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Bills Committee on Prevention of Cruelty to Animals (Amendment) Bill 2006

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 21 July 2006**

Penalty for offences relating to cruelty to animals

Purpose

This paper summarises the deliberations of the Panel on Food Safety and Environmental Hygiene on the legislative proposal to increase the maximum penalty for offences relating to cruelty to animals.

Background

2. The Prevention of Cruelty to Animals Ordinance (Cap. 169) is the main legislation in safeguarding animal welfare by prohibiting and punishing cruelty to animals. Any person who is guilty of the prohibited acts shall be liable on conviction to a maximum fine of \$5,000 and imprisonment for six months. The level of penalty provided in the Ordinance was first prescribed in 1935 and last amended in 1979.

3. The Prevention of Cruelty to Animals Regulations (Cap. 169A) specifies the conditions under which animals may be kept in confinement or during import or export. Any person who contravenes the requirements set out in the Regulations shall be liable to a fine of \$2,000 or, in the case of a continuing offence, the sum of \$200 for every day during which the offence continues.

4. According to the Administration, the present penalty level under the Ordinance does not reflect the seriousness of the crime concerning cruelty to animals or serve the purpose of deterring persons from committing acts of cruelty to animals. The penalties imposed by the court for offences concerning cruelty to animals were usually on the low side in the past. The enforcement statistics and outcomes of prosecutions in this regard are in **Appendix I**.

The legislative proposal

5. To enhance the deterrent effect against cruelty to animals, the Administration proposes to –

- (a) increase the maximum fine of \$5,000 and imprisonment for six months to a fine at Level 6 (i.e. \$100,000) and imprisonment for 12 months; and
- (b) increase the maximum penalty that may be prescribed under the Regulations from a fine of \$2,000 to a fine at Level 4 (i.e. \$25,000).

6. According to the Administration, the proposed increase will bring the penalty level in line with other developed countries. A list of penalties for offences relating to cruelty to animals in other places is in **Appendix II**.

Deliberations of the Panel

Relevant meeting

7. The Panel discussed the legislative proposal at its meeting on 11 April 2006. The Panel received two written submissions. While members expressed support for the legislative proposal, there were concerns about the scope of cruelty acts under the Ordinance, enforcement actions and public education. The deliberations of the Panel are summarised in the following paragraphs.

Scope of cruelty acts

8. Dr Kwok Ka-ki was concerned about the scope of cruelty acts to animals and whether negligence in taking care of animals would amount to an offence under the Ordinance.

9. The Administration explained that the Ordinance provided a definition on acts of cruelty to animals, which covered cruel beating, kicking and torturing of any animal; negligence in supplying sufficient food and fresh water to any animal in confinement or captivity; causing the fighting or baiting of an animal; and transporting any animal in such a manner as to subject it to needless or avoidable suffering, etc. The Administration pointed out that it had successfully prosecuted some pet shop owners and animal owners for not providing proper care to animals, such as insufficient fresh water or poor cage design.

Enforcement

10. Dr Kwok Ka-ki was of the view that staff of the Agriculture, Fisheries and Conservation Department (AFCD) should conduct periodic patrols in both urban areas and rural areas as many pets/animals were kept in urban areas.

11. The Administration assured members that in enforcing the legislation on animal welfare, AFCD staff patrolled all areas in Hong Kong, in particular the pet shops and Animal Management Centres in both urban areas and rural areas.

Public education

12. Mr WONG Yung-kan expressed concern that pet owners would abandon their pets in the event of an outbreak of animal-to-human infectious diseases. Mr WONG urged the Administration to introduce legislation to prohibit abandonment of animals, and step up public education in this respect.

13. The Administration explained that under the Rabies Ordinance (Cap. 421), abandonment of animals was punishable by a fine of \$10,000 and imprisonment for six months. If pet owners decided not to keep their pets, they could hand their pets to AFCD's Animal Management Centres or other animal charity organisations, such as Hong Kong Society for Prevention of Cruelty to Animals.

14. As regards public education, the Administration informed the Panel that two sets of Announcements in Public Interest for television and radio had recently been produced to promote responsible pet ownership and advise those who intended to keep pets to think carefully whether they could provide proper care to the pets.

Question raised at Council meeting

15. At the Council meeting on 8 February 2006, Ms Margaret NG raised an oral question on measures for dealing with animal abuse. The question and the reply are in **Appendix III**.

Prevention of Cruelty to Animals (Amendment) Bill 2006

16. The Prevention of Cruelty to Animals (Amendment) Bill 2006 was introduced into the Council on 5 July 2006. The Bill seeks to increase the maximum penalty for acts of cruelty to animals.

Relevant papers

17. A list of the relevant papers on the Legislative Council website is in **Appendix IV**.

Council Business Division 2
Legislative Council Secretariat
20 July 2006

Appendix I

Enforcement Statistics and Sentencing Outcome of Offences under Prevention of Cruelty to Animals Ordinance and Regulations (2003 to September 2005)

a) By sentencing outcome

Sentence pattern	2003	2004	2005 (Jan-Sep)
Not convicted	3	3	0
Immediate imprisonment	0	1	1
Community service order	0	0	1
Bound-over/Conditional discharge	1	0	0
Fine	13	14	9
Total number of successful prosecution	14	15	11
Total number of prosecution	17	18	11

b) Number of prosecutions by prosecuting department

Prosecuting Department	2003	2004	2005 (Jan-Sep)
Police	9	9	9
Agriculture & Fisheries Department	8	9	2
Total number of successful prosecution	14	15	11
Total number of prosecution	17	18	11

c) Defendants sentenced with immediate imprisonment by duration of imprisonment

Duration of imprisonment	2003	2004	2005 (Jan-Sep)
Less than 1 month	0	1	1
Total	0	1	1

d) Defendants sentenced with fine by fine amount (HK\$)

Fine Amount(HK\$)	2003	2004	2005 (Jan-Sep)
Less Than 1,000	6	5	1
1,000 - Less Than 4,000	7	8	8
4,000	0	1	0
Total	13	14	9
Overall Average Amount of Fine	\$1292		

Appendix II

Penalties against Cruelty to Animals in Other Countries/States

Country/State	Law	Maximum Penalty for Individuals	Maximum Imprisonment
New South Wales	Prevention of Cruelty to Animal Act 1979	200 penalty units (AUD\$110 per penalty unit) (HK\$126,060 in total)	2 years
Victoria	Prevention of Cruelty to Animal Act 1986	120 penalty units (AUD\$104.81 per penalty unit) (HKD\$72,067 in total)	12 months
Western Australia	Animal Welfare Act 2002	AUD\$50,000 (HK\$286,500)	5 years
New Zealand	Animal Welfare Act 1999	NZD\$25,000 (HK\$ 128,750)	6 months
UK	Protection of Animals Act	£ 5,000 (HK\$67,900)	6 months
Washington	Prevention of Cruelty to Animals	US\$10,000 (HK\$77,700)	5 years
New York	Agriculture and Markets Law	US\$5,000 (HK\$38,850)	4 years
Singapore	Animals and Birds Act	SG\$10,000 (HK\$47,900)	1 year
Japan	Law Concerning Protection and Control of Animals	Yen \$ 1,000,000. (HK \$ 65,000)	1 year

Extract from the Official Record of Proceedings
of the Council meeting on 8 February 2006

Measures Dealing with Animal Abuse

3. **MS MARGARET NG** (in Cantonese): *President, regarding the measures adopted by the Government for dealing with animal abuse, will the Government inform this Council:*

- (a) *whether it will consider imposing heavier fines on animal abusers to enhance the deterrent effect;*
- (b) *how it will improve the procedures adopted by law-enforcement agencies for handling reports by the public on animal abuse cases, and to strengthen publicity and education among the public, especially the young people, on animal protection, so as to make them understand that they should respect life; and*
- (c) *whether it will review the existing legislation on animal protection to see if there are any outdated provisions; if so, of the specific details of the review plan?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese):
Madam President,

- (a) According to our past experience in enforcement and investigation, most of the animal cruelty cases are due to negligence, such as failing to provide adequate care. Cases of ill treating animals with intention are generally uncommon. Under the Prevention of Cruelty to Animals Ordinance (Cap. 169) (PCAO), the maximum penalty for cruelty to animals is a fine of HK\$5,000 and imprisonment for six months. The Administration is studying the level of penalty on animal cruelty of other countries. We are considering to increase the maximum penalty to enhance the deterrent effect.
- (b) If the public discover any act of animal cruelty, they can call the police, or call the Agriculture, Fisheries and Conservation Department (AFCD) via 1823 "Citizen's Easy Link" hotline. The public can also report via email. Upon receipt of reported cases, the enforcement agencies will deal with the case as soon as possible.

If there is sufficient evidence showing that the person concerned violates the PCAO, the offender will be prosecuted. According to the PCAO, any senior veterinary officer, any other officer of the AFCD of the grade of Field Officer II and above and authorized in writing by the Director of Agriculture, Fisheries and Conservation, health officer, health inspector or police officer may enforce the PCAO. The current procedures adopted by the enforcement agencies in handling reports of cruelty to animals are considered both appropriate and sufficient. The police and the AFCD will continue to work in close collaboration with the Prevention of Cruelty to Animals (SPCA) in tackling these types of offences.

Pet owners have the responsibility to take good care of their animals. The AFCD conducts regular village and community campaign, such as educating the public to be responsible to their pets and ensure that they comply with vaccination and licensing requirements. Website of the AFCD contains educational materials available to the public. The AFCD takes every opportunity in dog shows or animal related activities to educate the public. A radio Announcement of Public Interest (API) on the topic of prevention of cruelty to animals has been produced. In addition, we will produce series of TV and radio APIs to remind people the importance of treating pets well, Responsible Pet Ownership and respect the life of animals. The APIs will be ready for broadcast in February 2006. Posters and pamphlets on the same topics are being produced, which can be sent to schools, pet shops, veterinary clinics and private buildings when ready.

Besides, on the prevention and education fronts, the Police Public Relations Bureau (PPRB) has formulated an action plan for 2006 to enhance public awareness through established channels, that is, Police TV Programmes, Junior Police Call Radio Programmes and press interviews, with the aims of highlighting the responsibilities of pet ownership and care, and also seeking to enlist public support in reporting instances of cruelty to animals to police.

Where an investigation unit considers a public appeal appropriate for a specific case or series of cases, the PPRB will also arrange for prompt publicity.

- (c) Currently, the PCAO covers various aspects of physical suffering of animals and the coverage is adequate. Strengthening enforcement, education and publicity together with deterrent penalty would be an effective way to address the problem. We remain open to review the relevant Ordinance.

MS MARGARET NG (in Cantonese): *President, I would like to further ask the Secretary about the deterrent measures stated in part (a) of the main question. Actually, at present, cases of animal cruelty with intention are not uncommon. According to the information provided by an organization called "Action Group 108", from September last year to February this year, there were already nine cases involving animal cruelty with intention. This kind of behaviour is really disturbing. Thus, may I ask the Secretary, instead of depending solely on the promotion of animal protection message to the public, whether deterrent measures against animal cruelty with intention will be put in place? The measures adopted should have a deterrent effect, for if animal cruelty with intention is discovered, the consequence may be serious and may cause distress in society. May I ask the Secretary whether any specific actions in this respect will be taken? The Secretary has specifically stated in the main reply that reference has been made to the relevant penalty overseas, what are the details in this respect and to what extent will the relevant penalty be increased?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, so far, among the successful prosecution cases, fines ranging from \$200 to \$4,000 have been imposed for a majority of cases. At present, the maximum penalty under the relevant Ordinance is a fine of \$5,000 and six months' imprisonment.

As for the number of cases with imprisonment sentences, there were only two such cases in the past three years and the imprisonment terms imposed for both cases were less than a month. We thus think that the lenient sentence passed by the Courts is one of the factors leading to the present state of affairs. But, at the same time, we are aware that the Ordinance was enacted years ago and the value of \$5,000 at that time would mean quite differently today. We thus consider that the penalty should be increased. Moreover, we will join

hands with the voluntary organizations concerned and animal protection organizations to examine the issue to ensure that the increased penalty will be acceptable to the majority public, for I think this is a point of great importance.

With regard to the act of animal cruelty included under the PCAO, I think the coverage is already quite extensive, and I believe all cases we currently considered as animal cruelty can be properly dealt with.

MS MARGARET NG (in Cantonese): *President, the Secretary has not given the specific increase in penalty he intended to make?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, for the time being, we have yet set a specific amount, but at least I consider the existing maximum penalty of \$5,000 is not adequate.

MR JASPER TSANG (in Cantonese): *President, in respect of the review of the existing legislation on animal protection, the Secretary said in the main reply that various aspects of physical suffering of animals were covered by the PCAO. May I ask the Secretary whether he agrees that many pet owners are now aware that the protection of animals means more than just guarding them against physical suffering, for they know, for example, that the lack of exercise space and relevant facilities will undermine the health of animals? In this connection, has the Government ever considered the need of pet owners; and will the space and facilities concerned be provided?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, as far as I understand it, the need in this respect has been covered by the existing legislation, that the size of carriers or baskets used for holding animals has been particularly stipulated to prevent animals from suffering any undue pain and hardship caused by the limited space provided. The law has already covered this aspect. Certainly, in the course of law enforcement, we should not simply regard the initiation of prosecution as the end. I believe we should, by means of education, let the public know, particularly at the moment they decide to buy a pet, that they should make sure they have

enough space for the activity of their pets. Though the existing law does not require that one has to prove the size of his or her accommodation or meet certain requirements before the purchase of pets, insofar as I understand it, the authorities concerned of public housing estates have already imposed certain restrictions on tenants of public housing flats. I think the first thing we should do now is to increase the fine and penalty provisions.

MR JASPER TSANG (in Cantonese): *President, perhaps the Secretary has not got my question right. My supplementary question states that pet owners all know their pets need to have some outdoor exercise space, but owing to the lack of such facilities and space, they are brought into conflict with the people in the neighbourhood and thus unable to bring their pets out for exercise. May I ask the Secretary whether the authorities concerned have noticed the problem in this respect?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, we surely know that. However, in Hong Kong, in particular in the urban area, the exercise space available is limited. For example, dog owners should know that nearly all dogs have to exercise every day, and dog owners or their family members have to walk their dogs every day. I think it is their responsibility to do so, and dog owners in particular should know how to handle this. Certainly, we rely mainly on education and promotion in this respect. However, at the same time, if it is discovered that the health of any pet is being jeopardized because of the lack of exercise space, we will advise the pet owner concerned to make appropriate arrangements. If the case is serious, prosecution will be initiated.

MR TAM YIU-CHUNG (in Cantonese): *In the Secretary's main reply, it is stated that consideration will be given to increasing penalty. But I would like to ask the Secretary: In the past three years, how many prosecutions were initiated by the Government under the PCAO and how many were successful?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, please wait a moment.

Among the animal cruelty cases investigated by the AFCD, there were 224 in the year 2004, of which advice was issued in 146 cases. In the year 2005, the number of cases investigated by the AFCD was 185 while advice was issued for 136 times. Moreover, in the year 2004, 18 prosecutions were initiated by the AFCD and the police, of which 15 cases were successful. During the period of January to September in 2005, the AFCD together with the police initiated 11 prosecutions and all were successful.

MR LEUNG KWOK-HUNG (in Cantonese): *President, in respect of penalty, may I ask the Secretary through the Chair whether animal abuser, regardless if the animal being ill treated belongs to the abuser or not, will be counselled by probation officers under the present arrangement? For I believe education is very important. Animal abusers may have made such mistakes out of their ignorance of animal protection. Will the authorities concerned consider the setting up of a probation system so that these abusers can receive appropriate counselling?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, according to our experience, a majority of the offenders of the PCAO are, in general, guilty of failing to provide suitable care for their pets, and these cases can simply be dealt with by the provision of advice. However, for some abuse cases of a more serious nature, particularly a recent case where the abuser has almost broken all the legs of a cat, I consider, in the light of that incident, that assistance in other aspects may be deemed necessary for the person concerned. Particularly, if the person concerned is found to have psychological problems, I think counselling service must be provided to him. We are now waiting for the ruling of the Court, but still, we will take the initiative to examine whether the incident is related to the psychological or mental status of the person concerned and provide assistance accordingly.

PRESIDENT (in Cantonese): Mr LEUNG Kwok-hung, has your supplementary question not been answered?

MR LEUNG KWOK-HUNG (in Cantonese): *Yes.*

PRESIDENT (in Cantonese): Please state the part which has not been answered.

MR LEUNG KWOK-HUNG (in Cantonese): *President, Secretary Dr York CHOW has not yet said whether he intends to propose the setting up of a probation system.*

PRESIDENT (in Cantonese): Mr LEUNG, please sit down first. Secretary, will you please give your answer.

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, the question of probation is decided by the Court. However, as far as I know, the Court has given community service orders to one or two offenders, which is in a way related to probation. However, whether the person concerned must be put under probation, there is no fixed practice at present.

MISS CHOY SO-YUK (in Cantonese): *President, the Secretary stated in his main reply that the coverage of the relevant ordinance was adequate. However, I believe the existing ordinance fails to cover or include one aspect, that is, if a driver knocks down an animal and causes injuries to it in the course of driving, any witness of the incident must immediately report the incident to the police. May I ask the Secretary whether consideration will be given to amend the relevant ordinance?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, the situation cited by Miss CHOY So-yuk just now is not regarded as abuse under the existing ordinance. I believe, more often than not, the driver concerned does not intend to knock down or injure the animal; these are only accidents. However, I agree that if an animal is knocked down and injured, the AFCD should be notified as soon as possible, so that the injured animal can receive treatment by a veterinary surgeon. I think this is worth considering. However, should such regulation be legislated, I think this must be considered cautiously. No matter how, we will give it some thoughts.

PRESIDENT (in Cantonese): Miss CHOY, has your supplementary question not been answered?

MISS CHOY SO-YUK (in Cantonese): *Yes, President. The Secretary said that these are accidents. However, if the death of the animal is caused from the lack of prompt treatment owing to the failure of the witness of the accident to report the case immediately, should this be regarded as a kind of animal cruelty?*

PRESIDENT (in Cantonese): Miss CHOY, I do not think this is part of the supplementary question you raised just now, and I hope you can raise this question on another occasion.

MR LEE CHEUK-YAN (in Cantonese): *President, the Secretary admitted just now that the existing highest fine of \$5,000 can no longer achieve a deterrent effect. Particularly, when it is heard that the fine imposed by the Courts recently only ranges from \$200 to \$4,000 in general, we cannot help thinking that the deterrent effect of penalty has come to nought. However, at present, the Secretary has not yet decided the level to which the fine will be increased. Then, in terms of timing, when does the Secretary plan to complete the perfecting of the legislation? Moreover, the Secretary said in the main reply that reference will be made of the relevant penalty imposed overseas. Will the Secretary inform us of the overseas penalties which reference has been made, and whether such penalties will be used as the benchmark for the early improvement of the ordinance?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, the amendment of the PCAO was made in the year 1979. The value of \$5,000 at that time was more significant and different from that of \$5,000 nowadays. Therefore, I consider that the penalty must be increased. But to what extent should it be increased and should other punishment with deterrent effect be included, we have to make reference to approaches adopted by other advanced countries in animal protection. We do have to spend some time on this before we can give a detailed report.

MR LEE CHEUK-YAN (in Cantonese): *The Secretary has not answered the question on timing. How long do the authorities concerned need?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, we do not have any timetable for the time being.

PRESIDENT (in Cantonese): We have spent more than 18 minutes on this question. Last supplementary question.

MR ABRAHAM SHEK (in Cantonese): *President, the Secretary does not seem to have answered the supplementary question raised by Mr Jasper TSANG earlier, I thus would like to follow up. May I ask the Secretary whether the Government will consider granting dogs access to parks or beaches, if so, dog owners may walk their dogs in those places?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I am not sure if this is directly related to animal cruelty, but the answer is certainly subject to the designated purpose of the public place concerned. I believe if it is only out of the concern of providing space for animals, it does not necessarily be parks or beaches. Moreover, we have to consider the possible influence such practice may have on the cleanliness and environment of parks and beaches, as well as the attitude and acceptance of the public in this respect.

MR ABRAHAM SHEK (in Cantonese): *I think dogs, like human beings, do need the opportunity to go out for a walk. The supplementary question I raised just now asked whether more space could be provided for animals, for failing to provide space for animals is also regarded as animal cruelty.*

PRESIDENT (in Cantonese): This is not the time for debate. You have deviated from the rules of speaking you should observe during Question Time. We will now proceed to the fourth oral question.

Appendix IV

Relevant documents on Prevention of Cruelty to Animals (Amendment) Bill 2006

Date of meeting	Council/Panel	Document	Paper No.
8.2.2006	Council meeting	Hon Margaret NG raised an oral question on “Measures dealing with animal abuse”	Official Record of Proceedings (pages 4146 – 4154)
11.4.2006	Panel on Food Safety and Environmental Hygiene	Minutes of meeting	CB(2)2114/05-06
		Administration’s paper on “Proposed amendments to the Prevention of Cruelty to Animals Ordinance (Cap.169)”	CB(2)1663/05-06(07)
		Submission from the Democratic Alliance for the Betterment and Progress of Hong Kong	CB(2)1663/05-06(08)
		Submission from Animal Earth	CB(2)1695/05-06(01)

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