

The Administration's Response to Comments and Questions raised at the Bills Committee on the Protection of Endangered Species of Animals and Plants Bill meeting held on 29 November 2005

Review of Schedule 3 of the Bill

We are reviewing the contents of Schedule 3 of the Protection of Endangered Species of Animals and Plants Bill (the Bill) in view of the comments from Members at the Bills Committee meeting on 29 November 2005. We are also seeking confirmation on the interpretation of certain decisions by the Conference of the Parties of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) from the CITES Secretariat. We will inform Members of our proposed amendments to Schedule 3 as soon as possible.

Interpretation of “commercial purposes”

2. We are still preparing the information regarding the differences in the interpretation of “commercial purposes” among the Bill, the Animals and Plants (Protection of Endangered Species) Ordinance (Cap.187) (the Ordinance) and other local legislations and will provide members the required information as soon as possible.

Convention requirement in the definition of “in-transit”

3. Members raised concern about the phrase “in accordance with any requirement under the Convention relating to the transit or transshipment of specimens” in clause 3 as the Bill also contains requirements of certain Convention Instruments in this regard that are not included in the main body of the Convention. As the various requirements of the Convention and the Convention Instruments have already been embedded in the main texts of the Bill and its Schedules, we agree that this phrase is not necessary and can be removed from clause 3 as follows:

For the purposes of this Ordinance, a thing is in transit if –

- a) it is brought into Hong Kong from a place outside Hong Kong;**

- b) it is in the process of being taken to another place outside Hong Kong; and
- c) it remains ~~in accordance with any requirement under the Convention relating to the transit or transshipment of specimens~~, under the control of the Director or an authorized officer from the time it is brought into Hong Kong up to the time it is taken outside Hong Kong.

Possession or control of pre-convention specimens

4. We note Members' concern that some persons may come into possession of specimen before such species are listed as endangered species under CITES and regulated by local legislation. They may not have any evidence to prove the date of possession of such species. We agree that when enforcing the requirements of the Bill, the possession of species should be considered having regard to all circumstances relating to each individual case. We welcome Members' suggestion that we should state this intention clearly in the speech to be delivered by the Secretary for the Environment, Transport and Works at the resumption of the second reading debate on the Bill.

Consequential amendments to clause 22

5. In view of the amendment to clause 3 regarding the definition of "in-transit", we propose to make a consequential amendment to clause 22(2) as follows:

(2) A person may import, re-export, or have in his possession or under his control a live animal of a scheduled species in transit if –

- (a) upon the landing of the animal in Hong Kong, he produces, or causes to be produced, to an authorized officer a Convention certifying document ~~export permit~~ or certificate in lieu in respect of the animal; and

- (b) subject to subsection (3), at least 3 working days before the intended date ~~on of the expected arrival of the vessel, vehicle, train or aircraft in~~ which the animal is to be brought into Hong Kong, the Director receives a notification made to him in writing –
- (i) providing a description and the particulars of the animal;
 - (ii) stating the intended date on which the animal is to be brought into Hong Kong; and
 - (iii) where the animal is to be brought into Hong Kong by a vessel, vehicle, train or aircraft, providing particulars of the vessel, vehicle, train or aircraft so as to enable the Director to locate it immediately upon its arrival in Hong Kong.

Streamlining of licensing procedure

6. At the Bills Committee meeting on 29 November 2005, some Members suggested that the Administration should consider ways to further streamline the licensing procedures to facilitate trade.

7. Members suggested that holders of the import licence should not be required to apply for possession licence. However, the control of import and possession of scheduled species are two different control mechanisms. Different information is required in the import and possession licences and different licence conditions are imposed. For example, the location of keeping premises will be specified in the possession licence but such information would not be required in the import licence. We would also need to require the holders of the possession licence to report the birth of offspring of their species but such licence condition is not appropriate for import licence. As required by CITES, a validity period of not more than 12 months should be imposed on import licence but a longer validity period is allowed for possession licences. It may also cause unnecessary confusion to the traders as under the current system, traders usually request the seller to present a copy of the possession licence. An importer may be unwilling to disclose the information on an import licence to a buyer as it contains details of the

overseas supplier.

8. The current import and possession licence system has been implemented since 1976 when the Ordinance was first enacted. The issue of both import and possession licences are generally accepted by the trade. Merging the two mechanisms into one will create enforcement difficulties. We should also note that with the passage of the Bill, about 80% of the present licensees will be exempted from the possession licence requirement. A further 10% of the licensees will be benefited from the reduced number of licences required because a single licence could be used for keeping specimens of different species in the same premises.

9. To ensure effective enforcement, we need to impose a validity period for the possession licence in order to maintain proper control of the specimens concerned. Licence renewal at regular intervals allows Agriculture, Fisheries and Conservation Department to keep track of the specimens concerned and information in relation to the specimens could be updated. The trade in general accepts the current validity period of 2 years. To address Members' concerns, we agree to extend the length of the validity period to five years to reduce the burden on the licensees even further.