

立法會
Legislative Council

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the Administration)

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**Bills Committee on
Fixed Penalty (Public Cleanliness Offences) Bill**

**Minutes of meeting
held on Thursday, 26 April 2001 at 8:30 am
in the Chamber of the Legislative Council Building**

- Members Present** : Hon Fred LI Wah-ming, JP (Chairman)
Hon James TIEN Pei-chun, JP
Hon WONG Yung-kan
Hon Andrew CHENG Kar-foo
Dr Hon TANG Siu-tong, JP
Hon Michael MAK Kwok-fung
Hon WONG Sing-chi
Hon Audrey EU Yuet-mee, SC, JP
- Members Absent** : Hon CHEUNG Man-kwong
Hon LEUNG Yiu-chung
Hon Emily LAU Wai-hing, JP
Hon Tommy CHEUNG Yu-yan, JP
Dr Hon LO Wing-lok
- 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 (HQs)
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 : Miss Connie FUNG
Assistant Legal Adviser 3

Miss Betty MA
Senior Assistant Secretary (2)1

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I. The Administration's response to issues raised at the last meeting on 3 April 2001
[LC Paper No. CB(2) 1385/00-01(01)]

At the invitation of the Chairman, Principal Assistant Secretary for the Environment and Food (PAS(EF)) took members through the Administration's response to the issues raised at the meeting on 3 April 2001 [LC Paper No. CB(2)1385/00-01(01)]. The Administration's responses were summarised below -

- (a) The prosecutions taken by the Marine Department (MD) against marine littering offenders in 1999 and 2000 were 131 and 113 respectively. All the cases involved depositing of small-size litter.
- (b) MD would, in addition to daily patrol, set up a task force to take enforcement actions in major littering blackspots after office hours, on Sundays and public holidays. In addition, the Marine Police had agreed to take joint operations with MD to prosecute marine littering offenders within the waters of Hong Kong.
- (c) In view of the more serious nature of depositing chemical waste, such offences would continue to be prosecuted under the normal summary procedures. To assist enforcement staff in taking prosecution actions, the Administration would suitably incorporate this point into the operation manual and guidelines. The Administration saw no need to amend the definition of waste in the Waste Disposal Ordinance.

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- (d) The Administration agreed to move a Committee Stage amendment to the Bill to include the offence of dog fouling in the list of scheduled offences.
- (e) As the Administration was still working out the details of the enforcement guidelines, only a draft flow chart on the processing of fixed penalty notice was provided for members' information.
- (f) The six enforcement departments would be responsible for enforcing the scheduled offences in areas under their jurisdictions. The Food and Environmental Hygiene Department (FEHD) would take up the co-ordinating role for the implementation of the proposed fixed penalty system and would evaluate its effectiveness from time to time.
- (g) The Housing Department (HD) would only take enforcement actions against littering and public cleanliness offences in those public housing estates where it had the ultimate management responsibility. HD would exercise flexible deployment of the authorised officers to carry out enforcement in those estates. For estates where the actual management works had been contracted out to property service companies, the responsibility for ensuring cleanliness would be vested with these companies. As for those estates where HD no longer had the ultimate management responsibility, e.g. the Home Ownership Scheme estates where Owners' Corporations had been formed, HD would not take enforcement action in these estates. HD would enlist the assistance of other departments, if necessary, in taking enforcement actions in public areas (e.g. public roads) within these estates.

2. The Chairman and Mr Andrew CHENG welcomed the Administration's decision to include dog fouling as a scheduled offence under the Bill.

Proposed flowchart for processing fixed penalty notices

3. Assistant Director of Food and Environmental Hygiene (Headquarters) (AD(HQ)) referred members to the Annex to the paper and explained the proposed flowchart for processing fixed penalty notices. He said that the procedures were briefly as follows -

- (a) When an authorised public officer was convinced that a person was committing or had committed any of the scheduled offences, the officer would fill out a fixed penalty notice in triplicate. One would be served to offender on the spot, the second copy passed to the Prosecution Section of the issuing department for processing and recording, and the

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third copy kept by the action officer for record and audit purpose. The Authority might at any time withdraw the notice before the commencement of proceedings, if it was considered more appropriate to serve a summons for the offence, or there was insufficient evidence to issue a fixed penalty notice. Any sum paid would be refunded to the person if the notice was withdrawn.

- (b) The Prosecution Section of the department which issued a fixed penalty notice would input the offence information into the fixed penalty computer system for record, monitoring payment and preparation of statistical reports. If the offender failed to pay within 21 days, the computer would generate a demand note. The offender would then be required to pay the penalty within 10 days or to notify the Authority of his/her intent to dispute the liability. If the offender paid within 21 days, the procedure would end.
- (c) If the offender still did not pay the fixed penalty and made no indication that he would dispute liability within 10 days after the issue of demand note, the department which issued the fixed penalty notice would apply to the magistrate for an ex parte order, requiring the offender to pay within 14 days to the court the fixed penalty and an additional penalty equal to the amount of the fixed penalty. If no payment was received within one month from the date of the ex parte order, the department might apply to the magistrate for an order to recover the penalty by distress and sale of any goods and chattels of the person.
- (d) If the offender disputed liability within 10 days after receiving the demand note, the department would apply to the court for the issue of summons through the CASEMAN system. A court hearing would then be arranged. If the offender paid the penalty two days before the court hearing, he would have to pay double of the amount of fixed penalty plus \$500 by way of costs.

4. Noting that the Authority might at any time withdraw the fixed penalty notice before the commencement of any proceedings, Mr Andrew CHENG asked about the criteria or guidelines for making such decisions.

5. PAS(EF) advised that under the present summons procedures, the summons (Form 1A) could also be withdrawn. She explained that under the proposed fixed penalty system, the relevant enforcement department would review each case to ascertain that there was sufficient evidence to support the issue of a fixed penalty notice. The department would have discretion to withdraw such a notice, for example, if a trivial offence was committed by a minor offender. On the other hand, the

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department might decide to institute prosecution by summons in respect of the more serious littering offences. Deputy Director of Food and Environmental Hygiene (Environmental Hygiene) (DD(EH)) added that certain offences under the Waste Disposal Ordinance might warrant prosecution instead of the issue of fixed penalty notices.

6. Mr Andrew CHENG questioned why there were different amounts of penalty for non-payment of the fixed penalty within the specified periods under Parts IV and V of the flowchart. According to Part IV of the flowchart, if an offender had made an indication to dispute liability but subsequently settled the payment two days before the court hearing, he would have to pay double of the amount of the fixed penalty plus \$500 by way of costs. However, if an offender did not pay the fixed penalty until after receiving a court order for non-payment, he would be required to pay the fixed penalty plus an additional penalty, but not the costs for issuing the court order.

7. PAS(EF) said that the additional penalty proposed under Part V was to provide deterrence against late payment or non-payment. As regards the payment of costs under Part IV, she explained that after the offender had indicated his wish to dispute liability, the enforcement department and the court had to make preparations for the court proceedings. Hence, even though the offender decided to withdraw before the commencement of proceedings, it would be necessary to recover the administrative costs for preparation of court proceedings. PAS(EF) added that the proposed penalties were in line with that for non-payment of penalties for minor traffic offences.

8. Ms Audrey EU asked whether Mr Andrew CHENG's concern could be addressed by clause 11 of the Bill as it provided for the imposition of an additional penalty where the person liable offered no defence or one which was frivolous or vexatious.

9. Senior Assistant Laws Draftsman (SALD) advised that the Bill had provided for heavier penalty for non-payment in different circumstances. For instance, a person was liable to pay a double penalty plus a fixed amount of \$500 by way of costs if he had indicated his wish to dispute liability but decided to withdraw before commencement of proceedings. As for a person who failed to make payment within the specified period and had not indicated his wish to dispute liability, a double penalty would be imposed if he still failed to pay, the authority could apply for an order for distress to recover the double penalty plus costs of the application for the distress order.

10. Mr Andrew CHENG pointed out that clause 11 was applicable to circumstances described in Part IV only, i.e. the magistrate should impose an additional penalty plus costs for proceedings on dispute of liability. However, if an offender simply ignored the fixed penalty notice and failed to pay the penalty within the specified period, the

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enforcement department could apply for a court order in accordance with Part V of the proposed flowchart to recover the outstanding payment; clause 7 of the Bill was applicable to such a situation. However, there was no provision in clause 7 that the offender could be asked to pay costs for the issue of court order. Mr CHENG said that as a fixed penalty notice was issued to an offender on the spot, the offender should have no excuse of not knowing that the fixed penalty was due for payment. Since an application for a court order created extra work for the court, Mr CHENG was of the view that a person who ignored a fixed penalty notice and the demand note should be required to pay double penalty as well as the costs for the issue of court order.

11. PAS(EF) explained that if an offender failed to pay the fixed penalty within the specified period and made no indication to dispute liability, a court order would be issued requiring him to pay double penalty to the court within 14 days. If no payment was received within one month from the date of serving an ex parte court order, the enforcement department might apply to the magistrate for an order to recover the penalty by distress and sale of any goods and chattels of the person. However, the Administration had not compared the administrative costs for a court order for distress in case of default with one to hear dispute of liability. PAS(EF) added that the Administration had given due consideration to the deterrence against non-payment. The Administration had made reference to the Road Traffic Ordinance and proposed to allow a magistrate to impose imprisonment on a person for non-payment, as neglect of a court order would constitute contempt of court. The Director of Prosecution raised no objection to the proposal. In view of members' concern about non-payment of fixed penalty, PAS(EF) said that the Administration might pursue the proposal.

12. Mr Andrew CHENG expressed support for providing greater deterrence against non-payment. The Chairman suggested that Part V of the flowchart should include the requirement that offenders would be required to pay the costs for the court order in addition to the double amount of fixed penalty. PAS(EF) agreed to consider.

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13. Ms Audrey EU sought clarification on the proceedings for the recovery of fixed penalty as provided in the Bill, particularly those requiring court hearings. SALD said that clause 7 provided that an application might be made in the name of the Secretary for Justice to the magistrate for an order to recover the fixed penalty, if the person had not paid the fixed penalty after the issue of a demand notice, and had not indicated his wish to dispute liability. The person would be required to pay the fixed penalty plus additional penalty equal to the amount of fixed penalty within 14 days. Clause 13 provided for the issue of a court order for distress in case of default of payment. If a person wished to dispute liability, clause 10 would apply. Assistant Legal Adviser 3 (ALA3) added that the service of summons under clause 10 was not applicable to a person who ignored the fixed penalty notice and made no indication to dispute liability.

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14. Referring to Part II of the flowchart, Ms Audrey EU noted that if an offender did not pay the fixed penalty within 21 days, a demand note would be issued. If the offender settled the demand note within 10 days, no additional penalty would be imposed. Ms EU was of the view that if the fixed penalty was not paid within 21 days and that the offender had not indicated his wish to dispute liability, additional penalty should be imposed on the offender when the demand note was issued. Ms EU also asked whether an offender who could not afford to pay the fixed penalty could seek a review on compassionate grounds within the 21-day period.

15. PAS(EF) said that the procedures for the issue of a demand note was modelled on the procedures for non-payment of fixed penalty in respect of minor traffic offences. She undertook to consider Ms EU's suggestion of additional penalty for non-payment within the initial period of 21 days. As regards the suggestion for a review procedure to waive or reduce the fixed penalty on compassionate grounds, PAS(EF) said that it would create a loophole in the legislation. She advised that if an offender could not afford to pay the fixed penalty, he might inform the enforcement department that he wished to bring his case to the court which would decide whether his pledge was justified.

16. Ms Audrey EU suggested that the Administration might consider including in the guidelines that enforcement officers should inform offenders that they could pledge before the court if they could not afford, or if they wanted more time, to pay the penalty. Ms EU pointed out that according to clause 7 as presently drafted, an offender would be required by court order to pay double the amount of fixed penalty if he did not pay the fixed penalty after the issue of a demand note and did not dispute liability. The Chairman requested the Administration to consider how to address these concerns. PAS(EF) agreed to consider and revert to the Bills Committee.

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Public officers empowered to issue fixed penalty notices

17. Mr Andrew CHENG expressed concern about the enforcement in those public housing estates where the management had been contracted out. He asked what assistance HD would render to the owners' corporations in these housing estates.

18. PAS(EF) said that as a matter of principle, HD would only take enforcement actions against public cleanliness offences in those public housing estates where it had the ultimate management responsibility. However, HD had set up mobile task force in eight regional districts and these could be deployed to take enforcement actions in these estates, with the support of the property services companies, as and when necessary. HD would also carry out joint operations with other departments at littering blackspots in and around public housing estates. PAS(EF) stressed that enforcement actions were only part of the overall efforts to maintain cleanliness in public housing estates.

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19. Mr WONG Yung-kan also expressed concern that there would be problems in enforcing the proposed fixed penalty system in public housing estates which were managed by the property service companies. He suggested that the Administration should consider specifying in the contract signed with these companies that they should assume the overall responsibility for ensuring cleanliness in the estates concerned.

20. Mr MAK Kwok-fung was of the view that HD staff should be more proactive in taking enforcement actions against littering and public cleanliness offences in public housing estates. He expressed reservation about the arrangement that HD would only assist the property service companies in taking enforcement actions on a need basis.

21. The Chairman said that the Administration's paper did not appear to have provided a solution to the enforcement problems in those public housing estates where the management work had been contracted out. He was worried that HD did not have sufficient enforcement capability since only a few grades in HD, namely, the Housing Manager, Assistant Housing Manager and Housing Officer, would be empowered to issue fixed penalty notices. He had doubts that these HD staff would take enforcement actions in those estates where the management work had been contracted out, since their offices were no longer located within these estates. To strengthen the enforcement capability of HD, the Chairman suggested that other grades in HD, such as the Estate Caretakers, should also be empowered to assist in the enforcement, or the authority should be delegated to the property service companies, where appropriate.

22. DD(EH) responded that FEHD had further discussed with HD and was advised that there were more than 2 500 officers in the Housing Manager/Housing Officer grades. HD would formulate enforcement strategies and ensure that appropriate manpower would be deployed to enforce the fixed penalty system in public housing estates.

23. Noting that the Marine Police had agreed to take joint operations with MD against marine littering, Mr Andrew CHENG asked whether amendment would be proposed to the Bill to add the Marine Police to the list of authorised public officers. PAS(EF) said that the Marine Police would be added to Schedule 2 to the Bill.

24. Mr WONG Yung-kan noted from the Administration's paper that special enforcement operations would be arranged in various typhoon shelters during the fish moratorium period in June and July. He requested the Administration to step up publicity to alert the fishermen of the special enforcement operations. PAS(EF) advised that MD had already planned to launch publicity on the introduction of fixed penalty system this summer.

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25. Ms Audrey EU enquired how the enforcement officers would exercise their power of arrest as provided under the Bill. She also asked about the criteria and circumstances for invoking clauses 4(2) and 15, since the levels of penalty for offences under these clauses were different.

26. DD(EH) replied that if the offender did not cooperate in providing proof of identity for inspection, clause 4(2) would apply. Clause 15 would be invoked only in very uncommon circumstances where the offender physically resisted or wilfully obstructed a public officer exercising his power under the Bill. DD(EH) stressed that the enforcement officer would normally seek Police assistance in situations where there was a possibility of criminal activity or the potential for disorder. She assured members that the enforcement departments would adopt consistent enforcement standards, and illustrative examples would be provided in the operation guidelines regarding the application of these clauses.

27. The Chairman asked whether the Police would also take part in the fixed penalty system, since the Marine Police had already agreed to assist in the enforcement of the proposed fixed penalty system.

28. PAS(EF) said that currently police officers were already empowered to issue summons for littering offences. While the Police would accord priority to its core areas of responsibility, it would provide support to enforcement departments requesting Police assistance in issuing fixed penalty notices. As for the participation of the Marine Police in the proposed fixed penalty system, PAS(EF) said that the Marine Police had been taking joint operations with MD to prosecute marine littering offenders within the waters of Hong Kong. The participation in the proposed fixed penalty system did not create new responsibility for the Marine Police.

29. Mr James TIEN said that while he supported the fixed penalty system in principle, he had reservations about the enforcement arrangements. He expressed concern that it might cause confusion to the public, given that there would be six different departments enforcing the system within their own jurisdictions, and that many of these public officers were not in uniform. Mr James TIEN was of the view that the Police, being a highly disciplined and credible enforcement agency, should be empowered to issue fixed penalty notices for minor public cleanliness offences on a territory-wide basis. Mr Andrew CHENG expressed support. PAS(EF) undertook to further discuss members' suggestion with the Police.

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30. Mr WONG Sing-chi pointed out that the Bill did not spell out the respective jurisdictions of the enforcement departments.

31. PAS(EF) explained that the Bill did not create new offences in relation to littering and public cleanliness. The jurisdictions of the six enforcement departments

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had been provided for in the source legislation, namely, the Public Health and Municipal Services Ordinance (Cap.132), Public Cleansing and Prevention of Nuisances Regulation under Cap. 132, Country Parks and Special Areas Regulations, Summary Offences Ordinance and Waste Disposal Ordinance. Although the legislation did not specify the geographical boundaries of these departments, the authorised public officers would not take enforcement actions in areas which were outside the jurisdiction of their own departments.

32. Mr Andrew CHENG expressed concern that there might be "grey areas" which did not fall within the responsibility of any of these departments.

33. ALA3 advised that in relation to some of the scheduled offences under the Bill, for example, offences under the Country Parks and Special Areas Regulations and the offence of marine littering, the enforcement departments and officers were clearly provided in the relevant source legislation. She pointed out, however, that the position appeared to be less clear in the Public Cleansing and Prevention of Nuisances Regulation under Cap. 132. The Regulation empowered the Director of Food and Environmental Hygiene and his authorised officers to take enforcement actions against littering and spitting in public places but it was not clear as to whether public officers in other departments, such as HD, were authorised to take enforcement actions against littering and spitting offences in public places. According to the Bill as currently drafted, it would appear that HD officers could take enforcement against littering and spitting offences in any public places which were not necessarily within their jurisdictions. If the policy intent was that the public officers set out in Schedule 2 to the Bill should take enforcement action within their jurisdictions only, this intent should be reflected clearly in the Bill. ALA3 said that the Administration might consider spelling out its policy intent by specifying the jurisdiction of the authorised public officers in their warrants.

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34. PAS(EF) said that she did not envisage practical difficulties concerning the jurisdictions of enforcement departments as these were clear to the enforcement officers and the public. However, she agreed to consider whether the drafting of the Bill could be improved to make it clear that the six enforcement departments would act within their own jurisdictions.

35. Mr WONG Sing-chi asked whether enforcement actions would be taken by public officers when they were off-duty.

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36. DD(EH) said that it was not the legislative intent that the authorised public officers should take enforcement actions when they were off-duty. She said that this concern would be followed up by the inter-departmental working group.

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Verification of identity and address

37. Ms Audrey EU expressed concern about the procedure for verification of an offender's address, as the accuracy of address was important for tracing the alleged offender if he failed to pay the fixed penalty. She said that failure to pay the penalty within the specified period, irrespective of whether the offender had received the demand note, could lead to additional penalty under the Bill.

38. Mr WONG Sing-chi shared Ms EU's concern. Mr WONG said that while it was basically the onus of the offender to provide accurate address, there should be a simple process to verify the information provided. He pointed out that in the case of minor traffic offences, the addresses of vehicle owners could be verified against the records of the Transport Department. He suggested that the Administration should consider providing a procedure for verification of an offender's address in the legislation or in the enforcement guidelines.

39. PAS(EF) agreed that to ensure effective enforcement, it was necessary for the enforcement departments to obtain the correct address of the offender. PAS(EF) said that as the enforcement departments would not normally have access to the personal information of members of the public, the enforcement officers would be required to take steps to verify the identity and address of the offender on the spot. As regards non-delivery of demand notes, PAS(EF) advised that clause 9 provided for a review of proceedings where the magistrate was satisfied that the subsequent notice had not come to the personal notice of the person without any neglect by that person. An application for review could be made for an alleged offender at any time.

40. DD(EH) supplemented that the alleged offender might be requested to provide his/her telephone number to assist in the verification of address. She said that the Administration would be cautious in this regard in order not to cause unnecessary inconvenience to the alleged offenders.

41. PAS(EF) said that the Administration would further examine the matter and provide a written response.

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II. Any other business

42. Members agreed to hold the next meeting on 15 May 2001 at 2:30 pm.

43. There being no other business, the meeting ended at 10:35 am.

Legislative Council Secretariat
5 October 2001