

立法會
Legislative Council

LC Paper No. LS 224/98-99

**Paper for the House Committee Meeting
of the Legislative Council
on 25 June 1999**

**Legal Service Division Report on
Resolution under section 3 of the
Dogs and Cats Ordinance (Cap. 167)**

The Secretary for Economic Services Bureau has given notice to move a motion under section 3 of the Dogs and Cats Ordinance (Cap. 167) at the Legislative Council meeting to be held on 7 July 1999. The purpose of the motion is to seek the Legislative Council's approval of the Dangerous Dogs Regulation ("the Regulation") which provides for the control and regulation of fighting dogs, large dogs and known dangerous dogs.

2. The Regulation defines the various classes of dogs as well as public place. The dogs under control are fighting dogs, large dogs and known dangerous dogs. Schedule 1 provides for the types of fighting dogs under control. A large dogs means a dog having such body weight as is specified in Schedule 2 but does not include a fighting dog or a known dangerous dog. Schedule 2 specifies the body weight to be 20 kg or above. A known dangerous dog means a dog classified as such by order of a magistrate in specified circumstances. The term "public place" is defined to include, with certain exceptions, any place to which the public normally have access whether on payment or otherwise, and common areas of buildings and developments, regardless of whether they are indoor or outdoor.

3. The Regulation provides for the control of fighting dogs. It creates an offence for removal of fighting dogs from a conveyance arriving in Hong Kong. It also creates offences for importation and breeding of fighting dogs and possession of a fighting dog without it being neutered. It further creates an offence for causing, suffering or permitting a fighting dog to enter or remain in public places without it being securely fitted with a muzzle or being securely held on a leash.

4. The Regulation provides for the control of large dogs. It creates an offence for causing, suffering or permitting a large dog to enter or remain in indoor public places without being securely fitted with a muzzle or being securely held on a leash, or to enter or remain in an outdoor public place without being held securely on a leash.

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5. The Regulation provides that a magistrate may by order, in specified circumstances, classify a dog as a known dangerous dog on application to him. It creates an offence for possession of a known dangerous dog without it being neutered. It also creates an offence for causing, suffering or permitting a known dangerous dog to enter or remain in public places without it being securely fitted with a muzzle or

held on a leash.

6. The Regulation also provides for miscellaneous matters including directions by an authorized officer, appeals in respect of such directions to the Administrative Appeals Board and classification of fighting dogs by authorized officers and the Dogs and Cats Classification Board.

7. The Regulation further provides that the Director of Agriculture and Fisheries may pay a keeper of an existing fighting dog, which is present in Hong Kong before the commencement of the Regulation and with a valid dog licence, a sum of \$3,000 if he surrenders his dog to the Director for destruction during the transitional period of 120 days.

8. The Regulation will come into operation on a day to be appointed by the Secretary for Economic Services by notice in the Gazette.

9. The Regulation is broadly based on the draft Regulation submitted to and scrutinised by the Bills Committee on the Dogs and Cats (Amendment) Bill 1996. The Regulation contains the following significant changes in the light of the comments of the Bills Committee and public consultation. The Administration has introduced the definition of “public place” and the class of “large dogs” to replace “potentially dangerous dogs” in the draft Regulation, removed requirement as set out in the draft Regulation for taking out insurance for fighting dogs and known dangerous dogs.

10. The Legal Service Division has raised certain drafting points with the Administration. Copies of the correspondence are annexed for members’ reference. As a result of which, the Administration has agreed to move amendments to the Regulation amending the Chinese text of section 14(1) to achieve consistency with the corresponding English version. With the proposed amendments, we are satisfied that the legal and drafting aspects of the Regulation are in order.

Encl

Prepared by
Lam Ping-man, Stephen
Assistant Legal Adviser
Legislative Council Secretariat

23 June 1999

Resolution/LS/R/16/98-99

LS/R/16/98-99
2869 9468
2877 5029

Mr K K Liu
Assistant Director
Agriculture and Fisheries Department
13/F, Canton Road
Government Offices
393 Canton Road
Kowloon

21 June 1999

BY FAX
Fax No. : 2199 7050
Total Page(s) : 2

Dear Mr Liu,

**Resolution under section 3 of the
Dogs and Cats Ordinance (Cap. 167) - Dangerous Dogs Regulation**

We are scrutinising the legal and drafting aspects of the Regulation. We have the following queries and should be grateful for your clarification—

Definition of “public place” : section 2

Paragraph (b) of the definition excludes “a building, a development or an estate which contains not more than one domestic premises”. The term “domestic premises” is defined in the principal Ordinance to mean “any premises or place used solely for dwelling purposes and constituting a separate household unit”. Thus, the exclusion in the provision covers only separate household unit in a development but, in our view, leaves out the scenario where there are two or more units in a development of the same household. Is this the policy intent of the Administration?

Section 14(1)

We append a copy of the Chinese version of the provision marked up with our comments for your consideration.

Section 16(2)(b)

The provision states that a dog shall cease to be regarded as a fighting dog as from the day on which the Director of Agriculture and Fisheries receives a notice of application under section 17, until the application has been disposed of, withdrawn or abandoned. Will the dog be regarded automatically once again as a fighting dog upon the withdrawal or abandonment of the application? The provision does not appear to say it clearly.

In facilitating us to report on the Regulation to the House Committee meeting to be held on 25 June 1999, it is appreciated that your reply, in both languages, could reach us by close of play tomorrow.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser

Encl

c.c. Miss Marie Siu
Senior Government Counsel
(Fax : 2869 1302)

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Letterhead of AGRICULTURE & FISHERIES DEPARTMENT

OUR REF.: () in AF

YOUR REF.:

TEL NO.: 2733 2174

Cable Address: AGFISH HONG KONG

Fax. No.: 2311 3731

23 June
1999

Mr. Stephen Lam
Legislative Council Secretariat
8 Jackson Road, Central
Hong Kong
Fax: 2877 5029

Dear Mr. Lam,

Thank you for your letter of 21 July 1999.

I have the following comments on the points you raised.

Definition of “public place”: section 3.

The policy intention was to exclude buildings, developments or estates that contain only one domestic premises. We wished to avoid the situation where one household unit occupying one building, development or estate would be breaking the law by having the family pet off leash or unmuzzled within the confines of their own exclusive property.

In my view, it would appear that where you have two or more “units” within one development occupied by members of one household, this place would not be a public place. According to the definition in the principal Ordinance a “domestic premises” means any premises or any **place** used solely for dwelling purposes and constituting a separate household unit. If, for example, one household unit occupies an entire building, development or estate, this place would not fall under the definition of public place, regardless of the number of “units” in the development. However, if other household units occupied one of the “units” in this building, development or estate, then the common parts between the “units” would become a public place, as we require.

Section 14 (1)

Agreed.

Section 16(2)(b)

It is not necessary to state that the dog be regarded once again as a fighting dog upon the withdrawal or abandonment of the application. Section 16(2)(a) is a general provision whereas section 16(2)(b) provides an exception to it.

Section 16(2)(a) provides that the dog shall be regarded as a fighting dog for the purposes of this regulation if the dog is classified as such under subsection (1). Section 16(2)(b) provides that where there is an application made under section 17, the dog shall cease to be regarded as a fighting dog for a certain period of time, that is, *from* the day on which the Director receives the application *until* the application has been disposed of, withdrawn or abandoned. In case the application is withdrawn or abandoned, it is reasonable and logical to construe that the dog will be regarded automatically as a fighting dog without any express provision.

Yours sincerely,

(L.D. SIMS)
for Director of Agriculture and
Fisheries

c.c.	ESB	Mr Howard Yam	2868 4679
	D of J	Ms Marie Siu	2869 1302
	D of J	Ms Melody Hui	2869 0670