

## LEGISLATIVE COUNCIL BRIEF

### Wild Animals Protection Ordinance (Chapter 170)

## WILD ANIMALS PROTECTION (AMENDMENT) BILL 2023

### INTRODUCTION

A At the meeting of the Executive Council on 14 November 2023, the Council **ADVISED** and the Chief Executive **ORDERED** that the Wild Animals Protection (Amendment) Bill 2023 (“Amendment Bill”), at **Annex A**, should be introduced into the Legislative Council (“LegCo”). The Amendment Bill seeks to, inter alia –

- (a) expand the scope of feeding ban to cover feral pigeons, in addition to the current feeding ban on wild animals (paragraph 5);
- (b) increase the maximum penalty and introduce a fixed penalty for illegal feeding of wild animals and feral pigeons (paragraphs 6 to 9); and
- (c) broaden the scope of enforcement officers and empower them to demand personal details and inspect the proof of identity of persons suspected of committing offences under the Wild Animal Protection Ordinance (paragraphs 10 to 11).

### JUSTIFICATIONS

2. Under the existing provisions of the Wild Animals Protection Ordinance (Cap. 170) (“the Ordinance”), feeding of wild animals in the entire territory of Hong Kong is prohibited. “Wild animal” is defined in section 2 of the Ordinance to mean any animal, other than those classed at common law as domestic<sup>1</sup>. Examples of wild animals include monkeys, wild pigs and tree sparrows. Feral pigeons are likely to be classified at common law as domestic animals, and thus fall outside the definition of wild animals under the Ordinance, and be excluded from the feeding ban.

3. Feeding of feral pigeons will result in acceleration of the growth of their population or even over-population, alteration of their foraging and migration behaviour, increase in the risks of disease and parasite transmission and jeopardy of their ability to survive on their own. Furthermore, wild animals, in particular wild birds like spotted doves and tree sparrows, will be attracted to eat the food given by the feeders, causing the same problems to these species. The unnatural growth of feral pigeons caused by feeding

---

<sup>1</sup> Including those so classed which have gone astray or have been abandoned.

can result in ecological imbalance through interspecific competition (i.e. competition among different species) for food and living space, etc., threatening the survival of both feral pigeons and wild birds. Therefore, feeding of feral pigeons will bring about adverse impacts not just to the species itself, but also to wild animals.

4. People who feed feral pigeons often spread food (such as rice and bread) in public places like streets and resting places (e.g. sitting out areas). The food itself and the faeces from feral pigeons and wild birds so attracted will not only foul public places, but also disgust and cause inconvenience to residents nearby and passers-by, as well as constitute a public health issue. In 2021 and 2022, the annual number of complaints related to feral pigeons received by the Agriculture, Fisheries and Conservation Department (“AFCD”), Food and Environmental Hygiene Department (“FEHD”) and Leisure and Cultural Services Department (“LCSD”) totalled on average over 700<sup>2</sup>, 900<sup>3</sup> and 80<sup>4</sup> cases respectively. In the same period, FEHD and LCSD prosecuted by summons and issued fixed penalty notices (“FPN”) to 400 offenders on average per year for littering associated with feeding of feral pigeon in the respective public places under the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132BK) and the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap. 570)<sup>5</sup>.

## **LEGISLATIVE PROPOSAL**

### Regulation of feeding of feral pigeons

5. With a view to enhancing protection of wild animals and safeguarding environmental hygiene, we propose amending the Ordinance such that a person must not feed feral pigeons, in addition to wild animals. We propose adding a new schedule to the Ordinance to specify the Feeding Ban Area (“FBA”) also applies to the animals listed in that schedule, and adding feral pigeons to the schedule. On the basis that feral pigeons are not wild animals, other provisions of the Ordinance that apply to wild animals, such as protection of nests and eggs, prohibition of hunting, etc., will continue not to be applicable to feral pigeons.

### Increase in maximum penalty

6. Feeding of wild animals and feral pigeons not only causes nuisance to the public and threatens public health, but also brings about adverse impact to wild animals and natural ecology. To reflect the seriousness of the consequences of illegal feeding, and in the light of the views of LegCo Members, stakeholders and the public at large, we propose increasing the maximum penalty for the offence from a fine at level 3 (\$10,000) to a fine at level 6 (\$100,000) and imprisonment for one year.

---

<sup>2</sup> In 2021 and 2022, AFCD received 808 and 682 complaints and enquiries, and in the first 8 months of 2023, AFCD received another 693 complaint cases.

<sup>3</sup> In 2021 and 2022, FEHD received 1 110 and 838 complaints and enquiries, and in the first 8 months of 2023, FEHD received another 705 complaint cases.

<sup>4</sup> In 2021 and 2022, LCSD received 70 and 98 complaints.

<sup>5</sup> Both departments prosecuted by summons and issued fixed penalty notices to 463 offenders in 2021; and 350 in 2022.

7. The proposed maximum penalty level will be on par with other offences under the Ordinance, such as hunting, wilfully disturbing or without a special permit possessing protected wild animals. It will allow heavier penalty to be imposed against persons involved in illegal feeding of a serious nature and degree, such as repeated offenders who feed a large number of wild pigs or feral pigeons in residential areas, thereby enhancing the deterrent effect.

#### Introduction of fixed penalty

8. With reference to the littering offence under Cap. 570, we also propose introducing a fixed penalty system for illegal feeding of wild animals and feral pigeons under the Ordinance. It seeks to standardise and allow swift handling of relatively straightforward illegal feeding cases through on-the-spot issuance of FPN to offenders, hence streamlining the prosecution procedure and increasing deterrent effect against such activities<sup>6</sup>.

9. The amount of fixed penalty for littering offence under Cap. 570 has been increased from \$1,500 to \$3,000 on 22 October 2023 following passage of the Fines and Fixed Penalties (Public Cleanliness and Obstruction) (Miscellaneous Amendments) Bill 2023 by LegCo earlier this year. To reflect the multi-facet adverse impacts beyond environmental hygiene brought about by illegal feeding ranging from wildlife protection to animal welfare, we propose that the amount of fixed penalty for illegal feeding be set at a higher level of \$5,000.

#### Expansion of the scope of enforcement officers

10. The original FBA first designated in 1999 was only confined to certain country park areas where feeding of monkeys occurred, with enforcement conducted solely by AFCD. Following the expansion of the FBA to the entire territory of Hong Kong last year, we propose that other Government departments be enlisted to assist for more effective enforcement at places under their respective purviews, such as through issuance of FPNs against illegal feeding.

11. We propose amending the Ordinance to broaden the scope of enforcement officers to include officers appointed from FEHD, LCSD and Housing Department (“HD”), on top of police officers and AFCD officers at the moment. To empower enforcement officers appointed from FEHD, LCSD and HD to enforce against illegal feeding, namely by issuing FPN, we propose that powers be given to them to require the offender concerned to provide his/her personal details, such as name, address and contact telephone number, and produce proof of identity for inspection to ensure effective enforcement. We also propose requiring all enforcement officers to produce proof of appointment for inspection by any person who reasonably requires to see it when enforcing the Ordinance.

#### Other amendments

12. Technically, the FBA covers both public and private places/premises. Noting that some wild animals are kept as pets by individuals or kept for research/conservation purpose by relevant institutes, and considering that the feeding ban aims to target wild

---

<sup>6</sup> Offenders of illegal feeding of a serious nature and magnitude, for example repeatedly committed such offences, can be prosecuted by issuing summons for the Court to consider imposing even higher penalty.

animals that live in the wild, there is a need to provide exemption for the aforesaid cases. We propose providing exemption from the feeding ban for the feeding of wild animals or feral pigeons which are ordinarily kept in captivity<sup>7</sup>.

13. The aforesaid legislative proposals give rise to the needs of related amendments to the Criminal Procedure Ordinance (Cap. 221), the Court Proceedings (Electronic Technology) (Magistrates' Court) Rules (Cap. 638B) and the Waterworks Regulations (Cap. 102A). We propose (i) including the new fixed penalty to be imposed under the Ordinance as an "excluded fine" under Cap. 221<sup>8</sup>; (ii) including the Ordinance under Cap. 638B which allows the use of electronic technology in relation to proceedings of the Magistrates' Courts; and (iii) repealing "nature warden or honorary nature warden" as one of the authorized officers under Cap. 102A<sup>9</sup>.

## OTHER OPTIONS

14. Legislative amendments are required for implementing the above proposed ban on feeding of feral pigeons, increase in maximum penalty and introduction of fixed penalty for illegal feeding, as well as the other technical amendments. There is no other option.

## THE AMENDMENT BILL

15. The key provisions of the Amendment Bill are as follows -

- (a) **Clause 1** sets out the short title and provides for commencement.
- (b) **Clause 3** amends section 2 of the Ordinance to revise the definition of authorized officer.
- (c) **Clause 4** adds a new section 9A to the Ordinance to impose a further restriction that a person must not feed an animal specified in Schedule 2A to the Ordinance (to which feral pigeon is added), in addition to the existing

---

<sup>7</sup> This exemption is proposed on top of the existing exemption, namely in situation where a special permit has been obtained from the Director of Agriculture, Fisheries and Conservation ("the Director") for feeding of the animal concerned under the existing section 17C(3) of the Ordinance.

<sup>8</sup> Section 113B(1) of Cap. 221 stipulates that "where an ordinance provides for a fine for an offence by reference to a level, the fine applicable for the offence is the amount shown for that level in Schedule 8". An excluded fine under Cap. 221 will not be deemed to be a "fine at a certain level", and as such it will not fluctuate when the level of fines is amended by the Chief Executive in Council to reflect his opinion of the effect of inflation.

<sup>9</sup> "Nature warden" and "honorary nature warden" are one of the categories of authorized officers as defined in the Ordinance currently and they are also the authorized officers under regulation 40 of Cap. 102A who have enforcement power in relation to illegal fishing in waterworks. Given that the Director would be empowered to appoint in writing any public officer serving under the Director to be authorized officers, there is no need to retain "a nature warden or honorary nature warden" in the definition of authorized officer under the Ordinance, who are usually AFCD staff appointed by the Director at present. Corresponding amendments are thus required for Cap. 102A. Nevertheless, the corresponding amendments will not introduce any changes in enforcement agents and their powers for the relevant provisions in Cap. 102A in effect.

prohibition of feeding a wild animal, and provides for exemption for feeding animals ordinarily kept in captivity and for those who have special permits from the Director for feeding.

- (d) **Clause 6** amends section 16 of the Ordinance to empower the Director to appoint in writing any public officer serving under the Director to be an authorized officer, and **clause 8** adds a new section 17D to the Ordinance to empower authorized officers to demand personal details and inspect proof of identity for the relevant offences under the Ordinance.
- (e) **Clause 9** amends section 18 of the Ordinance, mainly to provide for the following offences – (i) feeding wild animals and feral pigeons; (ii) failing to comply with a requirement of enforcement officers to provide personal particulars and proof of identity; and (iii) providing false or misleading information when asked to provide personal details. Clause 9 also amends that section to provide that where a person fails to comply with a requirement for production of personal particulars and proof of identity, it is a defence for the person that he or she had a reasonable excuse.
- (f) **Clause 10** adds section 18A and 18B to the Ordinance to provide that if a person is given a penalty notice for illegal feeding, the person may discharge liability for the offence by paying a fixed penalty of \$5,000, and that the LegCo may, by resolution, amend the amount.
- (g) **Clauses 11** amends section 22 of the Ordinance to empower the Director to amend Schedule 2A to the Ordinance (Animals for which feeding is prohibited) by notice published in the Gazette.
- (h) **Clause 15** adds a new Schedule 2A to the Ordinance to set out the type(s) of animals for which feeding is prohibited, and feral pigeons are added to the Schedule.
- (i) **Clause 17** adds a new Schedule 9 to the Ordinance to set out the provisions relating to the fixed penalty, including providing for the appointment of specified officers<sup>10</sup>.
- (j) **Clause 18** repeals the Prohibition of Feeding of Wild Animals Notice (Cap. 170B) since the prohibition of feeding wild animals now applies to the entire territory of Hong Kong, it is no longer necessary for the Director to specify the places at which the prohibition is to apply.
- (k) **Clauses 19 to 22** make related amendments to Cap. 102A, Cap. 221 and Cap. 638B.

---

<sup>10</sup> Public officers serving under the Director of Food and Environmental Hygiene, the Director of Leisure and Cultural Services or the Director of Housing may be appointed by the Director as specified officers.

## LEGISLATIVE TIMETABLE

16. The legislative timetable will be as follows –

Publication in the Gazette	17 November 2023
First Reading and commencement of Second Reading debate	29 November 2023
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

## IMPLICATIONS OF THE PROPOSAL

17. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the existing provisions of the Ordinance. The proposal has no environmental, economic, family, gender or productivity implications. As for civil service implication, relevant departments will meet the additional manpower resources requirements, if any, through internal re-deployment as appropriate. The financial and sustainability implications are set out at **Annex B**.

**B**

## PUBLIC CONSULTATION

18. We consulted the LegCo Panel on Environmental Affairs (“Panel”) and the Nature Conservation Subcommittee of the Advisory Council on the Environment (“ACE-NCSC”) on, amongst others, the proposed increase in maximum penalty and introduction of fixed penalty against feeding ban in July and September 2022. We consulted the Panel and ACE-NCSC again on the detailed proposals of regulating feeding of feral pigeon, as well as the proposed levels of maximum penalty and fixed penalty in May and June 2023 respectively. Members generally supported the proposals.

## PUBLICITY

19. A press release will be issued upon the gazettal of the Amendment Bill and a spokesperson will be available to answer enquiries from the media and the general public.

## ENQUIRIES

20. Enquiries in relation to this LegCo Brief can be directed to Mr Desmond Wu, Principal Assistant Secretary for Environment and Ecology (Nature Conservation) at 3151 7160, or Mr Simon Chan, Assistant Director (Conservation) of the Agriculture, Fisheries and Conservation Department at 2150 6605.

**Environment and Ecology Bureau  
Agriculture, Fisheries and Conservation Department  
15 November 2023**

## Wild Animals Protection (Amendment) Bill 2023

### Contents

Clause	Page
<b>Part 1</b>	
<b>Preliminary</b>	
1. Short title and commencement.....	1
2. Enactments amended.....	1
<b>Part 2</b>	
<b>Amendments to Wild Animals Protection Ordinance and its Subsidiary Legislation</b>	
<b>Division 1—Wild Animals Protection Ordinance (Cap. 170)</b>	
3. Section 2 amended (interpretation) .....	3
4. Section 9A added .....	3
9A. Feeding of wild animals and animals specified in Schedule 2A prohibited.....	4
5. Section 15 amended (special permits).....	4
6. Section 16 substituted .....	4
16. Authorized officers .....	5
7. Section 17C repealed (prohibition of feeding of wild animals <sup>a</sup> at specified places) .....	5
8. Section 17D added .....	5

Clause	Page
17D. Power to demand personal details and inspect proof of identity .....	5
9. Section 18 amended (offences and penalty).....	6
10. Sections 18A and 18B added .....	8
18A. Fixed penalty in discharge of liability under section 18(2).....	8
18B. Legislative Council may amend fixed penalty and costs.....	9
11. Section 22 amended (power to amend Schedules).....	9
12. Section 22A added .....	9
22A. Power of Secretary for Environment and Ecology to specify forms.....	9
13. Section 24 amended (notices) .....	10
14. Schedule 2 amended (protected wild animals).....	10
15. Schedule 2A added.....	10
Schedule 2A Animals for which Feeding is Prohibited .....	10
16. Schedule 6 amended (areas in which entry or presence is restricted) .....	11
17. Schedule 9 added .....	11
Schedule 9 Fixed Penalty .....	12
<b>Division 2—Prohibition of Feeding of Wild Animals Notice (Cap. 170 sub. leg. B)</b>	



Clause	Page
18.	Prohibition of Feeding of Wild Animals Notice repealed..... 24

### Part 3

#### Related Amendments

##### Division 1—Waterworks Regulations (Cap. 102 sub. leg. A)

19.	Regulation 40 amended (interpretation)..... 25
-----	--

##### Division 2—Criminal Procedure Ordinance (Cap. 221)

20.	Section 113C amended (provision for fines for offences)..... 25
-----	---

##### Division 3—Court Proceedings (Electronic Technology) (Magistrates' Court)

##### Rules (Cap. 638 sub. leg. B)

21.	Schedule 1 amended (Ordinances under which penalty notices are issued)..... 25
22.	Schedule 2 amended (documents that may be sent to Court by means of e-system instead of producing them as paper documents)..... 25

## A BILL

## To

Amend the Wild Animals Protection Ordinance to re-enact the offence relating to the prohibition on feeding wild animals as an offence that applies in the entire Hong Kong Special Administrative Region under the Ordinance with enhanced penalty; to prohibit the feeding of feral pigeons; to provide for certain exceptions to the prohibition on feeding those animals; to provide for a fixed penalty for contravention of the prohibition on feeding those animals; to provide for the appointment of specified officers for the purpose of enforcing the fixed penalty; to amend the categories of persons who may act as authorized officers; to provide for additional enforcement powers for authorized officers; and to provide for related and miscellaneous matters.

Enacted by the Legislative Council.

### Part 1

#### Preliminary

##### 1. Short title and commencement

- (1) This Ordinance may be cited as the Wild Animals Protection (Amendment) Ordinance 2023.
- (2) This Ordinance comes into operation on 1 August 2024.

##### 2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in

those Parts.

---

## Part 2

### Amendments to Wild Animals Protection Ordinance and its Subsidiary Legislation

#### Division 1—Wild Animals Protection Ordinance (Cap. 170)

##### 3. Section 2 amended (interpretation)

###### (1) Section 2—

**Repeal the definition of *authorized officer***

**Substitute**

***“authorized officer (獲授權人員) means—***

(a) a police officer; or

(b) a public officer, or a public officer belonging to a class of public officers, appointed by the Director under section 16(1);”.

###### (2) Section 2—

**Add in alphabetical order**

***“fixed penalty (定額罰款) means the fixed penalty under section 18A(1);***

***specified officer (指明人員) means a public officer, or a public officer belonging to a class of public officers, appointed by the Director under section 2(1) of Schedule 9;”.***

##### 4. Section 9A added

After section 9—

**Add**

**“9A. Feeding of wild animals and animals specified in Schedule 2A prohibited**

- (1) Subject to subsection (2), a person must not feed—
  - (a) a wild animal; or
  - (b) an animal specified in Schedule 2A.
- (2) Subsection (1) does not apply if—
  - (a) the animal mentioned in subsection (1)(a) or (b) is ordinarily kept in captivity; or
  - (b) a special permit has been granted for feeding such an animal.”.

**5. Section 15 amended (special permits)**

- (1) Section 15(1)—

**Repeal**

“he”

**Substitute**

“the Director”.

- (2) Section 15(1)—

**Repeal**

“17C(3)”

**Substitute**

“9A(2)(b)”.

**6. Section 16 substituted**

Section 16—

**Repeal the section****Substitute****“16. Authorized officers**

- (1) The Director may appoint in writing any public officer, or class of public officers, serving under the Director to be an authorized officer for the purposes of this Ordinance.
- (2) An authorized officer appointed under subsection (1), when exercising a power under this Ordinance, must produce the written appointment for inspection by any person who reasonably requires to see it.”.

**7. Section 17C repealed (prohibition of feeding of wild animals at specified places)**

Section 17C—

**Repeal the section.****8. Section 17D added**

Before section 18—

**Add****“17D. Power to demand personal details and inspect proof of identity**

- (1) This section applies if an authorized officer has reason to believe that a person is committing or has committed a relevant offence.
- (2) The authorized officer may, for the purpose of issuing or serving a summons, a notice or other document in relation to the relevant offence, require the person to—
  - (a) supply the person’s name, address and contact telephone number (if any); and
  - (b) produce for inspection the person’s proof of identity.
- (3) In this section—

*proof of identity* (身分證明文件) has the meaning given by section 17B(1) of the Immigration Ordinance (Cap. 115);

*relevant offence* (有關罪行) means an offence under section 18, other than an offence under section 18(1)(a) for contravening section 15A(3).”.

9. **Section 18 amended (offences and penalty)**

(1) Section 18—

**Renumber the section as section 18(1).**

(2) Section 18(1)(a)—

**Repeal**

“, 15A(3) or 17C(3)”

**Substitute**

“or 15A(3)”.

(3) Section 18(1), English text—

**Repeal**

“shall be guilty of”

**Substitute**

“commits”.

(4) Section 18(1)(i), English text—

**Repeal**

“shall be liable”

**Substitute**

“is liable”.

(5) Section 18(1)(ii), English text—

**Repeal**

“shall be liable”

**Substitute**

“is liable”.

(6) Section 18(1)(iii)—

**Repeal**

“of a contravention of section 17C(3) or”.

(7) Section 18(1)(iii), English text—

**Repeal**

“shall be liable”

**Substitute**

“is liable”.

(8) Section 18(1)(iv), English text—

**Repeal**

“shall be liable”

**Substitute**

“is liable”.

(9) After section 18(1)—

**Add**

“(2) A person who contravenes section 9A commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 1 year.

(3) A person who fails to comply with a requirement made under section 17D(2) or under section 3(2) of Schedule 9 commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

(4) It is a defence for a person charged with an offence under subsection (3) to establish that the person had a reasonable excuse for failing to comply with the requirement.

- (5) For the purposes of subsection (4), a person is taken to have established that the person had a reasonable excuse if—
  - (a) there is sufficient evidence to raise an issue that the person had a reasonable excuse; and
  - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (6) A person who, in purported compliance with a requirement made under section 17D(2) or under section 3(2) of Schedule 9, knowingly or recklessly supplies any information that is false or misleading in a material particular commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months.
- (7) A person who wilfully resists or obstructs a specified officer exercising any power under or pursuant to section 4 of Schedule 9 commits an offence and is liable on conviction to a fine at level 5.”.

**10. Sections 18A and 18B added**

After section 18—

**Add****“18A. Fixed penalty in discharge of liability under section 18(2)**

- (1) If a person commits an offence under section 18(2) and is given a penalty notice as defined by section 1(1) of Schedule 9, the person may, in accordance with that Schedule, discharge liability for the offence by paying a fixed penalty of \$5,000.
- (2) Schedule 9 provides for matters relating to the fixed penalty.

**18B. Legislative Council may amend fixed penalty and costs**

- (1) The Legislative Council may by resolution amend the amount of the fixed penalty.
- (2) The Legislative Council may by resolution amend the amount of the costs specified in section 10(2)(c), 14(3)(b)(iii) or 15(4)(c) of Schedule 9.”.

**11. Section 22 amended (power to amend Schedules)**

- (1) Section 22(1), after “Schedule”—

**Add**

“, except Schedule 9”.

- (2) After section 22(2)—

**Add**

“(3) The Director may by notice published in the Gazette amend Schedule 2A.”.

**12. Section 22A added**

After section 22—

**Add****“22A. Power of Secretary for Environment and Ecology to specify forms**

- (1) The Secretary for Environment and Ecology may specify the form of any notice or certificate for the purposes of Schedule 9.
- (2) The Secretary for Environment and Ecology must, as soon as practicable after a form is specified under subsection (1), publish the specified form in the Gazette.
- (3) A form specified under this section is not subsidiary legislation.”.

**13. Section 24 amended (notices)**

Section 24, after “For the purposes of this Ordinance”—

**Add**

“(except Schedule 9)”.

**14. Schedule 2 amended (protected wild animals)**

(1) Schedule 2, English text, Column 3, heading—

**Repeal**

“Common Name”

**Substitute**

“English Common Name”.

(2) Schedule 2, Column 4, heading—

**Repeal**

“Chinese Name”

**Substitute**

“Chinese Common Name”.

**15. Schedule 2A added**

After Schedule 2—

**Add**

**“Schedule 2A**

[ss. 9A & 22]

**Animals for which Feeding is Prohibited**

**Note:** An animal specified in this Schedule is the one specified in Column 3. The names given in Column 2, Column 4 and Column 5 are for information only.

Column 1	Column 2	Column 3	Column 4	Column 5
Item	ORDER/Family	Scientific name	English common name	Chinese common name
		AVES	BIRDS	雀鳥類
1.	COLUMBIFORMES/ Columbidae	Columba livia	Feral pigeon, domestic pigeon or rock pigeon	野鴿, 白鴿, 家鴿 or 原鴿”.

**16. Schedule 6 amended (areas in which entry or presence is restricted)**

Schedule 6—

**Repeal**

“[ss. 13 & 22]”

**Substitute**

“[ss. 2, 13 & 22]”.

**17. Schedule 9 added**

At the end of the Ordinance—

Add

## “Schedule 9

[ss. 2, 18, 18A, 18B,  
22, 22A & 24]

## Fixed Penalty

### Part 1

## Interpretation

### 1. Interpretation

(1) In this Schedule—

*Authority* (主管當局)—see subsection (2);

*demand notice* (繳款通知書) means a demand notice served under section 7(2) of this Schedule;

*penalty notice* (罰款通知書) means a penalty notice given under section 5(2) of this Schedule;

*recovery order* (追討令) means an order made under section 10(2) of this Schedule;

*specified form* (指明格式) means a form specified under section 22A.

(2) In this Schedule, in applying a provision in relation to an offence for which an authorized officer or specified officer (*officer concerned*) has given a penalty notice, a reference to the Authority is a reference to—

(a) if the officer concerned is a police officer—the Commissioner of Police;

- (b) if the officer concerned is a public officer serving under the Director—the Director;
- (c) if the officer concerned is a public officer serving under the Director of Food and Environmental Hygiene—the Director of Food and Environmental Hygiene;
- (d) if the officer concerned is a public officer serving under the Director of Leisure and Cultural Services—the Director of Leisure and Cultural Services; or
- (e) if the officer concerned is a public officer serving under the Director of Housing—the Director of Housing.

### Part 2

## Specified Officers

### 2. Specified officers

- (1) The Director may appoint in writing any public officer, or class of public officers, serving under a relevant authority to be a specified officer.
- (2) A specified officer appointed under subsection (1), when exercising a power under this Schedule, must produce the written appointment for inspection by any person who reasonably requires to see it.
- (3) In this section—  
*relevant authority* (有關當局) means—
  - (a) the Director of Food and Environmental Hygiene;
  - (b) the Director of Leisure and Cultural Services; or
  - (c) the Director of Housing.

**3. Power for specified officers to demand personal details and inspect proof of identity**

- (1) This section applies if a specified officer has reason to believe that a person is committing or has committed an offence under section 18(2).
- (2) The specified officer may, for the purpose of giving the person a penalty notice, require the person to—
  - (a) supply the person's name, address and contact telephone number (if any); and
  - (b) produce for inspection the person's proof of identity.
- (3) In this section—

*proof of identity* (身分證明文件) has the meaning given by section 17B(1) of the Immigration Ordinance (Cap. 115).

**4. Power of arrest for specified officers**

- (1) If a specified officer has reasonable grounds for believing that a person has committed an offence under section 18(3), the specified officer may arrest the person.
- (2) If a specified officer arrests a person under subsection (1), the specified officer must forthwith take the person to the nearest police station and hand the person over to the custody of a police officer, and section 52 of the Police Force Ordinance (Cap. 232) is to apply.

**Part 3**

**Penalty Notice and Demand Notice**

**5. Authorized officer and specified officer may give penalty notice**

- (1) This section applies if an authorized officer or specified officer has reason to believe that a person is committing or has committed an offence under section 18(2).
- (2) The authorized officer or specified officer may give the person a penalty notice in the specified form offering the person an opportunity to discharge the person's liability for the offence by paying the fixed penalty within 21 days after the date on which the notice is given.
- (3) A penalty notice must be given by the authorized officer or specified officer personally to the person.

**6. No prosecution or conviction if compliance with penalty notice**

- (1) This section applies to a person who has been given a penalty notice for an offence under section 18(2).
- (2) Subject to section 9 of this Schedule, the person is not liable to be prosecuted or convicted for the offence if the person has paid the fixed penalty within 21 days after the date on which the penalty notice is given.

**7. Authority may serve demand notice in case of failure to pay fixed penalty etc.**

- (1) This section applies if—
  - (a) a person—



- (i) has been given a penalty notice for an offence under section 18(2); and
  - (ii) fails to pay the fixed penalty within 21 days after the date on which the notice is given; or
- (b) a person refuses to accept a penalty notice intended to be given to the person for the offence.
- (2) The Authority may serve on the person a demand notice in the specified form—
  - (a) demanding payment of the fixed penalty;
  - (b) informing the person that the person must notify the Authority in writing if the person wishes to dispute liability for the offence; and
  - (c) stating that the payment or notification must be made within 10 days after the date on which the demand notice is served.
- (3) A demand notice may not be served later than—
  - (a) if subsection (1)(a) applies—6 months after the date on which the penalty notice is given; or
  - (b) if subsection (1)(b) applies—6 months after the date on which the person refuses to accept the penalty notice.
- (4) A demand notice may be served by sending it by post to the person's last known address.
- (5) A certificate of posting in the specified form purporting to be signed by or for the Authority is admissible in evidence in any proceedings under this Schedule.
- (6) Unless there is evidence to the contrary, it is presumed that—
  - (a) the certificate of posting was signed by or for the Authority; and

- (b) the demand notice to which the certificate relates was duly served.
- 8. No prosecution or conviction if compliance with demand notice**
  - (1) This section applies to a person on whom a demand notice has been served for an offence under section 18(2).
  - (2) Subject to section 9 of this Schedule, the person is not liable to be prosecuted or convicted for the offence if the person has paid the fixed penalty within 10 days after the date on which the demand notice is served.
- 9. Withdrawal of penalty notice or demand notice**
  - (1) The Authority may withdraw a penalty notice given, or a demand notice served, for an offence under section 18(2)—
    - (a) at any time before a recovery order is made; or
    - (b) at any time before any proceedings for the offence commence.
  - (2) If a penalty notice or demand notice is withdrawn—
    - (a) the Authority must serve notice of the withdrawal on the person to whom, or on whom, the penalty notice or demand notice has been given or served; and
    - (b) on application by the person, the Authority must refund, through the Director of Accounting Services, any amount paid for the fixed penalty.
  - (3) If a penalty notice or demand notice is withdrawn, proceedings for the offence may only be commenced where—

- (a) the ground, or one of the grounds, on which the notice is withdrawn is that it contains incorrect information; and
- (b) the incorrect information was supplied by the person to whom, or on whom, the notice was given or served.

## Part 4

### Recovery of Fixed Penalty

#### 10. Recovery of fixed penalty

- (1) This section applies to a person on whom a demand notice has been served who—
  - (a) fails to pay the fixed penalty in accordance with the notice; and
  - (b) fails to notify the Authority in accordance with the notice that the person wishes to dispute liability for the offence.
- (2) On application made in the name of the Secretary for Justice and production of the documents specified in subsection (3), a magistrate must order the person to pay, within 14 days after the date of service of notice of the order—
  - (a) the fixed penalty;
  - (b) an additional penalty equal to the amount of the fixed penalty; and
  - (c) \$300 by way of costs.
- (3) The documents are—
  - (a) a copy of the demand notice;

- (b) a certificate of posting relating to the demand notice under section 7(5) of this Schedule; and
- (c) a certificate under section 11 of this Schedule.
- (4) A magistrate must cause a notice of the recovery order to be served on the person against whom the order is made and the notice may be served by sending it by post to the person's last known address.
- (5) An application may be made in the absence of the person and the Secretary for Justice may appoint a person or class of persons to make an application.

#### 11. Evidentiary certificate

- (1) A certificate in the specified form stating the matters in subsection (2) and purporting to be signed by or for the Authority is admissible in evidence in any proceedings under this Schedule.
- (2) The matters are—
  - (a) that the person specified in the certificate had not, before the date of the certificate, paid the fixed penalty;
  - (b) that the person specified in the certificate had not, before the date of the certificate, notified the Authority that the person wished to dispute liability for the offence; and
  - (c) that the address specified in the certificate was, on the date specified in the certificate in relation to the address, the person's last known address.
- (3) Unless there is evidence to the contrary—
  - (a) it is presumed that the certificate was signed by or for the Authority; and
  - (b) the certificate is evidence of the facts stated in it.

**12. Consequences of compliance with recovery order or failure to do so**

- (1) This section applies to a person against whom a recovery order is made.
- (2) If the person has complied with the recovery order, the person is not liable to be prosecuted or convicted for the offence to which the order relates.
- (3) If the person fails to comply with the recovery order, the person—
  - (a) is to be regarded, for the purposes of section 68 of the Magistrates Ordinance (Cap. 227), as having failed to pay the sum adjudged to be paid by a conviction; and
  - (b) is liable to be imprisoned under that section.

**13. Application for review of recovery order**

- (1) A person against whom a recovery order is made may apply to a magistrate for review of the order.
- (2) An application must be made within 14 days after the date on which the recovery order first came to the personal notice of the applicant.
- (3) The applicant must give reasonable notice of the application to the Authority.
- (4) An application may be made in person or by counsel or solicitor.
- (5) For securing the attendance of witnesses and generally for conducting the proceedings, the magistrate has all the powers of a magistrate hearing a complaint under the Magistrates Ordinance (Cap. 227).

**14. Outcome of review**

- (1) On application under section 13 of this Schedule, a magistrate may rescind a recovery order if satisfied that the demand notice did not come to the personal notice of the applicant without any fault of the applicant.
- (2) If the magistrate rescinds a recovery order, and the applicant wishes to dispute liability for the offence to which the order relates, the magistrate must give leave to that effect.
- (3) If the magistrate rescinds a recovery order, and the applicant does not wish to dispute liability for the offence to which the order relates, the magistrate—
  - (a) must order the applicant to pay the fixed penalty within 10 days after the date of an order made under this paragraph; and
  - (b) must order that, if the applicant fails to pay the fixed penalty within that period, the applicant must immediately pay—
    - (i) the fixed penalty;
    - (ii) an additional penalty equal to the amount of the fixed penalty; and
    - (iii) \$300 by way of costs.
- (4) Despite section 26 of the Magistrates Ordinance (Cap. 227), if a magistrate gives leave under subsection (2), proceedings may be commenced within 6 months after the date on which the magistrate gives the leave.
- (5) If the applicant fails to comply with the order under subsection (3)(b), the applicant—
  - (a) is to be regarded, for the purposes of section 68 of the Magistrates Ordinance (Cap. 227), as having

failed to pay the sum adjudged to be paid by a conviction; and

- (b) is liable to be imprisoned under that section.
- (6) If the applicant has complied with the order under subsection (3)(a) or (b), the applicant is not liable to be prosecuted or convicted for the offence to which the order relates.

## Part 5

### Proceedings if Person Disputes Liability

#### 15. Dispute of liability for offence

- (1) This section applies if—
  - (a) a person has notified the Authority in accordance with a demand notice that the person wishes to dispute liability for an offence under section 18(2); or
  - (b) a person has been given leave under section 14(2) of this Schedule to dispute liability for an offence under section 18(2).
- (2) A summons issued in any proceedings against the person for the offence may be served on the person in accordance with section 8 of the Magistrates Ordinance (Cap. 227).
- (3) If—
  - (a) in consequence of the notification or leave, the person appears in any proceedings in answer to a summons; and
  - (b) the person is convicted of the offence after having offered no defence or a defence that is frivolous or vexatious,

the magistrate before whom the proceedings are heard must, in addition to any other penalty and costs, impose an additional penalty equal to the amount of the fixed penalty.

- (4) Any proceedings commenced against a person falling within subsection (1)(a) must terminate if the person pays in accordance with subsection (5)—
  - (a) the fixed penalty;
  - (b) an additional penalty equal to the amount of the fixed penalty; and
  - (c) \$500 by way of costs.
- (5) Payment under subsection (4) must be made at any magistrates' court not less than 2 days before the day specified in the summons for the person's appearance, and the summons must be produced at the time of the payment.
- (6) Neither a Saturday nor a public holiday may be included in the computation of the 2 days' period mentioned in subsection (5).

## Part 6

### General Provisions for Proceedings

#### 16. Power to rescind order on application by Authority

At any time, a magistrate may for good cause, on application by the Authority, rescind—

- (a) an order for the payment of the fixed penalty; and
- (b) any other order made under this Schedule in the same proceedings.”.

## Division 2—Prohibition of Feeding of Wild Animals Notice (Cap. 170 sub. leg. B)

18. **Prohibition of Feeding of Wild Animals Notice repealed**  
Prohibition of Feeding of Wild Animals Notice—  
Repeal the Notice.
- 

## Part 3

### Related Amendments

#### Division 1—Waterworks Regulations (Cap. 102 sub. leg. A)

19. **Regulation 40 amended (interpretation)**  
Regulation 40, definition of *authorized officer*—  
Repeal paragraph (c).

#### Division 2—Criminal Procedure Ordinance (Cap. 221)

20. **Section 113C amended (provision for fines for offences)**  
Section 113C(1)(c), after “meaning of”—  
Add  
“the Wild Animals Protection Ordinance (Cap. 170),”.

#### Division 3—Court Proceedings (Electronic Technology) (Magistrates’ Court) Rules (Cap. 638 sub. leg. B)

21. **Schedule 1 amended (Ordinances under which penalty notices are issued)**  
Schedule 1, after item 1—  
Add  
“1A. Wild Animals Protection Ordinance (Cap. 170)”.
22. **Schedule 2 amended (documents that may be sent to Court by means of e-system instead of producing them as paper documents)**  
Schedule 2, after item 1—

**Add**

- “1A. A document specified in section 10(3)(a), (b) or (c) of Schedule 9 to the Wild Animals Protection Ordinance (Cap. 170) that is produced for an application under section 10(2) of that Schedule”.
- 

**Explanatory Memorandum**

The main purpose of this Bill is to amend the Wild Animals Protection Ordinance (Cap. 170) (*principal Ordinance*) and its subsidiary legislation—

- (a) to re-enact the offence relating to the prohibition on feeding wild animals as an offence that applies in the entire Hong Kong Special Administrative Region under the principal Ordinance and to increase the penalty for feeding wild animals;
- (b) to prohibit the feeding of feral pigeons;
- (c) to provide for certain exceptions to the prohibition on feeding those animals;
- (d) to introduce a fixed penalty mechanism for contravention of the prohibition on feeding those animals;
- (e) to provide for the appointment of specified officers for the purpose of enforcing the fixed penalty; and
- (f) to amend the categories of persons who may act as authorized officers and to provide for additional enforcement powers for authorized officers.

2. The Bill contains 3 Parts.

**Part 1—Preliminary**

3. Clause 1 sets out the short title and provides for commencement.

**Part 2—Amendments to Principal Ordinance and its Subsidiary Legislation***Division 1—Principal Ordinance*

4. Clause 3 amends the definition of *authorized officer* in section 2 of the principal Ordinance to amend the categories of persons who may act as authorized officers.
5. Clause 4 adds a new section 9A to the principal Ordinance to replace the existing section 17C of the principal Ordinance. The new section 9A prohibits the feeding of wild animals and also an animal specified in a new Schedule 2A to the principal Ordinance. The prohibition is subject to exceptions.
6. Clause 6 substitutes section 16 of the principal Ordinance to delete the appointment of nature wardens and honorary nature wardens. Instead, the Director of Agriculture, Fisheries and Conservation (*Director*) is given a power to appoint any public officer (or class of public officers) serving under the Director as an authorized officer.
7. Clause 8 adds a new section 17D to the principal Ordinance to confer a power on an authorized officer to require a person to supply the person's particulars and proof of identity if the authorized officer has reason to believe that the person has committed an offence under section 18 of the principal Ordinance (except an offence for contravening section 15A(3) of the principal Ordinance).
8. Clause 9 amends section 18 of the principal Ordinance to create the following offences and to provide for their penalties—
  - (a) an offence for contravening the new section 9A of the principal Ordinance;
  - (b) an offence for failing to comply with a requirement to supply personal particulars and proof of identity;
  - (c) an offence for supplying any information that is false or misleading in purported compliance with a requirement mentioned in subparagraph (b); and
  - (d) an offence for wilfully resisting or obstructing a specified officer in exercising a power of arrest.

9. Clause 10 adds new sections 18A and 18B to the principal Ordinance to provide for a fixed penalty (*new fixed penalty*) for contravening the new section 9A of the principal Ordinance, and to provide that the Legislative Council may by resolution amend the amount of the new fixed penalty and the relevant costs.
10. Clause 11 amends section 22 of the principal Ordinance to provide that—
  - (a) the power of the Secretary for Environment and Ecology (*Secretary*) to amend the Schedules to the principal Ordinance does not include a power to amend the new Schedule 9 to the principal Ordinance; and
  - (b) the Director has power to amend the new Schedule 2A to the principal Ordinance by notice published in the Gazette.
11. Clause 12 adds a new section 22A to the principal Ordinance to empower the Secretary to specify forms relating to the new fixed penalty provisions.
12. Clause 15 adds a new Schedule 2A to the principal Ordinance to set out the animals the feeding of which is prohibited under the new section 9A of the principal Ordinance.
13. Clause 17 adds a new Schedule 9 to the principal Ordinance to set out the provisions relating to the new fixed penalty.
14. The Director is given a power under the new Schedule 9 to the principal Ordinance to appoint any public officer (or class of public officers) serving under the Director of Food and Environmental Hygiene, the Director of Leisure and Cultural Services or the Director of Housing as a specified officer to enforce the new fixed penalty.

*Division 2—Prohibition of Feeding of Wild Animals Notice (Cap. 170 sub. leg. B)*

15. Clause 18 repeals the Prohibition of Feeding of Wild Animals Notice (Cap. 170 sub. leg. B). As the prohibition on feeding wild animals applies in the entire Hong Kong Special Administrative Region, it is no longer necessary for the Director to specify the places at which the prohibition is to apply.

### Part 3—Related Amendments

16. Clause 19 amends the definition of *authorized officer* in regulation 40 of the Waterworks Regulations (Cap. 102 sub. leg. A) to delete the reference to nature wardens and honorary nature wardens.
17. Clause 20 amends section 113C(1)(c) of the Criminal Procedure Ordinance (Cap. 221) (*Cap. 221*) so that the new fixed penalty is an excluded fine for the purposes of section 113C of Cap. 221.
18. Clauses 21 and 22 amend Schedules 1 and 2 to the Court Proceedings (Electronic Technology) (Magistrates' Court) Rules (Cap. 638 sub. leg. B) (*Rules*) so that proceedings in relation to which a penalty notice is issued under the principal Ordinance are proceedings to which the Rules can apply.



## **Implications of the Proposal**

### **Financial implications**

The proposal itself does not seek to increase general revenue. The increase in the level of maximum fine and introduction of fixed penalty will raise the deterrent effect of the offence on illegal feeding. The number of offence of illegal feeding of wild animals and feral pigeons (the latter is currently enforced / prosecuted by other departments as littering offence) may drop as a result of the increased maximum penalty and introduction of fixed penalty. The actual financial implications depend on the number of fixed penalty notices to be issued on warranted cases and the court's decisions on the fines to be imposed on individual convicted cases.

2. The proposal stipulated in the Bill may have an impact on the workload of the Judiciary. In case the Judiciary cannot absorb the additional workload in the future, it will sort out the necessary financial and manpower resource requirements with the Government and seek resources in accordance with the established mechanism.

### **Sustainability implications**

3. The proposal will enhance the conservation of wild animals by raising the deterrent effect against illegal feeding which would alter their behavior / foraging skill. By reducing feeding activities in public places, the proposal will also enhance the environmental hygiene of Hong Kong.