

立法會
Legislative Council

LC Paper No. CB(2)679/16-17
(These minutes have been seen
by the Administration)

Ref : CB2/SS/1/16

Subcommittee on Public Health (Animals and Birds)
(Animal Traders) (Amendment) Regulation 2016
(Commencement) Notice

Minutes of meeting
held on Friday, 9 December 2016, at 10:45 am
in Conference Room 3 of the Legislative Council Complex

- Members present** : Dr Hon Elizabeth QUAT, JP (Chairman)
Hon WONG Ting-kwong, SBS, JP
Hon CHAN Hak-kan, BBS, JP
Hon CHAN Kin-por, BBS, JP
Hon Claudia MO
Hon Steven HO Chun-yin, BBS
Hon CHAN Chi-chuen
Hon CHAN Han-pan, JP
Hon LEUNG Che-cheung, BBS, MH, JP
Dr Hon CHIANG Lai-wan, JP
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Hon Holden CHOW Ho-ding
Hon CHAN Chun-ying
Hon LUK Chung-hung
Hon LAU Kwok-fan, MH
Dr Hon CHENG Chung-tai
Hon KWONG Chun-yu
Hon Jeremy TAM Man-ho
- Members attending** : Hon HO Kai-ming
Hon Nathan LAW Kwun-chung
- Public Officers attending** : Item II
Professor Sophia CHAN Siu-chee, JP
Under Secretary for Food and Health

Mr Bill WONG Kwok-piu
Principal Assistant Secretary for Food and Health (Food) 3

Miss Swing YAU Sze-wing
Assistant Secretary for Food and Health (Food) 5

Dr Thomas SIT Hon-chung
Assistant Director (Inspection and Quarantine)
Agriculture, Fisheries and Conservation Department

Dr Mary CHOW Ka-wai
Senior Veterinary Officer (Animal Management) Development
Agriculture, Fisheries and Conservation Department

Mr Gary LI Ming-fung
Government Counsel
Department of Justice

Clerk in attendance : Miss Josephine SO
Chief Council Secretary (2) 2

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Ms Wendy LO
Senior Council Secretary (2) 2

Mr Roger CHUNG
Council Secretary (2) 2

Miss Emma CHEUNG
Legislative Assistant (2) 2

Ms Camy YOONG
Clerical Assistant (2) 2

Action

I. Election of Chairman and Deputy Chairman

The Subcommittee deliberated (index of proceedings attached at Annex).

Action

Election of Chairman

2. Two valid nominations were made for the Chairmanship of the Subcommittee: (1) Dr Elizabeth QUAT was nominated by Dr CHIANG Lai-wan and the nomination was seconded by Mr CHAN Hak-kan. Dr Elizabeth QUAT accepted the nomination; and (2) Ms Claudia MO was nominated by Dr CHENG Chung-tai and the nomination was seconded by Mr Jeremy TAM. Ms Claudia MO accepted the nomination.

3. A vote was conducted by secret ballot and the result was that 11 members voted for Dr Elizabeth QUAT and five members voted for Ms Claudia MO. Dr Elizabeth QUAT was elected as the Chairman of the Subcommittee.

II. Meeting with the Administration

(LC Paper Nos. CB(2)347/16-17(02), CB(2)1804/15-16, LS12/16-17, L.Ns. 64 and 176 of 2016)

Ms Claudia MO's proposed resolution

4. Members noted that the Public Health (Animals and Birds) (Animal Traders) (Amendment) Regulation 2016 ("Amendment Regulation"), which was published in the Gazette on 20 May 2016 and tabled before the Fifth Legislative Council on 25 May 2016, amended the Public Health (Animals and Birds) (Animal Traders) Regulations (Cap. 139B) in order to strengthen the regulation of animal trading and dog breeding activities through licensing arrangements. The Public Health (Animals and Birds) (Animal Traders) (Amendment) Regulation 2016 (Commencement) Notice ("Commencement Notice") stipulated that the Secretary for Food and Health had appointed 20 March 2017 as the day on which the Amendment Regulation was to come into operation. Ms Claudia MO expressed concern that the Amendment Regulation might produce an unintended effect of legalizing private breeding of dogs and questioned the Administration's readiness in enforcing the licensing requirements. She proposed that a motion be moved by the Subcommittee Chairman to repeal the Commencement Notice.

5. As there were divided views among members on Ms Claudia MO's proposal, the Chairman put the proposal to vote. Ms MO requested for a division. The voting results were as follows:

Action

- (a) the following members voted in favour of the proposal:

Ms Claudia MO, Mr CHAN Chi-chuen, Mr CHU Hoi-dick,
Dr CHENG Chung-tai and Mr KWONG Chun-yu
(5 members)

- (b) the following members voted against the proposal:

Mr WONG Ting-kwong, Mr CHAN Hak-kan, Mr CHAN
Kin-por, Mr Steven HO, Mr CHAN Han-pan, Mr LEUNG
Che-cheung, Dr CHIANG Lai-wan, Mr Holden CHOW,
Mr CHAN Chun-ying, Mr LUK Chung-hung and Mr LAU
Kwok-fan
(11 members)

The Chairman declared that five members voted for and 11 members voted against the proposal. The motion was negated. Ms Claudia MO subsequently indicated her intention to repeal the Commencement Notice in her own name.

(Post-meeting note: On 9 December 2016, Ms Claudia MO gave notice to move a proposed resolution which sought to repeal the Commencement Notice.)

Follow-up action required of the Administration

6. The Administration was requested to provide a written response to issues raised by some members and the Legal Adviser to the Subcommittee in relation to inspections to be conducted on premises licensed by the Agriculture, Fisheries and Conservation Department under the Public Health (Animals and Birds) (Trading and Breeding) Regulations after the Commencement Notice had brought the Amendment Regulation into operation.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(2)494/16-17 on 23 December 2016).

Legislative timetable

7. The Subcommittee completed the scrutiny of the Commencement Notice. Members noted that as the scrutiny period of the Commencement Notice had already been extended by resolution to the Council meeting of 18 January 2017, the deadline for giving notice of amendment, if any, to the Commencement Notice would be 11 January 2017. Members also noted that the Chairman would report

Action

the deliberations of the Subcommittee to the House Committee on 6 January 2017.

III. Any other business

8. There being no other business, the meeting ended at 11:56 am.

Council Business Division 2
Legislative Council Secretariat
20 January 2017

**Proceedings of the meeting of the
Subcommittee on Public Health (Animals and Birds) (Animal
Traders) (Amendment) Regulation 2016 (Commencement) Notice
on Friday, 9 December 2016, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)/Discussion	Action Required
000120 - 000847	Mr WONG Ting-kwong Dr CHIANG Lai-wan Mr CHAN Hak-kan Dr Elizabeth QUAT Dr CHENG Chung-tai Mr Jeremy TAM Ms Claudia MO	Election of Chairman	
000848 - 001257	Chairman Admin	Briefing by the Administration on the Public Health (Animals and Birds) (Animal Traders) (Amendment) Regulation 2016 (Commencement) Notice ("Commencement Notice") which appointed 20 March 2017 as the day on which the Public Health (Animals and Birds) (Animal Traders) (Amendment) Regulation 2016 ("Amendment Regulation") was to come into operation.	
001258 - 001944	Chairman Mr Jeremy TAM Admin	<p>The new regulation 5A of the Amendment Regulation provided that the Director of Agriculture, Fisheries and Conservation ("DAFC") might exempt a person (including individuals and animal welfare organizations) from the requirement to obtain an Animal Trader Licence ("ATL") if DAFC was satisfied that the person was conducting genuine rehoming activities for animal welfare purposes on a non-profit-making basis. Noting that under the newly added regulation 5A(2)(c), in considering an exemption, DAFC might take into account, among others, whether the person engaged the services of a registered veterinary surgeon as defined by section 2 of the Veterinary Surgeons Registration Ordinance (Cap. 529) to act as an advisor on animal health and welfare, Mr Jeremy TAM sought clarification as to whether the person should engage a registered veterinary surgeon through an employment contract.</p> <p>The Administration advised that in deciding on the exemption, DAFC might consider, inter alia, whether the person engaged the services of a registered veterinary surgeon as an advisor</p>	

Time marker	Speaker	Subject(s)/Discussion	Action Required
		<p>on animal health and welfare. While there was no requirement for the applicant and the veterinary surgeon to enter into an employer-employee relationship, the parties concerned were expected to have developed and to continue to maintain a close working relationship.</p> <p>Mr Jeremy TAM's enquiry and the Administration's response on whether DAFC would refuse to grant or renew, or even cancel, a licence if the land leases and deeds of mutual covenant in relation to the premises on which dogs were kept for breeding and sale contained provisions forbidding the keeping of dogs/animals.</p>	
001945 - 002353	Chairman Dr CHENG Chung-tai Admin	<p>Dr CHENG Chung-tai was opposed to the commencement of the Amendment Regulation. He considered that the Administration should defer the commencement of the Amendment Regulation by at least one to two years to allow sufficient time for the community to discuss the new licensing regime. The Administration gave an account of the preparatory work undertaken by the Agriculture, Fisheries and Conservation Department ("AFCD") for implementing the enhanced licensing regime. The Administration assured members that AFCD was well prepared for implementing the enhanced regulatory regime at the end of March 2017.</p> <p>Dr CHENG expressed concern about the practical difficulties in AFCD's regulatory work as licensees, in particular those holding a dog breeder licence (category A) ("DBLA"), who bred dogs for sale in domestic premises might not be cooperative in allowing surprise inspection of their premises by AFCD officers, while giving prior notice of inspection would defeat the purpose for which the inspection was intended.</p> <p>The Administration's advice that:</p> <p>(a) upon the commencement of the Amendment Regulation, applications for ATL, DBLA or a dog breeder licence (category B) would be subject to the statutory requirements under the amended</p>	

Time marker	Speaker	Subject(s)/Discussion	Action Required
		<p>Public Health (Animals and Birds) (Animal Traders) Regulations (Cap. 139B) ("Regulations"), as well as the conditions attached to the three types of licences as provided under regulations 5(3), 5B(4) or 5C(3) of the amended Regulations. When considering whether to grant a licence to an applicant, DAFC might take into account all relevant circumstances to ascertain whether the stipulated requirements in relation to the premises were fulfilled and whether the applicant was a suitable person to carry out the regulated activity, after conducting an inspection on the premises related to the application; and</p> <p>(b) once a licence was granted, the licensed premises would be subject to regular inspections by authorized officers of AFCD to ensure continued compliance with the statutory requirements and the conditions attached to the licence. Such inspections might be conducted by prior arrangement with the licensee or surprise checks without prior notice. A specific condition would also be attached to the licence to require the licensee to facilitate AFCD's authorized officers to carry out the inspections by providing access to the licensed premises. Failure to comply with a request by an authorized officer to gain access to the licensed premises might be considered as a breach of this condition.</p>	
002354 - 002926	Chairman Ms Claudia MO Admin	<p>Ms Claudia MO held the view that many issues remained unresolved, such as how inspections on domestic premises might be conducted. Expressing concern that the Amendment Regulation might produce an unintended effect of legalizing private breeding of dogs, she considered that the Administration should defer the commencement of the Amendment Regulation by at least one to two years. She indicated her intention to repeal the Commencement Notice if the Administration refused to defer the implementation date of the enhanced licensing regime.</p> <p>The Administration's advice that:</p>	

Time marker	Speaker	Subject(s)/Discussion	Action Required
		<p>(a) the licensing regime would give an anchoring point for AFCD to carry out inspection, promotion and education work concerning dog breeding activities. The Administration noted that different stakeholders might have different views on the enhanced regulatory regime. Having weighed the views received and other relevant considerations, the Government remained of the view that the new licensing regime, as framed in the Amendment Regulation, could serve the policy objectives of enhancing animal health and welfare and strike an appropriate balance between the protection of animal welfare and the interests of pet owners and animal traders; and</p> <p>(b) to cope with the anticipated increase in workload, additional resources had been allocated to AFCD for carrying out the enforcement work. AFCD would keep in view the effectiveness of the Amendment Regulation after the implementation of the enhanced licensing regime.</p>	
002927 - 003703	Chairman Mr CHAN Chi-chuen Chairman Admin	Mr CHAN Chi-chuen was opposed to the commencement of the Amendment Regulation. He was of the view that the Amendment Regulation should not be brought into operation without further consultation and discussion. The Administration's reiteration that AFCD was well prepared for implementing the enhanced regulatory regime and would monitor the implementation progress of the enhanced licensing regime.	
003704 - 004201	Chairman Dr CHIANG Lai-wan Admin	<p>Dr CHIANG Lai-wan was supportive of implementing the enhanced regulatory regime to put dog breeding activities under licensing control. Her enquiry and the Administration's response on the estimated number of private dog breeders in the market after the implementation of the enhanced regulatory regime.</p> <p>Dr CHIANG requested the Administration to keep in view the effectiveness of the Amendment Regulation and report progress to the Panel on Food Safety and Environmental</p>	

Time marker	Speaker	Subject(s)/Discussion	Action Required
		Hygiene on a regular basis after the implementation of the enhanced licensing regime.	
004202 - 004832	Chairman Mr KWONG Chun-yu Admin	<p>Mr KWONG Chun-yu expressed concern about the adequacy of manpower resources of AFCD and its readiness in enforcing the licensing requirements.</p> <p>The Administration advised that to cope with the anticipated increase in workload, through the additional provision of seven permanent civil service posts and redeployment of staff currently engaged in duties related to the Public Health (Animals and Birds) (Trading and Breeding) Regulations (Cap. 139B) in AFCD, there would be some 30 officers deployed to discharge duties in relation to the licensing of animal trading activities and enhancing the relevant control measures after commencement of the Amendment Regulation. Proper training would also be provided for relevant staff to implement the licensing regime.</p>	
004833 - 010613	Chairman Ms Claudia MO Mr CHAN Chi-chuen Clerk Dr CHIANG Lai-wan	<p>Ms Claudia MO expressed concern about the practical difficulties in conducting inspections on premises licensed by AFCD under the Public Health (Animals and Birds) (Trading and Breeding) Regulations after the Commencement Notice had brought the Amendment Regulation into operation.</p> <p>Ms MO proposed that a motion be moved by the Subcommittee Chairman to repeal the Commencement Notice. The Chairman put Ms MO's proposal to vote. The Chairman declared the voting results and that the proposal was negatived.</p> <p>Legislative timetable in relation to the Commencement Notice.</p>	
010614 - 010714	Chairman ALA7 Admin	The Legal Adviser to the Subcommittee sought the Administration's response on how AFCD's inspections on domestic premises might be conducted at the time of the application for a licence and after the licence was granted in the light of Article 29 of the Basic Law which provided that "[t]he homes and other premises of Hong Kong residents shall be inviolable. Arbitrary or unlawful search of, or intrusion	

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		into, a resident's home or other premises shall be prohibited.".	
010715 - 011020		<i>The Chairman suspended the meeting to allow members who were also members of the Subcommittee on Matters Relating to Railways to proceed to the meeting venue of that Subcommittee for voting on a proposal. The meeting resumed at 11:55 am.</i>	
011021 - 011200	Chairman Admin ALA7	The Administration advised that failure to comply with a request by an authorized officer to gain access to the licensed premises might be considered as a breach of the licensing condition. The Administration undertook to provide a detailed written response to address this issue of concern after the meeting.	Admin (para. 6 of the minutes refers)
011201 - 011251	Chairman	The Chairman's closing remarks	

Council Business Division 2
Legislative Council Secretariat
 20 January 2017