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Panel on Food Safety and Environmental Hygiene

Subcommittee to Study Issues relating to Animal Rights

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 31 October 2017**

**Public Health (Animals and Birds) (Trading and Breeding) Regulations
(Cap. 139B)**

Purpose

This paper provides background information on the Public Health (Animals and Birds) (Trading and Breeding) Regulations (Cap. 139B) and summarizes the major views and concerns expressed by Members on the enhanced regulatory regime under Cap. 139B.

Background

2. In order to strengthen the regulation of animal trading and dog breeding activities through licensing arrangements, the Public Health (Animals and Birds) (Animal Traders) (Amendment) Regulation 2016 ("the Amendment Regulation") was gazetted on 20 May 2016 to amend the Public Health (Animals and Birds) (Animal Traders) Regulations (Cap. 139B) ("the Regulations") which regulate the activities of animal traders. To bring the Amendment Regulation into operation, the Public Health (Animals and Birds) (Animal Traders) (Amendment) Regulation 2016 (Commencement) Notice ("the Commencement Notice") was gazetted on 25 November 2016 to appoint 20 March 2017 as the day on which the Amendment Regulation came into operation. The title of Cap. 139B was amended from the Public Health (Animals and Birds) (Animal Traders) Regulations to the Public Health (Animals and Birds) (Trading and Breeding) Regulations.

3. Two Subcommittees were formed to study respectively the Amendment Regulation and the Commencement Notice.¹ Major amendments of the Amendment Regulation include:

- (a) revising the licensing scheme such that any person who sells, or offers to sell, dogs must obtain an Animal Trader Licence ("ATL") or a one-off permit, whereas any person who keeps for breeding and sells, or offers to sell, a dog, must obtain a dog breeder licence, viz. a dog breeder licence (category A) ("DBLA")² or a dog breeder licence (category B) ("DBLB")³;
- (b) revising the maximum penalty for any person who sells, or keeps for breeding and sells, a dog without a licence or a 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);
- (c) stipulating that the Director of Agriculture, Fisheries and Conservation ("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;
- (d) empowering DAFC to exempt a person from the requirement to obtain an ATL if DAFC is satisfied that the person is conducting genuine rehoming activities for animal welfare purposes on a non-profit-making basis; and
- (e) prohibiting the sale of dogs by a licensee or permit holder to a person under the age of 16, and the maximum penalty for contravention is a fine at level 5 (i.e. \$50,000).

Members' views and concerns

4. The major views and concerns expressed by Members on the subject

¹ The Subcommittee formed to study the Amendment Regulation also scrutinized the Specification of Public Offices (Amendment) Notice 2016 which aimed to amend the Schedule to the Specification of Public Offices Notice (Cap. 1C) to facilitate the day-to-day operation of the regulatory regime.

² A DBLA is 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.

³ A DBLB is 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.

during recent discussions at the committees of the Legislative Council ("LegCo"), including the Panel on Food Safety and Environmental Hygiene ("the FSEH Panel"), the two Subcommittees formed to study the Amendment Regulation and the Commencement Notice and the Subcommittee to Study Issues Relating to Animal Rights ("the Subcommittee") are summarized below.

Adoption of a two-tier regulatory regime for dog breeding

5. While many members were supportive of implementing the enhanced regulatory regime under the Amendment Regulation to put dog breeding activities under licensing control, some other members took the view that the introduction of DBLA would encourage more people to breed dogs since the threshold for the granting of DBLA was lower than that of DBLB. These members expressed grave concerns that unscrupulous commercial breeders might operate under the guise of hobby-breeders, and it was often difficult to regulate the operating conditions of the breeding premises of hobby-breeders, which in most cases were situated in residential buildings. These members strongly considered that pet trading should be prohibited in Hong Kong, and the Administration should work towards "zero trading" of animals while at the same time stepping up its efforts to further promote pet adoption. There was a suggestion that the Administration should consider tightening up the licensing requirements for DBLA to put them on par with those for DBLB so that all breeders would be subject to the same and more stringent licensing control. At the FSEH Panel meeting on 16 April 2013, members passed a motion urging the Administration to merely issue under its proposed licensing requirements a single animal breeder licence which applied to all commercial and private animal breeders and traders.

6. According to the Administration, a licensing regime would give an anchoring point for the Agriculture, Fisheries and Conservation Department ("AFCD") to carry out inspection, promotion and education work concerning dog breeding activities. As most of the small-scale breeders who were already in existence (sometimes referred to as "hobby-breeders" or "home-breeders") kept their dogs as pets and live with them in a household, consideration had to be given as to whether it was reasonable to require these breeders to construct kennels and other facilities meeting the same accommodation requirements for dogs as those for commercial breeders who bred a larger number of dogs. By introducing DBLA, the Administration was putting the breeding activities of hobby-breeders under regulation. If there was only one type of dog breeder licence applicable to all licensees, hobby-breeders might be discouraged from coming forward and it might even drive such breeding activities underground, increasing the level of difficulty in AFCD's regulatory work. The Administration was of the view that it was more appropriate to set up a two-tier licensing regime.

7. The Administration further advised that while DBLA holders were subject to accommodation requirements different from DBLB holders, they had to observe the majority of the licence conditions applicable to DBLB holders, including attending structured training and abiding by the respective Code of Practice ("CoP").⁴ As stipulated as one of the conditions attached to the licence, premises licensed under a DBLA would also be subject to regular inspections by authorized officers of AFCD to ensure compliance. These apart, the total number of dogs that could be kept on any premises licensed under a DBLA would be subject to the space requirements on the premises concerned as set out in CoP. In the Administration's view, these measures taken together would increase the compliance cost that was to be borne by prospective dog breeders. Hence, the Administration did not expect that the introduction of the two-tier licensing regime would lead to a significant expansion in hobby-breeding activities.

8. Some members suggested that the number of female dogs that could be kept by DBLA holders for breeding purposes should be reduced from "four or fewer" to "not more than two". As explained by the Administration, the differentiation between DBLA and DBLB was primarily based on the number of female dogs kept for breeding purposes by the licensee. Having regard to the actual circumstances that commercial breeders currently in the market were keeping five or more female dogs for breeding purposes on average, the Administration had decided to draw reference to the practice of other comparable jurisdictions and adopted the "not more than four female dogs" ceiling for DBLA.

The one-off permit

9. Some members raised query about the rationale of the Administration's decision to grant a maximum of two one-off permits to an individual within any four-year period. According to the Administration, there was a concern that a complete ban on trading of dogs by private pet owners would be inconsistent

⁴ According to the Administration, ATL, DBLA and DBLB will each be granted by DAFC alongside a set of conditions attached to the respective licences, specifying requirements for the licensed premises, the source of the dogs for sale, and procedures for the sale of dogs etc. All licensees will be subject to one common condition, i.e. they must comply with CoP of their respective licences. CoP is divided into different sections which provide details on subjects ranging from requirements for environment and facilities, to temperature, ventilation, lighting, training for the licensees and their staff (if any) and record keeping etc. The primary objective of CoP is to ensure the good welfare of dogs under the care and management of the licence holders at the licensed premises by, among other things, placing a "duty of care" on the licensee. In this regard, CoP sets out the required "duty of care" standards and other requirements, including those necessary for compliance with the relevant statutory requirements. Depending on the circumstances of a case, non-compliance with CoP might be a breach of the relevant statutory requirements or licence condition.

with the provisions of the Basic Law which protected private property rights. Any restriction on private property rights must satisfy the proportionality test assuming that such a test applied. Under the Amendment Regulation, DAFC might only grant a maximum of two one-off permits to a particular individual within any four-year period. In coming up with this proposal, consideration had been given to the duration of tenancy agreements for renting private premises in normal circumstances (i.e. a period of two years for each tenancy).

Compliance with land leases and deeds of mutual covenant by applicants/licensees

10. Some members expressed concern about whether DAFC would refuse to grant or renew, or even cancel, a licence if the land leases and deeds of mutual covenant ("DMCs") in relation to the premises on which dogs were kept for breeding and sale contained provisions forbidding the keeping of dogs/animals. According to the Administration, in general, it was the responsibility of the applicant/licensee to ensure compliance with all the requirements imposed under the relevant legal documents relating to the premises concerned, including the relevant provisions in DMCs. Application of the relevant requirements set out in DMCs and ensuring their compliance were outside the ambit of AFCD's regulatory power for the licensing regime as provided for under the Public Health (Animals and Birds) Ordinance (Cap. 139). However, if there was evidence to indicate that any breach of the relevant provisions in the relevant DMCs might affect the suitability of the premises concerned to be used for the regulated activity (i.e. breeding of dogs) or the compliance with the relevant requirements relating to the regulated activity, depending on the circumstances of the particular case, it might be one of the relevant factors for DAFC to take into account when considering whether to grant, renew or cancel the licence.

DAFC's powers to cancel a licence

11. Noting that under the new licensing regime, DAFC must not cancel a licence without first giving the licensee an opportunity of being heard, some members suggested that amendment should be made to the effect that the licensee should provide their representations "within a reasonable period of time" in order to forestall attempts on the part of the less than cooperative licensees who might seek to frustrate early cancellation of licence by delaying tactics.

12. The Administration advised that DAFC was required to invite the licensee to make representations and to consider the representations so received from the licensee before making a decision on whether to cancel the licence. Pursuant to the rules of natural justice, the affected licensee needed to know the

case against him and this required informing him of DAFC's reasons/grounds for the proposed cancellation decision. Furthermore, a reasonable time should be given to the licensee by DAFC to enable the licensee to make representations on the matter before a decision was made. Although the Amendment Regulation did 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 was provided for under section 70 of the Interpretation and General Clauses Ordinance.⁵ Provided that it was 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 specified (which must be a reasonable time) in the relevant notice of intended cancellation, DAFC might proceed with making a decision on available information if no representation was received from the licensee following expiry of the specified period.

13. On the enquiry as to whether an appeal mechanism was in place for appellants to lodge complaints against the decisions of DAFC not to grant or renew, or cancel a licence, the Administration advised that under section 11 of Cap. 139, any person who was dissatisfied with the decision of DAFC may appeal to the Chief Executive in Council. The appeal mechanism had been in place for many years and had been functioning well. Some members, however, suggested that the Administration should consider reviewing the appeal mechanism, making reference to the appeal mechanism under the liquor licensing regime.

DAFC's discretion to exempt certain persons from holding an ATL

14. Under the new licensing regime, DAFC might exempt a person (including individuals and animal welfare organizations ("AWOs")) from the requirement to obtain an ATL if DAFC was satisfied that the person was conducting genuine rehoming activities for animal welfare purposes on a non-profit-making basis. Some members asked about the Administration's criteria for determining whether an individual or AWOs conducting animal rehoming activities could be qualified for such exemption. The Administration advised that in deciding on the exemption, DAFC might take into account all relevant factors, including whether (a) the person was a registered society, registered company, or registered trustees incorporated; (b) the organization was a charitable institution or trust of a public character that was exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112); (c) the protection and promotion of animal welfare and rehoming were

⁵ Section 70 of the Interpretation and General Clauses Ordinance 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."

among the core activities and services of the organization; and (d) the person engaged the services of a registered veterinary surgeon to act as an advisor on animal health and welfare. While there was no requirement for the applicant and the veterinary surgeon to enter into an employer-employee relationship, the parties concerned were expected to have developed and to continue to maintain a close working relationship.

15. The Administration also advised that to enhance transparency, it planned to make available, on AFCD's website, information regarding all licensees and persons/AWOs to whom/which exemption from holding an ATL was granted. In view of members' concern about the protection of personal data, the Administration advised that it would seek legal advice and consult the Office of the Privacy Commissioner on how to ensure compliance with the relevant legal requirements.

Enforcement issues

Manpower resources of AFCD

16. Some members expressed concerns about the possible pressure on the manpower resources of AFCD and the practical difficulties in AFCD's regulatory work. In particular, whether AFCD could sustain the effective implementation of the enhanced regulatory regime with its current manpower resources.

17. According to the Administration, when the new regulatory regime was in full swing, it was estimated that there would be around 500 to 1 000 DBLAs, 25 DBLBs and 500 one-off permits in the market. To cope with the anticipated increase in workload, there would be an additional provision of seven permanent civil service posts and redeployment of staff currently engaged in duties related to the Regulations, AFCD anticipated that there would be some 30 officers deployed to discharge duties in relation to the licensing of animal trading activities and enhancing the relevant control measures after commencement of the Amendment Regulation. An appropriate enforcement strategy would be devised to optimize the utilization of its resources. AFCD would launch a series of publicity programme, which included production of Announcements of Public Interest, to ensure that members of the public and relevant stakeholders (in particular the dog breeding and trading sector) were aware of the enhanced regulatory regime.

Inspections on licensed premises

18. Noting that authorized officers of AFCD would conduct regular and surprise inspections on licensed animal traders/dog breeders from time to time for compliance check, members expressed concerns about the practical

difficulties in AFCD's regulatory work as DBLA licensees who bred dogs for sale in domestic premises might not be cooperative in allowing AFCD officers to conduct surprise inspection of their premises.

19. The Administration stressed that once a licence was granted, the licensed premises would be subject to regular inspections by authorized officers of AFCD to ensure continued compliance with the statutory requirements and the conditions attached to the licence. Such inspections might be conducted by prior arrangement with the licensee or surprise checks without prior notice and in any event during reasonable hours. In both cases, entry to the licensed premises, including domestic premises, would be carried out only with the consent of the licensee. A specific condition would be attached to the licence to require the licensee to facilitate AFCD's authorized officers to carry out the inspections by providing access to the licensed premises. Failure to comply with a request by an authorized officer to gain access to the licensed premises might be considered as a breach of this condition. Depending on particular circumstances of a case, the licensee might be liable to prosecution and/or cancellation of the licence.

Prohibiting the sale of dogs to persons under the age of 16

20. Concern was raised over the practical difficulties in enforcing the ban on the sale of dogs to persons under the age of 16 under the enhanced regulatory regime. According to the Administration, the proposal to prohibit an ATL, DBLA, DBLB or one-off permit holder from selling a dog to any person under the age of 16 years had been suggested by various parties during the public consultation exercise and was supported by animal traders. Taking into account members' suggestions, AFCD advised that it would 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 the age of 16 was not permitted under the law.

Investigations against illegal dog trading and breeding activities

21. When the subject of "Handling of illegal sale of dogs on the Internet" was discussed at the meeting of the Subcommittee on 16 May 2017, members considered that the Administration should be more proactive in initiating investigations to detect illegal dog trading and breeding activities rather than acting on complaints only.

22. The Administration advised that around 30 staff were deployed to enforce Cap. 139B, and a dedicated unit was in charge of monitoring advertisements for animal trading and boarding activities on the Internet, and responding to related complains. The investigation team would proactively look for "dogs for sale" advertisements posted on the Internet and took

appropriate follow-up actions on suspicious cases. In addition, since illegal breeding establishments would need to sell their dogs, by proactively looking for "dogs for sale" advertisements and follow-up suspicious cases, AFCD might track down illegal breeding establishments by following the clues. On members' enquiry concerning the conduct of decoy operation, the Administration stressed that decoy operation was only one of the investigation strategies and it might not be applicable to all suspicious cases.

Need to extend the new licensing regime to cats

23. In response to members' view that the enhanced regulatory regime should be extended to cover cats and/or other pet animals, the Administration explained that since the microchipping scheme for dogs had been in place, the enhanced regulatory regime would apply to dogs as a first step. 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 enhanced regulatory regime and assess the need to extend its coverage to cats and/or other pet animals at a later stage.

Latest development

24. At the Council meeting of 28 June 2017, a motion was passed urging the Administration to, amongst others, step up enforcement actions against unlicensed animal breeding facilities, enhance the inspection power of law enforcement officers, consult the public on extending the regulatory system for animal registration and breeding to cover cats and other animals commonly kept as pets, and draw up a timetable for further tightening the regulation of sale of animals.

25. The Administration will brief members on the implementation of the enhanced regulatory regime under Cap. 139B at the Subcommittee meeting on 31 October 2017.

Relevant papers

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

Relevant papers on the Public Health (Animals and Birds) (Trading and Breeding) Regulations (Cap. 139B)

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	16.4.2013 (Item V)	Agenda Minutes
	8.7.2014 (Item II)	Agenda Minutes Follow-up paper (LC Paper No. CB(2)1195/15-16(01))
Legislative Council	11.5.2016	Official Record of Proceedings Pages 8655 to 8658 (written question raised by Hon Claudia MO on "Legislative Proposals on Enhancing Regulation of Animal Trading, as well as Breeding and Selling of Dogs")
House Committee	24.6.2016	Report of the Subcommittee on Public Health (Animals and Birds) (Animal Traders) (Amendment) Regulation 2016 and Specification of Public Offices (Amendment) Notice 2016
	6.1.2017	Report of the Subcommittee on Public Health (Animals and Birds) (Animal Traders) (Amendment) Regulation 2016 (Commencement) Notice
Subcommittee to Study Issues relating to Animal Rights	16.5.2017 (Item II)	Agenda Minutes

Committee	Date of meeting	Paper
Legislative Council	28.6.2017	Motion on "Safeguarding animal rights" Progress report on the motion
	12.7.2017	Official Record of Proceedings Pages 11642 to 11646 (written question raised by Hon Jeremy TAM on "Implementation of the Public Health (Animals and Birds) (Trading and Breeding) Regulations")

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