

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

**Government' responses to the follow-up items  
requested by the Subcommittee**

At the meeting on 7 June 2016, Members of the Subcommittee raised a number of issues relating to the Public Health (Animals and Birds) (Animal Traders) (Amendment) Regulation 2016 ("Amendment Regulation"). Specifically, Member asked the Government to advise on or consider the following –

- (a) the number of prosecutions instituted in the past five years (i) in respect of contravention of provisions under the Public Health (Animals and Birds) (Animal Traders) Regulations (Cap. 139B) and (ii) against holders of Animal Trader Licence ("ATL") for breach of conditions attached to ATL;
- (b) the suggestion made by some members that while the Director of Agriculture, Fisheries and Conservation ("DAFC") must not cancel a licence without first giving the licensee an opportunity of being heard under the new regulation 5G(2), the licensee should put in their representations "within a reasonable period of time". Members were of the view that the suggested amendment to the new regulation 5G(2) could help forestall attempts on the part of less than co-operative licensees who might seek to frustrate early cancellation of licence by delaying tactics.
- (c) advise what kind of information would be released for public consumption and whether the extent of disclosure of information for public access in the case of body corporates and non-profit-making animal welfare organisations ("AWOs") would be the same as that for individuals, on the understanding that the Government plans to make available, on Government websites, information regarding licensees and persons/AWOs to whom/which exemption from holding an ATL was granted; and
- (d) consider a Member's suggestion to require licensed animal traders/dog breeders to post a notice at a conspicuous place of their premises in respect of which a licence was granted to remind patrons that the minimum age of a person to whom a licence holder could sell dogs was 16.

2. Our responses are set out below:-

- (a) The table below gives the number of prosecutions instituted against (i) contravention of relevant provisions under Cap. 139B<sup>1</sup> and (ii) holders of ATL for breach of conditions attached to ATL<sup>2</sup>

Year	Number of Prosecutions	
	(i)	(ii)
2011	13	2
2012	6	0
2013	3	2
2014	5	1
2015	8	10 <sup>3</sup>

- (b) The new regulation 5G(2) of Cap. 139B provides that DAFC must not cancel a licence without first giving the licensee an opportunity of being heard. This means that DAFC is required to invite the licensee to make representations on the matter and to consider the representations so received from the licensee (if any) before making a decision whether to cancel the licence. This is a matter of procedural fairness as underpinned by the statutory requirement set out in regulation 5G(2) of Cap. 139B. Pursuant to the rules of natural justice, the affected licensee needs to know the case against him and this also requires disclosure to him of the DAFC's reasons/grounds for the proposed cancellation decision. Further, a reasonable time should be given to the licensee by DAFC to enable the licensee to make representations on the matter before a decision is made.

Although the new regulation 5G(2) does not prescribe a time limit for the licensee to take the opportunity to be heard, the condition that it must be exercised without unreasonable delay by the licensee is provided for under section 70 of the Interpretation and General Clauses Ordinance (Cap. 1)<sup>4</sup>. As such, failure by the licensee to take the opportunity to be heard within a reasonable

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<sup>1</sup> Prosecutions were made under Regulations 13(1) of Cap. 139B.

<sup>2</sup> Prosecutions were made under Regulation 13(2) of Cap. 139B.

<sup>3</sup> Among these cases, seven counts were related to one licensee for breaches of different licence conditions.

<sup>4</sup> Section 70 of the Interpretation and General Clauses Ordinance (Cap. 1) provides that “Where no time is prescribed or allowed within which any thing shall be done, such thing shall be done without unreasonable delay, and as often as due occasion arises.”

time allows DAFC to cancel the licence under the new regulation 5G(2).

DAFC is only required to give an opportunity to the affected licensee to make representation before the licence is cancelled. Provided that it is not unreasonable, having regard to the particular circumstances of a case, for DAFC to ask the affected licensee to make representation(s) within the period of time (which must be a reasonable time) specified in the relevant notice of intended cancellation, DAFC may proceed with making a decision on available information if no representation is received from the licensee following expiry of the specified period.

The current drafting of regulation 5G(2) has therefore aptly reflected the policy intention and addressed Members' concern on the matter.

- (c) Under the Amendment Regulation, if DAFC is satisfied that a person is conducting genuine rehoming activities for animal welfare purposes on a non-profit making basis, he may exempt the person from holding an ATL.

To enhance transparency, we intend to publish on the Agriculture, Fisheries and Conservation Department ("AFCD")'s website the list of persons who are exempt from the licensing requirement. Since some of the information of the exempt individuals may be classified as personal data, we would consult legal advice and the Office of the Privacy Commissioner on the practice to ensure compliance with the relevant legal requirement.

- (d) Taking into account the Member's suggestion, AFCD will require all licensees to post a notice at their licensed premises as one of the conditions attached to the licence, reminding patrons that the sale of dogs to any persons under age of 16 is not permitted under the law.

**Food and Health Bureau  
Agriculture, Fisheries and Conservation Department  
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