

**For discussion  
on 14 May 2019**

**LegCo Panel on Food Safety and Environmental Hygiene**

**Public Consultation on the Proposals to Enhance Animal Welfare**

**PURPOSE**

We launched a three-month public consultation on proposals to enhance animal welfare on 26 April 2019. This paper highlights the major proposals and invites Members' views.

**PROPOSALS**

2. Detailed proposals are set out in the consultation document at **Annex**. Key proposals are summarised below.

**(a) To introduce a positive 'Duty of Care'**

**The Concept of 'Duty of Care'**

3. Duty of care to an animal means that a person responsible for the animal must take such steps as are reasonable in the circumstances to ensure its welfare needs are met. The person(s) responsible for the animal include(s) not only the owner, but also someone in charge of, or having custody of the animal, whether permanently or temporarily. The following animal welfare needs should be met to the extent required by good practice:

- (a) the need for suitable nutrition;
- (b) the need for a suitable environment;
- (c) the need to be able to exhibit normal patterns of behaviour (including social needs); and
- (d) the need to be protected from pain, suffering, disease and injury.

### Codes of Practice

4. Along with the introduction of the duty of care, we propose to issue Codes of Practice (CoPs) for those types of animals commonly kept in Hong Kong, starting with pet animals. CoPs will give practical guidance, such as providing constant access to a sufficient quantity of clean water and a balanced diet, providing a safe, clean and comfortable environment with suitable temperature and ventilation, etc. CoPs are not meant to be part of the legislation, and contravention of a CoP does not constitute an offence *per se*, though it may be cited as an evidence in court proceedings initiated for the contravention of the duty of care.

### Abandonment of Animals

5. Section 22 of the Rabies Ordinance (Cap. 421) provides that abandonment of a mammal (except human beings) is an offence to prevent spreading of rabies in the community by the abandoned animal. From the perspective of enhancing animal welfare, we propose that abandonment of an animal (not limiting to mammals) should also be considered as a contravention of the duty of care since it is tantamount to leaving the animal unattended, not taking good care of it and not providing for its welfare needs.

### Improvement Notice

6. If a responsible person fails to ensure the needs of an animal are met to the extent required by good practice, he or she commits an offence. However, there may be situations where a relatively minor contravention could be rectified by way of an improvement notice issued by an authorised public officer to compel the responsible person to take such steps as necessary to improve the animal's welfare. The notice will specify the specific actions the responsible person is required to take within a specified period, with a view to ensuring that the situation and / or the welfare of the animal will improve and preventing potential animal suffering.

7. The authorised officer will follow up the case and ensure that the improvement notice is complied with. Failure to comply with the improvement notice within the specified period may lead to prosecution for the contravention of the duty of care. It should be pointed out that an improvement notice is not necessarily a precursor to prosecution, as serious cases of infringing the law in particular those involving acts of animal cruelty may still be prosecuted right away, depending on the circumstances.

### Penalties for the Contravention of the Duty of Care

8. In general, contravention of the duty of care in overseas places results in a fine or imprisonment, and the penalties imposed are often lower than those for animal cruelty. We propose that it is an offence for a person responsible for an animal to contravene the duty of care, and invite views on what level of maximum penalty (including amount of fine and length of imprisonment) would be appropriate for such an offence, having regard to the levels of penalty imposed on comparable offence in other places as well as those for other criminal offences in Hong Kong.

#### **(b) To enhance the provisions for prevention of cruelty**

### Increase the Penalty for the Offence of Animal Cruelty and Introducing an Indictable Offence

9. We propose to increase the maximum penalty and make the offence triable either summarily (for general cases) or upon indictment (for severe cases). While keeping the penalty for the offence of animal cruelty convicted by summary trial unchanged, we invite views on what level of maximum penalty (amount of fine and length of imprisonment) would be appropriate for the offence of animal cruelty convicted by indictment, having regard to the levels of penalty imposed on animal cruelty in other places as well as those for other criminal offences in Hong Kong.

### Disqualification Order

10. We propose to empower the courts to disqualify a person convicted of an animal cruelty offence from keeping animal for a specified period or permanently, and deprive him/her of any animal(s) currently being kept. The disqualification order may also prohibit the convicted person from participating in the keeping of animals with others or dealing with animals. The disqualification order will be issued at the discretion of the courts.

#### **(c) To enhance enforcement powers to prevent and protect animals from suffering**

11. The existing Prevention of Cruelty to Animals Ordinance (Cap. 169) provides for an authorised officer to enter and search any building or vehicle, etc. if there is a reason to suspect that an offence is being committed. To better safeguard animal welfare, we propose to give authorised officers the power to intervene before an animal suffers, i.e. entering the premises if there is a reason to suspect that an animal is likely

to suffer if the circumstances do not change. We also propose to add a provision empowering a Magistrate to issue a warrant to allow an authorised officer to enter and search buildings and premises.

12. We also propose to empower an authorised officer to seize an animal if it is suffering or if there is a reason to believe that the animal is likely to suffer if the circumstances do not change and allow a Senior Veterinary Officer of the Agriculture, Fisheries and Conservation Department (AFCD) to release an animal seized from detention if it has been surrendered by the owner and it is no longer required for evidence purposes.

## **WAY FORWARD**

13. Members of the public have been invited to give views on the proposals set out in the consultation document in writing by 31 July 2019, or at the consultation forums to be organised by AFCD during the consultation period. We will take into account the views received to draw up legislative proposals.

## **ADVICE SOUGHT**

14. Members are invited to comment on the proposals set out above.

**Food and Health Bureau  
Agriculture, Fisheries and Conservation Department  
May 2019**

**CONSULTATION DOCUMENT**

**PROPOSALS TO ENHANCE ANIMAL WELFARE IN  
HONG KONG**

**Food and Health Bureau  
Agriculture, Fisheries and Conservation Department  
April 2019**

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## **1. FOREWORD**

1.1 We attach great importance to animal welfare. Our policy objective is to ensure that animals and people co-exist in a harmonious way in Hong Kong. Under a multi-pronged approach, we take vigorous enforcement actions against acts of animal cruelty; conduct public education on animal welfare; and work closely with animal welfare organisations to promote adoption and the concept of responsible pet ownership.

1.2 We also keep our law relating to animal welfare updated, along with the international trend. The current maximum penalty of three years' imprisonment and a fine of \$200,000 for acts of animal cruelty under the Prevention of Cruelty to Animals Ordinance (Cap. 169) ("the Ordinance") was introduced in 2006, representing a six-fold increase from the original maximum imprisonment term of six months and 40 times increase of the maximum fine of \$5,000. However, in the light of the increasing concern about animals in our society, we believe that it is timely for the Government to take a fresh look at the Ordinance.

1.3 Whilst the Ordinance prohibits and punishes acts of cruelty towards animals, it does not specifically promote good welfare or provide guidance on how good welfare can be achieved. After reviewing the local situation and noting developments in some overseas places, we have identified a number of possible areas for improvement to bring the current legislation up-to-date to meet community expectations. This view has also been shared by the Legislative Council (LegCo), academics, and other groups and individuals who are concerned about animal welfare.

1.4 In this consultation paper, we have set out the current provisions in place to prevent and prohibit cruelty to animals, possible areas for enhancement and proposals to implement the enhancement measures through legislative amendments to the Ordinance.

1.5 Please share your views with us!

**Prof. CHAN Siu-chee, Sophia**  
**Secretary for Food and Health**  
**April 2019**

## **2. INTRODUCTION**

2.1 The overall objective of these proposals is to enhance animal welfare by requiring persons responsible for animals to take positive steps to provide for their welfare needs. Although failure to comply with this requirement is proposed to be an offence under the law, our primary intention is to elevate the public awareness of animal welfare and encourage keepers to take a positive duty of care of the animals, with a view to improving animal welfare in Hong Kong.

2.2 As the current proposals are related to enhancement of animal welfare, the current exercise is confined to amendment of the Ordinance, without touching on other legislation related to public health or control of animal diseases. The proposals, which are an overhaul of the Ordinance, will represent a significant improvement to animal welfare in Hong Kong. The Ordinance, if amended, will be the main legislation safeguarding animal welfare in Hong Kong, complemented by various other pieces of legislation relating to animals that serve specific purpose(s) and function(s). Along with the shift in focus towards promotion of good animal welfare, rather than just prevention of cruelty, the title and purpose of the Ordinance should reflect the concept of “animal welfare”.

2.3 We set out below the inadequacy of the Ordinance, where there is room for improvement, and what benefits could be brought by the proposals.



### **3. BACKGROUND**

#### **The current scope of the Ordinance**

3.1 Under section 3 of the Ordinance, any person who cruelly beats, kicks, ill-treats, over-rides, over-drives, overloads, tortures, infuriates or terrifies any animal, or by wantonly or unreasonably doing or omitting to do any act, causes any unnecessary suffering to any animal commits an offence and shall be liable on conviction to a fine of \$200,000 and imprisonment for three years.

3.2 Relevant Government departments take enforcement actions under and in accordance with the Ordinance. Both the Hong Kong Police Force (the Police) and the Agriculture, Fisheries and Conservation Department (AFCD) investigate into suspected cases of cruelty to animals and institute prosecution when there is sufficient evidence. In the past three years (2016-2018), the Government received an average of around 300 suspected animal cruelty cases per year. The investigations by the departments concerned showed that most of these cases did not involve any criminal element. In the past three years<sup>1</sup>, there were a total of 47 successful prosecution cases under the Ordinance. The heaviest sentence handed down by the court since 2006 was 16 months of imprisonment.

3.3 The underlying principle of the offence of cruelty is that unnecessary suffering has been caused to an animal by unreasonably doing or omitting to do any act. Suffering can be physical and/or mental. Any person can be liable for the offence, not just the owner or keeper of the animal.

3.4 On the other hand, the views of society and scientific knowledge of animal welfare have changed substantially since the Ordinance was last updated in 2006. The Ordinance focuses on preventing pain and suffering of animals and punishing those who cause animals to suffer. Whilst it is important and necessary to legislate against animal cruelty, it is now recognised that prevention of suffering is not sufficient to safeguard animal welfare on its own.

#### **The need for safeguarding animal welfare through legislation**

3.5 Animal welfare is about how an animal is coping with the conditions in which it lives. It encompasses an animal's physical state, its mental state and its ability to fulfil its natural needs and desires. According to the World Organisation for Animal Health (OIE), "An animal experiences good welfare if the animal is healthy, comfortable, well nourished, safe, is not suffering from unpleasant states

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<sup>1</sup> From January 2016 to September 2018.

such as pain, fear and distress, and is able to express behaviours that are important for its physical and mental state”.

3.6 While pain and suffering is bad for animal welfare, an absence of pain and suffering does not necessarily mean that welfare is good. Good animal welfare results not only from an absence of suffering, but also from the presence of positive experiences and sensations.

3.7 In order to promote better animal welfare, there is a need to amend the Ordinance to bring it in line with modern concept of how we should care for animals and safeguard their welfare. Imposing *positive* duties on those responsible for animals to provide for their needs could promote better animal welfare. In line with the proactive nature of the duty of care, departments concerned should be empowered to take early intervention to better safeguard animal welfare. Besides, quite a number of other places have already imposed a positive duty of care onto persons responsible for animals under their legislation, such as the United Kingdom, Japan, Taiwan, New Zealand, Queensland of Australia, and Singapore.

## 4. THE PROPOSALS

4.1 With reference to the relevant legislation of overseas places and having taken into account views of animal welfare organisations, the general public and LegCo Members, the Government has put together legislative proposals with the shift in focus towards promotion of animal welfare, rather than just prevention of cruelty. Details of the proposals are set out below.

### I. To introduce a positive “Duty of Care”

#### A. *The concept of “Duty of Care”*

What is meant by “duty of care”?

4.2 **We propose to impose a positive “Duty of Care” on persons responsible for animals.** The duty of care means that a person who is responsible for an animal must take such steps as are reasonable in the circumstances to ensure the welfare needs of the animal are met to the extent required by good practice. The duty of care is intended to introduce a more proactive and educational approach to enhance animal welfare. The duty of care, if introduced, will be complementary to, but will not replace, the existing anti-cruelty provisions. The intention is that an animal will never reach a state of suffering when the duty of care is properly exercised.

To whom will the positive “duty of care” apply?

4.3 Any person who is responsible for an animal has to fulfil the duty of care to provide for its welfare needs. It is proposed that the person(s) responsible for the animal include(s) not only the owner, but also a person in charge of, or having custody of the animal, whether permanently or temporarily. If a child under 16 years has custody of an animal, their parents/guardian would be the person responsible for the animal. In the case of a dog licensed under the Rabies Regulation (Cap. 421A), the licensee will also be defined as one of the persons responsible for it.

What kinds of animals are covered?

4.4 Under the Ordinance, “animal” includes any mammal, bird, reptile, amphibian, fish or any other vertebrate or invertebrate whether wild or tame. This definition will continue to apply but the duty of care only applies when a person is responsible for an animal. Therefore, animals living in a wild or feral state not under the control of any person are excluded from any requirement under the duty

of care as no person is considered directly responsible for them. However, when wild or feral animals are in the custody or under the control of a person, then the duty of care will apply.

#### What are the welfare needs of the animals?

4.5 The responsible person must take steps to ensure the following welfare needs of the animal are met to the extent required by good practice:

- (a) the need for suitable nutrition;
- (b) the need for a suitable environment;
- (c) the need to be able to exhibit normal patterns of behaviour (including social needs); and
- (d) the need to be protected from pain, suffering, disease and injury.

#### Steps which responsible persons need to take to provide for the welfare needs

4.6 The steps which the responsible person needs to take to provide for the welfare needs of an animal will vary depending on the type of animal and the circumstances in which it is kept. The duty of care is not a requirement to treat all animals in exactly the same way or in an unrealistic fashion but to meet an acceptable standard of welfare based on good practice.

4.7 The proposed duty of care places the onus on the responsible person both to know and provide for the needs of the animal for which he/she is responsible. This can be achieved by doing proper research from reputable sources such as a veterinary surgeon. The vast majority of responsible pet owners are already complying with the duty of care but the proposed legislation will allow action to be taken to better protect animals whose welfare needs are not being met.

4.8 To complement the duty of care, we propose to promulgate Codes of Practice (CoPs) for those types of animals which are commonly kept in Hong Kong, starting with pet animals as the first priority. CoPs will give practical guidance on how to provide for the welfare needs of animals to the extent required by good practice, for example:

- to provide constant access to a sufficient quantity of clean water and a balanced diet suitable for the animal's individual needs;
- to provide a safe, clean and comfortable environment with suitable temperature and ventilation;
- to take reasonable steps to prevent disease (e.g. vaccination and other prophylactic treatment);

- to check the animal regularly, watch out for sign(s) of ill-health and seek timely advice from a veterinary surgeon if the animal is ill or injured; and
- to meet the animal's behavioural needs, such as providing regular exercise, opportunities for play and keeping it company.

These are basic and non-exhaustive examples of good-practice requirements which will be further expanded in CoPs taking into account the needs of individual species. CoPs can be updated from time to time having regard to evolving developments in the scientific knowledge of animal welfare and public attitudes towards animals having regard to the local situation.

4.9 We propose that CoPs should be issued by the Director of Agriculture, Fisheries and Conservation after consultation with stakeholders, including the Animal Welfare Advisory Group<sup>2</sup>.

4.10 CoPs are not meant to be part of the legislation, and contravention of a CoP does not constitute an offence *per se*, though it may be cited as evidence in court proceedings initiated for the contravention of the duty of care. Conversely, compliance with a CoP may be used as a defence against a charge for the contravention of the duty of care.

4.11 Abandonment of an animal would be considered as a contravention of the duty of care since it is equivalent to leaving an animal without provision for its welfare needs. This better reflects the nature of the offence in terms of the impact on animal welfare and has the benefit of covering a wider range of animals, instead of only mammals as is currently the case with the abandonment offence under the Rabies Ordinance (Cap. 421). It also widens the net of liability since the prosecution has to prove that the responsible person contravenes the duty of care (i.e. failure to provide for an animal's welfare needs) rather than abandons the animal *per se*. If an animal suffers as a result of abandonment, the offence of cruelty with more severe penalty will continue to apply. As proposed in paragraph 4.3 above, the licensed keeper of a dog will be one of the persons responsible for it. As such, when a licensed dog is found at large without provision for its welfare needs, the licensee would bear a prima facie responsibility unless he or she can show that, on the balance of probabilities, he/she is not responsible for the dog at the material time.

## ***B. Improvement Notices***

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<sup>2</sup>The Animal Welfare Advisory Group (AWAG) was established in 1996 to advise the Government on matters concerning animal welfare, including the promotion of community awareness of animal welfare and responsible pet ownership.

4.12 If a responsible person fails to ensure the needs of an animal are met to the extent required by good practice, he or she would contravene the duty of care and commit an offence. However, there may be situations in which the degree of the contravention of the duty of care presents a relatively lower risk to the welfare of the animal, and such a contravention could be rectified. For instance, if a responsible person has not taken an animal showing signs of illness to see a veterinary surgeon, he/she should be required to do so promptly. In those situations it may be more effective and efficient to issue an improvement notice to compel the responsible person to take necessary steps to improve the animal's welfare, rather than resorting to prosecution.

4.13 In those situations, **we propose to empower a public officer to issue an improvement notice** which would specify what the responsible person is required to do in order to improve and meet the welfare needs of the animal within a specified amount of time. This ensures action can be taken to improve a situation before an animal actually suffers. The authorised officer would follow up the case and ensure that proper steps have been taken in accordance with the improvement notice.

4.14 Failure to comply with the improvement notice within the specified period may lead to prosecution for the contravention of the duty of care. Depending on the circumstances, serious contravention of the duty of care would justify prosecution right away without issuing any improvement notice first. However, the experience of the United Kingdom shows that an improvement notice can achieve the desired effect of safeguarding animal welfare in most cases. As mentioned in paragraph 2.1 above, the primary intention of introducing the concept of duty of care is to encourage persons responsible for animals to take positive actions to look after animals well, rather than to penalise contravention of the duty of care which people are willing and able to rectify.

### *C. Penalties for the contravention of the duty of care*

4.15 Whilst we expect that most contravention of the duty of care can be rectified by issuing an improvement notice, there is still a need to have an underlying offence for those situations where the contravention is more serious or the responsible person is unable or unwilling to rectify it (i.e. failure to comply with the improvement notice). In general, the contravention of the duty of care in overseas places results in a fine or imprisonment, and the penalties imposed are often lower than those for animal cruelty (**Annex 1**). **We propose that it is an offence for a person responsible for an animal to contravene the duty of care** (i.e. failing to take such steps as are reasonable in the circumstances to ensure the needs of the animal are met to the extent required by good practice). **We invite views on what level of maximum penalty (amount of fine and length of**

imprisonment) would be appropriate for the contravention of the duty of care, having regard to the penalties imposed on contravening the duty of care in other places (**Annex 1**) and the penalties for other criminal offences in Hong Kong (**Annex 2**). Some suggested options for the proposed penalties are listed in the feedback form (**Annex 3**).

## **II. To enhance the provisions for prevention of cruelty**

### ***A. Updating the definition of cruelty to animals***

4.16 We believe that section 3 of the Ordinance has served the purpose of tackling acts of animal cruelty well over the years, and continues to be effective in the present day. In addition, it has the backing of several decades of enforcement experience and case law. We have reviewed the definition of animal cruelty in other overseas places and note the definition under the Ordinance is quite similar to those adopted by some jurisdictions (e.g. Australia (Queensland and New South Wales), California of the United States and Singapore). An act or failure to act causing unnecessary suffering to animals is the underlying principle of the definitions of “cruelty to animals” in most cases.

4.17 On the other hand, we note that there are concerns about release of captive animals into the wild for religious purposes. Such activities may have a detrimental effect on animal welfare if the animals are released into an environment which is not suitable for them. **We propose to specify that the release of an animal into an unsuitable environment, which causes it to suffer, is an act of cruelty to animals.**

### ***B. Increasing the penalty for the offence of cruelty to animals and introducing an indictable offence***

4.18 The maximum penalty under the Ordinance was substantially increased in 2006 from \$5,000 to \$200,000 fine and from six months’ to three years’ imprisonment. So far, the heaviest sentence handed down by the court is imprisonment for 16 months.

4.19 During our review of the legislation, we have referenced the legislation related to animal cruelty in other places, including Australia, New Zealand, the United Kingdom, and Singapore, etc. (**Annex 1**). We also note that there is strong support for increasing the maximum penalty for the offence of cruelty to animals to have a greater deterrent effect and reflect the increasing concern within society on the seriousness and gravity of the offence.

**4.20 In order to more effectively deter acts of cruelty to animals and to reflect the seriousness of the offences, we propose to increase the maximum penalty and make the offence triable either summarily (for general cases) or upon indictment (for severe cases).** Currently, the offence of cruelty is a “summary offence”. “Summary offence” generally refers to a less serious offence, and an “indictable offence” refers to a more serious one. Factors to be considered in determining the seriousness of a case could include the culpability of the offender, the number of animals involved, the degree of harm caused to the animal(s) and any other aggravating factors. The proposal is in line with other similar local legislation such as the Import and Export Ordinance (Cap. 60), the Dangerous Drugs Ordinance (Cap. 134) and the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586).

4.21 Summary offences are heard in the Magistrates’ Courts whilst indictable case are tried in higher courts. The time bar for prosecution of a summary offence is six months after the incident occurred (unless otherwise stated in the law). There is no specific time bar for prosecution of indictable offences. This allows law enforcement officers to have sufficient time to investigate more complex or serious cases.

4.22 We propose that the penalty for the offence of cruelty to animals convicted by summary trial continues to be a fine of \$200,000 and 3 years’ imprisonment. **For the offence of cruelty to animals convicted by indictment (as proposed), we invite views on what level of maximum penalty (amount of fine and length of imprisonment) would be appropriate,** having regard to the penalties imposed on cruelty to animals in other places and the penalties for other criminal offences in Hong Kong (**Annex 2**). Suggested options for the increased penalty levels are listed in the feedback form (**Annex 3**).

4.23 We note that there are views that offenders of cruelty to animals should receive mandatory psychological counselling and/or attend training courses in proper care of animals. In fact, the court already has the power to require offenders to undergo psychological evaluation or to undergo training if necessary. There have been some convicted cruelty cases in which the Magistrate made use of such powers to direct the offenders to attend training courses in the proper care of animals or to undergo a psychological evaluation. As the motives and underlying reasons for committing such offences could vary from one case to another, requiring each and every person convicted of animal cruelty offences to receive mandatory psychological counselling or training may not be appropriate and should be a decision left in the hands of the courts.



### *C. Disqualification of offenders from keeping animals*

4.24 Under the Ordinance, a Magistrate may deprive an offender of ownership of an animal if it is shown by evidence as to a previous conviction or as to the character of the owner that the animal is likely to be exposed to further cruelty if left with the owner. This sets the bar for deprivation rather high. Besides, the law does not provide power for the Magistrate to disqualify the offender from obtaining and keeping more animals in future.

4.25 **We propose to empower the courts to disqualify a person convicted of an animal cruelty offence from keeping animals within a specified period or permanently, and deprive him/her of any animal(s) currently being kept.** The disqualification order may also prohibit the convicted person from participating in the keeping of animals with others or dealing with animals as may be appropriate in a particular case. The disqualification order would be issued at the discretion of the courts and would not be mandatory in all cases. The benefit of this proposal is to protect animals from the risk of continuing to be kept by a person convicted under the Ordinance.

## **III. To enhance enforcement powers for safeguarding animal welfare**

### *A. Enhancing enforcement powers*

4.26 Currently, the Ordinance does not provide any powers for authorised officers to request documentary proof of identity and address from suspects. **We propose to add such a provision, along with an offence of obstructing a public officer in the discharge of his/her lawful duties.**

### *B. Entry to premises, seizure of animals, and release of animals from detention*

4.27 The Ordinance provides for authorised officers to enter and search any building or vehicle, etc. if there is reason to suspect that an offence is being committed. However, this implies that an animal must already be suffering before an intervention can occur. To better safeguard the welfare of animals, we propose to give authorised officers the power to intervene before an animal suffers. **We propose that authorised officers should be able to enter premises not only when there is reason to suspect an offence has been committed (i.e. when an animal is suffering) but also if there is reason to suspect that an animal is likely to suffer if the circumstances do not change.**

4.28 **We also propose to add a provision empowering a Magistrate to issue a warrant to allow an authorised officer to enter and search buildings and premises without the consent of the occupier.** This aims to allow earlier intervention by an authorised officer as necessary in order to better safeguard animal welfare. It is recognised that there will be situations where it is not reasonably practicable to obtain a warrant before a search is conducted, for example, if an animal is suffering acute or serious harm or injury, or if any delay could result in the loss of evidence. In those urgent cases an authorised officer would still be able to enter and search a premises without a warrant, provided such an action could be justified.

4.29 Under the Ordinance, an authorised officer may only seize an animal when an offence has been committed. This implies that an animal must already be suffering before such intervention can occur and also that seizure must be followed by prosecution in most cases. Hence the bar for seizure is set rather high. To better safeguard the welfare of animals, **we propose to empower an authorised officer to seize an animal if it is suffering or if there is reason to believe that the animal is likely to suffer if the circumstances do not change.**

4.30 Currently, animals seized under the Ordinance can only be released from detention upon the order of a Magistrate. As some cases may take months or even longer to complete, it is beneficial for the welfare of the animals involved to release them from detention earlier so that they can be rehomed when circumstances permit. **We propose to allow a Senior Veterinary Officer of AFCD to release a seized animal from detention if it has been surrendered by the owner and it is no longer required for evidence purposes.** It may still be necessary for the Magistrate to decide on the release of an animal in other scenarios, particularly when the owner does not agree to surrender it or the ownership is in question.

4.31 **We also propose to remove the current provision in section 5(3) of the Ordinance which allows the owner of an animal to request the animal to be destroyed by the officer in charge of it.** This provision was originally intended to be invoked if the owner of an animal in detention cannot pay the costs of keeping it. However, it may not meet our society's expectation that an animal could be destroyed upon the owner's wish in such circumstances. Instead, the owner could surrender the animal and it could be rehomed as appropriate.

## 5. INVITATION FOR COMMENT

5.1 Comments are invited on whether the following proposals are appropriate, sufficient and agreeable:

- (a) imposing a “duty of care” on persons responsible for animals to provide for their welfare needs;
- (b) issuing “improvement notices” in certain cases where the duty of care has not been fulfilled;
- (c) updating the definition of cruelty to include release of an animal into an inappropriate environment causing suffering;
- (d) introducing an indictable offence for more severe acts of cruelty to animals;
- (e) enabling a court to disqualify offenders from keeping animals;
- (f) empowering public officers to collect personal information from suspects; and
- (g) providing authorised officers with enhanced powers of entry, seizure of animals and their release from detention.

5.2 Views are also invited on the appropriate maximum level of penalty (amount of fine and length of imprisonment) for:

- (a) the contravention of the duty of care; and
- (b) committing an act of cruelty to animals convicted on indictment.

5.3 Please fill in the Feedback Form (**Annex 3**) and send your comments by post, facsimile or email on or before **31 July 2019** to:

Address:                   Animal Management (Development) Division  
                                  Inspection and Quarantine Branch  
                                  Agriculture, Fisheries and Conservation Department

5/F, Cheung Sha Wan Government Offices  
303 Cheung Sha Wan Road  
Kowloon, Hong Kong

Fax Number: 3110 1336

Email address: cap169\_amendment@afcd.gov.hk

5.4 It is voluntary for any member of the public to supply his/her personal data upon providing views on the consultation document. Any personal data provided with a submission will only be used for this consultation exercise. The submissions and personal data collected may be transferred to the relevant Government bureaux, departments or agencies for purposes directly related to this consultation exercise. The relevant parties receiving the data are bound by such purposes in their subsequent use of such data.

5.5 The names and views of individuals and organisations which put forth submissions in response to the consultation document (senders) may be published for public viewing after conclusion of the consultation exercise. AFCD may, either in discussion with others or in any subsequent report, whether privately or publicly, attribute comments submitted in response to the consultation document. We will respect the wish of senders to remain anonymous and/or keep the views confidential in relation to all or part of a submission; but **if no such wish is indicated, it will be assumed that the sender can be named and his/her views be published for public information.**

5.6 Any sender providing personal data to AFCD in the submission will have the right of access and correction with respect to such personal data. Any request for data access or correction of personal data should be made in writing to the contact specified in paragraph 5.3 above.

**Comparison of penalties for the contravention of ‘duty of care’ in other places**

**(A) Fine**

Place	Maximum Fine <sup>3</sup>
Macau	\$ 4,000 – \$ 20,000
Singapore	\$ 58,000 (1 <sup>st</sup> offence) \$ 116,000 (2 <sup>nd</sup> offence) <i>(higher if offence related to animal business)</i>
Queensland, Australia	\$ 222,000
New Zealand	\$ 267,000 <i>(higher for corporations)</i>
Taiwan	\$ 780 – \$ 521,000
Japan	\$ 72,000
England & Wales	Unlimited fine <sup>4</sup>
USA (California)	N/A
USA (Columbia)	N/A

**(B) Imprisonment**

Place	Maximum Penalty
England & Wales	51 weeks’ imprisonment
Queensland, Australia	1 year’s imprisonment
New Zealand	12 months’ imprisonment
Singapore	12 months’ imprisonment (1 <sup>st</sup> offence) 24 months’ imprisonment (2 <sup>nd</sup> offence) <i>(higher if offence related to animal business)</i>
Taiwan	2 years’ imprisonment
Japan	N/A
Macau	N/A
USA (California)	N/A
USA (Columbia)	N/A

<sup>3</sup> The amount of fine has been converted Hong Kong dollar as of January 2019.

<sup>4</sup> Although there is no limit set for the fine, a court is required to follow the [Sentencing Council Guidelines](#) in sentencing the offence.

## Comparison of penalties for cruelty to animals in other places

### (A) Fine

Place	Maximum Fine <sup>5</sup>
Japan	\$ 145,000
USA (California)	\$ 157,000
Singapore	\$ 87,000 (1 <sup>st</sup> offence) \$ 172,000 (2 <sup>nd</sup> offence) <i>(higher if offence related to animal business)</i>
USA (Columbia)	\$ 196,000
Taiwan	\$ 52,000 - \$ 521,000
New Zealand	\$ 535,000 <i>(higher for corporations)</i>
Queensland, Australia	\$ 1,477,000
Macau	\$2,400,000 <i>(There is a daily fine which ranges from \$100 to \$20,000. The daily fine can be imposed for up to 120 days.)</i>
England & Wales	Unlimited fine <sup>6</sup>

### (B) Imprisonment

Place	Maximum Penalty
England & Wales	51 weeks' imprisonment <i>(which is being proposed to increase to 5 years<sup>7</sup>)</i>
Macau	1 year's imprisonment
USA (California)	1 year's imprisonment (misdemeanour) 3 years' imprisonment (felony)
Japan	2 years' imprisonment
Taiwan	2 years' imprisonment
Singapore	18 months' imprisonment (1 <sup>st</sup> offence) 3 years' imprisonment (2 <sup>nd</sup> offence) <i>(higher if offence related to animal business)</i>
Queensland, Australia	3 years' imprisonment 7 years' imprisonment (severe animal cruelty)
USA (Columbia)	5 years' imprisonment (felony)
New Zealand	5 years' imprisonment

<sup>5</sup> The amount of fine has been converted Hong Kong dollar as of January 2019.

<sup>6</sup> Although there is no limit set for the fine, a court is required to follow the [Sentencing Council Guidelines](#) in sentencing the offence.

<sup>7</sup> <https://www.gov.uk/government/news/animal-cruelty-maximum-sentences-will-be-increased-government-confirms>

**Penalties for selected criminal offences in Hong Kong**

<b>Cap. No.</b>	<b>Offence</b>	<b>Fine</b>	<b>Imprisonment</b>
212	Common assault	N/A	1 year
212	Assault with intent to commit offence, or on police officer, etc.	N/A	2 years
374	Drink driving	\$10,000 (1 <sup>st</sup> offence, summary) - \$25,000 (2 <sup>nd</sup> or subsequent offence, Summary / Indictment)	6 months (1 <sup>st</sup> offence, summary) / 1 year (2 <sup>nd</sup> or subsequent offence, Summary) - 3 years (Indictment)
374	Dangerous driving	\$10,000 (Summary) – \$25,000 (Indictment)	1 year (Summary) – 3 years (Indictment)
212	Wounding or inflicting grievous bodily harm (GBH)	N/A	3 years (Indictment)
212	Assault occasioning actual bodily harm	N/A	3 years (Indictment)
212	Administering poison with intent to injure	N/A	3 years (Indictment)
374	Causing grievous bodily harm by dangerous driving	\$25,000 (Summary) - \$50,000 (Indictment)	2 years (Summary) - 7 years (Indictment)
374	Causing death by dangerous driving	\$25,000 (Summary) - \$50,000 (Indictment)	2 years (Summary) - 10 years (Indictment)
586	Smuggling/illegal trade in endangered species or their products in CITES Appendix I	\$5,000,000 (Summary) – \$10,000,000 (Indictment)	2 years (Summary) – 10 years (Indictment)
212	Abandon or expose child whereby the life of such child (under 2 years) is endangered etc.	N/A	3 years (Summary) - 10 years (Indictment)
212	Ill-treatment or neglect of child	N/A	3 years (Summary) - 10 years (Indictment)

200	Destruction or damage of property	N/A	10 years (Indictment)
200	Bestiality	\$50,000	10 years (Indictment)
200	Indecent assault	N/A	10 years (Indictment)
210	Theft	N/A	10 years (Indictment)
212	Administering poison so as to endanger life or inflict GBH	N/A	10 years (Indictment)
134	Trafficking in a dangerous drug	\$500,000 (Summary) – \$5,000,000 (Indictment)	3 years (Summary) - Life (Indictment)
200	Arson	N/A	Life (Indictment)
200	Rape	N/A	Life (Indictment)
210	Robbery	N/A	Life (Indictment)
212	Murder	N/A	Life
212	Manslaughter	Unlimited	Life



**Feedback Form**

*To help us collect your opinion on the proposals to amend Cap. 169 as set out in the consultation document we would appreciate if you'd take a few minutes to complete this questionnaire. Please tick the box that best represents your views .*

Name: \_\_\_\_\_

Telephone: \_\_\_\_\_

Organisation: \_\_\_\_\_

	Agree	Disagree	Remarks
1. Legislative amendment of Cap. 169 is required to enhance animal welfare.	<input type="checkbox"/>	<input type="checkbox"/>	_____
2. A "Duty of Care" should be introduced so that persons responsible for animals are legally required to take reasonable steps to provide for the welfare needs of their animals.	<input type="checkbox"/>	<input type="checkbox"/>	_____
3. Improvement Notices should be issued in certain cases where the duty of care has not been fulfilled.	<input type="checkbox"/>	<input type="checkbox"/>	_____
4. The definition of cruelty shall be updated to specify that release of an animal into an unsuitable environment, which causes it to suffer, is an act of cruelty.	<input type="checkbox"/>	<input type="checkbox"/>	_____
5. An indictable offence should be introduced for severe cases of cruelty.	<input type="checkbox"/>	<input type="checkbox"/>	_____
6. The courts should be enabled to disqualify offenders from keeping animals.	<input type="checkbox"/>	<input type="checkbox"/>	_____
7. Enforcement powers to enter premises and seize animals should be enhanced to better safeguard animal welfare.	<input type="checkbox"/>	<input type="checkbox"/>	_____
8. Seized animals should be released from detention earlier if circumstances permit.	<input type="checkbox"/>	<input type="checkbox"/>	_____

9. The maximum penalty for an **indictable offence of cruelty** should be increased to:

<p><u>Imprisonment</u></p> <p><input type="checkbox"/> 4 – 5 years    <input type="checkbox"/> 6 – 8 years    <input type="checkbox"/> 9 – 10 years</p> <p><input type="checkbox"/> Others (Please specify : _____ )</p> <p><u>Fine</u></p> <p><input type="checkbox"/> \$200,001 - \$500,000    <input type="checkbox"/> \$500,001 - \$1,000,000</p> <p><input type="checkbox"/> \$1,000,001 - \$2,000,000</p> <p><input type="checkbox"/> Others (Please specify : _____ )</p>
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10. The maximum penalty for **the contravention of the duty of care** should be:

<p><u>Imprisonment</u></p> <p><input type="checkbox"/> Less than 1 year    <input type="checkbox"/> 1 year</p> <p><input type="checkbox"/> 2 years    <input type="checkbox"/> 3 years</p> <p><input type="checkbox"/> Others (Please specify : _____ )</p> <p><u>Fine</u></p> <p><input type="checkbox"/> \$50,000 or below    <input type="checkbox"/> \$50,001 - \$100,000</p> <p><input type="checkbox"/> \$100,001 - \$200,000</p> <p><input type="checkbox"/> Others (Please specify : _____ )</p>
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11. I support the proposed amendments to Cap. 169.

                    

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Other opinions:

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