment) Notice 2016

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Administration's legislative proposals to amend the Public Health (Animals and Birds) (Animal Traders) Regulations (Cap. 139B) ("the Regulations") and the Schedule to the Specification of Public Offices Notice (Cap. 1C) with a view to enhancing the regulation of animal trading and dog breeding activities. It also summarizes the concerns of members of the Panel on Food Safety and Environmental Hygiene ("the Panel") on the legislative proposals.

Background

The current regulatory regime

2. Regulation 4(1)(a) of the Regulations provides that a person must not carry on business as an animal trader¹ unless with a licence (i.e. an Animal Trader Licence ("ATL")) granted by the Director of Agriculture, Fisheries and Conservation ("DAFC"). Under the Regulations, DAFC is empowered to attach to a licence such conditions as he may think fit. Licensed animal traders must comply strictly with the statutory requirements concerning housing facilities, sanitary conditions, provision of food and water, pest control, etc. for their animals as stipulated in the Regulations as well as any relevant conditions imposed by DAFC and attached to their licences. The Agriculture, Fisheries and Conservation Department ("AFCD") conducts inspections on licensed animal traders from time to time or in response to public reports for

¹ According to Regulation 2 of Cap. 139B, an "animal trader" means a person who sells, or offers to sell, animals or birds, other than a person selling or offering to sell any animal or bird kept by him as a pet or any offspring thereof.

compliance check. Any trader contravening the statutory requirements or any condition specified in his licence may render himself liable to prosecution and on conviction to a fine². At present, a person who sells his own pet (or the pet's offspring), however, is excluded from the definition of "animal trader". The person is hence not required to obtain an ATL.

3. According to the Legislative Council ("LegCo") Brief (File ref.: FH CR 3/3231/07) issued by the Food and Health Bureau and AFCD in May 2016, the current exclusion of pets and pets' offspring from the control of the licensing scheme has been exploited by some unscrupulous traders who operate under the disguise of a private pet owner, thereby circumventing the relevant regulatory control and leading to public health and animal welfare concerns. Empirical data show that dogs are by far the most vulnerable pet group prone to such a problem. They comprise the largest share of the pet market. Past investigation and conviction records also show that the welfare of dogs that are kept for breeding purposes has been compromised more frequently and to a greater extent than other types of animals. There is a strong case to strengthen the regulation for trading of dogs, including putting the sale of one's own pet dogs and the breeding for sale of dogs under licensing control.

4. According to the Administration, a number of inadequacies have also been identified in the current regulatory regime. For example, the current penalty levels are considered too low to have sufficient deterrence. Besides, DAFC is not explicitly empowered to refuse to grant or renew a licence on grounds that the applicant has been convicted of an offence under the Prevention of Cruelty to Animals Ordinance (Cap. 169) ("PCAO"), or that the licensee has a record of repeated breaches of the licence conditions. For better protection of animal welfare, the Administration proposes to enhance the regulatory control.

The Public Health (Animals and Birds) (Animal Traders) (Amendment) Regulation 2016 and the Specification of Public Offices (Amendment) Notice 2016

5. The Public Health (Animals and Birds) (Animal Traders) (Amendment) Regulation 2016 ("the Amendment Regulation") and the Specification of Public Offices (Amendment) Notice 2016 ("the Amendment Notice") were published in the Gazette on 20 May 2016 and tabled before LegCo on 25 May 2016 to implement strengthened control over animal trading and dog breeding

² Under the existing Regulations, the sale of animal or bird without a licence is an offence and the offender is liable on conviction to a fine of \$2,000, whereas the contravention of licence conditions may render the offender liable on conviction to a fine of \$1,000.

activities. The key features of the legislative amendments are highlighted in the ensuing paragraphs.

Enhancing the regulation of sale, and keeping for breeding and sale, of dogs

6. The Administration proposes to revise the licensing scheme such that any person who sells or offers to sell dogs must obtain a licence or a permit. Under the revised regulatory regime, there will be three types of licence and one type of one-off permit, namely:

- (a) ATL, the type of licence which is currently in place, for any person who sells, or offers to sell, dogs and/or other animals or birds at one premises, but does not keep dogs for breeding, as an animal trader;
- (b) Dog Breeder Licence Category A ("DBLA") for any individual who keeps four or fewer female dogs for breeding purposes at one premises, and sells, or offers to sell, those breeding dams or their offspring. Any individual may hold only one DBLA at any one time;
- (c) Dog Breeder Licence Category B ("DBLB") for any person who keeps a number of female dogs for breeding purposes up to the limit provided for in the licence at one premises, and sells, or offers to sell, those breeding dams, their offspring or dogs from other approved sources; and
- (d) One-off Permit for any dog owner who sells, or offers to sell, a dog that the dog owner keeps as the licensed keeper of that dog. DAFC may only grant a maximum of two one-off permits to a particular individual within any four-year period³.

Setting a minimum age for a person to whom a licence or permit holder can sell dogs

7. In the Administration's view, keeping a dog carries with it serious responsibility and commitment. For the protection of public health and animal welfare, it takes a person with a good measure of maturity to make the decision of buying a dog and the reasonable capacity of taking care of it thereafter. The Administration thus introduces a new provision which prohibits an ATL, DBLA, DBLB or One-off Permit holder from selling a dog to any person under the age of 16.

³ A holder of the One-off Permit may surrender an unused permit previously granted and a surrendered permit would not be counted for the purpose of this arrangement.

Exemption from licensing requirement for animal welfare organizations ("AWOs") providing animals re-homing services

8. Over the years, AFCD has occasionally encountered cases seeking to bypass the licensing requirement whereby the "seller" offers to give away an animal "for free" while at the same time demanding the "buyer" to purchase pet accessories or pet food etc., often at an inflated price, in exchange. To plug the loophole, the term "sell" will be defined to include "transfer, or agree to transfer, ownership of the animal or bird in consideration of entry by the transferee into another transaction". With the new definition, selling pet accessories or food etc. for the transfer of the ownership of an animal or bird shall constitute a sale and be subject to the licensing requirement.

9. There are currently some AWOs which receive stray animals and pets voluntarily surrendered by their owners and arrange adoption or re-homing of such animals. Whilst the animals are usually given out without monetary consideration, it is a common practice that these AWOs would charge a fee to recover the costs of vaccination, de-sexing and/or other medical treatments of the animals concerned. Following the expansion of the definition of "sell", such activities of AWOs may amount to the "sale and offer for sale of dog" and thereby be caught by the licensing requirement inadvertently. To relieve genuine animal re-homing organizations from the burden of the licensing requirement, the Administration proposes that DAFC be empowered to exempt an AWO from the requirement to obtain an ATL if he is satisfied that it is conducting genuine re-homing of animals for welfare purposes on a non-profit making basis. In deciding whether to grant an exemption, DAFC may have regard to the relevant circumstances.

Grounds on which DAFC may refuse to grant or renew, or cancel a licence

10. Under the Amendment Regulation, DAFC may refuse to grant or renew, or may cancel, a licence if he is not satisfied that the applicant or licensee is a suitable person to carry out the regulated activity. In considering whether an applicant or a licensee is a suitable person, DAFC may take into account all relevant factors, including but not limited to whether the person has been convicted of an offence under the Public Health (Animals and Birds) Ordinance (Cap. 139) and its subsidiary legislation, or an offence under section 3 of PCAO⁴, and whether the person has a past record of breaches of the conditions attached to any previous licence held by that licensee.

⁴ Section 3 of PCAO sets out the key offences of cruelty to animals. Offenders are liable on summary conviction to a fine of \$200,000 and imprisonment for three years.

Increasing the penalty levels

11. The existing penalty levels under the Regulations are considered too lenient to have sufficient deterrence. The Administration proposes to increase the maximum penalty for any person who sells, or keeps for breeding and sells, a dog without a licence (an ATL, or a DBLA or DBLB) or an One-off Permit to a fine at level 6 (i.e. \$100,000); and the maximum penalty for contravention of a condition attached to a licence or permit to a fine at level 5 (i.e. \$50,000).

Other technical amendments

12. To facilitate the day-to-day operation of the enhanced regulatory regime, the Administration proposes to amend the Schedule to the Specification of Public Offices Notice (Cap. 1C) such that DAFC may designate any public officer to exercise, on DAFC's behalf, the powers conferred on DAFC under the specified provisions of the amended Regulations.

13. The Administration also proposes a number of technical amendments to the existing Regulations, including setting out the fees payable for the grant and renewal of a licence or the grant of a permit in a Schedule, and providing for the transitional arrangements for existing ATL holders to tide over to the new regulatory regime.

Deliberations of the Panel

14. The Panel was consulted on the legislative proposals at its meetings on 16 April 2013 and 8 July 2014. Members' major views and concerns are summarized below.

Adoption of a two-tier regulatory regime

15. While there was general support for the proposal to put dog breeding activities under control by way of licensing, some members were of the view that the threshold for the granting of DBLA and DBLB⁵ was low, producing an unintended effect of legalizing private breeding of dogs by some commercial breeders who operated under the disguise of private pet owners. These members strongly considered that the Administration should refine its proposal and consider introducing a single-tier licensing regime for dog breeders and subjecting all licensees to the more stringent DBLB to discourage hobby breeding. At the meeting on 16 April 2013, the Panel passed a motion urging the Government to "merely issue under its proposed licensing requirements a

⁵ Formerly named respectively as Animal Breeder Licence (Category A) and Animal Breeder Licence (Category B).

single animal breeder licence which applies to all commercial and private animal breeders and traders".

16. The Administration advised that having critically reviewed this option, it remained of the view that the provision of a two-tier licensing regime for dog breeders would be more appropriate. Under the revised regulatory regime, every individual who bred and/or sold any dog would be required to obtain a licence or permit. In the Administration's view, consideration should be given to the question of whether it was reasonable to require a person who bred a relatively smaller number of dogs to construct kennels and facilities in the same manner as a commercial breeder who bred a larger number of dogs. As most of the small-scale breeders (sometimes referred to as "hobby-breeders" or "home-breeders") kept their dogs as pets and lived with them in a household, it would be unreasonable to require them to construct kennels and other facilities meeting the same accommodation requirements for dogs as a commercial breeder.

17. The Administration stressed that by introducing DBLA, it would put the breeding activities of such hobby-breeders under regulation, hence better protecting the welfare of dogs. While DBLA holders might not be subject to accommodation requirements as stringent as those applicable to DBLB holders, the former had to observe the majority of the licensing conditions applicable to DBLB holders. In brief, all breeders would be required to attend compulsory training and comply with the relevant Code of Practice ("CoP") as one of the licensing conditions. Their licensed premises would also be subject to regular inspections by AFCD officers to ensure compliance. There would be restrictions on the total number of dogs that could be kept on any premises licensed under a DBLA based on the size of the premises. Under no circumstance could the number of adult female dogs exceed four. These measures would help protect the welfare of the animals kept in licensed premises. Taken as a whole, the Administration believed that it had struck a reasonable balance between protecting animal welfare and placing responsibility on the dog breeder.

18. The Administration further pointed out that in many other comparable jurisdictions overseas, small-scale breeding was not subject to any regulation. For example, in the United Kingdom, a dog breeder only required a breeder licence if he bred for sale more than four litters in any 12-month period. The Administration's proposal to put all breeding activities (including small-scale breeding) under regulation was already more stringent than what was currently practiced in many other jurisdictions.

19. There were also views that the introduction of DBLA might encourage more people to breed dogs since, in contrast to DBLB, they were not required to construct extensive kennel and facilities. The Administration explained

that under the existing regulatory regime, any person might breed and sell his own pets without restriction. The legislative proposals were indeed seeking to put such activity under regulation. The Administration further advised that the estimated number of private animal breeders in the market was in the range of 200 to 300. Given the added compliance costs, it did not expect that the introduction of DBLA would lead to a significant expansion in hobby-breeding activities.

Whether the numbers of DBLA and DBLB should be capped

20. Concern was raised as to whether the proposed amendments would lead to a significant increase in the number of "hobby-breeders" or "home-breeders". There was a suggestion that the Administration should impose a cap on the numbers of DBLA and DBLB. Some members questioned whether the doing away of the One-off Permit would constitute a breach of Article 105 of the Basic Law which was in relation to individual rights to property ownership, acquisition, use and disposal.

21. The Administration advised that according to its legal advice, a complete ban on trading of pets by private pet owners would amount to a control of the use of property. Such infringement of individual rights was considered disproportionate when compared with the objective of regulating commercial pet breeders. The proposed One-off Permit was considered appropriate for regulating pet trading by private pet owners. The requirement concerning the granting of the One-off Permit would nevertheless be tightened, so as to forestall possibility of commercial dog breeders/traders bypassing the licensing requirements. Regarding the suggestion of imposing a cap, the Administration did not see a strong justification for capping the numbers of DBLA and DBLB in Hong Kong at the present stage.

Need to extend the proposed licensing system to cats

22. Noting that the legislative proposals would initially address the breeding and trading of dogs only, some members expressed concern about the need to regulate breeding and sale of cats for commercial gain. There was a view that the enhanced regulatory regime should be extended to cover cats and/or other pet animals. Information was also sought on the timetable for extending the proposed regulatory measures to cover the breeding and sale of cats.

23. The Administration explained that since the microchip scheme for dogs had been in place, the enhanced regulatory regime would apply to dogs as a first step. Empirical data showed that dogs were by far the most vulnerable pet group as they comprised the largest share of the pet market. Based on past investigation records and conviction cases, the welfare of dogs that were kept for breeding purpose was compromised more frequently and to a greater extent

than other types of pet. The Administration therefore saw a strong case to put dog breeding activities under licensing control. The Administration would keep in view the effectiveness of the new regulatory regime and assess the need to extend its coverage to cats and/or other pet animals at a later stage.

Enforcement issues

24. Noting that the requirements set out in the draft CoP were quite detailed, members were concerned as to whether the law enforcement department could take effective enforcement actions against non-compliance cases. Concern was also raised about the resource implications on AFCD. Members asked whether AFCD, with its current manpower resources, could sustain the effective implementation of the revised regulatory regime. Some members expressed worries that breeders would be required to pay a high licensing fee based on the "user-pay" principle.

25. According to the Administration, the new licence/permit system would facilitate the development of an extensive database of animal breeders/traders, which could facilitate regular visits and inspections by AFCD officers to ensure compliance. AFCD would acquire additional resources in accordance with the established mechanism for implementing the strengthened regulatory regime. Having regard to other competing demands on AFCD's enforcement capability, it would map out an enforcement strategy that would ensure an effective use of enforcement assets. When considering the levels of licence fees, the Administration would take into account the number of inspections and the manpower involved in enforcement.

Latest development

26. At the House Committee meeting on 27 May 2016, Members agreed to form a subcommittee to examine the Amendment Regulation and the Amendment Notice.

Relevant papers

27. A list of relevant papers on the LegCo website is in the **Appendix**.

**Relevant papers on Public Health (Animals and Birds)
(Animal Traders) (Amendment) Regulation 2016 and
Specification of Public Offices (Amendment) Notice 2016**

| Committee | Date of meeting | Paper |
|--|------------------------|---|
| Panel on Food Safety and Environmental Hygiene | 16.4.2013 (Item V) | Agenda Minutes |
| Panel on Food Safety and Environmental Hygiene | 8.7.2014 (Item II) | Agenda Minutes Follow-up paper (LC Paper No. CB(2)1195/15-16(01)) |

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