

立法會 *Legislative Council*

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Panel on Food Safety and Environmental Hygiene

Background brief prepared by the Legislative Council Secretariat for the special meeting on 5 July 2019

Administration's proposals to enhance animal welfare

Purpose

This paper summarizes major views and concerns of members of the Panel on Food Safety and Environmental Hygiene ("the Panel") regarding the Administration's proposals to enhance animal welfare through legislative amendments.

Background

Current legislation safeguarding animal welfare

2. The Prevention of Cruelty to Animals Ordinance (Cap. 169) ("the Ordinance") is the main legislation safeguarding animal welfare by prohibiting and punishing cruelty to animals. 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 necessary suffering to any animal commits an offence and shall be liable on summary conviction to a fine of \$200,000 and to imprisonment for three years.

3. According to the Administration, 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. Between 2016 and 2018, the Administration received an average of around 300 suspected

animal cruelty cases per year and a total of 47 successful prosecutions had been instituted under the Ordinance. 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. As the views of society and scientific knowledge of animal welfare have changed substantially since the Ordinance was last updated in 2006, the Administration has, after reviewing the local situation and noting developments in some overseas places, identified a number of possible areas for improvement to bring the current legislation up-to-date to meet community expectations.

Proposals to enhance animal welfare

4. On 26 April 2019, the Administration kicked start a three-month public consultation exercise on its proposals to enhance animal welfare through amending the Ordinance. The overall objective of the proposals is to enhance animal welfare by requiring persons responsible for animals to take positive steps to provide for their welfare needs. Key elements of the Administration's proposals include:

- (a) to introduce a positive "duty of care";
- (b) to enhance the provisions for prevention of cruelty; and
- (c) to enhance enforcement powers to prevent and protect animals from suffering.

Details of the proposals are set out in the consultation document.¹

Members' concerns

5. At the Panel meeting on 14 May 2019, the Administration briefed members on the proposals to implement the enhancement measures through legislative amendments to the Ordinance. Members' major views and concerns are summarized below.

The concept of "duty of care"

6. Members in general supported the proposed introduction of the concept of responsible pet ownership by imposing a positive "duty of care" on persons responsible for animals. Some members, however, expressed concern that if the terms "duty of care" and "persons responsible for animals" were not clearly

¹ The public consultation document (Annex to LC Paper No. CB(2)1381/18-19(03)) is available on the Legislative Council website at <https://www.legco.gov.hk/yr18-19/english/panels/fseh/papers/fseh20190514cb2-1381-3-e.pdf>

defined, animal welfare organizations ("AWOs") and volunteers as animal carers might, in rescuing or taking care of stray/wild animals, be caught by the law inadvertently due to some unintentional acts. There was a view that the Administration should provide clear guidelines on how a person could fulfill the "duty of care" to provide for the welfare needs of animals.

7. The Administration advised that the "duty of care" only applied when a person was responsible for an animal. Therefore, animals living in a wild or feral state not under the control of any person were excluded from any requirement under the "duty of care" as no person was considered directly responsible for them. However, when wild or feral animals were in the custody or under the control of a person, then the "duty of care" would apply. When assessing whether there was contravention of the "duty of care" in a case, the Administration would consider the actual situation and evidence, including the type of animal and the circumstances under which it was kept. AWOs and volunteers taking care of animals in a genuine manner for the animals' benefit needed not be too concerned about the new requirements.

8. The Administration further advised that it would promulgate Codes of Practice ("CoPs") to give practical and realistic guidance on how good animal welfare could be achieved (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.). As the first priority, CoPs would be issued for those types of animals which were commonly kept in Hong Kong, starting with pet animals. CoPs were not meant to be part of the legislation and contravention of which would not constitute an offence *per se*, although it might be cited as a piece of evidence in court proceedings initiated for contravening the legislation.

9. Concern was raised as to whether the Administration would take into account the operational difficulties of AWOs and volunteers when applying the concept of "duty of care". In response, the Administration advised that as a general principle, the persons responsible for the animal, irrespective of whether they were paid to perform the duty or working on a voluntary basis, needed to take steps to ensure the welfare needs of the animal were met to the extent required by good practice. While AWOs and animal carers might have concerns about the positive actions required for fulfilling the "duty of care", the Administration's primary intention was to encourage persons responsible for animals to take positive actions to look after animals well, rather than to penalize contravention of the "duty of care" in cases which people were willing and able to rectify.

Enhancing the provisions for prevention of cruelty

10. Some members were concerned that in recent years, the penalties imposed by the court on convicted animal cruelty cases were too lenient, not adequate enough to reflect the gravity of the offence and to achieve the deterrent effect. There was a suggestion that the maximum penalty for the offence of cruelty to animals under the Ordinance should be substantially increased (e.g. from three years' imprisonment to 10 years' imprisonment as proposed by some animal concern groups). Some other members, however, held the view that setting a high standard of animal welfare or imposing a heavy penalty for contravention of the "duty of care" might affect people's willingness to keep pets.

11. According to the Administration, public views were invited on the appropriate maximum level of penalty (amount of fine and length of imprisonment) for contravening the "duty of care" and committing an act of cruelty to animals convicted on indictment during the public consultation exercise. Meanwhile, AFCD would keep in view the level of penalty handed down by the court in convicted cases, for the purpose of considering whether a review of the sentence should be sought. It would seek the advice of the Department of Justice, where necessary.

Law enforcement for safeguarding animal welfare

12. Concern was raised whether AFCD and the Police had sufficient manpower and resources to carry out law enforcement work, after the implementation of the enhancement measures as set out in the consultation document. Some members envisaged that the threshold of prosecution would be increased after the introduction of an indictable offence for more severe acts of cruelty to animals. An enquiry was raised as to whether the Administration would consider setting up an "animal police" team dedicated to investigating animal cruelty cases.

13. The Administration advised that AFCD and the Police would suitably deploy resources for carrying out duties related to safeguarding animal welfare. The Administration would finalize the proposals in light of the views received during the consultation period and review whether additional manpower and resources were required for stepping up enforcement under the Ordinance. The Administration also advised that AFCD had all along been working with the Police and AWOs in combating acts of animal cruelty. Dedicated investigation teams had been set up in the 22 police districts across the territory to strengthen their efforts in combating cases of animal cruelty. In addition, the Police would enlist the support of AWOs and animal lovers to implement the "Animal Watchers" Scheme starting from the financial year 2019-2020.

Impact on the food trade

14. Query was raised about the impact of the Administration's proposals for enhancing animal welfare on people engaging in the food and farming trades, particularly those involving slaughtering, defeathering or butchering of live fish, poultry or livestock in the daily operations. Members were of the view that the Administration should define clearly the elements that constituted "cruelty to animals" and explain whether practitioners of these trades would be exempted from the proposed amendment legislation.

15. The Administration reiterated that the proposals under discussion focused on promotion of animal welfare, rather than imposing control on current trade practices. As advised earlier, the Administration would issue CoPs after consulting stakeholders, including the Animal Welfare Advisory Group, to give practical guidance on how to provide for the welfare needs of animals to the extent required by good practice. The Administration, however, considered it inappropriate to exempt a particular group of people or a specific trade from the proposed amendment legislation.

Recent developments

16. The Panel will receive deputations' views on the Administration's proposals to enhance animal welfare at the special meeting on 5 July 2019.

Relevant papers

17. A list of the relevant papers on the Legislative Council website is in **Appendix**.

**Relevant papers on
Administration's proposals to enhance animal welfare**

Committee	Date of meeting	Paper
Panel on Food Safety and Environmental Hygiene	14.5.2019 (Item IV)	<u>Agenda</u>

Council Business Division 2
Legislative Council Secretariat
28 June 2019