



中華人民共和國香港特別行政區政府總部食物及衛生局  
Food and Health Bureau, Government Secretariat  
The Government of the Hong Kong Special Administrative Region  
The People's Republic of China

Our ref : FH CR 3/3231/07  
Your ref: CB2/SS7/15

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22 December 2016

Miss Josephine SO  
Clerk to Subcommittee  
Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong.

Dear Miss SO,

**Subcommittee on Public Health (Animals and Birds) (Animal Traders)  
(Amendment) Regulation 2016 (Commencement) Notice**

**Follow-up actions arising from the discussion  
at the meeting on 9 December 2016**

I refer to your letter of 12 December 2016 requesting for a written response in relation to inspections on premises licensed by the Agriculture, Fisheries, and Conservation Department (“AFCD”) under the Public Health (Animals and Birds) (Trading and Breeding) Regulations (Cap. 139 sub. leg. B) (“Amended Regulations”) after the captioned Commencement Notice has brought the Public Health (Animal and Birds) (Animal Traders) (Amendment) Regulation 2016 (L.N. 64 of 2016) into operation.

Upon commencement of the Public Health (Animals and Birds) (Animal Traders) (Amendment) Regulation 2016, applications for animal trader licence (“ATL”), Dog Breeder Licence Category A (“DBLA”) or Dog Breeder Licence Category B (“DBLB”) will be subject to the statutory requirements under the Amended Regulations, as well as the conditions attached to the 3 licences as provided under regulations 5(3), 5B(4) or 5C(3) of the Amended Regulations. Each ATL, DBLA or DBLB is tied to a specific premises. A licensee is only allowed to carry out the regulated activities at premises specified in the relevant licence (“the licensed premises”).

Under the Amended Regulations, the Director of Agriculture, Fisheries and Conservation (“DAFC”) may refuse to grant/renew or cancel a licence if he considers that the applicant is not, or the licensee is no longer, a suitable person to hold the licence (regulations 5E(1) and 5G(1)). Furthermore, DAFC may not grant or renew a licence unless the primary enclosures, housing facilities and outdoor areas of the premises concerned conform to the required standards (regulations 5(2), 5B(3) and 5C(2)). In this regard, when considering whether to grant a licence to an applicant, DAFC may take into account all the relevant circumstances to ascertain whether the stipulated requirements in relation to the premises are fulfilled, and whether the applicant is a suitable person to carry out the regulated activity, after conducting an inspection of the premises related to the application.

Once a licence is granted, the licensed premises will be subject to regular inspections by authorised officers of AFCD to ensure continued compliance with the statutory requirements and the conditions attached to the licence. Such inspections may be conducted by prior arrangement with the licensee or surprise checks without prior notice, and in any event during reasonable hours. In both cases, entry to the licensed premises, including domestic premises, will be carried out only with the consent of the licensee.

A specific condition will also be attached to the licence to require the licensee to facilitate the authorised officers of AFCD to carry out regular inspections by providing access to the licensed premises. Failure to comply with a request by an authorised officer to gain access to the licensed premises may be considered as a breach of this condition. Depending on particular circumstances of a case, the licensee may be liable to prosecution under regulation 13(2)(a) and/or to cancellation of the licence under regulation 5G(1) of the Amended Regulations.

An applicant may register either domestic or non-domestic premises in applying for a licence, and such person should not be exempt from inspection for compliance with the statutory requirements and licensing conditions simply because the regulated activities are carried out in domestic premises. Bearing in mind that (a) the power of entry and inspection will be exercisable in relation to licensed premises only (and not any other premises of the licensee); (b) a licensee is entitled to a lower expectation of privacy when he has voluntarily agreed to carry out a heavily regulated activity in licensed premises and has expressly agreed to abide by the conditions of the licence (including regular inspection of the licensed premises); and (c) entry to licensed premises for regular and/or surprise inspections will be conducted at

reasonable hours with the consent of the licensee without the use of force and for the limited purposes of ensuring compliance with the statutory requirements and licence conditions, we consider that the power of entry and inspection is consistent with Article 29 of the Basic Law<sup>1</sup>.

Yours sincerely,



( Bill WONG )  
for Secretary for Food and Health

c.c. Director of Agriculture, Fisheries and Conservation  
(Attn : Dr. Thomas SIT)(Fax : 2311 3731)  
ALA (Attn : Miss Winnie LO)(Fax : 2877 5029)

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<sup>1</sup> Basic Law Article 29 states that "The homes and other premises of Hong Kong residents shall be inviolable. Arbitrary or unlawful search of, or intrusion into, a resident's home or other premises shall be prohibited."