

## **Frequently Asked Questions of the Proposals to Enhance Animal Welfare in Hong Kong**

### **A. Introduction**

#### **Question 1. Why should the legislation on animal welfare be enhanced?**

Answer 1. Currently, the Prevention of Cruelty to Animals Ordinance (Cap. 169) (“the Ordinance”) focuses on prohibition and punishment of cruelty to animals, but it does not specifically promote good welfare or provide guidance on how good welfare can be achieved, nor does it allow the courts to disqualify a person convicted of an animal cruelty offence from keeping animals. Law enforcement officers have limited power to act before an animal suffers. In recent years, some other places have updated their animal protection legislation, reflecting the advances in knowledge of animal welfare. Although the implementations may vary, the common theme is to impose a “duty of care” onto persons responsible for animals. In view of this, the animal welfare legislation in Hong Kong should encompass this concept.

### **B. Duty of care**

#### **Question 2. What is meant by “duty of care”?**

Answer 2. The persons responsible for an animal should take reasonable steps to ensure the welfare needs of the animal are met. The welfare needs include:-

- the need for suitable nutrition;
- the need for a suitable environment;
- the need to be protected from pain, suffering, disease and injury;
- and
- the need to be able to exhibit normal patterns of behaviour.

#### **Question 3. Is the legislative amendment specific to certain types of animals, such as cats or dogs?**

Answer 3. The legislative amendment is not specific to certain types of animals, and it applies to all animals for which a person is responsible.

#### **Question 4. To whom will the duty of care apply?**

Answer 4. Any person who is responsible for an animal has to fulfil the duty of care to provide for its welfare needs. It is proposed that the persons responsible for the animal include not only the owner, but also a person in charge of, or having custody of the animal, whether permanently or temporarily. If a child under 16 years has custody of an animal, their

parent/guardian would be the person responsible for the animal. In the case of a dog licensed under the Rabies Regulation (Cap. 421A), the licensee will also be defined as one of the persons responsible for it.

**Question 5. Will the duty of care be applicable to persons feeding stray cats or dogs?**

Answer 5. Animals living in a wild or feral state not under the control of any person are excluded from any requirement under the duty of care as no person is considered directly responsible for them. However, duty of care applies when wild or feral animals are in custody or under the control of a person (such as when being adopted or in captivity).

**Question 6. Will the duty of care apply to cats and dogs kept in construction sites or commercial premises?**

Answer 6. Duty of care is imposed on any persons that own, or are in charge or have custody of animals whether permanently or temporarily. This may include persons who allow animals to live in his/her land or premises.

**Question 7. Will losing a dog be considered as a breach of duty of care and bear any liability?**

Answer 7. If a person genuinely lost their dog, reasonable steps which could be taken to ensure its welfare would include reporting it as lost to relevant authorities such as Agriculture, Fisheries and Conservation Department (AFCD) and Police as well as Animal Welfare Organisations (AWOs), and conducting a diligent search. Abandonment of an animal would be considered as a contravention of the duty of care since it is equivalent to leaving an animal without provision for its welfare needs. If an animal suffers as a result of abandonment, the offence of cruelty with more severe penalty will continue to apply. As such, when a licensed dog is found at large without provision for its welfare needs (and has not been reported as lost), the licensee would bear a prima facie responsibility unless he/she can show that, on the balance of probabilities, he/she is not responsible for the dog at the material time.

**Question 8. Since animal abandonment is considered as a breach of duty of care and a legal offence, why are members of the public allowed to hand over animals to AFCD or AWOs?**

Answer 8. Animal abandonment refers to leaving an animal without making provisions for that animal's welfare needs. Surrendering an animal to AFCD or AWOs is not "abandonment" as the organisation agrees to take over the care of the animal and rehome it if possible. After AFCD receives the animal, veterinarians will perform health checks and

temperament assessment on the animal. If the animal is in good health condition and has a good temperament, it will be available for adoption.

**Question 9. Currently, when an animal is found at large by AFCD officers, the keeper could refuse to claim the animal even if AFCD could contact him/her. Why is the owner not liable for abandonment?**

Answer 9. Law enforcement officers will investigate the case. If there is sufficient evidence to prove intentional abandonment under the existing legislation, the animal owner will face prosecution action. If the proposals are adopted, abandonment of an animal would be considered as a contravention of the duty of care since it is equivalent to leaving an animal without provision for its welfare needs. If an animal suffers as a result of abandonment, the offence of cruelty with more severe penalty will continue to apply.

**Question 10. Will members of the public be prosecuted based on an incomplete understanding of the duty of care?**

Answer 10. The steps which the responsible person needs to take to provide for the welfare needs of an animal will vary depending on the type of animal and the circumstances in which it is kept. The duty of care is not a requirement to treat all animals in exactly the same way or in an unrealistic fashion but to meet an acceptable standard of welfare based on good practice.

The majority of responsible pet owners are already complying with the duty of care. If the responsible person has not provided for the welfare needs of the animal to the extent required by good practice, but not to the extent of causing suffering to the animal, an authorised officer could issue an improvement notice to specify appropriate improvements within a specified period. Prosecution action will only be carried out if the responsible person does not comply with the improvement notice or is in serious breach of duty of care.

## **C. Codes of Practice**

**Question 11. What are Codes of Practice?**

Answer 11. The government may issue Codes of Practice (CoPs) for any specified type of animal. CoPs will give practical guidance on how to provide for the welfare needs of animals to the extent required by good practice. Contravention of a CoP would not constitute an offence *per se*, though it may be cited as evidence in court proceedings initiated for the contravention of the duty of care.

**Question 12. Will detailed requirements such as ways to take proper care of an animal, prohibition of allowing animals to wander at large or mandatory neutering be incorporated into CoPs? Will there be public consultation in drafting the CoPs?**

Answer 12. CoPs mainly provide guidance in areas such as the standard of suitable environment, nutrition, how to provide for behavioural needs and protection from disease and injury. AFCD will consult the Animal Welfare Advisory Group and other stakeholders in formulating the CoPs. We have no plans to require mandatory neutering.

**Question 13. Is there a CoP on animal care for all types of animals? If there is no CoP for a specific kind of animal, how should the members of public take care of them?**

Answer 13. AFCD proposes to promulgate CoPs for those types of animals which are commonly kept in Hong Kong, starting with pet animals as the first priority. If there is no relevant CoP, persons responsible for animals still have a responsibility to know and provide for the welfare needs of the animal for which they are responsible. Lack of a relevant CoP would not be an excuse for breaching the duty of care.

**Question 14. Please explain “breach of the CoP does not constitute an offence *per se*, but breach of duty of care constitutes an offence”.**

Answer 14. CoPs are guidelines on how to fulfill the duty of care and provide for the welfare needs of an animal. The CoPs are not legislation, so contravention does not constitute an offence *per se*, though it may be cited as evidence in court proceedings initiated for the contravention of the duty of care.

If the person responsible for animals did not provide for the welfare needs of an animal to the extent required by good practice, AFCD could issue an improvement notice to the responsible person so as to specify appropriate improvements. If the notice was not complied with, AFCD could cite it as evidence as breach of duty of care, which constitutes an offence.

The content of CoPs can be updated along with progression of scientific knowledge of animal welfare and public expectations, so it will not constitute part of the legislation.

**Question 15. How would AFCD prevent pet owners or other responsible persons from using ignorance as an excuse from being responsible? How would AFCD promote the proper way of caring for animals?**

Answer 15. AFCD will initiate education and publicity programs on the relevant legislation and provision of animal welfare needs, including delivering the message in kindergarten / primary school / secondary school / estates seminars, different types of public transport, AFCD website, social media platform, TV and radio advertisements, etc. Persons responsible for animals have the responsibility to research and find information related to their animals and understand the welfare needs so as to provide good welfare and care.

**Question 16. According to the requirements of the duty of care, a person responsible for an animal should take reasonable steps to provide for its welfare needs. How will AFCD determine who is the person responsible for an animal if it is not microchipped? Does AFCD have any plan for microchipping on cats and other animals?**

Answer 16. The person(s) responsible for the animal include(s) not only the owner, but also a person in charge of, or having custody of the animal, whether permanently or temporarily. When taking enforcement action, we shall rely on evidence collected by law enforcement officers to determine the responsible person(s) for the animal. Such evidence may include whether the animals have been microchipped, relevant witness statements, whether there is documentary or video evidence, as well as circumstantial evidence.

#### **D. Improvement Notices**

**Question 17. Under what circumstances would an Improvement Notice be issued?**

Answer 17. If a responsible person fails to ensure the needs of an animal are met to the extent required by good practice, he or she would contravene the duty of care and commit an offence. However, there may be situations in which the degree of the contravention of the duty of care presents a relatively lower risk to the welfare of the animal, and such a contravention could be rectified. In those situations it may be more effective and efficient to issue an improvement notice to compel the responsible person to take necessary steps to improve the animal's welfare, rather than resorting to prosecution. The improvement notice would specify what the responsible person is required to do in order to improve and meet the welfare needs of the animal within a specified amount of time.

**Question 18. Can prosecution be initiated without the issue of Improvement Notice?**

Answer 18. Serious contravention of the duty of care would justify prosecution right away without issuing any improvement notice first.

## **E. Enforcement powers**

### **Question 19. After the legislative amendments, can AFCD officers forcefully enter the premises and take away the animals concerned?**

Answer 19. Under the current Ordinance, authorised officers can only seize animals when an offence has been committed. This means that the animal is already suffering before the authorised officers can intervene. Based on the proactive nature of the duty of care, we propose that the Ordinance empowers magistrates to issue warrants for authorised officers to enter the premises by reasonable means of force if they have reason to believe that if the animal is likely to be harmed if the situation does not change. It is also proposed that in urgent cases an authorised officer would be able to enter and search a premises without a warrant, provided such an action could be justified.

### **Question 20. After the legislative amendments to the Ordinance, can the power to release seized animals from detention be changed?**

Answer 20. At present, animals seized in cruelty cases can only be released under the orders of the magistrate. Under our proposals, the senior veterinarian of AFCD is empowered to release the animal if the owner of the animal surrenders the animal and the animal is no longer required for evidence purposes.

## **F. Disqualification order from keeping or dealing with animals**

### **Question 21. In what circumstances would the court issue an order to disqualify a person from keeping or dealing with animals?**

Answer 21. If the courts consider that the convicted person has a tendency to reoffend, based on the facts of the case, the courts may issue a disqualification order to disqualify them from keeping or dealing with animals.

### **Question 22. For those who are deprived from keeping or dealing with animals by the court, how can AFCD follow up and monitor their behaviour?**

Answer 22. It would be an offence for a disqualified person to breach the disqualification order. AFCD will study the development of appropriate follow-up and monitoring measures to enforce the disqualification order.

### **Question 23. Will there be a list of persons disqualified from animal keeping or handling, which is issued by the courts, for the public, AWOs and pet shops' reference?**

Answer 23. AFCD will maintain a list of persons disqualified from keeping or

dealing with animals for follow-up monitoring work. However, in view of personal privacy considerations, AFCD would discuss with Department of Justice during the drafting of the legislation on the possibility of disclosing the list to the public or relevant third parties.

## **G. Penalty**

### **Question 24. How to determine whether the cases are “summary offences” with lower penalty, or “indictable offences” with heavier penalty?**

Answer 24. Currently, the offence of animal cruelty is a “summary offence”. “Summary offence” generally refers to a less serious offence, and an “indictable offence” refers to a more serious one. The government will seek professional advice from the Department of Justice for individual cases. Factors to be considered in determining the seriousness of a case could include the culpability of the offender, the number of animals involved, the degree of harm caused to the animal(s), etc.

### **Question 25. Despite the increase in the amount of fine or length of imprisonment period, how to make the court increase the penalty when determining the sentence?**

Answer 25. Since the level of maximum penalty has been increased in 2006, the sentences in each case have increased correspondingly. The government will monitor the sentences of individual cases, and seek review if the sentence is considered unreasonably low.

## **H. Resources for Implementation and Enforcement**

### **Question 26 After the amendment of the legislation, how can the government ensure that there are sufficient staff to carry out public education work on the duty of care and undertake law enforcement duties against the violation of the law.**

Answer 26 When we finalise the legislative amendment proposals, we would assess the workload involved in public education and law enforcement, so as to arrange appropriate manpower and resources to handle related work.

## **I. Others**

### **Question 27. Will the legislation regulate Mercy Release?**

Answer 27. We note that there are concerns about release of captive animals into the wild for religious purposes. Such activities may have a detrimental effect on animal welfare if the animals are released into an environment which is not suitable for them. We have proposed in the consultation document and specified that the release of an animal into

an unsuitable environment, which causes it to suffer, is an act of cruelty to animals.

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