

For discussion
on 8 July 2014

LegCo Panel on Food Safety and Environmental Hygiene

**Amendments to the Public Health (Animals and Birds)
(Animal Traders) Regulations for better regulating pet trading**

INTRODUCTION

This paper briefs Members on the legislative proposals to amend the Public Health (Animals and Birds) (Animal Traders) Regulations (Cap. 139B) with a view to enhancing animal health and welfare through better regulation of animal trading, as well as the breeding and selling of dogs.

BACKGROUND

2. The Public Health (Animals and Birds) (Animal Traders) Regulations 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. In April 2012, the Administration reported to the Panel 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. Proposals designed to address areas of concern were drawn up and a public consultation was conducted from October to November 2012 to gauge the views from the public on these proposals. A total of around 2 700 responses were received. In the course of the public consultation, we invited views from this Panel and the deputations in attendance of the meeting concerned, organised four consultation forums, met with representatives of animal welfare groups, pet traders, pet breeder association members, veterinary associations and kennel clubs members, and the Animal Welfare Advisory Group (“AWAG”). We have also met with representatives of some animal welfare groups which raised suggestions after the consultation period and exchanged views with them.

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.

4. At its meeting on 16 April 2013, this Panel was updated on the results of the public consultation and our legislative proposals drawn up in the light of the views received. Details were set out in LC Paper No. CB(2)944/12-13(07). The main proposals of the Administration are recapitulated in the ensuing paragraphs.

MAIN LEGISLATIVE PROPOSALS

(A) Increase Penalties under Cap. 139B

5. The Administration has 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. These proposed fine levels are within the cap specified under the Public Health (Animals and Birds) Ordinance (Cap. 139). The proposed levels represent a 50-fold increase relative to the existing fine levels. They should carry substantive deterrence against the acts of non-adherence to the licensing conditions and illegal trading of animals, helping to minimise cases of irresponsible treatment of animals. This proposal has the support of 79% of respondents in the public consultation.

(B) To provide DAFC with the power to revoke or refuse to grant or renew an ATL and proposed dog breeder licences for offences under Cap. 169.

6. Currently, there is no specific provision in Cap. 139B that empowers DAFC to revoke or rescind, or to refuse to grant or renew an ATL to a licensee or applicant who has been convicted of an offence related to cruelty to and maltreatment of animals under the Prevention of Cruelty to Animals Ordinance (Cap. 169). The Administration has proposed to empower DAFC to do so. This proposal will help ensure that individuals who have had a history of offences relating to animal cruelty will be prohibited from running animal trading business that requires care for animals. This shall equally apply to any applications in relation to the newly proposed animal breeder licences issued under Cap. 139B. The proposal has received a good measure of support (82%) in the public consultation.

(C) To tighten the regulation of sale, and breeding for sale, of dogs

7. 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. The Administration has proposed to remove such exemption and request any person who sells dogs to 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.

8. There will be four types of licence/permit listed as follows–
- (a) ATL, the type of licence which is currently in place, for any person who sells dogs and/or other animals, but does not breed dogs;
 - (b) Animal Breeder Licence Category A ("ABLA")² for any person 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")³ for any person who keeps five or more entire female dogs on one premises and sells his breeding dams, offspring of the dams or other dogs; and
 - (d) One-off Permit for any genuine pet owner who sells an individual dog that he owns⁴.

The proposal of removing the exemption that a person may sell his own pet (and his pet's offspring) without an ATL has received strong support (83%) in the public consultation. On the proposal of creating different categories of licence/permit, whilst the majority of the respondents were in support of the overall direction, there were mixed views on some specific aspects. Some (19%) objected to the introduction of ABLA, and some (5%) objected to the introduction of the One-off permit.

² We propose that an individual should be limited to one ABLA on one premises. This is to avoid situations where misbehaving traders bypass the more stringent requirements of ABLB by applying for multiple ABLAs by an individual or multiple individuals on one single premises.

³ 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.

⁴ 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.

PANEL DISCUSSION ON 16 APRIL 2013 AND ADMINISTRATION'S RESPONSE

9. At the Panel meeting on 16 April 2013, Members and the deputations in attendance expressed mixed views on the proposed licence/permit system. Some expressly supported the stepping up of regulation of pet trading and the legislative proposals, while others raised views which differ from the way forward proposed by the Administration. After discussion, the Panel passed a motion as follows –

“That this Panel urges the Agriculture, Fisheries and Conservation Department to merely issue under its proposed licensing requirements a single animal breeder licence which applies to all commercial and private animal breeders and traders, so as to further protect the welfare of animals in Hong Kong.”

10. The Agriculture, Fisheries and Conservation Department (“AFCD”) has since revisited the proposed measures and the legislative proposals in the light of the motion passed by the Panel and the views expressed by Panel Members and the deputation at the meeting. AFCD has also maintained dialogue with animal welfare groups, animal breeders/traders and other concerned parties to discuss issues of concerns. Our considered views on and response to the issues raised are set out in paragraphs 11 to 20 below.

Suggestion for a single animal breeder licence

11. Whilst there was wide support for the proposal to put dog breeding activity under control by way of licensing, there has been a suggestion that there should be a single licence applicable to all types of breeders, i.e. removal of ABLA licence and subject all licensees to the more stringent ABLB.

12. The Administration has critically reviewed this option. We remain of the view that the provision of a two-tier licensing regime would be more appropriate. Under the legislative proposals, every individual who breeds and/or sells any dog will be required to obtain a licence or permit. We would have to consider whether it is reasonable to require a person who breeds a relatively smaller number of dogs to construct kennels and facilities in the same manner as a commercial breeder who breeds a larger number of dogs. Most of the small-scale breeders (sometimes referred to as “hobby-breeders” or “home-breeders”) keep

their dogs as pets and live with them in a household. It would be unreasonable to require them to construct kennels and other facilities meeting the same accommodation requirements for dogs as a commercial breeder.

13. By introducing the option of an ABLA, we would put the breeding activities of such hobby-breeders under regulation. The welfare of the dogs could be better protected. While ABLA holders may not be subject to accommodation requirements as stringent as those applicable to ABLB holders, they have to observe the majority of the licensing conditions applicable to ABLB holders. They will be required to attend appropriate training and comply with the Codes of Practice (“CoP”) as one of the licensing conditions. Their licensed premises will also be subject to regular inspections by AFCD officers to ensure compliance. Moreover, there will be restrictions on the total number of dogs that can be kept on any premises licensed under a ABLA based on the size of the premises. Under no circumstance can the number of the entire adult female dogs exceed four. These measures would help ensure the welfare of the animals kept in licensed premises. Taken as a whole, we believe that they strike a reasonable balance between protecting animal welfare and the responsibility placed on the dog breeder.

14. Indeed, in many other comparable jurisdictions overseas, small-scale breeding is not subject to any regulation. For example, in England, a dog breeder only requires a breeder licence if he breeds for sale more than four litters in any 12-month period. Therefore, our proposal to put all breeding activity (including small-scale breeding) under regulation is already more stringent than what is currently practised in many other jurisdictions.

15. There have also been views from some parties that the introduction of the ABLA may encourage more people to breed dogs since, in contrast to the ABLB, they are not required to construct extensive kennel and other facilities. Under the existing regulatory regime, any person may breed and sell his/her own pets without restriction. Our legislative proposal is in fact seeking to put such activity under regulation. Under the proposed regulation, the breeders would be required to attend compulsory training. Their licensed premises would be subject to regular inspections. They would also have to comply with the licensing conditions (including the CoP) on an on-going basis. The added compliance costs are such that we do not expect that the ABLA would lead to a significant expansion in hobby-breeding activities.

Whether the number of ABLA and ABLB should be capped

16. At the Panel meeting on 16 April 2014, some Members enquired if the maximum number of ABLA and ABLB would be specified in the legislative proposal. Having carefully considered this point, we do not see strong justification for capping the number of ABLA and ABLB in Hong Kong at this juncture.

Suggestion for extending the proposed licensing system to cats

17. Some Members had expressed the views that the proposed regulation should cover cats as well. As the Administration has explained at the previous meeting, empirical data show that dogs are by far the most vulnerable pet group as they comprise the largest share of the pet market. Based on past investigation records and conviction cases, the welfare of dogs that are kept for breeding purpose was compromised more frequently and to a greater extent than other types of pet. We therefore see a strong case to remove the exemption from the ATL requirement and put breeding activity under licensing control for dogs as a first step. The Administration would keep in view the effectiveness of the new regulation and assess the need to extend the coverage of the regulation to cats and/or other pet animals at a later stage.

Concern about possible abuse of the proposed one-off permit

18. Some animal welfare groups have expressed concern on the proposal that a single applicant may be allowed to obtain a maximum of two one-off permits within a 24-month period for selling his own pet dog. They are concerned if this might result in the abuse of the system, allowing some pet owners an easier way out than ABLA or ABLB to sell their pet dogs.

19. Having carefully considered such views and taken into account the actual circumstances, the Administration is prepared to tighten the requirement such that a single applicant would be allowed to obtain a maximum of three one-off permits within a 10-year period. This would help forestall possible abuse of the one-off permit system by commercial dog breeders/traders minded to bypass the requirement to apply for an ATL, ABLA or ABLB.

Concern about the possible pressure on the manpower resources of AFCD

20. Some Members have raised concern about the resource implications on AFCD and whether the Department, with its current manpower resources, could sustain the effective implementation of the enhanced measures. In accordance with the established mechanism, AFCD would suitably acquire additional manpower resources to cover the handling of licence/permit applications, inspections, renewal of licence / permits, investigation of suspected illegal cases etc. Having regard to other competing demands on the Department's enforcement capability, AFCD would map out an enforcement strategy that would allow it to maximize the effective use of its enforcement assets.

CODES OF PRACTICE

21. Each of the licence types mentioned in paragraph 8 will be granted alongside a set of additional licensing conditions. All licensees will be subject to one common condition, namely that the CoP must be adhered to. Hence, any breach of the CoP may be considered as a breach of licence condition, subjecting the licensee to prosecution. The main provisions of the CoP have been outlined in the Panel paper dated 16 April 2013 (see LC Paper No. CB(2)944/12-13(07)) and in the public consultation document. To address the Panel's concern, we would stipulate under the CoP that a licensee is required to receive training on husbandry of dogs and good hygiene practice to the satisfaction of AFCD. We are working on and refining the draft CoP and additional conditions in consultation with stakeholders including in particular the AWAG legal subgroup. We will consult the trade and the Panel when the draft CoP is ready.

22. The CoP will not be applicable to the one-off permit as the permit relates strictly to an individual dog being kept as a pet. That said, AFCD may attach certain conditions to the one-off permit as necessary.

CONCLUSION

23. On balance, having weighed the views received and other relevant considerations, the Administration believes that the main proposals as set out in paragraphs 5-8 above and the proposed modification to the one-off permit as elucidated in paragraph 19 would serve the policy objectives of enhancing animal health and welfare well, and strike a right balance between protection of animal welfare and the interests of pet owners and pet traders.

24. Subject to any further comments that this Panel may have, the Administration would proceed to prepare the legislative amendments to Cap. 139B with a view to tabling the amendment regulation before the Legislative Council in the 2014-15 legislative session.

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