

LCQ18: Regulation of the use of animals to solicit business

Following is a question by the Hon Chan Hak-kan and a written reply by the Secretary for Food and Health, Professor Sophia Chan, in the Legislative Council today (March 27):

Question:

Currently, quite a number of shops without a restaurant licence, restaurants and cafés keep animals on their premises for entertainment of customers with a view to soliciting business. Quite a number of members of the public have relayed to me that these animals are often kept under extremely unsatisfactory conditions, including not having enough rest time, being confined in a narrow activity space, and not being given inadequate food. In this connection, will the Government inform this Council:

- (1) whether the Government received complaints in the past three years about animals being abused on the aforesaid premises; if so, of the details;
- (2) whether the Government compiled statistics in the past three years on the number of such kind of premises; if so, of the details; if not, the reasons for that;
- (3) whether (i) the use of animals by operators of restaurants to solicit business and (ii) the provision of food, which was prepared off-site (e.g. cup noodles, biscuits and packaged drinks), by operators of premises without a restaurant licence for customers' consumption on the premises are subject to regulation under the existing legislation; if so, of the details;
- (4) whether the Government instituted prosecutions in the past three years against the operators of premises mentioned in (3) (ii) above for operating a restaurant without a licence; if so, of the details; if not, the reasons for that;
- (5) whether the Government instituted, by invoking the Food Business Regulation (Cap 132X), prosecutions in the past three years against the relevant operators for the presence of animals in food premises; if so, of the details;
- (6) whether the Government deployed officers to pose as patrons in the past three years to investigate if the operators or the customers of those premises had committed offences under the Prevention of Cruelty to Animals Ordinance (Cap 169); if so, of the details; if not, the reasons for that; and
- (7) whether it will amend the legislation to strengthen the regulation of commercial acts of using animals to solicit business, so as to protect animal rights?

Reply:

President,

(1) In the past three years, the Agriculture, Fisheries and Conservation Department (AFCD) received one complaint concerning suspected acts of cruelty to rabbits kept by a café. The investigation did not find any acts of cruelty to animals involved. However, the café concerned was prosecuted by the Food and Environmental Hygiene Department (FEHD) for operating food business without a licence.

(2) and (3) All licensed food premises have to meet the requirements of the Food Business Regulation (Cap 132X) (the Regulation) to prevent food contamination. Animals can be a source of contamination of food and equipment as their bodies, hair and excreta may carry pathogens and parasites. To ensure food safety and environmental hygiene, section 5(3)(b) of the Regulation requires that no person shall suffer or permit the presence of live birds or animals in any food room (including a kitchen) of food premises.

In addition, section 10B of the Regulation stipulates that no person shall bring any dog onto any food premises, and that no person engaged in any food business shall knowingly suffer or permit the presence of any dog on any food premises. The only exception is where the dogs are serving as guide dogs for visually impaired persons (other than entering a food room, including a kitchen) or performing statutory duties (e.g. police dogs).

Other than the requirements of section 10B of the Regulation, the existence of other animals in food premises is not a major licensing control, but a licensee must keep the food premises clean and in good repair and condition. Also, the Public Health and Municipal Services Ordinance (Cap 132) provides that any food intended to be sold for human consumption in Hong Kong must be fit for human consumption. Hence, it is the responsibility of the licensee to ensure food safety and environmental hygiene of the food premises.

(4) According to section 31(1) (b) of the Regulation, a restaurant licence issued by FEHD is required for conducting any food business which involves the sale of meals or unbottled non-alcoholic drinks (other than Chinese herb tea) for consumption on the premises.

FEHD instituted 1 711, 1 604 and 1 710 prosecutions against unlicensed food premises respectively in each of the past three years. It does not keep separate breakdown on the use of animals by these food premises for soliciting business.

(5) In the past three years, FEHD instituted one prosecution against the licensee of food premises for suffering or permitting animal(s) to enter the food room of the premises.

(6) Upon receiving complaints from members of the public against acts of animal cruelty, AFCD's officers will take appropriate follow-up and investigation after inspecting the premises suspected to have contravened the law.

(7) Having reviewed overseas legislation on animal welfare, and considered views of animal welfare organisations and other stakeholders, we plan to consult the public in mid-2019 on proposals to strengthen the protection of animal welfare. Our proposals would include exploring the introduction of a concept of positive duty of care on animal keepers, i.e. requiring animal keepers to take all necessary measures to protect the welfare of their animals, such as providing proper care and sufficient space for their animals, etc. Under these proposals, the "animal keepers" mentioned above include the persons in charge of the animal keeping premises. We will draw up legislative proposals after taking into account the views gathered from the public consultation. Yet, the Government has no plan to regulate the use of animal in soliciting business, unless it involves acts of cruelty to animals or failure to provide duty of care.