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GOVERNMENT SECRETARIAT

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Hong Kong

19 January 2024

Ms. Angel SHEK
Chief Council Secretariat (1)1
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms. Shek,

Bills Committee on Wild Animals Protection (Amendment) Bill 2023
List of follow-up actions arising from the meeting of 18 December 2023

Thank you for your email of 19 December 2023. We would like to provide the requested supplementary information as follows.

(a) Comparison of the statutory powers and functions of “authorized officer” and “specified officer” as defined under the Wild Animals Protection (Amendment) Bill 2023 (“the Bill”)

The existing Wild Animals Protection Ordinance (Cap. 170) (“Ordinance”) not only prohibits the feeding of wild animals, but also regulates hunting, wilful disturbance, possession, sale or export of protected wild animals, possession of hunting appliances and entry into restricted areas, etc. According to the existing Ordinance, “authorized officers” include police officers and public officers of the Agriculture, Fisheries and Conservation Department (“AFCD”) appointed by the Director of Agriculture, Fisheries and Conservation (“the Director”). They are responsible for enforcing the aforesaid various regulations, and are granted with the following enforcement powers -

- (i) power of inspection and power of arrest for offences listed under the Ordinance;
- (ii) power of search of suspects as well as seizure and detention of evidence; and

(iii) power of entry into premises¹.

The Bill seeks to expand the existing provisions of the Ordinance in relation to the feeding ban of wild animals, by extending it to cover feral pigeons; increasing the penalties for illegal feeding; and introducing a fixed penalty. The new requirements will continue to be enforced by “authorized officers”. In particular, to support the implementation of fixed penalty, “authorized officers” are authorized under the Bill to issue fixed penalty notices (“FPNs”) for illegal feeding (stipulated in section 5 of the new Schedule 9 under clause 17 of the Bill). At the same time, to assist the enforcement by issuing FPNs, the Bill proposes to grant “authorized officers” the power to request relevant persons to provide personal details and inspect the proof of identity (stipulated in clause 8 of the Bill). In view of the AFCD’s past experience in enforcement and with reference to other legislations², this power is proposed to be applicable to the situations of enforcement of other regulations under the Ordinance.

On the other hand, with the expansion of the feeding ban area to cover the entire territory of Hong Kong since end-2022, in order to enforce the feeding ban more effectively, the Bill proposes to expand the category of enforcement officers to include public officers of the Food and Environmental Hygiene Department, Leisure and Cultural Services Department and Housing Department appointed by the Director to enforce against illegal feeding of wild animals or feral pigeons within their respective areas. Since the public officers of these three departments will only enforce the regulation of feeding ban, it is not appropriate to include them in the above category of “authorized officers”. The Bill therefore proposes to add a new category of “specified officers” (as defined in section 2 of the new Schedule 9 under clause 17 of the Bill), who are authorised to issue FPNs to persons who have breached the feeding ban regulation (stipulated in section 5 of the new Schedule 9 under clause 17 of the Bill).

To ensure that the FPNs could be issued effectively, the Bill proposes that “specified officers” be granted the power to require relevant persons to provide personal details and inspect proof of identity (stipulated in section 3 of the new Schedule 9 under clause 17 of the Bill). In addition, the Bill also proposes to grant “specified officers” the power of arrest when relevant person refuses to comply with the request for personal details and inspection of proof of identity during enforcement (stipulated in section 4 of the new Schedule 9 under clause 17 of the Bill).

¹ The powers set out in (i) to (iii) are stipulated in sections 17, 17A and 17B of the Ordinance respectively.

² In the past, the AFCD had encountered situations where the relevant persons refused to provide personal details when enforcing other regulations under the Ordinance through issuing summons. Other existing legislations such as the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586) and the Environmental Impact Assessment Ordinance (Cap. 499) also empower enforcement officers to require relevant persons to provide personal details and inspect the proof of identity.

In sum, “authorized officers” can enforce all requirements under the Ordinance and thus can exercise all enforcement powers under the Ordinance. On the other hand, “specified officers” are limited to enforce against illegal feeding of wild animals or feral pigeons through issuing FPNs to offenders, thus their powers are limited to issuing FPNs and other related matters only.

(b) Meaning or definition of “feeding” in relevant local legislation and previous court case(s)

“Feed” and “feeding” have not been defined under Hong Kong legislation. According to the Oxford English Dictionary, the meaning of “feed” as a verb is “to give food to; to supply with food; to provide food for”³, while the meaning of “feeding” as a noun is “the action of feed”⁴.

“餵飼” has also not been defined under Hong Kong legislation. According to “現代漢語詞典”, “餵” means “給動物東西吃” or “把食物送到人嘴裏”⁵. The two words “餵” and “飼” form the two-syllable commonly used expression “餵飼”, its ordinary meaning is to give an animal something to eat and the object to which food is given is an animal.

After consulting the Department of Justice, as stated in the “Drafting Legislation in Hong Kong – A Guide to Styles and Practices” published in 2012, from the law drafting perspective, it is not necessary to define a term under the respective law if the term in the law is used in its ordinary sense (i.e. dictionary meaning)⁶. The terms “feed” and “feeding” in the English text, and the term “餵飼” in the Chinese text are being used in their ordinary sense in the existing Ordinance and the new section 9A of the Bill (i.e. the section which prohibits the feeding of wild animals and feral pigeons). It is therefore not necessary to define the terms especially.

There is no previous court case (especially conviction case involving the offence of feeding wild animals) that specifically and expressly gave a comprehensive interpretation of the terms “餵飼” or “feed” and “feeding”. Having said this, the following court cases consider what conduct constitutes “feeding”:

³ “Feed, V.” *Oxford English Dictionary*, Oxford UP, December 2023, <https://doi.org/10.1093/OED/7764090623>.

⁴ “Feeding, N.” *Oxford English Dictionary*, Oxford UP, December 2023, <https://doi.org/10.1093/OED/8080870308>.

⁵ 中國社會科學院語言研究所詞典編輯室編：《現代漢語詞典》(香港：商務印書館，2001年)。

⁶ The Law Drafting Division of the Department of Justice. 2012. *Drafting Legislation in Hong Kong – A Guide to Styles and Practices*. Hong Kong: The Government of the Hong Kong Special Administrative Region. Chapter 5.2.20.

- Case 1 - 香港特別行政區 訴 陳偉烽 (HCMA 575/2015): The appellant held a bag of beans and threw some suspected food to the monkey in front of him, which was later picked up and consumed by the monkey. The appellant admitted that he was feeding monkeys with the beans. The Court of First Instance of the High Court upheld the conviction of “feeding wild animal(s) at a country park without a permit”⁷.
- Case 2 - 香港特別行政區 訴 陸錦文 (HCMA 932/2009): The appellant threw bananas towards monkey for consumption. The Court of First Instance of the High Court upheld the conviction of “feeding wild animals, namely wild monkeys, in a place where the feeding of wild animals is prohibited, namely Kam Shan Country Park, not in accordance with a special permit”.
- Case 3 - 香港特別行政區 訴 陳國標 [2022] HKCFI 3667 (HCMA 600/2021): The appellant was convicted of “feeding birds found in a pleasure ground, namely Kowloon Park”⁸. The appellant admitted during the trial that he had thrown 5 kg of rice on the ground in Kowloon Park for feeding feral pigeons, and some feral pigeons did consume the rice. The appellant filed an appeal and the Court of First Instance of the High Court dismissed the appeal and upheld the conviction.

Since the establishment of feeding ban area in 1999, when determining whether a person is “feeding” wild animals and whether to initiate prosecution, the AFCD mainly collects the following evidence, including the type and quantity of food, frequency of feeding; the method of feeding; from where the food for feeding was taken out (such as plastic bags); the number and species of wild animals being fed on site; and the process (such as throwing food or dropping food on the ground, or taking food directly from the feeder’s hands, etc.). After the Bill comes into effect, the AFCD will continue to collect the evidence and consider whether to issue the FPNs in accordance with the established principles, and has also formulated unified guidelines for reference by other enforcement departments. Same as other legislations with fixed penalty, the Bill allows persons who have been issued with FPNs for contravening the feeding ban to dispute liability and proceedings will be commenced for the court to make a ruling (stipulated in section 15 of the new Schedule 9 under clause 17 of the Bill).

⁷ Contravention of sections 17C(3) and 18(a) of the Ordinance.

⁸ Contravention of sections 11(g) and 30(a) of the Pleasure Grounds Regulation under the Public Health and Municipal Services Ordinance (Cap. 132).

(c) Flow chart on the operation of the proposed new Schedule 9 of the Bill in relation to fixed penalty

The flow chart on the operation of the proposed new Schedule 9 of the Bill in relation to fixed penalty is set out in **Annex**.

Yours sincerely,



(Desmond WU)

for Secretary for Environment and Ecology

cc Director of Agriculture, Fisheries and Conservation (Attn.: Mr Simon Chan)
Secretary for Justice (Attn.: Ms. Janice Leung)

Flow Chart of the Proposed New Schedule 9 to the Bill in relation to Fixed Penalty

The provisions in the new Schedule 9 of the Bill aim to ensure that the enforcement in relation to the feeding ban through issuance of FPNs could be conducted effectively. At the same time, it could also provide several tiers of protection in legal procedures for persons who have been issued with FPNs, and provide a mechanism for the relevant persons to dispute for liability. Furthermore, the provisions of the new Schedule 9 have made reference to other legislations with fixed penalty, such as the Motor Vehicle Idling (Fixed Penalty) Ordinance (Cap. 611) and the Product Eco-responsibility Ordinance (Cap. 603), of which the provisions / mechanisms in relation to fixed penalty are basically the same as the aforesaid legislations. The relevant flow chart is as follows –

