

**For discussion
on 16 April 2013**

LegCo Panel on Food Safety and Environmental Hygiene

**Proposals to Better Regulate Pet Trading – Report on
the Outcome of Public Consultation and Legislative Proposals**

INTRODUCTION

This paper sets out the outcome of the public consultation conducted from October to November 2012 on proposed measures to better regulate pet trading in the interest of enhancing animal health and welfare. It briefs Members on the legislative proposals drawn up in the light of the views received.

BACKGROUND

2. The Public Health (Animals and Birds) (Animal Traders) Regulations (Cap. 139B) regulate the activities of animal traders¹. At present, all animal traders must obtain an Animal Trader Licence (“ATL”) issued by the Director of Agriculture, Fisheries and Conservation (“DAFC”). Any trader breaching the statutory requirements or the relevant licensing conditions imposed by DAFC renders himself liable to prosecution.

3. We reported to the Panel in April 2012 that we had reviewed the operation of the pet trade, as well as the related enforcement action and legislation, and identified a number of improvement measures. We published in October 2012 the consultation document titled “Better Regulating Pet Trading to Enhance Animal Health and Welfare” (“consultation document”) to gauge views from the public and the trade on the recommendations before finalising the legislative proposals. The public consultation ended in November 2012. A total of around 2 700 responses were received. We consulted Members of this Panel, organised four consultation forums, met with representatives of the animal groups, pet traders, pet breeder association members, veterinary associations and kennel

¹ According to regulation 2 of Cap. 139B, an “animal trader” means a person who sells or offers to sell animals or birds other than a person selling or offering to sell any animal or bird kept by him as a pet or any offspring thereof.

clubs members. We consulted the Animal Welfare Advisory Group (“AWAG”)². We have also met with representatives of some animal groups which raised suggestions after the consultation period had ended, and exchanged views with them.

PROPOSED MEASURES TO BE IMPLEMENTED

4. We have received very strong support (85%) for our proposed measures to enhance regulation on pet trading as stated in the consultation document. Taking into account the views received, we have made some refinement of the proposed measures. The views received and our proposed way forward are set out below.

(A) To increase penalties under Cap. 139B

Proposal in the consultation document

5. At the moment, the maximum penalty for a breach of licensing conditions and illegal trading of animals under Cap. 139B is \$1,000 and \$2,000 respectively. Such penalty levels, relative to the price of a pet animal which may run up to tens of thousands of dollars, pose little deterrence against malpractice. It is proposed that the maximum fine for a breach of licensing conditions should be raised from \$1,000 to \$50,000, and that for illegal trading of animals be raised from \$2,000 to \$100,000.

Views received and proposed way forward

6. The majority of the submissions that commented on this proposal are supportive (79%). Some respondents consider that this will serve more effectively to deter animal traders and breeders from breaching the regulations, and thus offering better protection to animal welfare and public health.

7. Some respondents propose to further increase the penalties. Some even suggest that imprisonment should be a sentencing option to achieve greater deterrence. In our view, the increases proposed in the consultation document (being 50 folds of the current levels) should bear a

² Animal Welfare Advisory Group is a non-statutory advisory body established to advise DAFC on matters concerning animal welfare, including the promotion of community awareness of animal welfare and responsible pet ownership.

good measure of effect in deterring individuals from the illegal trading of animals and repeat offenders in particular.

8. We therefore intend to take forward the increases in maximum penalty (for breaches of licensing conditions or other animal keeping requirements as well as for illegal trading of animals) as originally proposed.

(B) To provide DAFC with power to revoke ATL for offences under Cap. 169

Proposal in the consultation document

9. There is currently no specific provision in Cap. 139B that empowers DAFC to revoke an ATL if the licensee has been convicted of an offence related to cruelty to and maltreatment of animals under the Prevention of Cruelty to Animals Ordinance (Cap. 169).

10. In order to prevent unsuitable persons from running animal trading businesses (including breeding and selling dogs), we propose to amend Cap. 139B to provide DAFC with the specific power to revoke or rescind the licences issued under Cap. 139B. Circumstances warranting revocation of a licence include offences related to cruelty to and maltreatment of animals under Cap. 169. This proposal will help ensure that individuals who have had a history of offences relating to the welfare of animals will be prohibited from running a business overseeing the care of animals.

Views received and proposed way forward

11. This proposal has received a good measure of support (82%). The majority of the respondents agree that unsuitable persons should be excluded from running a business in which the persons would have direct control over animals. A small number of respondents (6%) have expressed worry that an individual may re-apply for the licence after revocation. They propose that the individual should be prohibited perpetually from applying for licences issued under Cap. 139B.

12. In light of the views received, we intend to take forward the proposal of providing DAFC with the power to revoke or rescind, or to refuse to grant or renew the licences under Cap. 139B if the licensee has been convicted of an offence related to cruelty to and maltreatment of animals under Cap. 169.

(C) To tighten regulation of animal breeders

13. Under the current legislation, a person may sell his own pet (and his pet's offspring) without an ATL. This exemption has been exploited by some commercial breeders who operate under the guise of a private pet owner ("PPO"), thereby circumventing the relevant regulation and leading to public health and animal welfare concerns. This has been shown to be particularly problematic in the case of dogs. We consider that the loophole must be plugged and these "de-facto" commercial breeders should be subject to necessary licensing conditions to ensure animal health and welfare as well as public health.

Removal of exemption of PPOs in relation to dogs

Proposal in the consultation document

14. We propose to remove the exemption that a person may sell his own pet (and his pet's offspring) without an ATL. Any person who sells dogs must obtain a licence or permit, irrespective of the number of dogs involved, and whether the dog involved is the person's own pet or the offspring of his pet.

15. For a start, the withdrawal of the exemption will apply to dogs only. Owners of other animals will still be allowed to sell their own pets or their offspring without a licence.

16. There will be four types of licence/permit, each catering for the specific needs of the following categories of persons. They are :

- (a) ATL, the type of licence which is currently in place, for anyone who sells dogs and/or other animals, but does not breed dogs;
- (b) Animal Breeder Licence Category A ("ABLA")³ for anyone who keeps not more than four entire female dogs on one premises and sells his breeding dams or offspring of these dogs;
- (c) Animal Breeder Licence Category B ("ABLB") for anyone who keeps five or more entire female dogs on one premises and sells

³ We propose that an individual should be limited to one ABLA. This is to avoid situations where misbehaving traders bypass the more stringent requirements of ABLB by applying for multiple ABLAs.

his breeding dams, offspring of the dams or other dogs⁴; and

- (d) One-off Permit for any genuine pet owner who sells an individual dog that he owns⁵.

Views received and proposed way forward

17. The proposal of removing the exemption that a person may sell his own pet (and his pet's offspring) without an ATL has received very strong support (83%). We will implement the proposal.

18. Some respondents (10%) suggest that the proposal should also cover cats for the reason that cats are also a common kind of pet. They also express the worry that illicit breeding of cats will increase if the legislative amendment is passed. We consider that dogs are by far the most vulnerable pet group as they comprise the largest share of the pet market and, based on past investigation records and conviction cases, the welfare of dogs (kept for breeding purposes) was compromised more frequently and to a greater extent than other types of pet. In 2012, the number of imported dogs was four times the number of imported cats. Besides, according to the statistics collated by the Census and Statistics Department in 2010, the dog household rate in Hong Kong almost doubled that for cats. We therefore intend to, as the first step, apply the withdrawal of the exemption to dogs only. The Administration will keep in view the effectiveness of the new regulation and assess the need to extend the coverage of the regulation to other pet animals at a later stage.

19. Some respondents (19%) object to the introduction of ABLA. They are of the view that the Administration should not provide a channel for persons who keep not more than four entire female dogs on one premises and sell their breeding dams or offspring of these dogs ("hobby breeder") to operate. They hold the view that it is often hard to regulate operating conditions of the breeding premises of such hobby breeders, which in most cases are accommodated in residential buildings. Hence, animal welfare is likely subject to compromise. They suggest that all breeders should be subject to the more stringent ABLB to discourage hobby breeding. The Administration fully appreciates these respondents' concern about the

⁴ ABLB holders, being commercial breeders engaged in dog breeding/keeping activities of a larger scale, would be subject to more stringent requirements as compared with ABLA holders.

⁵ Pet owners must have had the dog licensed under their names for a minimum of four months. Each permit is valid for one transaction covering one dog only. A limit of two such permits may be issued within a 24-month period to a single applicant, thus preventing the use of the permit by commercial animal traders to bypass the requirement to apply for an ATL.

operations of hobby breeders. The Administration shares the same views as the respondents that hobby breeders have to be subject to regulation, otherwise they might go underground which would be hardly conducive to protecting animal welfare and public health. The Administration considers that the licensing requirements in relation to ABLA are stringent enough having regard to the operating characteristics of hobby breeding. Nevertheless, noting the respondents' views, we have decided to tighten the licensing conditions for ABLA (please see the elaboration in para. 26). ABLA premises will be subject to regular inspections to ensure compliance with the licensing conditions and the proposed Code of Practice ("CoP").

20. Some respondents (5%) object to the introduction of the One-off Permit, which is designed for genuine pet owners who sell individual dogs that they own. Despite the safeguards we have proposed against abuse (please see footnote 5), these respondents are of the view that the proposal is tantamount to the Government endorsing pet trading by PPOs. The Administration has taken note of their concerns. At the same time, we have to come to terms with the possible implications of doing away with the One-off Permit which effectively means banning the sale of pet dogs by individual owners. Legal advice sought by the Administration reveals that a complete ban on trading of pets by PPOs would amount to a control of the use of property, and hence a likely breach of the relevant provisions of the Basic Law in relation to individual rights to property ownership, acquisition, use, disposal, etc. Such infringement of individual rights is considered disproportionate when compared with the objective to regulate commercial pet breeders. Besides, the Administration is not aware of any such ban on the sale of pet dogs by owners in major developed countries including UK, US, Australia and New Zealand. On balance, the Administration considers that introducing a One-off Permit for PPOs is an appropriate measure to better regulate commercial pet trading. Nonetheless, in light of the respondents' concern over possible abuse of the One-off Permit, we will tighten the suggested arrangement of allowing an owner to sell two dogs in two years and replace it by a provision that allows an owner to sell not more than three dogs in ten years.

New Requirement for Promotion of Sale and Revised Permitted Sources of Dogs

Proposal in the consultation document

21. We propose that all licence/permit holders must declare his licence/permit number in every transaction and promotion of sale involving dogs. Anyone who sells or advertises to sell a dog without a valid

licence/permit will be liable to prosecution.

22. We also propose to revise the permitted sources from which animal traders may acquire dogs. Following such revisions, animal traders may only obtain dogs from the following sources, but not from PPOs who do not have a licence or permit –

- (a) legally imported and covered by a valid import permit issued by DAFC, together with a valid health certificate issued by the veterinary authority of the exporting place; or
- (b) acquired from ATL, ABLA, ABLB or One-off Permit holders.

Views received and proposed way forward

23. Majority of the respondents (83%) are supportive. We will implement the above proposals

OTHER VIEWS RECEIVED

24. As an additional element of the amendment package, some animal welfare stakeholders put forth the idea of making it compulsory to neuter pet dogs not less than six months of age for the purpose of controlling the problem of stray dogs. We envisage practical difficulties in enforcing such a requirement as it is difficult to determine if a female dog has been neutered or not if the owner or the relevant veterinary record is no longer available. There are also concerns that compulsory neutering may entail an increase in pet abandonment by those dog owners who are reluctant to get their dogs de-sexed. We consider it more effective to step up public education to promote responsible pet ownership and encourage voluntary neutering of dogs.

PROPOSED CODE OF PRACTICES

25. All licensees must comply with a CoP which will form part of the licensing conditions under Cap. 139B. A summary of the proposed licensing conditions including the main elements of the proposed CoP was provided in the consultation document.

26. From January to March 2013, AFCD conducted six rounds of discussion and consultation with the trade members, animal groups, the

AWAG and members of the public on the draft CoPs. Useful views were received. While some urge for imposing the more stringent licensing requirements for ABLB licensees on ABLA licensees, others opine that the licensing requirements should be commensurate with the unique modus operandi of set-ups of different sizes. Having balanced all the views received, we plan to refine the CoP and are in the process of finalising it. The key requirements, including some tightening up following the consultation, are set out below:

- (a) For ABLA licensed premises, a saleable floor area of 9.3m², 16.72m² and 23.23m² is required for each small, medium and large dogs respectively.
- (b) For ABLB licensed premises, an individual sleeping area of 1.1m², 2.4m² and 3.5m² is required for each small, medium and large dog. In addition, an exercise area of 7.4m², 11m² and 14.8m² is required for each of them respectively.
- (c) Dogs are required to have exercise at least one hour per day.
- (d) Bitches shall only give birth after maturation from the second heat and are between 18 months to 6 years old. They are allowed to give birth to 3 litters within 2 years.
- (e) Licensees and staff working in licensed premises must be trained to the satisfaction of AFCD.
- (f) Licensees will be required to let AFCD authorized personnel to collect samples from all bitches and offsprings for DNA testing.
- (g) ATL, ABLA and ABLA licensees must not sell dogs to any person under the age of 18 years, and all dogs offered for sale must be at least 8 weeks old and have received first vaccination by veterinary surgeon not less than 14 days before sale.

27. Other basic requirements are also listed in detail in the proposed CoPs such as necessary protection for the dogs from adverse conditions, enough appropriate feeds and fresh water, protection of dogs from pest and disease, lighting and temperature, prompt veterinary treatment for sick dogs, hygiene of the premises, cleansing and waste disposal, proper conduct of whelping and care of new born puppies.

28. We are finalising the CoPs. They should be ready for scrutiny by the Legislative Council (“LegCo”) in conjunction with the proposed amendments to Cap. 139B.

WAY FORWARD

29. We will prepare proposed amendments to Cap. 139B on the basis of the proposals highlighted above. We aim to table the amendment regulation before LegCo within 2013.

**Food and Health Bureau
Agriculture, Fisheries and Conservation Department
April 2013**