

立法會

Legislative Council

LC Paper No. CB(2) 2378/00-01
(These minutes have been seen by
the Administration)

Ref : CB2/BC/11/00

Bills Committee on Fixed Penalty (Public Cleanliness Offences) Bill

Minutes of meeting
held on Tuesday, 3 April 2001 at 8:30 am
in Conference Room A of the Legislative Council Building

Members Present : Hon Fred LI Wah-ming, JP (Chairman)
Hon James TIEN Pei-chun, JP
Hon CHEUNG Man-kwong
Hon WONG Yung-kan
Hon Andrew CHENG Kar-foo
Dr Hon TANG Siu-tong, JP
Dr Hon LO Wing-lok
Hon WONG Sing-chi
Hon Audrey EU Yuet-mee, SC, JP

Members Absent : Hon LEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung

Public Officers Attending : Miss Eva TO
Principal Assistant Secretary for the Environment and Food (A) 3

Miss Sarah WU
Deputy Director of Food and Environmental Hygiene
(Environmental Hygiene)

Mr W H CHEUK
Assistant Director (Headquarters)
Food and Environmental Hygiene Department

Miss Fanny IP
Senior Assistant Laws Draftsman
Department of Justice

Clerk in Attendance : Mrs Constance LI
Chief Assistant Secretary (2)5

Staff in Attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Miss Betty MA
Senior Assistant Secretary (2)1

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I. Election of Chairman

Mr Fred LI was elected Chairman of the Bills Committee.

II. Meeting with the Administration

2. At the invitation of the Chairman, Principal Assistant Secretary for Environment and Food (PAS(EF)) briefed members on the proposal contained in the Fixed Penalty (Public Cleanliness Offences) Bill (the Bill). She said that the proposed fixed penalty system would cover three minor public cleanliness offences, namely depositing of litter in public areas or into the sea, spitting in public places, and unauthorised display of bills or posters. The proposed fixed penalty system was similar to that for minor traffic offences, and aimed at providing a simple and effective means to deal with minor public cleanliness offences. She said that the Administration proposed to fix the level of penalty for minor public cleanliness offences at \$600 having regard to the average fines imposed by the Court for littering and spitting offences.

3. PAS(EF) further said that the Administration proposed that certain grades of public officers in the Food and Environmental Hygiene Department (FEHD), Agriculture, Fisheries and Conservation Department, Marine Department (MD), Housing Department (HD), Leisure and Cultural Services Department and Environmental Protection Department (EFD) should be authorised to issue fixed penalty notices. As the main department responsible for enforcing the proposed fixed penalty system, FEHD would prepare a comprehensive training programme for the

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enforcement staff, covering gathering of evidence, dealing with confrontations, operational procedures, giving evidence in court, and conduct and discipline.

Scope of the fixed penalty system

Marine littering

4. Mr James TIEN expressed concern about difficulties in taking enforcement actions against dumping refuse into the sea, and sought clarification on the definition of "sea" for marine littering offences.

5. PAS(EF) said that marine littering would cover depositing litter into the waters of Hong Kong which included seafront promenades and public piers. PAS(EF) agreed that there might be difficulties in taking enforcement actions against marine littering. However, MD would, in addition to its daily patrol, step up enforcement actions at littering blackspots during Sundays and public holidays. MD would also increase publicity and educational efforts in this respect.

6. Mr James TIEN asked whether MD would adopt any new measures to cope with the increase of work in enforcing the proposed fixed penalty system. He suggested that MD could, for example, inspect returning ships and boats to check whether refuse was properly deposited in plastic bags or containers. PAS(EF) agreed to convey Mr TIEN's views to MD. She said that currently the number of marine littering offences was not on the high side, but she would further discuss with MD ways to combat marine littering.

7. Responding to the Chairman, Deputy Director of Food and Environmental Hygiene (Environmental Hygiene) (DD(EH)) said that although the evidence would be preserved for prosecution cases, this was not absolutely necessary for cases where fixed penalty notices were issued. At the request of the Chairman, PAS(EF) agreed to provide information on the number of prosecutions taken in respect of marine littering and the nature of such cases.

8. Mr CHEUNG Man-kwong asked whether there were differences between "marine littering" and "dumping refuse into the sea". It appeared to him that the former was liable to a fine of \$10,000 and to imprisonment for one year under section 4D of the Summary Offences Ordinance, but the latter would be subject to a fixed penalty of \$600 under the Bill.

9. PAS(EF) explained that the Bill did not create new offences for littering. She said that the purpose of the Bill was to enable a person who had committed certain minor offences relating to public cleanliness to discharge his liability to conviction by the payment of a fixed penalty. It did not affect the definition of marine littering under

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section 4D(1) of the Summary Offences Ordinance. MD officers could still prosecute offenders who dumped bulky refuse into the waters of Hong Kong.

Chemical waste

10. Mr CHEUNG Man-kwong expressed concern that there might be "grey areas" if a dual system was adopted for littering offences. He pointed out that under the Waste Disposal Ordinance, "waste" meant any substance or article which was abandoned and included animal waste, chemical waste, household waste, livestock waste, street waste and trade waste. As depositing chemical waste was a serious offence, he did not agree that it should be punishable by a fixed penalty of \$600. Mr CHEUNG opined that there should be different treatment for different types of littering offences, having regard to the seriousness of the offence instead of the size of the waste. Dr LO Wing-lok expressed similar concerns and enquired about the criteria for determining the severity of littering offences.

11. PAS(EF) said that EPD was the department responsible for enforcing the Waste Disposal Ordinance. The EPD officers would decide whether a fixed penalty notice or a summons should be issued after assessing the nature of the offence, the quantity of the waste and the location where the waste was deposited. She emphasised that the proposed fixed penalty system was targetted at minor public cleanliness offences, while unlawful disposal of bulky waste and waste which would pollute the environment would continue to be prosecuted by summons. PAS(EF) added that FEHD would prepare enforcement guidelines to ensure consistency in enforcement. As regards the handling of chemical waste, PAS(EF) agreed to convey Mr CHEUNG's concern to EPD and to consider deleting "chemical waste" from the definition of "waste" in the Waste Disposal Ordinance for the purpose of the proposed fixed penalty system.

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Dog fouling

12. Dr LO Wing-lok asked why dog fouling was not included in the Bill and requested the Administration to provide prosecution figures in respect of dog fouling. PAS(EF) replied that there were 86 and 46 convicted cases of dog fouling in 1999 and 2000 respectively. The average fine imposed by the Court was about \$1,000. Given that the number of cases involved was not substantial and the penalty imposed by the Court would provide more deterrent effect to dog owners, the Administration considered that there was no need to include dog fouling in the proposed fixed penalty system. PAS(EF) explained that the proposal was targetted at the most common public cleanliness offences which had caused much public nuisance, and which posed relatively less enforcement problems. She said that the list of offences in the Schedule 1 to the Bill could be amended or expanded at a later time as necessary.

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13. Dr LO commented that the Administration should, as a matter of policy, consider whether dog fouling should be included in the proposed fixed penalty system, as dog fouling was particularly serious in certain areas.

14. Mr Andrew CHENG expressed support for combating the problem of dog fouling by a fixed penalty system as this was simple and effective. He asked whether it was due to difficulties in gathering evidence in respect of dog fouling that the Administration decided to exclude dog fouling from the Bill. Mr CHENG strongly requested the Administration to give serious consideration to the suggestion.

15. The Chairman shared the views of Dr LO and Mr CHENG. He said that the Panel on Food Safety and Environmental Hygiene had strongly requested the Administration to include dog fouling in the proposed fixed penalty system when consulted on the legislative proposal in January 2001.

Admin 16. PAS(EF) agreed to consider members' suggestion and revert to the Bills Committee.

Level of fixed penalty

17. Mr Andrew CHENG said that although the fixed penalty should be set at a level sufficient to achieve the desired deterrent effect, it should not be higher than the average fines imposed by the Court for littering offences. He further said that in determining the level of fixed penalty, the Administration should strike a right balance between providing sufficient deterrence and imposing too heavy a fine. Noting that the respective average fines imposed by the Court for littering and spitting were \$468 and \$570, Mr CHENG considered it more appropriate to set the fixed penalty at \$500.

18. PAS(EF) said that the Administration had given careful consideration to the level of fixed penalty with regard to the average fines imposed by the Court in 1999 and 2000 -

<u>Year</u>	<u>Average fine for littering</u>	<u>Average fine for spitting</u>
1999	\$468	\$570
2000	\$502	\$680

PAS(EF) informed members that there had been an increase in the average fines imposed by the Court for littering and spitting offences, and that the average fine for unauthorised display of bills or posters was \$835 in 2000. She pointed out that for traffic offences, the offenders were also subject to the Driving Offence Points System in addition to the fixed penalty. Assistant Director of Food and Environmental Hygiene (Headquarters) (AD(HQ)) added that in 2000, almost half of the convicted cases of littering were awarded a fine above \$500.

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19. Mr Andrew CHENG said that, in 1998, the Steering Committee on Healthy Living of former Provisional Municipal Councils (PMCs) had recommended a two-tier system so that a heavier fine would be imposed on repeated offenders. He believed that a two-tier system would provide greater deterrence against littering offences. Noting that the Administration had rejected the proposal on grounds of administrative and operational problems, Mr CHENG enquired about the problems and the resources required for implementing a two-tier system.

20. PAS(EF) responded that the Administration had carefully considered the proposal of a two-tier system. However, the proposed system would give rise to administrative and operational problems, because it would be necessary to maintain and check the conviction records in order to issue notification letters to repeated offenders for additional fines. It would also defeat the purpose of having a simple and effective system to combat the problem of littering.

21. Dr LO Wing-lok expressed support for setting the level of fixed penalty at \$600, as this would convey a clear message to the public that littering would not be tolerated and would lead to punishment.

Enforcement of the fixed penalty system

Marine littering

22. Mr WONG Yung-kan said that there were often no refuse collection facilities near the fishing grounds. Moreover, construction waste was often carried by the tide to waters surrounding the fishing vessels. He was concerned that fishermen would easily be caught by the proposed fixed penalty system.

23. PAS(EF) clarified that owners of vessels would not be held responsible for the construction waste in the waters surrounding the vessels. She stressed that enforcement officers would issue fixed penalty notices for marine littering only when there was evidence that the offender deliberately threw the litter into the sea. She said that the Administration would step up publicity to promote cleanliness in the waters of Hong Kong. She would discuss with MD that refuse collection facilities and refuse bags should be provided for fishermen.

24. DD(EH) pointed out that under clause 3 of the Bill, an enforcement officer would give an offender a fixed penalty notice only when he/she had reason to believe that the person was committing or had committed a scheduled offence. The enforcement officer would need to have actually observed the committing of an offence, and he would not rely on any presumption in issuing fixed penalty notices. She said that there would be clear operational guidelines, and comprehensive training

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would be provided to all enforcement officers. Moreover, the offender would be informed of the offence he had committed, and he had the right to dispute liability.

Enforcement guidelines

25. Dr LO Wing-lok asked about the criteria to be adopted for determining the size of litter which warranted the issue of fixed penalty notices. PAS(EF) responded that the enforcement guidelines were being drawn up by FEHD in consultation with other enforcement departments. In addition to the size of litter, the enforcement officer would also need to consider whether the litter deposited would create a hazard or be harmful to the environment.

26. Mr WONG Sing-chi considered that there would be technical difficulties in collecting evidence to prove an offence of littering and this would give rise to disputes and misunderstanding. He expressed concern that there should be measures to safeguard the rights of members of the public, and that a person issued with a fixed penalty notice should be informed of his rights to dispute liability.

27. PAS(EF) responded that each enforcement officer would be issued a warrant card which gave the officer's name, department, post title, and his photo. It would be stipulated in the guidelines that an enforcement officer should inform the suspect the offence he had allegedly committed, and that he would be issued with a fixed penalty notice in respect of the offence. The enforcement officer would also explain to the suspect the purpose of collecting his personal data, the time allowed for settlement of the fixed penalty and his rights to dispute liability for the offence. PAS(EF) said that the procedures would be similar to that for minor traffic offences, and the Administration would widely publicise the proposed fixed penalty system before it came into effect.

28. DD(EH) added that since 1999, frontline officers had been reminded to strictly observe the enforcement guidelines, and that they had to caution any suspect for public cleanliness offences before issuing the summons. To ensure that the offenders were aware of their rights and procedures, the procedures for settlement of the fixed penalty and for disputing liability would also be included in the fixed penalty notice.

29. Mr WONG Sing-chi stressed that the Administration should take all necessary steps to ensure that enforcement officers complied with the guidelines to prevent injustice to persons who were accused of committing minor public cleanliness offences.

30. The Chairman shared Mr WONG's concern and stressed the importance of devising consistent enforcement standards for the six departments concerned.

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31. DD(EH) assured members that FEHD would be responsible for drawing up the enforcement guidelines for all enforcement officers in different departments to follow. A comprehensive training programme would also be provided to the enforcement staff on the procedures for issuing fixed penalty notices.

32. Dr TANG Siu-tong asked whether there would be on-going training for enforcement staff to ensure that all new-comers were familiar with the enforcement guidelines. Dr TANG also asked about the arrest procedures and whether government departments or public officers performing official duties would be exempted from the fixed penalty system.

33. DD(EH) made the following responses -

- (a) Training programmes would be provided to newcomers, and refresher courses would be organised from time to time.
- (b) Clause 4(3) in the Bill empowered an authorised public officer to arrest a person if the latter, without reasonable excuse, failed to comply with the request to produce proof of identity for inspection. The person would be taken to the nearest police station or given to the custody of a police officer.
- (c) There was no exemption provision in the Bill. Any person, irrespective of whether he was a public officer or not, would be liable to the fixed penalty if there was evidence that he had committed a minor public cleanliness offence as listed in Schedule 1 to the Bill. Complaints would be investigated and prosecutions had previously been taken against government departments for public cleanliness offences.

34. Mr Andrew CHENG requested that the Administration should provide the draft operational guidelines for scrutiny by the Bills Committee. Mr WONG Sing-chi asked how the Administration could ensure consistency in the enforcement standards of the six enforcement departments. He considered it most important to designate a department to coordinate the implementation of the proposed fixed penalty system and evaluate its effectiveness.

35. DD(EH) responded that the effectiveness of the proposed fixed penalty system would to a large extent depend on the enforcement capability of the departments concerned. To ensure that all enforcement officers from the six departments concerned would adopt a consistent enforcement standard, FEHD would assume the coordinating role in drawing up a set of operational guidelines and in organising the training. The respective responsibilities of the six enforcement departments would be clearly specified in the guidelines. In addition to the internal monitoring within the six

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enforcement departments, FEHD would also hold regular meetings with the other departments to resolve any problems encountered in implementation.

36. PAS(EF) responded that a working group comprising representatives of the six departments concerned had been set up to work on the enforcement standards and procedures. Presently, the working group was making progress on the following three areas -

- (a) Setting up a centralised computer system to keep data in respect of the issue of fixed penalty notices - FEHD would be responsible for the day-to-day management of the computer system.
- (b) FEHD to invite other enforcement departments to send officers to join the "Train the trainer programme" and the trainers would be responsible to train the enforcement officers in their departments.
- (c) FEHD to draw up the departmental guidelines in consultation with other enforcement departments.

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To facilitate members' understanding of the operational procedures, the Administration agreed to provide a draft flow chart on the processing of fixed penalty notices. The draft guidelines would be provided to members for information when they were ready.

Public officers empowered to issue fixed penalty notices

37. Mr Andrew CHENG said that the Police, in particular the Marine Police, should also participate in the proposed fixed penalty system, in order to further enhance the deterrent effect against littering and spitting.

38. PAS(EF) said that the Police had been consulted on its participation in the proposed fixed penalty system. The Police had advised that their broad strategy had been to concentrate on core areas of responsibility such as combating crime. The Police was of the view that over ten thousand government officers from the six departments would create a highly effective enforcement unit, which would be adequate to carry on the campaign against littering.

39. Mr Andrew CHENG said that the Administration might need to assess the enforcement capabilities of the six enforcement departments in different areas of Hong Kong. He considered that the Police, including the Marine Police, could provide consistent enforcement across the territory and should be requested to participate in enforcing the fixed penalty system.

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40. PAS(EF) said that although the Police would not issue fixed penalty notices for littering, they would provide the greatest possible support to those enforcement officers requesting police assistance in situations where there was a possibility of criminal activity or the potential for disorder. However, in view of members' concerns, PAS(EF) agreed to further discuss with the Police and revert to the Bills Committee.

41. The Chairman expressed concern about the enforcement of the fixed penalty system in those public housing estates where the management had been contracted out to property service companies. PAS(EF) replied that HD held the view that for the sake of the quality and credibility of the enforcement team, it was not appropriate to authorise non-public officers to enforce the proposed fixed penalty system. She said for those estates where the management had been contracted out, they would be managed in the same way as other private buildings, i.e. with the support of owners' corporations.

42. The Chairman pointed out that private parking management companies were authorised to issue penalty tickets for illegal parking in public housing estates. He said that public housing estates remained to be Government property although the management had been contracted out. He was worried that as HD did not maintain offices in those estates where the management had been contracted out, HD would not enforce the fixed penalty system in these estates. Mr WONG Sing-chi expressed similar concerns.

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43. DD(EH) said that there were almost 2 000 officers in the Housing Officer and Housing Manager grades in HD and they would be authorised to enforce the fixed penalty system. HD would suitably deploy these staff for the enforcement work, e.g. by setting up task forces to tackle the most problematic areas. FEHD would further work out the enforcement details with HD. She agreed to provide a written response.

Unauthorised display of bills and posters

44. The Chairman sought clarification about the enforcement actions taken against unauthorised display of bills or posters in public places. He asked whether a fixed penalty notice would be issued to the person who actually displayed the bills or posters without permission, or to the beneficiaries of the display of such bills or posters.

45. PAS(EF) advised that under the Public Health and Municipal Services Ordinance, the relevant authority might institute prosecution against the person who displayed the bills or posters without legal authority or permission, and/or the beneficiaries of such bills or posters. In response to the Chairman, AD(HQ) explained that a fixed penalty notice would normally be issued to a person who was caught red-

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handed in displaying the bills or posters, but FEHD also prosecuted beneficiaries if there was sufficient evidence.

III. Date of next meeting

46. Members agreed to hold the next meeting on 26 April 2001 at 8:30 am.
47. There being no other business, the meeting ended at 10:30 am.

Legislative Council Secretariat

5 October 2001