

**For discussion
on 17 January 2017**

**LegCo Panel on Food Safety and Environmental Hygiene
Subcommittee to Study Issues Relating to Animal Rights**

**Review of the definition of “cruelty to animals”, and the relevant
penalty under the Prevention of Cruelty to Animals Ordinance**

INTRODUCTION

This paper summarises the findings on the review of the definition of “cruelty to animals” under the Prevention of Cruelty to Animals Ordinance (Cap. 169) (“the Ordinance”), as well as the penalties under the Ordinance and the Prevention of Cruelty to Animals Regulations (Cap. 169A) (“the Regulations”) by drawing reference from the equivalent definitions / penalties in other jurisdictions.

CURRENT SITUATION IN HONG KONG

2. The Ordinance is the primary legislation for safeguarding animal welfare by prohibiting and punishing cruelty to animals, and the Regulations specify the conditions under which animals may be kept in confinement or during import or export. Under the Ordinance, any person who cruelly beats, kicks, ill-treats, over-rides, over-drives, overloads, tortures, infuriates or terrifies any animal, or by wantonly or unreasonably doing or omitting to do any act, causes any unnecessary suffering to any animal commits an offence. Any person who has or keeps any animal in any way which may cause it needless or avoidable suffering or neglects to supply an animal with sufficient food and fresh water also commits an offence. Additionally, an owner shall be deemed to have permitted cruelty if he or she has failed to exercise reasonable care and supervision to protect an animal therefrom. The Regulations further set out basic requirements for keeping of animals in confinement or during import or export, including provision of adequate shelter, cleanliness, lighting, ventilation, and an adequate supply of clear fresh water. Enforcement actions under the Ordinance and the Regulations including investigation and prosecution are undertaken by both the Police and the Agriculture, Fisheries and Conservation Department (AFCD).

3. The level of penalty provided in the Ordinance and the Regulations was last amended in 2006. The maximum fine for offences against the prohibited acts under the Ordinance was substantially 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 was increased from \$2,000 to \$50,000. So far, the heaviest sentence for convicted cases under the Ordinance handed down by the court is imprisonment for 16 months.

COMPARISON WITH OTHER JURISDICTIONS

Definitions of “Cruelty to Animals”

4. AFCD has compared the current definition of “cruelty to animals” and penalty under the Ordinance with the relevant provisions of legislations of other countries / places. Details are at **Annex A**. It is noted that an act or failure to act which causes unnecessary suffering to animals is the underlying principle of the definitions of “cruelty to animals” in most cases. Furthermore, the definition of “cruelty to animals” under the Ordinance is quite similar to the provisions of some jurisdictions (e.g. Queensland, New South Wales, California and Singapore).

5. The Ordinance states that an owner shall be deemed to have permitted cruelty if he or she has failed to exercise reasonable care and supervision to protect an animal therefrom. Aside from legislative means, AFCD also provides advice on how to treat animals and pets well, and be a responsible pet owner. Some jurisdictions set out such requirements in the form of codes of practice, for example, Singapore, the United Kingdom (UK) and New Zealand.

Maximum Penalty for Causing Cruelty to Animals

6. The maximum penalty for causing cruelty to animals varies from one place to another. The imprisonment penalty ranges from one year to seven years, whereas the maximum fine ranges from around \$150,000 fine to more than \$1 million. Macau, on the other hand, takes the approach of imposing a daily fine. A list of penalty level of other places is provided at **Annex B**.

CONCLUSIONS AND WAY FORWARD

7. Having regard to the findings of the legislative provisions in other jurisdictions, it appears that the existing definition of “cruelty to animals” under the Ordinance is by and large comparable to that adopted in these places, and the maximum penalty under the Ordinance is in fact heavier than most of them. The Government believes that the current provisions and penalty level are effective in deterring against acts of animal cruelty. Through concerted efforts of the Police, AFCD and animal welfare organisations, the Government would continue to vigorously combat animal cruelty and enforce the Ordinance and the Regulations.

8. The above notwithstanding, the Government would strive to step up its work in safeguarding animal welfare, and introduce new measures as appropriate. AFCD will continue to strengthen its public education and publicity programmes for promoting the messages of caring for animals and responsible pet ownership through advertisements, websites; promotional and pet adoption events; and school talks and community engagement programmes.

9. Last year, the Public Health (Animals and Birds) (Animal Traders) Regulations (Cap. 139B) (“Animal Traders Regulations”) was amended for strengthening regulation of animal trading and dog breeding activities. The maximum penalties under the Animal Traders Regulations have already been increased from \$2,000 to \$100,000 (for selling animals or birds, or keeping dogs for breeding and selling, without a licence or a one-off permit), and from \$1,000 to \$50,000 (for contravention of a condition attached to a licence or permit), to heighten the deterrent effect for contravention of the licensing requirements for animal traders and dog breeders. In addition, the Director of Agriculture, Fisheries and Conservation (DAFC) is empowered to refuse to issue a licence to, or cancel the licence of, a person if he is not satisfied that the person concerned is suitable to be an animal trader / dog breeder, by considering factors, including whether the person has been convicted of an offence under the Ordinance. AFCD will launch publicity programmes to disseminate information about the new requirements of the regulatory regime for the animal traders and dog breeders to the public and the trade.

10. In parallel with the commencement of the new regulatory regime, AFCD will soon issue new Codes of Practice (CoPs) for licensed animal traders in dogs and dog breeders, to ensure the welfare of dogs under the care and management of the licence holders at the licensed premises. The CoPs set out the requirements for licensee and any staff working at the

licensed premises in operating animal trading and dog breeding activities. Examples of such requirements include requirements for environment and facilities, to temperature, ventilation, lighting, training for the licensees and their staff, if any, and record keeping etc. Having consulted members of the trade, the Animal Welfare Advisory Group, and the Panel on Food Safety and Environmental Hygiene (in June 2016), AFCD has uploaded the latest draft CoPs to their website (<http://www.pets.gov.hk>), and plans to implement the CoPs along with the commencement of the regulatory regime. AFCD will gradually introduce CoPs for licensed traders of animals other than dogs, such as cats and reptiles.

ADVICE SOUGHT

11. Members are requested to note the content of this paper.

**Food and Health Bureau
Agriculture, Fisheries and Conservation Department
January 2017**

Definitions of “Cruelty to Animals” in Other Countries / Places
其他國家／地方對「殘酷對待動物」的定義

Country / Place 國家 / 地區	Law 法例	Definition of “Cruelty to Animals” 對「殘酷對待動物」的定義
New South Wales 新南威爾士州	Prevention of Cruelty to Animals Act 1979	<p>Under section 4(2), for the purposes of this Act, a reference to an act of cruelty committed upon an animal includes a reference to any act or omission as a consequence of which the animal is unreasonably, unnecessarily or unjustifiably:</p> <ul style="list-style-type: none">(a) beaten, kicked, killed, wounded, pinioned, mutilated, maimed, abused, tormented, tortured, terrified or infuriated,(b) over-loaded, over-worked, over-driven, over-ridden or over-used,(c) exposed to excessive heat or excessive cold, or(d) inflicted with pain. <p>Under Section 4(3), for the purposes of this Act, a person commits an act of aggravated cruelty upon an animal if the person commits an act of cruelty upon the animal or (being the person in charge of the animal) contravenes section 5(3) in a way which results in (a) the death, deformity or serious disablement of the animal, or (b) the animal being so severely injured, so diseased or in such a physical condition that it is cruel to keep it alive.</p> <p>Under Section 5, (1) a person shall not commit an act of cruelty upon an animal.</p> <ul style="list-style-type: none">(2) a person in charge of an animal shall not authorise the commission of an act of cruelty upon the animal;(3) a person in charge of an animal shall not fail at any time:<ul style="list-style-type: none">(a) to exercise reasonable care, control or supervision of an animal to prevent the commission of an act of cruelty upon the animal,(b) where pain is being inflicted upon the animal, to take such reasonable steps as are necessary to alleviate the pain; or(c) where it is necessary for the animal to be provided with veterinary treatment, whether or not over a period of time, to provide it with that treatment.

Country / Place 國家 / 地區	Law 法例	Definition of “Cruelty to Animals” 對「殘酷對待動物」的定義
Queensland 昆士蘭	Animal Care and Protection Act 2001	<p>Section 18 states that a person is taken to be cruel to animal if the person does any of the following to be the animal –</p> <ul style="list-style-type: none"> (a) causes it pain that, in the circumstances, is unjustifiable, unnecessary or unreasonable; (b) beats it so as to cause the animal pain; (c) abuses, terrifies, torments or worries it; (d) overdrives, overrides or overworks it; (e) uses on the animal an electrical device prescribed under a regulation; (f) confines or transports it— <ul style="list-style-type: none"> (i) without appropriate preparation, including, for example, appropriate food, rest, shelter or water; or (ii) when it is unfit for the confinement or transport; or (iii) in a way that is inappropriate for the animal’s welfare; or (iv) in an unsuitable container or vehicle; (g) kills it in a way that— <ul style="list-style-type: none"> (i) is inhumane; or (ii) causes it not to die quickly; or (iii) causes it to die in reasonable pain; (h) unjustifiably, unnecessarily or unreasonably— <ul style="list-style-type: none"> (i) injures or wounds it; or (ii) overcrowds or overloads it.
New Zealand 新西蘭	Animal Welfare Act 1999	<p>Section 10 states that the owner of an animal, and every person in charge of an animal, must ensure that the physical, health, and behavioural needs of the animal are met in a manner that is in accordance with both—</p> <ul style="list-style-type: none"> (a) good practice; and (b) scientific knowledge. <p>Section 11 states that (1) The owner of an animal that is ill or injured, and every person in charge of such an animal, must ensure that the animal receives treatment that alleviates any unreasonable or unnecessary pain or distress being suffered by the animal.</p>

Country / Place 國家 / 地區	Law 法例	Definition of “Cruelty to Animals” 對「殘酷對待動物」的定義
		<p>Section 12 states that a person commits an offence who, being the owner of, or a person in charge of, an animal,—</p> <ul style="list-style-type: none"> (a) fails to comply, in relation to the animal, with section 10 (Obligation in relation to physical, health, and behavioural needs of animals); or (b) fails, in the case of an animal that is ill or injured, to comply, in relation to the animal, with section 11 (Obligation to alleviate pain or distress of ill or injured animals); or (c) kills the animal in such a manner that the animal suffers unreasonable or unnecessary pain or distress. <p>Section 14 states that</p> <ul style="list-style-type: none"> (1) A person commits an offence who, being the owner of, or a person in charge of, an animal, without reasonable excuse,— <ul style="list-style-type: none"> (a) keeps the animal alive when it is in such a condition that it is suffering unreasonable or unnecessary pain or distress; or (b) sells, attempts to sell, or offers for sale, otherwise than for the express purpose of being killed, the animal when it is suffering unreasonable or unnecessary pain or distress. (2) A person commits an offence who, being the owner of, or person in charge of, an animal, without reasonable excuse, deserts the animal in circumstances in which no provision is made to meet its physical, health, and behavioural needs. <p>Section 28 states that a person commits an offence if that person wilfully ill-treats an animal with the result that—</p> <ul style="list-style-type: none"> (a) the animal is permanently disabled; or (b) the animal dies; or (c) the pain or distress caused to the animal is so great that it is necessary to destroy the animal in order to end its suffering; or (d) the animal is seriously injured or impaired.

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UK 英國	Animal Welfare Act 2006	<p>Section 4 states that</p> <p>(1) A person commits an offence if—</p> <ul style="list-style-type: none"> (a) an act of his, or a failure of his to act, causes an animal to suffer, (b) he knew, or ought reasonably to have known, that the act, or failure to act, would have that effect or be likely to do so, (c) the animal is a protected animal, and (d) the suffering is unnecessary. <p>(2) A person commits an offence if—</p> <ul style="list-style-type: none"> (a) he is responsible for an animal, (b) an act, or failure to act, of another person causes the animal to suffer, (c) he permitted that to happen or failed to take such steps (whether by way of supervising the other person or otherwise) as were reasonable in all the circumstances to prevent that happening, and (d) the suffering is unnecessary. <p>(3) The considerations to which it is relevant to have regard when determining for the purposes of this section whether suffering is unnecessary include—</p> <ul style="list-style-type: none"> (a) whether the suffering could reasonably have been avoided or reduced; (b) whether the conduct which caused the suffering was in compliance with any relevant enactment or any relevant provisions of a licence or code of practice issued under an enactment; (c) whether the conduct which caused the suffering was for a legitimate purpose, such as— <ul style="list-style-type: none"> (i) the purpose of benefiting the animal, or (ii) the purpose of protecting a person, property or another animal; (d) whether the suffering was proportionate to the purpose of the conduct concerned; (e) whether the conduct concerned was in all the circumstances that of a reasonably competent and humane person.

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California 加利福尼亞州	CA PENAL § 597	<p>Section 597 of the Penal Code of the California states that</p> <p>(a) every person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal, is guilty of a crime punishable; and</p> <p>(b) every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labour, is, for each offense, guilty of a crime punishable.</p>
District of Columbia 哥倫比亞特區	DC CODE § 22- 1001 - 1015	<p>Section 22 – 1001 states that</p> <p>(a) whoever knowingly overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly chains, cruelly beats or mutilates, any animal, or knowingly causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly chained, cruelly beaten, or mutilated, and whoever, having the charge or custody of any animal, either as owner or otherwise, knowingly inflicts unnecessary cruelty upon the same, or unnecessarily fails to provide the same with proper food, drink, air, light, space, veterinary care, shelter, or protection from the weather, shall for every such offense be punished by imprisonment in jail not exceeding 180 days, or by fine not exceeding \$250, or by both.</p> <p>(b) For the purposes of this section, “cruelly chains” means attaching an animal to a stationary object or a pulley by means of a chain, rope, tether, leash, cable, or similar restraint under circumstances that may endanger its health, safety, or well-being. Cruelly chains includes, but is not limited to, the use of a chain, rope, tether, leash, cable or similar restraint that:</p> <ol style="list-style-type: none"> (1) Exceeds 1/8 the body weight of the animal; (2) Causes the animal to choke; (3) Is too short for the animal to move around or for the animal to urinate or defecate in a separate area from the area where it must eat, drink, or lie down;

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		<p>(4) Is situated where it can become entangled;</p> <p>(5) Does not permit the animal access to food, water, shade, dry ground, or shelter; or</p> <p>(6) Does not permit the animal to escape harm.</p> <p>(c) For the purposes of this section, “serious bodily injury” means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, mutilation, or protracted loss or impairment of the function of a bodily member or organ. Serious bodily injury includes, but is not limited to, broken bones, burns, internal injuries, severe malnutrition, severe lacerations or abrasions, and injuries resulting from untreated medical conditions.</p> <p>(d) Except where the animal is an undomesticated and dangerous animal such as rats, bats, and snakes, and there is a reasonable apprehension of an imminent attack by such animal on that person or another, whoever commits any of the acts or omissions set forth in subsection (a) of this section with the intent to commit serious bodily injury or death to an animal, or whoever, under circumstances manifesting extreme indifference to animal life, commits any of the acts or omissions set forth in subsection (a) of this section which results in serious bodily injury or death to the animal, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment not exceeding 5 years, or by a fine not exceeding \$25,000, or both.</p>
Singapore 新加坡	Animals and Birds Act	<p>Section 42 states that</p> <p>(1) Any person who — cruelly beats, kicks, ill-treats, over-rides, over-drives, over-loads, tortures, infuriates or terrifies any animal; causes or procures or, being the owner, permits any animal to be so used; by wantonly or unreasonably doing or omitting to do any act, causes any unnecessary pain or suffering or, being the owner, permits any unnecessary pain or suffering to any animal; employs or causes or procures or, being the owner, permits to be employed in any work of labour, any animal which in consequence of any disease, infirmity, wound or sore, or otherwise is unfit to be so employed; or 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 the premises or place, shall be</p>

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		<p>guilty of an offence.</p> <p>(2) For the purposes of subsection (1), an owner shall be deemed to have permitted cruelty to an animal, if he has failed to exercise reasonable care and supervision in respect of the animal.</p>
Japan 日本	Law concerning Protection and Control of Animals	Cruelty means causing unnecessary pain to animal, killing or hurting animal without proper reason, negligence in daily care, not providing medical treatment to injured or sick animal, not providing sufficient food and water, and other neglects.
Taiwan 台灣	Animal Protection Act 動物保護法	<p>Article 5</p> <p>5.1 An animal owner must be over 20 years of age. The statutory agent or legal guardian of a minor (anyone less than 20 years old) keeping or tending animals shall be the owner on behalf of the minor.</p> <p>5.2 Regarding animals tended under his care, an owner shall comply with the followings:</p> <p>5.2.1 Providing proper, clean and harmless food as well as adequate and clean water which should be available at all times.</p> <p>5.2.2 Providing a living environment that is safe, clean, well- ventilated, non-flooding with proper and adequate shelter, lighting and warmth.</p> <p>5.2.3 Providing necessary precaution against infectious animal diseases.</p> <p>5.2.4 Preventing the animal from harassment, abuse or injury.</p> <p>5.2.5 Providing adequate room for a caged pet to stretch and move about, while allowing sufficient out-of-cage activities.</p> <p>Article 6 One must not harass, abuse or injure any animal.</p> <p>Article 10</p> <p>10.1 One must not do the followings to any animal:</p> <p>10.1.1 Conducting fights that pit an animal against another animal or human for direct/indirect gambling, entertainment, profit, business promotion or a dubious purpose.</p>

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		<p>10.1.2 Conducting animal races or contests for direct/indirect gambling. 10.1.3 Abusing, swapping or giving away animals for direct/indirect gambling or a dubious purpose.</p> <p>Article 12 No one shall be allowed to kill animals without due cause unless in any of the [specified] situations under the law.</p> <p>第 5 條 動物之飼主，以年滿二十歲者為限。未滿二十歲者飼養動物，以其法定代理人或法定監護人為飼主。 飼主對於其管領之動物，應依下列規定辦理： 一、提供適當、乾淨且無害之食物及二十四小時充足、乾淨之飲水。 二、提供安全、乾淨、通風、排水、適當及適量之遮蔽、照明與溫度之生活環境。 三、提供法定動物傳染病之必要防治。 四、避免其遭受騷擾、虐待或傷害。 五、以籠子飼養寵物者，其籠內空間應足供寵物充分伸展，並應提供充分之籠外活動時間。</p> <p>第 6 條 任何人不得騷擾、虐待或傷害動物。</p> <p>第 10 條 對動物不得有下列之行為： 一、以直接、間接賭博、娛樂、營業、宣傳或其他不當目的，進行動物之間或人與動物間之搏鬥。 二、以直接、間接賭博為目的，利用動物進行競技行為。 三、以直接、間接賭博或其他不當目的，而有虐待動物之情事，進行動物交換或贈與。</p>

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		<p>第 12 條 對動物不得任意宰殺。但有[法例上列明的情事之一者]，不在此限。</p>
<p>Macau 澳門</p>	<p>Animal Protection Law 動物保護法</p>	<p>Section 25 states that treating animals through cruel, violent or torturous means with intent to inflict suffering on them, which leads to severe physical disabilities, loss of important organs or death is punishable by a maximum of one year or a fine of up to 120 days.</p> <p>第 25 條訂定意圖令動物受痛苦，使用殘忍、暴力或折磨的手段對待動物，造成其肢體嚴重殘缺、失去重要器官或死亡者，處最高一年徒刑或科最高 120 日罰金。</p>

Penalties against the “Cruelty to Animals” in Other Countries / Places

Country / Place	Law	Maximum Penalty for Individuals	Maximum Imprisonment
New South Wales	Prevention of Cruelty to Animals Act 1979	AUD22,000 (HK\$131,000)	5 years
Queensland	Animal Care and Protection Act 2001	AUD235,600 (HK\$1,400,000)	7 years
New Zealand	Animal Welfare Act 2002	NZD100,000 (HK\$560,000)	5 years
UK	Animal Welfare Act 2006	GBP20,000 (HK\$200,000)	51 weeks
California	California Penal Code 597	USD20,000 (HK\$156,000)	1 year
District of Columbia	DC CODE § 22-1001 - 1015	USD25,000 (HKD194,000)	5 years
Singapore	Animals and Birds Act	SGD30,000 (HKD171,000)	3 years
Japan	Law concerning Protection and Control of Animals	Yen 2,000,000 (HKD153,000)	2 years
Taiwan	Animal Protection Act	NT\$1,000,000 (HKD247,000)	1 year
Macau	Animal Protection Law	MOP 20,000 per day	1 year