

立法會
Legislative Council

LC Paper No. LS14/14-15

**Paper for the House Committee Meeting
on 21 November 2014**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 14 November 2014**

Tabling in LegCo : Council meeting of 20 November 2014

Amendment to be made by : Council meeting of 17 December 2014 (or that of 14 January 2015 if extended by resolution)

Dangerous Dogs Regulation (Exemption) (Amendment) Notice 2014 (L.N. 137)

Rabies (TNR Programme) (Exemption) Notice (L.N. 138)

Trap-Neuter-Return (TNR) Programme

The TNR Programme is a trial programme which aims at assessing the effectiveness of the trap-neuter-return mechanism in reducing the number of stray dogs within the selected areas in Cheung Chau and Tai Tong (trial zones). The programme is intended to last for three years and will be implemented by the Society for the Prevention of Cruelty to Animals (Hong Kong) Trustees Incorporated and the Society for Abandoned Animals Limited (programme coordinators).

2. Members may wish to refer to the LegCo Brief (File Ref: FHB/F/6/8/40/3) issued by the Food and Health Bureau and the Agriculture, Fisheries and Conservation Department dated 12 November 2014 for further information.

3. For the purpose of the TNR Programme, L.N. 137 and L.N. 138 have been made by the Director of Agriculture, Fisheries and Conservation (the Director) respectively under section 17(1) of the Dogs and Cats Ordinance (Cap. 167) and, under sections 47 and 51(3) of the Rabies Ordinance (Cap. 421). Under the relevant empowering provisions, the Director may exercise the power to grant exemptions to a person or class of persons or an animal or class of animals from application of any provision of the Ordinances or its regulations where he or she is satisfied that public

or animal health will not be endangered and the Director may impose conditions in relation to such exemptions.

L.N. 137

4. Section 9(1) of the Dangerous Dogs Regulation (Cap. 167D) provides that no person shall cause, suffer or permit a large dog¹ to enter or remain in a public place unless it is securely held on leash or tied to a fixed object on a leash. L.N. 137 amends the Dangerous Dogs Regulation (Exemption) Notice (Cap. 167F) to add an exemption that section 9(1) of Cap. 167D does not apply to a person who causes, suffers or permits a large dog to be released under the TNR Programme if the following conditions are met -

- (a) the dog must be released within a trial zone by a person carrying an identification card issued by a programme coordinator to show that the person is an employee or volunteer of the programme coordinator, and the person has completed a training course organized by the programme coordinator; and
- (b) the dog must be affixed with an identification mark by the programme coordinator on the basis that it has been assessed as being suitable for release within a trial zone, and has been neutered and vaccinated against major dog diseases.

5. L.N. 137 also sets out supplementary requirements regarding the training courses to be completed by the employee or volunteer of the programme coordinator and the assessment of dogs.

L.N. 138

6. Section 22(1) of Cap. 421 prohibits a keeper of any animal² from abandoning that animal without reasonable excuse. Section 23(1) of Cap. 421 provides that a dog must not be in a public place or a place from which it may reasonably be expected to wander into a public place, unless it is on a leash or otherwise under control. L.N. 138 provides that sections 22(1) and 23(1) do not apply when a dog is released under the TNR Programme subject to certain conditions similar to those provided in L.N. 137 as set out in paragraphs 4 and 5 above.

¹ Under section 2 of Cap. 167D, "large dog" is defined to mean dog having body weight of 20 kg or above but does not include a fighting dog or a known dangerous dog.

² Under section 2 of Cap. 421, "animal" is defined to mean an animal of the class Mammalia (mammals), except human beings.

7. Section 20(1) of the Rabies Regulation (Cap. 421A) provides that no person shall keep a dog over the age of 5 months except under and in accordance with a licence. L.N. 138 exempts a person from this provision if the person keeps the dog under the TNR Programme subject to the following conditions -

- (a) the person keeps the dog within the premises of a programme coordinator for the purposes of assessing the dog's suitability for being released within a trial zone and if applicable, neutering and vaccinating the dog; and
- (b) the person is issued with an identification card and keeps the dog with a view to bringing it to the premises of the programme coordinator for the above purposes, or to bring it to, and releasing it within a trial zone.

L.N. 137 and L.N. 138

8. According to paragraph 25 of the LegCo Brief, views and opinions concerning the TNR Programme, especially the identification of the trial zones, were collected from the respective rural committees, village representatives, mutual aid committees and incorporations of owners through questionnaires and local consultation forum. These views and opinions had been taken into account when the Administration proposed the trial zones.

9. As advised by the Clerk to the Panel on Food Safety and Environmental Hygiene (the Panel), the Panel was consulted at its meetings on 8 May 2012 and 14 January 2014 on the Administration's proposed TNR trial programme for stray dogs. Members in general supported the concept of TNR and requested the Administration to extend the programme to other districts. Some members considered that the Administration should invite more animal welfare organizations to participate in the programme. They were also concerned about the support that the Administration could provide to those organizations which had been voluntarily operating the programmes. Concern was also raised about whether the locations of the selected trial zones in Yuen Long and Cheung Chau could reveal the real situation and severity of the stray dog problem in urban areas. The Administration also informed that an exemption notice has to be gazetted to exempt staff and volunteers of programme coordinators from certain requirements under the relevant ordinances and regulations so as to implement the TNR trial programme (L.C. Paper No. CB(2)1870/11-12(05)). The Panel has not been consulted of the above Notices in particular.

10. L.N. 137 and L.N. 138 come into operation on 16 January 2015.

11. Legal Service Division has sought clarification from the Administration on the expiry of the exemptions, the Administration replied that in the event that the TNR Programme is terminated, the Director will repeal the relevant provisions on the exemptions in the Notices by subsidiary legislation.

12. No difficulties have been identified in relation to the legal or drafting aspects of L.N. 137 and L.N. 138.

Prepared by

TAM Shuk-fong, Clara
Assistant Legal Adviser
Legislative Council Secretariat
20 November 2014