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Panel on Food Safety and Environmental Hygiene

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 8 July 2014**

Regulation of pet trading

Purpose

This paper summarizes the concerns of the members of the Panel on Food Safety and Environmental Hygiene ("the Panel") on the Administration's proposals to amend the Public Health (Animals and Birds) (Animal Traders) Regulations (Cap. 139B) ("the Regulations") to better regulate pet trading.

Background

2. According to the Regulations, all animal traders, including those engaged in breeding of pet animals for trading purposes, must obtain an animal trader licence ("ATL") issued by the Agriculture, Fisheries and Conservation Department ("AFCD") and comply strictly with the statutory requirements concerning accommodation, living conditions, provision of food and water, pest control, etc. for their animals as stipulated in the Regulations as well as the relevant licensing conditions. AFCD conducts inspections on licensed animal traders from time to time or in response to public reports for compliance check. Any trader breaching the statutory requirements renders himself liable to prosecution.

3. The Administration has introduced additional licensing conditions on pet traders selling dogs since 1 February 2010 to tighten the control over the sources of dogs offered for sale. In 2011, a review was conducted by AFCD to assess the effectiveness of the additional licensing conditions in stopping illegal sourcing of dogs. The review also looked into the operation of the pet trade

and identified areas where improvements were required in the legislation. In October 2012, a public consultation exercise was launched to solicit public views on the legislative proposals to better regulate pet trading, particularly the breeding and trading of dogs. The public consultation exercise ended on 30 November 2012.

4. According to the consultation document, the legislative proposals seek to amend the Regulations to -

- (a) remove the existing exemption that a person may sell his own pet and his pet's offspring (initially dogs only) without ATL;
- (b) introduce a licence/permit system: any person who breeds and/or sells dogs, regardless of the number of animals involved, is required to apply for a licence or a permit. There will be four types of licence or permit, each catering for the specific needs of the following categories of persons:
 - (i) ATL, for anyone who sells dogs and/or other animals, but does not breed dogs;
 - (ii) Animal Breeder Licence Category A ("ABLA"), for anyone who keeps not more than four entire female dogs on one premises and sells his breeding dams or offspring of these dogs;
 - (iii) Animal Breeder Licence Category B ("ABLB"), for anyone who keeps five or more entire female dogs on one premises and sells his breeding dams, offspring of the dams or other dogs; and
 - (iv) One-off Permit, for any genuine pet owner who sells an individual dog that he owns;
- (c) introduce a code of practice ("CoP") which will form part of the licensing conditions and be a legal requirement under the Regulations;
- (d) revise the permitted sources from which animal traders may acquire dogs in order to disallow them from sourcing their dogs from private pet owners ("PPOs") who do not have a licence or permit;

- (e) increase the maximum penalty for illegal trading of animals and breaching of licensing conditions; and
- (f) empower the Director of Agriculture, Fisheries and Conservation ("DAFC") to revoke or rescind the licences issued under the Regulations.

5. The Administration advised the Panel at its meeting on 16 April 2013 that taking into account the views received in the consultation exercise, the Administration had refined some proposed measures outlined in the consultation document -

- (a) to provide DAFC with the power to revoke or rescind, or to refuse to grant or renew the licences under the Regulations if the licensee had been convicted of an offence related to cruelty to and maltreatment of animals under the Prevention of Cruelty to Animals Ordinance (Cap. 169);
- (b) to tighten the licensing conditions for ABLA by imposing more stringent requirements in CoP. The requirements for ATL, ABLA and ABLB set out in the draft CoP are in **Appendix I**; and
- (c) to tighten the suggested arrangement of allowing an owner holding an One-off Permit to sell two dogs in two years by replacing it with a provision that allowing an owner to sell not more than three dogs in ten years.

Deliberations of the Panel

6. The Panel was briefed on the Administration's proposals to amend the Regulations to better regulate pet trading at its meeting on 16 April 2013. Major concerns and views of members are summarized below.

Regulation of pet breeding and trading

7. While expressing support for enhancing the regulation of pet trading, some members were concerned about whether the maximum number of ABLA and ABLB would be specified in the legislative proposals. Concern was also raised about whether the Administration would require hobby breeders to complete relevant training programmes before approving their applications for licences. There was also a strong view that the Administration should review the proposals for regulating animal breeders and give consideration to issuing a

single animal breeder licence for all commercial and private animal breeders and traders.

8. Some members queried why the doing way of the One-off Permit would constitute a breach of Article 105 of the Basic Law which was in relation to individual rights to property ownership, acquisition, use and disposal. The Administration advised that according to its legal advice, a complete ban on trading of pets by PPOs would amount to a control of the use of property. Such infringement of individual rights was considered disproportionate when compared with the objective to regulate commercial pet breeders. The proposed One-off Permit was considered appropriate to better regulate commercial pet trading.

CoP for animal breeders

9. Noting that the requirements set out in the draft CoP were quite detailed, members were concerned about how the law enforcement department could take effective enforcement actions against non-compliance cases. Concern was also raised about the adequacy of manpower in AFCD for enforcing the licensing conditions. Some members were worried that breeders would be required to pay a high licensing fee based on the "user-pay" principle. These members urged the Administration to thoroughly consider the manpower need for enforcing the licensing conditions as well as other regulatory requirements and the relevant financial resources involved before introducing subsidiary legislation to amend the Regulations.

10. The Administration advised members that it would deploy additional manpower to ensure effective enforcement of the licensing system after the proposed amendments to the Regulations came into operation. The Administration would take into account the number of inspections and the manpower involved in enforcement when considering the levels of licence fees.

11. Members considered that the Administration should submit the latest draft CoP in conjunction with the proposed amendments to the Regulations for scrutiny by the Legislative Council ("LegCo"). The Administration advised that it would continue to engage relevant stakeholders on the draft CoP. When the proposed amendments came into operation, the details of CoP would be published. The Administration would step up publicity so as to enhance public awareness of the proposed amendments and CoP.

Extending the licensing conditions to other animals

12. Noting that the Administration's proposals would address initially the

breeding and trading of dogs only, some members raised concern about the breeding and sale of cats. They sought information on the timetable for extending the proposed regulatory measures to cover the breeding and sale of cats. The Administration explained that since the microchip scheme for dogs had been in place, the proposed regulation would apply to dogs as a first step. The Administration would keep in view the effectiveness of the new regulatory measures and assess the need to extend the regulation to cover cats and other pet animals at a later stage.

Motion passed by the Panel

13. At its meeting on 16 April 2013, the Panel passed a motion moved by Hon Claudia MO urging AFCD 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.

Latest development

14. Hon Alan LEONG raised a written question on the regulation of pet trading at the Council meeting of 18 December 2013. According to the Administration's reply, AFCD would inspect premises intended for animal selling/breeding purposes when processing licence applications. To ensure compliance with the licensing conditions and CoP by licensees, AFCD would also inspect the premises after licences were issued. A licence would not be granted or renewed unless DAFC was satisfied that the premises concerned fully met the relevant requirements. As regards the concern of some animal groups about the application for licence to breed and trade animals made "in the name of a person", the Administration advised that it was the aim of the proposed licensing system to regulate the "de-facto" commercial breeders who were currently exploiting the exemption to breed and sell animals under the disguise of PPOs. As all persons who bred animals for trading purposes would be regulated under the proposed licensing system, the Administration therefore would not suggest setting a ceiling on the number of licences to be issued. The question and the Administration's reply are in **Appendix II**.

15. The Administration will consult the Panel on the proposed legislative amendments to the Regulations at the Panel meeting on 8 July 2014.

Relevant papers

16. A list of the relevant papers on LegCo website is in the **Appendix III**.

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Legislative Council Secretariat
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Requirements for Animal Trader Licence, Animal Breeder Licence Category A and Animal Breeder Licence Category B set out in the draft Code of Practice

Key requirements

- (a) For Animal Breeder Licence Category A ("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 Animal Breeder Licence Category B ("ABLB") licensed premises, an individual sleeping area of 1.1m², 2.4m² and 3.5m² is required for each small, medium and large dogs respectively. 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 six year old. They are allowed to give birth to three litters within two years.
- (e) Licensees and staff working in licensed premises must be trained to the satisfaction of the Agriculture, Fisheries and Conservation Department ("AFCD").
- (f) Licensees will be required to let AFCD authorized personnel to collect samples from all bitches and offsprings for DNA testing.
- (g) Animal trader licence, ABLA and ABLB licensees must not sell dogs to any person under the age of 18 years, and all dogs offered for sale must be at least eight weeks old and have received first vaccination by veterinary surgeon not less than 14 days before sale.

Other basic requirements

Other basic requirements include 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.

Press Releases

LCQ18: Regulation of pet trading

Following is a question by the Hon Alan Leong and a written reply by the Secretary for Food and Health, Dr Ko Wing-man, in the Legislative Council today (December 18):

Question:

Last year, the Government conducted public consultation on proposed measures to better regulate pet trading. When reporting the outcome of the public consultation to a panel of the Legislative Council (LegCo) on April 16 this year, the Agriculture, Fisheries and Conservation Department (AFCD) indicated that it aimed to propose legislative amendments to the Public Health (Animals and Birds) (Animal Traders) Regulations (Cap.139, sub leg B) within this year, but such legislative proposal has not yet been introduced into LegCo so far. Moreover, some concern groups on animal interests consider that as only the breeding and selling of dogs will be regulated, the proposed amendments fail to regulate private breeding centres comprehensively. In this connection, will the Government inform this Council:

- (a) of the respective numbers of reports on animal abuse received and prosecutions instituted by AFCD and the Police in each of the past three years, with a breakdown by the type of animals abused;
- (b) of the sales volume of pets in each of the past three years, with a breakdown by the type of animals;
- (c) why it has not yet introduced the aforesaid legislative amendments into LegCo and when it will do so;
- (d) as some concern groups on animal interests are worried that under the proposed amendments, operation of private animal breeding centres in private residential premises is not prohibited, which makes it difficult for the authorities to conduct surprise inspections on such breeding centres, that application for licence to breed and trade animals may be made in the name of a person, and that no ceiling has been set on the number of such licences to be issued within the territory, whether the authorities have assessed if such situations would constitute loopholes of regulation, thus making it difficult for the authorities to control private pet-breeding activities effectively; if they have, of the details; if not, the reasons for that; and
- (e) whether AFCD has assessed if there are fewer cases of animal abuse and abandonment in countries or regions where private breeding of pets for commercial purposes is totally prohibited; if the assessment result is in the affirmative, of the details, and whether AFCD will consider adopting such a practice; if it has not conducted such assessment, of the reasons?

Reply:

President,

Currently, under the Public Health (Animals and Birds) (Animal Traders) Regulations (Cap. 139B), any person who sells, or offers to sell, animals or birds has to obtain an animal trader licence (ATL) from the Director of Agriculture, Fisheries and Conservation (DAFC), unless he is selling or offering to sell any animal or bird kept by him as a pet or any offspring thereof. This exemption has been exploited by some commercial breeders who operate under the disguise of a private pet owner, thereby circumventing the relevant regulation and causing public health and animal welfare concerns. The problem is particularly acute in the case of dogs.

To better regulate pet trading for enhancing animal health and welfare, the Administration reviewed the operation of the pet trade, the related enforcement action and legislation, and started a two-month public consultation in October 2012. The main proposals included introducing a new system of licence/permit to tighten regulation of dog breeders and traders, increasing penalties under Cap. 139B and providing the DAFC with power to revoke animal trader licences under specific circumstances. Subsequently in April 2013, we reported to the Legislative Council (LegCo) Panel on Food Safety and Environmental Hygiene (Panel) on the outcome of the consultation.

My reply to the various parts of the question is as follows:

(a) In the past three years, the Administration received the following number of reports on suspected cruelty to animals: 153 in 2010; 129 in 2011; and 112 in 2012. Investigations by the departments concerned showed that most of the reported cases did not involve cruelty to animals. The number of prosecutions instituted under the Prevention of Cruelty to Animals Ordinance was 11 in 2010, 15 in 2011; and 19 in 2012. Most of the offenders were convicted. The Administration does not keep statistics on the type of animals involved in these cases.

(b) Under existing legislation, it is not necessary for animal traders to report the sales volume of pets to the Agriculture, Fisheries and Conservation Department (AFCD). Therefore, the Administration does not have statistics in this respect.

(c) When briefing Panel members on the outcome of the public consultation on April 16, 2013, the Administration mentioned our target of tabling the amendment regulation before the LegCo within 2013. However, members made different comments on the proposed new licensing system at the meeting. Some animal groups and the pet trading and breeding trade also expressed new views about the proposed new licensing system after the public consultation. To follow up on these views and comments, the Administration met again with the LegCo members concerned and representatives of animal groups and the trade in the past few months to discuss the approach and details of regulation. We are now considering their views carefully in the interest of ensuring that the regulatory system to be set up is practicable and effective in protecting the welfare of animals. We will introduce the amendment regulation into the LegCo for vetting as soon as possible.

(d) It is noted that some animal groups are concerned about the effectiveness of the AFCD's enforcement actions. In fact, the AFCD will inspect premises intended for animal selling/breeding purposes when processing licence applications. To ensure compliance with the licensing conditions and code of practice by licensees, the AFCD will also inspect the premises after licences

are issued. A licence will not be granted or renewed unless the DAFC is satisfied that the premises concerned fully meet the relevant requirements.

The question touches on the concern of some animal groups over the application for licence to breed and trade animals made "in the name of a person", which will be allowed according to the proposed amendments. It is precisely the aim of the proposed licensing system to regulate these "de-facto" commercial breeders who are currently exploiting the exemption to breed and sell animals under the disguise of private pet owners.

As we hope to regulate through the proposed licensing system all persons who breed animals for trading purposes, we would not suggest setting a ceiling on the number of licences to be issued.

(e) According to the information that AFCD has in hand, we have not come across any country or territory which fully prohibits the private breeding of animals for commercial purposes, including such developed countries as the United Kingdom, the United States, Australia and New Zealand.

Ends/Wednesday, December 18, 2013
Issued at HKT 18:08

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Appendix III

Relevant papers on regulation of pet trading

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	14.6.2011 (Item VI)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	10.4.2012 (Item V)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	13.11.2012 (Item IV)	Agenda Minutes
Panel on Food Safety and Environmental Hygiene	16.4.2013 (Item V)	Agenda Minutes
Legislative Council	18.12.2013	Written question raised by Hon Alan LEONG on "Regulation of pet trading"

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