

**For discussion
on 10 May 2022**

LegCo Panel on Food Safety and Environmental Hygiene

**Proposed Amendments to
the Prevention of Cruelty to Animals Ordinance (Cap. 169)**

PURPOSE

This paper briefs Members on the Government’s key proposals to amend the Prevention of Cruelty to Animals Ordinance (Cap. 169) (“the Ordinance”), and seeks Members’ views.

BACKGROUND

2. The Government attaches great importance to animal welfare, with the policy objective to facilitate animals and people to co-exist harmoniously. The Ordinance prohibits and punishes cruelty to animals, and is the main legislation safeguarding animal welfare in Hong Kong. As society evolves, pet-keeping has become increasingly common in Hong Kong and the community’s concerns about animal welfare have grown as well. After taking into account the local situation and practices in other jurisdictions, the Government proposes to amend the Ordinance to require persons responsible for animals to take care of animals more proactively and raise public awareness on catering for animal welfare needs, not just preventing cruelty acts, in order to further enhance animal welfare. As for acts that constitute animal cruelty, we hope to further deter by increasing penalties and enhancing enforcement powers through amending the Ordinance.

3. Public consultation on the proposed amendments was conducted from April to July 2019 and we reported the consultation outcome to this Panel in April 2020 (LC Paper No. CB(2)832/19-20(04)). During the consultation period, we held five public forums with over 300 attendees and reached out to over 600 stakeholders, including animal welfare organisations (“AWOs”), pet-related trades and the food trade, etc. The proposals were widely supported by the public, with the majority of the responses (88%)¹

¹ A total of 2 507 written responses were received. Of these, 2 114 responses were based on the Government’s proposals and 393 were in the format of a different feedback form designed by an animal welfare group based on its proposals to be included in the legislation. Of the responses based on the Government’s proposals, around 88% of the respondents agreed that animal welfare should be enhanced and supported the proposed amendments to the Ordinance overall.

supporting the proposed amendments.

KEY PROPOSALS TO AMEND THE ORDINANCE

4. The Government's key proposals on the amendments are threefold, namely introducing a positive "Duty of Care" to animals, enhancing the provisions for prevention of cruelty to animals and empowering the court to disqualify offenders from keeping animals, and enhancing enforcement powers.

I. Introduction of positive "Duty of Care" to animals ("DoC")

5. The Government considers that the prohibition of animal cruelty, whilst important, is not sufficient to effectively safeguard animal welfare. In the past three years, the Agriculture, Fisheries and Conservation Department ("AFCD") and Police received on average 280 cases of suspected animal cruelty reports annually. After investigation, it was found that around 70 cases (25%) were related to cruelty acts, whilst around 40 cases (15%) were possibly related to negligence of animals but not cruelty, and the remaining approximately 170 cases (60%) involved noise and odour nuisance² or no evidence of cruelty.

6. In order to enhance animal welfare, we propose to impose a positive DoC on persons responsible for animals ("Responsible Person"). Responsible Person(s) includes the owner of the animal, the person in charge of, or having custody of the animal (whether permanently or temporarily), etc., for example, friends or relatives temporarily taking care of pets for the owner, staff of pet groomers and pet hotels, etc. As for volunteers who feed stray animals but are not actually in charge of or do not have actual custody of the animals, they will not be considered as Responsible Persons and will not be subject to the DoC requirements. However, they will still need to comply with other applicable legislations and regulations³ when feeding stray animals. If the person responsible for an animal is a child under 16

² For example, members of public reporting on loud barking or strong odour and hence making reports on suspected animal cruelty cases, but upon investigation, no evidence of cruelty or negligence of care was found.

³ Acts of animal feeding may contravene other legislations, such as prohibition of feeding wild animals in specified places in the Wild Animals Protection Ordinance (Cap. 170) and prohibition of littering in public places in the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132BK).

years old, the parents or guardian would also be responsible for the animal⁴. Since children generally need support and guidance from adults to carry out the DoC requirements, we hence propose that the Ordinance should specify that the parents or guardian shall also be responsible for the animal, to ensure that the underage responsible person of the animal will take proper care of his or her animal's welfare needs.

7. The DoC requirement will apply to vertebrates, namely mammals (excluding human beings), birds, reptiles, amphibians and fish. The proposed scope of animals is similar to the practice in other jurisdictions and will cover different situations, such as pets, working animals and food animals, etc. In order to strike a balance between maintenance of public health and animal welfare, DoC will not apply to pest control.

8. The responsible person of an animal must take **such steps that are reasonable in the circumstances** to cater for the welfare needs of the animal. The welfare needs of animals include the need for suitable diet, suitable environment, exhibiting normal patterns of behaviour and to be protected from pain, suffering, injury and disease. The reasonable steps required will vary, depending on the type of animal, actual circumstances and environment, etc., instead of asking to treat all animals in the same way or in an unrealistic fashion. For example, regarding the current operation of the trade in handling food animals (including rearing, transporting and selling, etc.), we consider that the operation methods are currently accepted by society and will not breach the DoC requirements under the proposed amendments. The DoC requirements will also not be applicable to animal slaughtering procedures that do not cause unnecessary suffering to the animals concerned. The Government will continue to keep in view opinions of society, scientific developments and international standards on animal welfare, etc., and maintain communication with the food animal trade and AWOs, to provide the trade with practical and feasible methods, facilitating trade practice to keep up with the times.

9. To provide practical guidance to responsible persons of animals in complying with the DoC, the AFCD will issue Codes of Practice (CoP) in phases for different animals, to set out practical guidance on how to provide for the welfare needs of animals properly⁵. The AFCD will first issue the CoPs for pets (e.g. dogs and cats) and gradually extend to other animals in

⁴ Currently, under the Rabies Ordinance (Cap. 421), if the keeper concerned is under 16 years old, in addition to the child who needs to comply with the responsibilities required by law, the parents or guardian will also be responsible for the acts of the child.

⁵ For example, the CoPs for pets will mainly include guidelines on providing suitable animal-keeping environment, suitable diet and suitable protection and medical treatment, etc., as well as measures to be taken by the owner when a pet goes astray.

an orderly manner. Contravention of a CoP does not constitute an offence *per se*, but it may become a consideration factor in relevant court proceedings.

10. The focus of the introduction of DoC is to educate and assist the public to improve animal welfare. Generally speaking, it is envisaged that the persons concerned who are suspected of breaching DoC will be issued improvement notices, which will specify how DoC has been breached, the steps that must be taken to rectify, time within which those steps are to be taken and potential consequences of non-compliance with the improvement notices. If the person concerned does not comply with the improvement notice, the AFCD may instigate prosecution. According to experience of other jurisdictions, most breaches of DoC could be resolved by issuing improvement notices and without instigating prosecutions. In addition to public officers, we propose that the Director of Agriculture, Fisheries and Conservation may authorise suitable persons to issue improvement notices. Since inspectors of the Society for the Prevention of Cruelty to Animals (“SPCA”) currently already assist the AFCD and Police in investigating animal cruelty cases, to utilise their existing expertise, we are preliminarily considering to appoint SPCA inspectors to assist the AFCD in issuing improvement notices for breaches of DoC involving cats and dogs⁶. A breach of the DoC shall be liable on summary conviction to a maximum fine of \$200,000 and imprisonment for three years.

II. To enhance provisions for prevention of animal cruelty

Introducing higher penalties

11. Under the current Ordinance, any person who does or omits doing any act and causes unnecessary suffering to an animal, may constitute an offence for animal cruelty. Provisions on animal cruelty cover any vertebrate or invertebrate, whether wild or tame. Currently, animal cruelty is a summary offence⁷, with maximum penalty of a \$200,000 fine and three years’ imprisonment. In order to reflect more clearly the gravity of the offence, to further deter actions concerned, we propose to introduce an indictable offence and raise the penalties. On conviction by indictment, the offender will be liable for a \$1 million fine and seven years’ imprisonment, to allow enforcement officers more time to instigate prosecution on complex or serious cruelty cases.

⁶ The AFCD will provide guidelines and training to persons who are authorised to issue improvement notices, and be responsible for following up on non-compliance cases of improvement notices issued by these persons.

⁷ Summary offences are generally heard in the Magistrates’ Courts, and the time bar for prosecution of a summary offence is six months after occurrence of the incident.

Introducing new or clearer offences

12. In addition, we will introduce the following new or clearer offences against animal cruelty :

- (i) Release or abandonment of animals leading to unnecessary suffering: There have been concerns about abandonment and inappropriate release that cause unnecessary suffering to animals. Such acts are already illegal under the current Ordinance. To further combat these acts, we propose to make it explicit in the Ordinance that releasing or abandoning an animal which causes unnecessary suffering to the animal (e.g. releasing a sea turtle or marine fish into a freshwater river which is an unsuitable habitat) constitutes an offence for animal cruelty.
- (ii) Carrying out specified restricted procedures not in the interest of the animal: Some pet owners allow their pets to undergo unnecessary “mutilations” for non-medical reasons, such as removal of dog’s tail, causing unnecessary suffering to animals. We propose introducing new offences in the Ordinance, prohibiting any person who is not a registered veterinary surgeon from carrying out specified restricted procedures on animals, namely docking dog’s tail, cropping dog’s ear, conducting debarking surgery on dogs and removing cat’s claws. A registered veterinary surgeon may only carry out the restricted procedures on an animal if he or she reasonably considers that it is in the interest of the animal to do so.
- (iii) Poisoning offence: In view of acts of deliberately placing poisonous or harmful substances on the streets, etc., leading to animal poisoning, we propose that a new offence be introduced to specify that administering poison to an animal or placing of poison without lawful authority (e.g. pest control) is an act of animal cruelty, regardless of whether actual suffering is caused.

Introducing Disqualification Order

13. Under the current Ordinance, a Magistrate may deprive an offender of ownership of an animal, if it is shown by a previous conviction or the character of the owner that the animal is likely to be exposed to further cruelty if left with the owner. In this regard, we propose to simplify the conditions concerned, allowing the court to deprive an offender of ownership of an animal if the owner is convicted of an offence under the Ordinance.

14. In addition, to better prevent persons convicted of animal cruelty

offence from continuing to keep animals in the future and harming them, after making reference to some jurisdictions, we propose to empower the court to disqualify a person convicted of an animal cruelty from keeping or dealing in animals, within a specified period or permanently. A Disqualification Order may also apply to prohibit a person concerned from keeping or dealing in animals with others. Contravention of a Disqualification Order is liable to a fine of \$200,000 and three years' imprisonment upon summary conviction. The AFCD will conduct regular inspections and monitor the disqualified persons and follow up on complaints, to ensure compliance with the Disqualification Order.

III. To enhance enforcement powers to prevent and protect animals from suffering

15. Under the current Ordinance, an authorised officer may take enforcement action, if there is reason to suspect an offence is being or has been committed, including arresting the suspect, seizing and detaining animals, entering and searching any building or vehicle, etc. However, this implies that an animal might already be suffering before the officer can intervene. In view of this, we propose to enhance enforcement powers, to allow authorised officers to intervene on a case before the animal suffers. We propose to empower authorised officers to take enforcement action, where there is reason to suspect an offence is imminent or that the animal is likely to suffer if the circumstances do not change. Furthermore, the court may issue a warrant to allow an authorised officer to enter and search buildings and premises, without the consent of the occupier. We propose to allow authorised officers to enter premises without a warrant, if there is an imminent risk of serious harm to the animal concerned, or to prevent loss or destruction of evidence of the offence, and it is not reasonably practicable to apply for a warrant.

16. In addition, we propose to empower authorised officers to request documentary proof of identity and address, for the purpose of issuing improvement notices and ensuring compliance with Disqualification Orders. Any person who obstructs officers concerned in performing their duty under the Ordinance is liable on summary conviction to a fine at level 5 (currently \$50,000) and three years' imprisonment.

17. As for animals seized under the Ordinance, they currently can only be released from detention upon the order of a Magistrate. We propose to allow a Senior Veterinary Officer of the AFCD to release a seized animal from detention, if it has been surrendered by the owner and it is no longer required for evidence purposes, so that the animal can be rehomed when circumstances permit. In addition, we propose to remove the current provision in the Ordinance, which allows the owner of an animal to request

the animal to be destroyed, since it may not meet prevailing social expectations. We also propose setting up a mechanism that allows the court to request payment from persons convicted of contravening the Ordinance for the cost of taking care of the detained animals, to reimburse AWOs' expenses.

WAY FORWARD

18. Upon seeking Members' views, we will further finalise the legislative proposals, and expect to introduce the amendment bill into the Legislative Council in the second half of this year.

Food and Health Bureau
Agriculture, Fisheries and Conservation Department
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