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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 19 April 2021**

**Enforcement actions to combat acts of
animal cruelty and proposed amendments to
the Prevention of Cruelty to Animals Ordinance (Cap. 169)**

Purpose

This paper summarizes the major views and concerns of members of this Subcommittee and the Panel on Food Safety and Environmental Hygiene ("the Panel") regarding the Administration's enforcement actions to combat acts of animal cruelty and its proposals to enhance animal welfare through amending the Prevention of Cruelty to Animals Ordinance (Cap. 169) ("PCAO").

Background

2. PCAO is the key legislation on animal protection in Hong Kong, it not only safeguards animals against acts of cruelty, but also imposes a duty of care requirement on animal owners or keepers. Under PCAO, cruelty to animals includes cruelly beating, kicking, ill-treating, torturing, infuriating, or terrifying any animals to cause unnecessary suffering to them. Cruelty to animals also covers the improper carriage of animals and putting animals in captivity. Anyone who fails to supply animals with sufficient food and fresh water or causes unnecessary suffering to an animal commits an offence. The Prevention of Cruelty to Animals Regulations (Cap. 169A) made under PCAO also set out the basic requirements for keeping animals in confinement or during transport, contravention of which may constitute an offence

notwithstanding that the animal has yet to be harmed. Any person who commits an offence under PCAO shall be liable on conviction to a fine of \$200,000 and imprisonment for three years.

3. According to the Administration, the number of suspected animal cruelty reports received by the Hong Kong Police Force ("the Police") and the Agriculture, Fisheries and Conservation Department ("AFCD") in 2018, 2019 and 2020 (as at 30 June) were 368, 288 and 150 respectively, while the number of prosecutions made during the corresponding periods were 27, 29 and 5 respectively. Most of the cases were found to be related to nuisance instead of animal cruelty upon investigation. Relevant government departments will take enforcement action under PCAO where circumstances warrant. Both the Police and AFCD will investigate into cases of cruelty to animals and institute prosecution. Where necessary, AFCD will provide professional veterinary advice, while the Food and Environmental Hygiene Department will assist in handling environmental hygiene issues and dead animals. The Society for the Prevention of Cruelty to Animals ("SPCA") has set up a 24-hour enquiry hotline for such cases and it will also provide medical treatment to the animals and facilitate law enforcement officers in their work.

4. According to the Administration, whilst PCAO prohibits and punishes acts of cruelty towards animals, it does not specifically promote good welfare or provide guidance on how good welfare can be achieved. As the views of society and scientific knowledge of animal welfare have changed substantially since PCAO was last updated in 2006, the Administration has, after reviewing the local situation and noting developments in some overseas places, identified a number of possible areas for improvement to bring the current legislation up-to-date to meet community expectations. Between April and July 2019, the Administration conducted a public consultation exercise on its proposals to enhance animal welfare through amending PCAO. The overall objective of the proposals is to enhance animal welfare by requiring persons responsible for animals to take positive steps to provide for their welfare needs. Key elements of the Administration's proposals¹ include:

- (a) to introduce a positive "duty of care";
- (b) to enhance the provisions for prevention of cruelty to animals; and
- (c) to enhance enforcement powers to prevent and protect animals from suffering.

¹ Details of the proposals are set out in the public consultation document (Annex to LC Paper No. CB(2)1381/18-19(03)) which is available on the Legislative Council website at <https://www.legco.gov.hk/yr18-19/english/panels/fseh/papers/fseh20190514cb2-1381-3-e.pdf>

The Administration reported to the Panel on the outcome of the public consultation at its meeting on 21 April 2020. According to the Administration, the majority of respondents supported the proposals to amend PCAO.

Members' major views and concerns

5. Members' major views and concerns on the subject are summarized in the ensuing paragraphs.

Enforcement actions to combat acts of animal cruelty

6. Some Members were of the view that the Administration should draw on overseas experience and consider establishing in Hong Kong "animal police" teams specially tasked to investigate into cases of animal cruelty and abandonment. Appropriate training should also be provided to frontline enforcement officers in order to enhance their investigation capability. Some Members had also raised concern about the division of work between AFCD and the Police and whether they had sufficient manpower and resources when carrying out law enforcement work, after the implementation of the proposed enhancement measures.

7. The Administration advised that dedicated investigation teams had been set up in the 22 police districts across the territory. The dedicated teams, comprising officers with experience and skills in investigating and handling other serious crimes, would take up the animal cruelty cases. In addition, the Police had introduced the Animal Watch Scheme in 2011 with the support from AFCD, SPCA, veterinary associations and animal concern groups to strengthen the Police's capacity in the investigation of animal cruelty cases. The Police would also enlist the support of animal welfare organizations ("AWOs") and animal lovers to implement the "Animal Watchers" Scheme starting from the financial year 2019-2020. The Police would continue to provide training to frontline officers to enhance their awareness and ability to handle cruelty to animal cases, it had also introduced an e-learning software for providing a learning platform to ensure that cases of cruelty to animals were handled in a professional and consistent manner. That apart, AFCD and SPCA would provide lectures and seminars to keep frontline officers abreast of relevant crimes and their trend. The Administration also advised that the Police, in collaboration with different stakeholders, had been combating cruelty to animals through a four-pronged approach including education, publicity, intelligence gathering and investigation. The Administration considered that the existing mechanism was generally effective and it had no plan to establish an "animal police" team. AFCD and the Police would suitably deploy resources for carrying out duties

related to safeguarding animal welfare and would work out law enforcement arrangements and review whether additional manpower and resources were required for stepping up enforcement under PCAO.

Proposed amendments to the Prevention of Cruelty to Animals Ordinance

The concept of "duty of care"

8. Members in general supported the proposed introduction of the concept of responsible pet ownership by imposing a positive "duty of care" on persons responsible for animals. However, they considered it necessary for the Administration to clearly define the terms "duty of care" and "persons responsible for animals", so as to make it explicit who would be covered by or excluded from the definition of "persons responsible for animals" to whom the "duty of care" would apply. Some Members had expressed concern that if the two terms were not clearly defined, AWOs and volunteers as animal carers might, in rescuing or taking care of stray/wild animals, be caught by the law inadvertently due to some unintentional acts. Some Members were also concerned about the impact of the "duty of care" requirement on the daily operation of the food and farming trades (in particular, people engaging in slaughtering, defeathering and/or butchering of live fish and poultry in wet markets). There were views that the Administration should clarify whether the existing slaughtering/defeathering/butchering methods adopted by trade practitioners would be in contravention of the proposed "duty of care" requirement; and guidelines on how to provide for the welfare needs of animals should be provided to trade practitioners.

9. The Administration advised that the "duty of care" only applied when a person was responsible for an animal. Therefore, animals living in a wild or feral state not under the control of any person were excluded from any requirement under the "duty of care" as no person was considered directly responsible for them. However, when wild or feral animals were in the custody or under the control of a person, then the "duty of care" would apply. When assessing whether there was contravention of the "duty of care" in a case, the Administration would consider the actual situation and evidence, including the type of animal and the circumstances under which it was kept. AWOs and volunteers taking care of animals in a genuine manner for the animals' benefit needed not be too concerned about the new requirements. The Administration further advised that to complement the "duty of care", AFCD planned to promulgate Codes of Practice ("CoPs") to give practical and realistic guidance on how good animal welfare could be achieved. As the first priority, CoPs would be issued for those types of animals which were commonly kept in Hong Kong, starting with pet animals. AFCD would make reference to overseas practices and consult stakeholders, including the food and farming trades, before finalizing the relevant CoPs.

Enhancing the provisions for prevention of cruelty to animals

10. Some Members considered that the current penalty levels might not have sufficient deterrence against acts of animal cruelty. In particular, they were concerned that in recent years, the penalties imposed by the court on convicted animal cruelty cases were too lenient and inadequate to reflect the gravity of the offence. There was a suggestion that the maximum penalty for the offence of cruelty to animals under PCAO should be substantially increased. Some other Members, however, held the view that setting a high standard of animal welfare or imposing a heavy penalty for contravention of the "duty of care" might affect people's willingness to keep pets.

11. The Administration advised that the penalty was substantially increased to a fine of \$200,000 and to imprisonment for three years in 2006 to strengthen deterrence against cruelty to animals. Since then, the heaviest sentence handed down by the court for convicted cases under PCAO was imprisonment for 16 months. According to the Administration, the penalty levels under PCAO were by and large comparable to other countries/places including the United Kingdom, New Zealand, Japan, Singapore, the New South Wales and Queensland of Australia, California and the District of Columbia of the United States, Taiwan and Macau. AFCD would keep in view the level of penalty handed down by the court in convicted cases, for the purpose of considering whether a review of the sentence should be sought. It would seek the advice of the Department of Justice, where necessary. The Administration stressed that apart from penalties with substantial deterrent effect and appropriate sentencing, the most effective way to reduce the number of animal cruelty cases was to enhance public awareness of respect for life and care for animals. The Administration would continue to step up its efforts in public education.

12. The Administration had invited the public to give views on the appropriate maximum level of penalty (amount of fine and length of imprisonment) for contravening the "duty of care" and committing an act of cruelty to animals convicted on indictment during the public consultation exercise. According to the Administration, there was broad agreement on the proposals to introduce an indictable offence for severe cases of cruelty to animals and to increase the maximum penalty for such cases.

13. Some Members noted that the Administration had proposed to empower the courts to disqualify a person convicted of an animal cruelty offence from keeping animals within a specified period or permanently and to seize the animals currently kept by the person concerned. They expressed concern about how AFCD could ensure that the convicted person could not keep/deal with animals in the future. The Administration advised that in

taking forward the proposal to empower the courts to disqualify offenders from keeping animals, the Administration intended to explore the possibility of maintaining a register of persons to whom a disqualification order applied for access by relevant parties (e.g. AWOs or animal traders) whilst having regard to requirements on personal data protection.

14. Some Members called on the Administration to kick start the relevant legislative amendment work as early as possible. The Administration advised that upon finalizing the legislative proposals after considering the public views received, the Administration would commence the drafting work of the legislation.

Latest development

15. The Administration will brief the Subcommittee on the latest development regarding its enforcement actions to combat acts of animal cruelty and amendments to PCAO at the Subcommittee meeting on 19 April 2021.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
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Appendix

Relevant papers on enforcement actions to combat acts of animal cruelty and proposed amendments to the Prevention of Cruelty to Animals Ordinance (Cap. 169)

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	-	Report of the Subcommittee on Issues Relating to Animal Welfare and Cruelty to Animals
	14.6.2016 (Item V)	Agenda Minutes
Legislative Council	9.11.2016	Official Record of Proceedings Pages 311 to 315 (written question raised by Hon CHAN Hak-kan on "Efforts to combat crimes of cruelty to animals"
Subcommittee to Study Issues Relating to Animal Rights	17.1.2017 (Items II & III)	Agenda Minutes
Legislative Council	2.5.2018	Official Record of Proceedings Pages 9602 to 9609 (written question raised by Hon Elizabeth QUAT on "Protection of animal welfare and prevention of cruelty to animals"
	13.6.2018	Official Record of Proceedings Pages 12100 to 12107 (written question raised by Dr Hon Priscilla LEUNG on "Prevention of incidents of cruelty to animals"
	14.11.2018	Official Record of Proceedings Pages 2379 to 2384 (written question raised by Hon CHAN Hak-kan on "Protection of animal rights, interests and welfare"

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	14.5.2019 (Item IV)	Agenda Minutes
Legislative Council	26.6.2019	Official Record of Proceedings Pages 11799 to 11805 (Written question raised by Hon CHAN Hak-kan on "Welfare of animals")
Panel on Food Safety and Environmental Hygiene	21.4.2020 (Item V)	Agenda Minutes
Legislative Council	21.10.2020	Official Record of Proceedings Pages 221 to 226 (written question raised by Hon CHAN Hak-kan on "Prevention of cruelty to animals")
	14.11.2020	Official Record of Proceedings Pages 1035 to 1041 (written question raised by Hon Elizabeth QUAT on "Prevention of cruelty to animals")
	9.12.2020	Official Record of Proceedings Pages 2297 to 2302 (written question raised by Hon CHAN Hak-kan on "Prevention of cruelty to animals")

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