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Hon Tommy Cheung
Chairman
Subcommittee on Public Health (Animals and Birds)
(Animal Traders) (Amendment) Regulation 2016 and
Specification of Public Offices (Amendment) Notice 2016
Legislative Council
Hong Kong

"Amendment to CAP 139B Public Health (Animals and Birds) (Animal Traders)"

We, the Society for the Prevention of Cruelty to Animals, Hong Kong (SPCA (HK)) support the introduction of the amendment under CAP 139B proposed by AFCD. We believe that the proposed legislation with a framework of 3 licences (ATL, ABLA, ABLB), the related additional licence conditions and mandatory codes of practice (including the one-off dog selling permit) greatly improves regulation of the dog trade and affords an opportunity to move forward with protecting dogs used in the trade.

The SPCA has served the Hong Kong community for over 95 years, protecting animals and working on the frontline of animal rescue day in day out. Every year we help tens of thousands of companion animals each year providing services such as veterinary treatment and care, rehabilitation, re-homing and spay-neuter surgeries. Unfortunately, our veterinary clinics regularly see puppies and dogs brought in by their owners suffering with infectious diseases or genetic issues, a direct result of the poorly regulated dog trade.

For over 20 years the animal welfare community has been asking the Government to amend the legislation under CAP 139B. A framework was put forward in 2009 but found lacking, and more research and consultations were undertaken before a new framework was finally proposed by the Government in 2013 to close the loophole that allowed commercial breeders to masquerade as private dog owners.

This concrete proposal will make an enormous difference to the lives of thousands of dogs. Unless the CAP 139B amendment is passed, dogs used by the trade will continue to be left vulnerable on a

daily basis with no proper regulation or oversight. We do not want them to suffer more through failure to introduce the proposed legislation when finally presented this year.

Expedient introduction of the amendment to CAP 139B is a vital first step - introducing a new framework can support revision as necessary. Improvements can be made over time as needed through amendments to the licensing conditions and codes of practice but without implementation of the primary amendment we are still left with a dramatically deficient regulatory system and a cycle of poor control and poor welfare.

Below are some comments on the proposed amendments:

Change in title of the regulation to include breeding

This is important and reflects the new elements of the regulations that now cover breeding for sale.

Revised and expanded definitions under Regulation 2

Revising and expanding the definitions under this regulation is important to help close the loopholes in the current legislation.

The improved definition of sale is much needed as occasionally illegal traders will 'give away' puppies as a 'free gift' if at the same time people purchase other products or services which are overpriced and effectively include the purchase price of the puppy. They may also present the puppies they are selling as available for 'adoption' but solicit 'donations' that are equivalent to the market price (or just below that) of similar puppies being sold by legitimate licenced traders in pet shops.

Regulations 4 and 5

Following on from tightening the definition of sale it is good to see that the AFCD recognises the important role that animal welfare NGOs and private individuals play in assisting with the rehoming of unwanted animals and has **included a mechanism under regulation 5A (exemption at the discretion of the Director) allowing bona fide parties carrying out genuine, altruistic rehoming activities to be protected from prosecution** if caught under the new regulatory regime.

The **new licencing regime and one-off permit** introduced in regulations 5B, 5C and 5H **helps to regulate areas of dog breeding and selling that currently are legal but are not regulated under CAP 139B legislation**. One loophole allows dog owners to legally breed from their pet dogs and sell the offspring without any oversight. Another allows a dog owner to sell any number of dogs he owns without restriction. These loopholes are currently being exploited by unscrupulous illegal large scale dog breeders and illegal traders who pose as dog owners but sell large numbers of dogs that are not their pets or the offspring of their pets.

The **one-off permit** system also helps to close the existing loophole relating to private pet owners being able to sell their pet dogs by only allowing private individuals to sell two dogs in four years. There are additional conditions attached to the sale of these dogs such that they must have been in the owners possession for at least four months and be registered, licenced and microchipped. This

aims to eliminate low level illegal trading which could be linked to smuggling or larger scale illegal trading where puppies are sold through organised networks of individuals or one individual masquerading as different individuals using aliases (as occurs currently in some other jurisdictions). The one-off permit system does not encourage the selling of unwanted dogs, it is currently legal for dog owners to sell any number of unwanted dogs without sanction but with the introduction of the one-of permit system sale becomes regulated and restricted.

Under regulation 5E regarding issuing or renewing a licence, a great improvement is the **Director will also now assess if the licensee is a suitable person to hold a licence and that a licensee must now be aged 18 or above to apply for a licence**. Similarly, it is welcomed under regulation 5G that the Director will have **more powers to cancel licences** should circumstances warrant such action.

Throughout this section the Director will have the right to attach conditions to any licence or permit issued and it is **these additional conditions and codes of practice that will set minimum standards, improve the welfare of dogs used for breeding or sold by the dog trade and can truly make a difference to the day to day lives of dogs**.

These instruments will also control how breeders, traders and their staff carry out aspects of their business. We are glad to hear that AFCD will include a requirement for personnel training, and for educating potential new pet owners (including giving information on dog care at point of sale). We note the intention to support the concept of responsible pet ownership by introducing a restriction on selling to people under the age of 16 – this plus training and point of sale information is something the SPCA has requested in the past.

We note that the Director can amend the additional conditions and codes as and when needed to further guide the breeders and traders in the better care of the dogs under their control and in relation to other aspects of the trade.

Regulation 15

The increases in maximum possible penalties introduced in amending this section are long overdue. A maximum fine of level 5 (for contravention of licencing conditions) and level 6 (for illegal breeding and trade) will have an increased deterrent effect and be more punitive. However, in the future we would suggest that the primary ordinance CAP 139 is reviewed as it currently limits the maximum fine that can be applied. This means if and when the monetary amount of different levels of fines set under CAP 221 the Criminal Procedures Ordinance increases the maximum fine under CAP 139B will be restricted by the maximum level set under the primary ordinance CAP 139.

Other considerations

CAP 139 can only regulate breeding of animals for commercial gain. Ill thought out or unplanned breeding (as often happens with free-roaming dogs and cats) is not captured by this legislation unless there is an element of commercial gain or consideration. To address this in the future additional measure may need to be introduced under CAP 421 – The Rabies Ordinance or CAP 167 – The Dogs and Cats Ordinance for instance.

Measures that should be considered are:

- Mandatory spay/neuter laws.
- A differential licensing fee system applied to animals in various scenarios. Such a system could complement mandatory spay/neuter laws in that there could be significantly lower fees for neutered animals.

An amended CAP 139B can only be effective in better regulating the dog trade if the public is educated to understand what the trade should be doing under the new regime. The public also be informed of how they can support this by acting responsibly and only acquiring puppies from legitimate sources, by asking to visit the puppies where they were born and reporting problems to the authorities to follow-up. Education and engagement of the puppy buying public is vital.

To these ends it is promising to note the AFCD has committed additional resources to enforcement, however, the Administration must be willing to request additional resources if required and the Legislative Council should be supportive of such requests.

Aspirations

Based on animal welfare considerations the SPCA (HK)'s position on acquiring a companion animal is that all animals should either be adopted from an animal rescue organisation or acquired from the place where they were born. As such the long-term goal for Hong Kong should be that selling animals through retail outlets would eventually cease.

We are also concerned under the more commercial ABLB licence with the focus on profit, where dogs are kept in primary enclosures it will be possible for factory farming or 'puppy milling' to occur. In these circumstances commercial breeders may be more interested in maximising profits rather than the long-term welfare of the breed or the individual dogs involved. Situations may arise where large numbers of dogs are kept, exploited and bred from with little concern for their individual welfare or needs. As such we believe that there should be a cap on the maximum number of breeding dogs permitted under any ABLB licence irrespective of the size of premises.

We believe that educated dog breeders with smaller numbers of breeding dogs, keeping them as companions within the family home (where they are loved, taken for walks and live freely) are better placed to meet the welfare needs of individual mothers and puppies. They are far more likely to have the welfare of their dogs as their prime consideration (as opposed to economic bottom line); this is more in line with the ABLA breeding licence concept.

In conclusion:

The framework and amendments proposed by AFCD to better regulate dog trading and breeding under CAP 139B should be adopted and implemented without delay. We sincerely hope passing the amendment will help to make the following case photos a thing of the past and drastically improve the daily lives of many thousands of dogs:



An illegal, commercial dog breeding operation - the operator was able sell puppies by exploiting the existing loopholes in the current legislation. The dogs suffered dreadfully for long periods.





A neglected, 'over-bred' bitch (above) and more puppies and dogs mistreated by an illegal, commercial scale breeder (below).



We sincerely hope in the near future work can commence on addressing the need to better regulate the breeding and trade of other species so they also do not suffer unnecessarily through exploitation of existing loopholes and under regulation.



Cats suffering alongside dogs at an illegal breeding establishment.

Should you have any enquiries in relation to this submission please do not hesitate to contact me on 2232-5563 or by emailing fiona.woodhouse@spca.org.hk .

Yours sincerely

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(Electronically)

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