

**L.N. 64 of 2016**

**Public Health (Animals and Birds) (Animal Traders)  
(Amendment) Regulation 2016**

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# **Public Health (Animals and Birds) (Animal Traders) (Amendment) Regulation 2016**

(Made by the Chief Executive in Council under section 3 of the Public Health (Animals and Birds) Ordinance (Cap. 139))

## **Part 1**

### **Preliminary**

#### **1. Commencement**

This Regulation comes into operation on a day to be appointed by the Secretary for Food and Health by notice published in the Gazette.

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## Part 2

### Amendments to Public Health (Animals and Birds) (Animal Traders) Regulations

**2. Public Health (Animals and Birds) (Animal Traders) Regulations amended**

The Public Health (Animals and Birds) (Animal Traders) Regulations (Cap. 139 sub. leg. B) are amended as set out in sections 3 to 15.

**3. Title amended**

The title—

**Repeal**

“ANIMAL TRADERS”

**Substitute**

“TRADING AND BREEDING”.

**4. Regulation 1 amended (citation)**

Regulation 1—

**Repeal**

“Animal Traders”

**Substitute**

“Trading and Breeding”.

**5. Regulation 2 amended (interpretation)**

(1) Regulation 2, definition of *animal trader*—

**Repeal**

everything after “a person who”

**Substitute**

“sells, or offers to sell, animals or birds, but does not include—

- (a) a person selling, or offering to sell, any animal or bird kept by the person as a pet or any of its offspring; or
- (b) a dog breeder;”.

- (2) Regulation 2—

**Repeal the definition of *licence***

**Substitute**

“*licence* (牌照) means—

- (a) an animal trader licence; or
- (b) a dog breeder licence;”.

- (3) Regulation 2, definition of *licensed animal trader*—

**Repeal**

“a licence granted under regulation 5(1)(a)”

**Substitute**

“an animal trader licence”.

- (4) Regulation 2, definition of *licensed premises*—

**Repeal**

“under regulation 5(1)(b)”.

- (5) Regulation 2, definition of *sanitize*—

**Repeal the full stop**

**Substitute a semicolon.**

- (6) Regulation 2—

**Add in alphabetical order**

“*animal trader licence* (動物售賣商牌照) means a licence granted or renewed under regulation 5(1);

*contravene* (違反) includes breach;

*dog breeder* (狗隻繁育者) means a person who—

- (a) keeps one or more female dogs for breeding purposes; and
- (b) sells, or offers to sell, any of those dogs or their offspring;

*dog breeder licence* (繁育狗隻牌照) means—

- (a) a dog breeder licence (category A); or
- (b) a dog breeder licence (category B);

*dog breeder licence (category A)* (甲類繁育狗隻牌照) means a licence granted or renewed under regulation 5B(1);

*dog breeder licence (category B)* (乙類繁育狗隻牌照) means a licence granted or renewed under regulation 5C(1);

*licensee* (持牌人), in relation to a licence, means the holder of the licence;

*one-off permit* (單次許可證) means a one-off permit granted under regulation 5H(3);

*sell* (出售), in relation to an animal or bird, includes transfer, or agree to transfer, ownership of the animal or bird to a person in consideration of entry by the person into another transaction.”.

## 6. Regulation 4 amended (prohibition of trading without a licence)

- (1) Regulation 4, heading—

**Repeal**

**“trading without a licence”**

**Substitute**

**“trading animals without licence etc.”.**

- (2) Regulation 4(1), English text—

**Repeal**

**“shall”**

**Substitute**

**“must”.**

- (3) Regulation 4(1)(a)—

**Repeal**

**“a licence”**

**Substitute**

**“an animal trader licence or an exemption granted under regulation 5A(1)”.**

- (4) Regulation 4(1)—

**Repeal subparagraph (b)**

**Substitute**

**“(b) keep animals or birds, or both, for the purpose of the person’s business as an animal trader otherwise than at premises in respect of which the person is granted an animal trader licence.”.**

- (5) Regulation 4—

**Repeal paragraph (2)**

**Substitute**

**“(2) If a person keeps animals or birds, or both, for the purpose of the person’s business as an animal trader at different premises, the person must hold an animal trader licence in respect of each of the premises.”.**



**7. Regulations 4AA and 4AAB added**

After regulation 4—

**Add**

**“4AA. Prohibition of breeding dogs without licence etc.**

(1) A person must not—

- (a) act as a dog breeder otherwise than under a dog breeder licence; or
- (b) keep dogs as a dog breeder otherwise than at premises in respect of which the person is granted a dog breeder licence.

(2) If a person keeps dogs as a dog breeder at different premises, the person must hold a dog breeder licence in respect of each of the premises.

**4AAB. Prohibition of keeping more dogs than permitted**

A person holding a dog breeder licence in respect of any premises must not at any time keep at the premises a greater number of female dogs for breeding purposes than the number specified for the premises in the licence.”.

**8. Regulation 4B added**

After regulation 4A—

**Add**

**“4B. Prohibition of selling dogs to persons under 16**

- (1) No person may sell a dog to any person under the age of 16 years.
- (2) A person who contravenes paragraph (1) commits an offence and is liable on conviction to a fine at level 5.

- (3) It is a defence to a charge for an offence under paragraph (2) for a defendant to establish that, at the time the offence is alleged to have been committed, the defendant had reasonable cause to believe, and did believe, that the person to whom the dog was sold was not under the age of 16 years.
- (4) The defendant is taken to have established a fact that needs to be established for the defence if—
  - (a) there is sufficient evidence to raise an issue with respect to that fact; and
  - (b) the contrary is not proved by the prosecution beyond reasonable doubt.”.

**9. Regulation 5 amended (power of Director to license animal traders)**

- (1) Regulation 5, heading—

**Repeal**

**“license animal traders”**

**Substitute**

**“grant or renew animal trader licences”.**

- (2) Regulation 5—

**Repeal paragraphs (1) and (2)**

**Substitute**

- “(1) On application in the form specified by the Director and payment of the fee specified in the Schedule, the Director may grant to any person an animal trader licence in respect of any premises, or renew the licence, to—
- (a) carry on business as an animal trader; and

(b) keep at the premises animals or birds, or both, for the purpose of the person’s business as an animal trader.

(2) The Director must not grant or renew an animal trader licence unless the Director is satisfied that the primary enclosures, housing facilities and outdoor areas of the premises in which the applicant intends to keep the animals or birds, or both, conform to the standards specified in regulation 6.”.

(3) Regulation 5(3)—

**Repeal**

everything after “Director may”

**Substitute**

“at any time—

(a) attach to an animal trader licence any condition the Director thinks fit; and

(b) amend or revoke any condition so attached.”.

(4) Regulation 5—

**Repeal paragraph (4)**

**Substitute**

“(4) An animal trader licence is valid for a period of 12 months beginning on the date the licence is granted or renewed.”.

(5) Regulation 5—

**Repeal paragraph (5).**

**10. Regulations 5A to 5H added**

After regulation 5—

**Add**

**“5A. Exemption from holding an animal trader licence**

- (1) If the Director is satisfied that a person is conducting genuine rehoming activities for animal welfare purposes on a non-profit-making basis, the Director may exempt the person from holding an animal trader licence.
- (2) In determining whether a person is conducting genuine rehoming activities for animal welfare purposes on a non-profit-making basis, the Director may take into account all relevant factors, including—
  - (a) whether the person falls within any of the following descriptions—
    - (i) a charitable institution or trust of a public character that is exempt from tax under section 88 of the Inland Revenue Ordinance (Cap. 112);
    - (ii) a society as defined by section 2(1) of the Societies Ordinance (Cap. 151) and registered under section 5A(1) of that Ordinance;
    - (iii) a body of persons, or charity, as defined by section 2(1) of the Registered Trustees Incorporation Ordinance (Cap. 306), which has been granted a certificate of incorporation under section 4(1) of that Ordinance;
    - (iv) a company registered under the Companies Ordinance (Cap. 622) or under the Companies Ordinance (Cap. 32) as in force at the time of the registration;

- (b) whether the protection and promotion of animal welfare and rehoming are amongst the core activities and services of the person; and
    - (c) whether the person engages the services of a registered veterinary surgeon as defined by section 2 of the Veterinary Surgeons Registration Ordinance (Cap. 529) to act as an advisor on animal health and welfare.
- (3) The Director may at any time—
  - (a) attach to an exemption any condition the Director thinks fit; and
  - (b) amend or revoke any condition so attached.
- (4) The Director may at any time revoke an exemption if—
  - (a) any condition of the exemption has been contravened; or
  - (b) the person to whom the exemption is granted no longer satisfies the Director that the person is conducting genuine rehoming activities for animal welfare purposes on a non-profit-making basis.
- (5) The Director may only—
  - (a) grant an exemption for a fixed period; and
  - (b) renew an exemption, each time for a fixed period.

**5B. Power of Director to grant or renew dog breeder licences (category A)**

- (1) On application in the form specified by the Director and payment of the fee specified in the Schedule, the Director may grant to any individual a dog breeder licence (category A) in respect of any premises, or renew the licence, to—
  - (a) at any time keep at the premises up to the number of female dogs for breeding purposes that is specified for the premises in the licence; and
  - (b) sell, or offer to sell, any of those dogs or their offspring.
- (2) For subsection (1)(a), the Director may specify up to 4 female dogs.
- (3) The Director must not grant or renew a dog breeder licence (category A) unless the Director is satisfied that the primary enclosures, housing facilities and outdoor areas of the premises in which the applicant intends to keep the dogs conform to the standards specified in regulation 6.
- (4) The Director may at any time—
  - (a) attach to a dog breeder licence (category A) any condition the Director thinks fit; and
  - (b) amend or revoke any condition so attached.
- (5) A dog breeder licence (category A) is valid for a period of 12 months beginning on the date the licence is granted or renewed.
- (6) An individual may at any time hold only 1 dog breeder licence (category A).

**5C. Power of Director to grant or renew dog breeder licences (category B)**

- (1) On application in the form specified by the Director and payment of the fee specified in the Schedule, the Director may grant to any person a dog breeder licence (category B) in respect of any premises, or renew the licence, to—
  - (a) at any time keep at the premises up to the number of female dogs for breeding purposes that is specified for the premises in the licence; and
  - (b) sell, or offer to sell—
    - (i) any of those dogs or their offspring; and
    - (ii) any dogs from sources specified in the licence.
- (2) The Director must not grant or renew a dog breeder licence (category B) unless the Director is satisfied that the primary enclosures, housing facilities and outdoor areas of the premises in which the applicant intends to keep the dogs conform to the standards specified in regulation 6.
- (3) The Director may at any time—
  - (a) attach to a dog breeder licence (category B) any condition the Director thinks fit; and
  - (b) amend or revoke any condition so attached.
- (4) A dog breeder licence (category B) is valid for a period of 12 months beginning on the date the licence is granted or renewed.

**5D. Provision supplementary to regulations 5, 5B and 5C—premises**

The Director may only grant 1 licence in respect of 1 premises.

**5E. Provision supplementary to regulations 5, 5B and 5C—individuals**

- (1) The Director must not grant a licence to an individual, or renew a licence held by an individual, unless—
  - (a) the individual has attained the age of 18 years at the date of application for the licence; and
  - (b) the individual satisfies the Director that the individual is a suitable person to hold the licence.
- (2) In determining whether an individual is a suitable person to hold a licence, the Director may take into account all relevant factors, including—
  - (a) whether the individual has been convicted of an offence under the Ordinance or section 3 of the Prevention of Cruelty to Animals Ordinance (Cap. 169);
  - (b) whether any condition attached to a licence held, or previously held, by the individual has been contravened; and
  - (c) whether any licence previously held by the individual has been cancelled.



**5F. Provision supplementary to regulations 5, 5B and 5C—  
bodies corporate or partnerships**

- (1) The Director must not grant an animal trader licence or dog breeder licence (category B) to a body corporate or partnership, or renew a licence held by a body corporate or partnership, unless—
  - (a) the body corporate or partnership satisfies the Director that it is a suitable person to hold the licence;
  - (b) the body corporate or partnership has authorized an individual to act as its representative for the purpose of the licence; and
  - (c) the individual satisfies the Director that the individual is a suitable person to manage the operation of the body corporate or partnership permitted by the licence.
- (2) In determining whether a body corporate or partnership is a suitable person to hold an animal trader licence or dog breeder licence (category B), the Director may take into account all relevant factors, including—
  - (a) whether the body corporate or partnership has been convicted of an offence under the Ordinance or section 3 of the Prevention of Cruelty to Animals Ordinance (Cap. 169);
  - (b) whether any condition attached to a licence held, or previously held, by the body corporate or the partnership has been contravened; and
  - (c) whether any licence previously held by the body corporate or partnership has been cancelled.

- (3) In determining whether an individual is a suitable person to manage the operation of a body corporate or partnership permitted by a licence, the Director may take into account all relevant factors, including—
  - (a) whether the individual has been convicted of an offence under the Ordinance or section 3 of the Prevention of Cruelty to Animals Ordinance (Cap. 169);
  - (b) whether any condition attached to any of the following licences has been contravened—
    - (i) a licence held, or previously held, by the individual;
    - (ii) a licence held, or previously held, by a body corporate or partnership for which the individual is or was authorized by the body corporate or partnership to act as its representative; and
  - (c) whether any of the following licences has been cancelled—
    - (i) a licence previously held by the individual;
    - (ii) a licence previously held by a body corporate or partnership for which the individual was authorized by the body corporate or partnership to act as its representative.
- (4) If a licensee is a body corporate or partnership, the licensee may, with the approval of the Director, substitute another individual (*substitute individual*) for the individual who has been authorized by the licensee to act as its representative for the purpose of the licence.

- (5) The Director must not give approval under paragraph (4) unless the substitute individual satisfies the Director that the individual is a suitable person to manage the operation of a body corporate or partnership permitted by the licence.

**5G. Provision supplementary to regulations 5, 5B and 5C—cancellation**

- (1) The Director may cancel a licence if the Director considers that—
  - (a) in any case—the licensee is no longer a suitable person to hold the licence;
  - (b) if the licensee is a body corporate or partnership—the individual authorized by the licensee to act as its representative is no longer a suitable person to manage the operation of the body corporate or partnership permitted by the licence; or
  - (c) any condition attached to the licence has been contravened.
- (2) The Director must not cancel a licence without first giving the licensee an opportunity of being heard.

**5H. One-off permit to sell dog without licence**

- (1) This regulation does not apply in relation to a dog that is sold, or offered to be sold, under a licence.
- (2) A person must not sell, or offer to sell, a dog otherwise than under a one-off permit.

- (3) On application in the form specified by the Director and payment of the fee specified in the Schedule, the Director may grant a one-off permit in respect of a dog to any individual to sell, and offer to sell, the dog.
- (4) The Director may attach to a one-off permit any condition the Director thinks fit.
- (5) For this regulation, a one-off permit is used once the sale of the dog to which the permit relates is concluded.
- (6) A one-off permit that is not used ceases to be valid on the expiry of the 6-month period beginning on the date on which the permit is granted.
- (7) The Director must not grant a one-off permit to an individual in respect of a dog unless—
  - (a) the individual has attained the age of 18 years at the date of application for the permit; and
  - (b) the individual has kept the dog for 4 consecutive months as a licensed keeper immediately before the date of application.
- (8) The Director may grant a maximum of 2 one-off permits to an individual within a period of 4 years beginning on the date the first of the permits for the period is granted.
- (9) For paragraph (8), a fresh 4-year period begins on the date a one-off permit is granted after a preceding 4-year period expires.
- (10) The holder of a one-off permit may surrender the permit by returning it to the Director before it is used, whether or not it has ceased to be valid.

(11) For paragraphs (8) and (9), a one-off permit surrendered under paragraph (10) is not counted as a one-off permit.

(12) In this regulation—

*licensed keeper* (持牌飼養人) means a keeper as defined by section 2 of the Rabies Ordinance (Cap. 421) who has been granted a licence under section 19A(1) of the Rabies Regulation (Cap. 421 sub. leg. A).”.

**11. Regulation 9 amended (husbandry and sanitation)**

Regulation 9—

**Repeal**

“A licensed animal trader shall comply”

**Substitute**

“A licensee must comply”.

**12. Regulation 10 amended (certain animals and birds to be kept separate)**

Before regulation 10(1)—

**Add**

“(1A) This regulation applies only in relation to animals and birds kept under a licence.”.

**13. Regulation 13 amended (offences and penalties)**

(1) Regulation 13(1)—

**Repeal**

“4A, 11 or 12 shall be guilty of an offence and shall be liable on conviction to a fine at level 1”

**Substitute**

“4AA(1)(a), 4AAB, 4A, 5H(2), 11 or 12 commits an offence and is liable on conviction to a fine at level 6”.

- (2) Regulation 13(2)—

**Repeal**

“licensed animal trader”

**Substitute**

“licensee”.

- (3) Regulation 13(2)(a)—

**Repeal**

“specified in his”

**Substitute**

“attached to the”.

- (4) Regulation 13(2)(b)—

**Repeal**

everything after “4(1)(b),”

**Substitute**

“4AA(1)(b), 7, 9, 10 or 16(4),”.

- (5) Regulation 13(2)—

**Repeal**

“shall be guilty of an offence and shall be liable on conviction to a fine of 1,000 dollars”

**Substitute**

“commits an offence and is liable on conviction to a fine at level 5”.

- (6) After regulation 13(2)—

**Add**

“(3) The holder of a one-off permit who contravenes any condition attached to the permit commits an offence and is liable on conviction to a fine at level 5.”.

**14. Regulation 15 repealed (transitional arrangement for existing licence holders)**

Regulation 15—

**Repeal the regulation.**

**15. Regulation 16 and Schedule added**

At the end of the Regulations—

**Add**

**“16. Transitional arrangements for existing licensed animal traders**

- (1) An animal trader licence that is valid immediately before the commencement date remains valid subject to its terms until its expiry.
- (2) A person may act as a dog breeder at any premises on or after the commencement date if—
  - (a) the person is a licensed animal trader in respect of the premises, and the licence is valid immediately before the commencement date; and
  - (b) the person is permitted to keep female dogs for breeding purposes at the premises under that licence.
- (3) Paragraph (2) does not permit a person described in that paragraph to act as a dog breeder after the animal trader licence held by the person expires.

- (4) A person who immediately before the commencement date holds an animal trader licence, under which the person is permitted to sell dogs, in respect of a premises may until its expiry only sell, or offer to sell, dogs that are—
  - (a) kept at the premises immediately before the commencement date under the licence;
  - (b) legally imported on or after the commencement date;
  - (c) acquired on or after the commencement date—
    - (i) from a licensed animal trader;
    - (ii) from a dog breeder holding a licence; or
    - (iii) under a one-off permit; or
  - (d) for a person who acts as a dog breeder under paragraph (2)—bred at the premises.
- (5) In this regulation—

**commencement date** (生效日期) means the day on which the Public Health (Animals and Birds) (Animal Traders) (Amendment) Regulation 2016 comes into operation.

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## Schedule

[regs. 5, 5B, 5C & 5H]

### Fees

Column 1 Item	Column 2 Description	Column 3 Fee \$
1.	Grant of an animal trader licence under regulation 5(1).....	3,780
2.	Renewal of an animal trader licence under regulation 5(1).....	2,970
3.	Grant of a dog breeder licence (category A) under regulation 5B(1)....	1,350
4.	Renewal of a dog breeder licence (category A) under regulation 5B(1)....	805
5.	Grant of a dog breeder licence (category B) under regulation 5C(1)....	4,700
6.	Renewal of a dog breeder licence (category B) under regulation 5C(1)....	3,510
7.	Grant of a one-off permit under regulation 5H(3).....	225”.

## Part 3

### Consequential Amendment to Public Health (Animals and Birds) Regulations

**16. Public Health (Animals and Birds) Regulations amended**

The Public Health (Animals and Birds) Regulations (Cap. 139 sub. leg. A) are amended as set out in section 17.

**17. Regulation 9B amended (imported quails to be taken to specified premises)**

Regulation 9B—

**Repeal**

“(Animal Traders) Regulations (Cap. 139 sub. leg.)”

**Substitute**

“(Trading and Breeding) Regulations (Cap. 139 sub. leg. B)”.

Kinnie WONG  
Clerk to the Executive Council

COUNCIL CHAMBER

10 May 2016

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## Explanatory Note

The main object of this Regulation, which amends the Public Health (Animals and Birds) (Animal Traders) Regulations (Cap. 139 sub. leg. B) (*principal Regulations*), is to regulate the keeping and selling of dogs through a licensing arrangement.

2. Sections 3 and 4 respectively amend the title and the citation of the principal Regulations to better reflect the scope of the amended principal Regulations.
3. Section 5 amends regulation 2 of the principal Regulations to include new terms and redefine old terms. In particular, *animal trader* is redefined as excluding dog breeders, such that dog breeding activities and animal trading activities will require different types of licences. *Sell* is also defined such that its ambit includes to transfer, or agree to transfer, ownership of an animal or bird in consideration of entry by the transferee into another transaction.
4. Section 6 makes minor textual amendments to regulation 4 of the principal Regulations.
5. Section 7 adds regulations 4AA and 4AAB to the principal Regulations. The new regulation 4AA provides for the prohibition of breeding dogs at premises without a licence. The new regulation 4AAB stipulates that a dog breeder must not keep at any premises more female dogs for breeding purposes than the number specified for the premises in the licence.
6. Section 8 adds regulation 4B to the principal Regulations to prohibit the sale of dogs to persons under 16.

7. Section 9 amends regulation 5 of the principal Regulations to vary the powers of the Director of Agriculture, Fisheries and Conservation (*Director*) in relation to the conditions attached to a licence. Minor textual amendments are also made.
8. Section 10 adds regulations 5A to 5H to the principal Regulations. The new regulation 5A provides for the Director's discretion to exempt certain animal welfare organizations from holding animal trader licences. The new regulations 5B and 5C provide for the Director's powers in relation to the grant and renewal of dog breeder licence (category A) and dog breeder licence (category B) respectively. The new regulations 5D to 5G make provisions supplementary to regulations 5, 5B and 5C. The new regulation 5H prohibits the sale of dogs without a one-off permit by persons who are not licensees and provides for the Director's power to grant one-off permits to individuals. It also stipulates the number of permits that can be granted to an individual within a period of time.
9. Section 11 amends regulation 9 of the principal Regulations such that it applies to both licensed animal traders and dog breeders holding a licence.
10. Section 12 amends regulation 10 of the principal Regulations such that it applies only in relation to animals and birds kept under a licence.
11. Section 13 amends regulation 13 of the principal Regulations to provide for offences and penalties for newly added prohibitions.
12. Section 14 repeals regulation 15 of the principal Regulations which is spent.

13. Section 15 adds regulation 16 and the Schedule to the principal Regulations. The new regulation 16 provides for the transitional arrangements for existing licensed animal traders. The new Schedule lists the fees for the grant and renewal of animal trader licences and dog breeder licences, and the grant of one-off permits, under the amended principal Regulations.
14. Section 17 contains a consequential amendment to the Public Health (Animals and Birds) Regulations (Cap. 139 sub. leg. A).