

立法會
Legislative Council

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

**Minutes of meeting
held on Tuesday, 15 May 2001 at 2:30 pm
in Conference Room B 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 Tommy CHEUNG Yu-yan, JP
Hon WONG Sing-chi
Hon Audrey EU Yuet-mee, SC, JP
- Members Absent** : Hon CHEUNG Man-kwong
Hon Michael MAK Kwok-fung
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

Ms Francis HUI
Senior Government Counsel
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 26 April 2001
[LC Paper No. CB(2) 1529/00-01(01)]

At the invitation of the Chairman, Principal Assistant Secretary for Environment and Food (PAS(EF)) took members through the Administration's response to the issues raised by the Bills Committee at the meeting on 26 April 2001 [LC Paper No. CB(2) 1529/00-01(01)] -

- (a) The Administration generally agreed that a heavier fine should be imposed on late payment. It would consult the Prosecution Division of the Department of Justice on whether an additional penalty should be imposed for non-payment of the fixed penalties after the initial 21 days, and for the distress process under clause 13. Concrete proposals would be provided to the Bills Committee at the next meeting.
- (b) The Administration did not consider it desirable to allow for waiver or deduction of penalty on compassionate grounds within the 21-day period, as it would go against the spirit of having a fixed penalty system, i.e. providing a simple and effective means to combat littering. The proposal would also give the enforcement departments too much discretionary power that might be opened to abuse or corruption.

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- (c) As regards the verification of the offender's address, the Administration had proposed administrative and legislative measures for obtaining and verifying an offender's address, as detailed in paragraph 1(c) of the Administration's paper.
- (d) The jurisdiction of the enforcement departments had been provided in the source legislation. In addition, each department by its set-up already had a clear boundary and jurisdiction of its own. There was no need to further elaborate in the Bill the respective jurisdictions of the departments in respect of the scheduled offences. Nevertheless, the Administration would spell out clearly the respective jurisdictions of the enforcement departments in the operation guidelines.
- (e) The Administration advised that only officers on duty would take enforcement action against littering offences. There was no question of off-duty officers taking enforcement actions as and when they liked. Most enforcement departments had arrangements for their staff to work on a shift system or to work irregular hours so that enforcement action could be taken by officers on duty during non-office hours.
- (f) The Administration was still liaising with the Police on its participation in enforcing the proposed fixed penalty system and would revert to the Bills Committee later.
- (g) Regarding the proposal to empower other public officers in the Housing Department (HD) to take enforcement actions in public housing estates, HD had advised that it was desirable to have the same grades of officers empowered to issue the proposed fixed penalty notices and the existing Form 1As, for the sake of consistency and ensuring the quality and credibility of the enforcement team. HD would review the effectiveness of the arrangement after a period of implementation.

2. Referring to the draft Committee Stage amendments (CSAs) to include the offence of dog fouling in Schedule 1, PAS(EF) said that the Director of Agriculture, Fisheries and Conservation (DAFC) was omitted from the list of Authorities in Schedule 2. DAFC would be included in the revised CSAs.

Operation guidelines

3. The Chairman said that the operation guidelines were important and asked when the draft would be available for consideration by the Bills Committee. Deputy Director of Food and Environmental Hygiene (Environmental Hygiene) (DD(EH)) said that the

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Admin operation guidelines were under preparation and the preliminary draft would be ready in a few weeks' time. PAS(EF) added that the relevant parts addressing members' concerns would be provided to members in the first instance. The Chairman agreed.

Off-duty officers

4. Noting that off-duty officers would not take enforcement action against littering offences, Dr TANG Siu-tong asked how a member of the public could know whether a public officer, especially if he was not required to wear uniform, was on duty. PAS(EF) responded that most of the authorised public officers were uniformed staff. Besides, they would carry their Departmental Warrant Card for identification while on duty.

5. To avoid abuse of power, Dr TANG Siu-tong further asked how the identity of non-uniformed enforcement officers could be verified. PAS(EF) said that the Administration would spell out clearly in the operation guidelines that only officers on duty would take enforcement action against littering offences. If any person had doubts on the enforcement officer's identity, he/she could request to have the telephone number of the officer's supervisor for verification. PAS(EF) further said that clause 6 of the Bill provided that the fixed penalty notice or the subsequent notice might be withdrawn by the enforcement departments if the fixed penalty notice was wrongfully issued. PAS(EF) reiterated that as most enforcement departments had arrangements for their staff to work on a shift system or to work irregular hours for operational need, there was no question of no enforcement being taken during non-office hours.

Late payment

6. Mr Andrew CHENG welcomed the Administration's decision to impose a heavier fine on late payment. However, Mr CHENG reserved his position about the proposal to allow an additional channel for the court to impose imprisonment for non-payment of fixed penalty. He would prefer increasing the amount of the penalty instead.

7. PAS(EF) responded that according to the experience of the Judiciary, the process of distress was an inefficient, time-consuming, costly and painstaking way of recovering payment. She said that the proposal of imprisonment was put forward for members' consideration as there were similar provisions for traffic offences. If members expressed support for the proposal, the Administration would further consult the Department of Justice and revert to the Bills Committee later.

8. Mr Andrew CHENG noted that the Administration had given careful consideration to the various options to ensure adequate deterrence against late payment or default of payment. However, he had to consider the proposal of imprisonment

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carefully although he might not necessarily object to the proposal. He pointed out that in the case of non-payment of fixed penalties for traffic contravention, the offender would be served with a summons, and the decision for imposing an imprisonment term on an offender would only be made for contempt of court. Mr Tommy CHEUNG also expressed reservations about the proposal to impose imprisonment for non-payment of fixed penalty.

9. Mr WONG Yung-kan asked whether absence from Hong Kong would be a defence for late payment or failure to indicate one's wish to dispute liability within the initial 21-day period. He asked whether there were any arrangements for visitors who left Hong Kong after receiving a fixed penalty notice.

10. PAS(EF) said that it was the offender's responsibility to pay the fixed penalty within the specified period upon receipt of a fixed penalty notice. The offender should make arrangements for the payment if he had to leave Hong Kong during the period. As for visitors, PAS(EF) said that the same enforcement procedures would apply. However, she agreed that there were constraints in recovering the payment after the visitors had left Hong Kong. She hoped that members would appreciate that there were limitations in legislation and it would not be cost-effective to take further action outside Hong Kong to recover the payment.

Verification of address

11. Mr Andrew CHENG agreed in general with the proposed administrative and legislative measures for obtaining and verifying the address of the offender. However, he had reservations about making the supply of false/wrong address an offence under the Bill. Mr CHENG considered that this would give rise to abuses and there was also problem of proving the intent of supplying wrong addresses.

12. Mr Tommy CHEUNG, Mr WONG Yung-kan and Mr WONG Sing-chi also expressed reservation about the proposal of making the supply of a false address an offence under the Bill. They considered that the false address might be supplied unintentionally. Mr Tommy CHEUNG also expressed doubt on the need to verify the address by telephone.

13. Assistant Director (Headquarters) of Food and Environmental Hygiene (AD(HQ)) explained that an offender would be prosecuted for providing a false address only if he was proved to have acted intentionally. The benefit of doubt would go to the defendant in any case. AD(HQ) further said that members would need to consider whether it was necessary to provide deterrence against deliberate provision of false information. He said that to avoid abuses, the verification procedures would be detailed in the operation guidelines and all such cases would as far as practicable be reviewed by a directorate officer in the enforcement department. PAS(EF) added that

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the accuracy of address was important to avoid wasting resources to trace an alleged offender if he failed to pay the fixed penalty. She assured members that the Administration would need to prove that an alleged offender provided a false address intentionally, before taking prosecution actions.

14. Mr Andrew CHENG suggested that an offender could be required to make a declaration that the information he provided was true and accurate, so that he would be held legally responsible for providing inaccurate information. Mr WONG Sing-chi and Mr James TIEN expressed support for Mr Andrew CHENG's suggestion. Mr WONG said that only the deliberate provision of false information should be made an offence and that the onus of proof should be on the prosecution. The Chairman suggested that an alternative was to impose a heavier fine for providing false information. PAS(EF) agreed to consider members' suggestions.

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Public officers empowered to issue fixed penalty notices

Enforcement by Housing Department staff

15. Mr Andrew CHENG accepted HD's explanation for having the same grades of officers to take enforcement against littering offences. He asked whether the same consideration applied to the other enforcement departments.

16. PAS(EF) replied that the Administration had no intention to pitch the enforcement officers in different enforcement departments at the same rank. She said that as the Housing Manager, Assistant Housing Manager and Housing Officer were currently empowered to issue summons (Form 1A) for littering offences, it was desirable to have the same grades of officers empowered to issue the proposed fixed penalty notices, for the sake of consistency and ensuring the quality and credibility of the enforcement team.

17. Mr Andrew CHENG remained concerned that the enforcement actions taken by HD staff might not be very effective as the authorised staff currently were not required to carry out daily patrol in public housing estates.

18. Mr WONG Yung-kan expressed concern about the enforcement in those public housing estates where the responsibility for management had been contracted out, e.g. public housing estates sold under the Tenant Purchase Scheme. In this connection, the Chairman asked whether HD had any plans to carry out enforcement in these housing estates.

19. PAS(EF) responded that as she had advised at the last meeting, HD would only take enforcement action against public cleanliness offences in those public housing estates where it had the ultimate management responsibility. For those housing estates

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where the actual management work had been contracted out to property service companies, the responsibility for ensuring cleanliness in these estates would be vested in these companies. However, a mobile task force led by HD staff had been set up to take enforcement actions in these estates as and when necessary, with the support of these property service companies. As for those housing estates where HD no longer had the ultimate management responsibility, i.e. the Home Ownership Scheme estates, they were regarded as private housing estates, and FEHD staff would only take enforcement actions in the public areas in these estates. Details of the enforcement strategies would be worked out by the inter-departmental working group.

Admin 20. The Chairman requested the Administration to provide a breakdown of the prosecution statistics in respect of the proposed scheduled offences in the past year. The Administration agreed.

Enforcement by the Police

21. Mr WONG Yung-kan enquired whether the Marine Police would assist in the enforcement of the proposed fixed penalty system. Given the extensive area of the waters of Hong Kong and the limited enforcement capabilities and vessels of the Marine Department and the Agriculture, Fisheries and Conservation Department (AFCD), he was concerned that there might not be effective enforcement against marine littering.

22. PAS(EF) replied that the Marine Police had agreed to assist in the proposed fixed penalty system.

23. As regards the participation of the Police in the proposed fixed penalty system, the Chairman was of the view that the Police and the six enforcement departments should not adopt different enforcement actions in respect of the scheduled public cleanliness offences. Mr James TIEN and Mr Tommy CHEUNG expressed support. Mr TIEN said that as the Police was currently issuing summons against littering offences, it would not create much extra work for the Police if it was empowered to issue fixed penalty notice for such offences. He considered it more appropriate for the Police and uniformed staff to carry out the enforcement of the proposed fixed penalty system on a territory-wide basis.

Admin 24. PAS(EF) said that the Police had advised that their broad strategy was to concentrate on core areas of responsibility. However, the Police would provide the greatest possible support to departments requesting its assistance in situations where there was a possibility of criminal activity or the potential for disorder. Having regard to members' concern, PAS(EF) agreed to further discuss with the Police and revert to the Bills Committee later. The Chairman proposed and members agreed that representatives of the Police should be invited to attend the Bills Committee meeting

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if the Police did not change its position.

Enforcement of the scheduled offences

25. Mr Andrew CHENG questioned why DAFC was not empowered to take actions against dog fouling, and why the Director of Housing and Director of Leisure and Cultural Services were not empowered to take enforcement actions against unauthorised display of bills and posters.

26. PAS(EF) made the following response -

- (a) Enforcement against dog fouling was presently carried out in accordance with the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132. sub. leg.). DAFC was currently not authorised to enforce the Regulation, and DAFC would be included in Schedule 2 to the Bill for enforcement against dog fouling; and
- (b) Enforcement actions against unauthorised display of bills and posters were currently carried out by FEHD under the Public Health and Municipal Services Ordinance (Cap. 132). The source legislation presently did not cover private premises and HD was not the Authority to take enforcement in this respect.

27. Mr Andrew CHENG sought clarification as to how the unauthorised display of bills or posters in public areas or outside buildings (e.g. banks) would be enforced. DD(EH) said that enforcement action against unauthorised display of bills or posters was currently carried out by FEHD staff. The Administration would need to consult the Department of Justice as to whether other relevant public officers in AFCD and HD should be included for enforcement against unauthorised display of bills or posters.

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28. Mr James TIEN pointed out that without the participation of the Police in the proposed fixed penalty system, there was no single enforcement department to be empowered to issue fixed penalty notices on a territory-wide basis. Mr TIEN expressed concern that there might be grey areas which did not fall within the responsibility of any of six enforcement departments, and that there would be uneven spread of enforcement staff in different areas of Hong Kong.

29. Mr Andrew CHENG shared Mr TIEN's concern. Mr CHENG wondered why FEHD staff could not take enforcement actions in respect of littering and spitting in country parks which were also public places. As FEHD was the major enforcement department for the proposed fixed penalty system, Mr CHENG suggested that FEHD staff should be empowered to take enforcement actions in country parks.

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30. PAS(EF) explained that administratively, each department by its set-up had already a clear boundary and jurisdiction of its own and the current arrangement was proven effective. She said that although FEHD was empowered to enforce the Public Cleansing and Prevention of Nuisances Regulation in public places, the management of country parks was not within FEHD's jurisdiction. DD(EH) added that FEHD staff would not enter country parks to enforce the Regulation in their day-to-day operation. PAS(EF) further said that should there be any problem areas which did not fall within the jurisdiction of any one department, joint operations could be taken by the departments concerned. The Administration would spell out clearly in the operation guidelines the respective jurisdictions of the enforcement departments as well as the size and quantity of the litter for which a fixed penalty notice would be issued.

31. Assistant Legal Adviser 3 pointed out that under the Waste Disposal Ordinance, a person committed an offence if he without lawful authority or excuse deposited or caused or permitted to be deposited any waste in a public place. The Environmental Protection Department was expressly provided with enforcement power under the Ordinance. However, given that the offence was committed in a public place, FEHD staff and the Police would also have power to take enforcement actions. As such, the different jurisdictions of the six enforcement department would merely be an administrative arrangement.

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32. Mr Andrew CHENG requested that the Administration should further consider including other relevant public officers such as DAFC, the Director of Housing and Director of Leisure and Cultural Services as the Authorities in respect of offences in items 4, 5 and 7 in Schedule 1. The Administration agreed to consider.

33. Concerning the inclusion of dog fouling in the proposed fixed penalty system, Ms Audrey EU said that some members of the public had told her that it was difficult to control small dogs from urinating in public places. She requested that dog urine be deleted from the Administration's proposed CSAs.

34. Senior Assistant Law Draftsman (SALD) advised that the offence of dog fouling was created by virtue of section 13 of the Public Cleansing and Prevention of Nuisances Regulation under which no person in charge of a dog should allow the dog to deposit any of its faeces in the common parts of a building or in any street or public place; or any urine in the common parts of a building. DD(EH) said that as dog urine posed a relatively less serious problem than dog faeces, she would consider Ms EU's suggestion.

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35. The Chairman suggested and members agreed that the Administration should consider deleting dog urine from the proposed CSAs.

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36. Mr Andrew CHENG asked whether the Marine Police would be required to take enforcement actions against marine spitting. SALD said that she would look into the definition of marine littering to ascertain whether it covered marine spitting.

37. Mr WONG Yung-kan said that it was often difficult for fishermen and people living on boats to find litter bins and toilets while on sea. He considered that enforcement of the Bill should have regard to the habits of certain people and the availability of refuse collection or toilet facilities in the area.

38. PAS(EF) explained that the proposed fixed penalty system was targetted at minor public cleanliness offences which were frequently committed by members of the public. She believed that the habits of people could change through education and legislation. As regards the other public cleanliness offences not covered by the Bill, PAS(EF) said that prosecution could still be instituted by summons.

39. Mr Andrew CHENG and Mr James TIEN disagreed with Mr WONG Yung-kan that the habits of some people should be an excuse for marine littering and spitting. They considered that sanitary facilities and litter bins could be provided on boats and ships. They were of the view that the culture and habits of some people could be changed, and that the proposed fixed penalty system could educate and deter people from committing the scheduled offences. Mr Andrew CHENG stressed that marine spitting should be included in the proposed fixed penalty system. The Administration noted members' views.

40. Members agreed to hold the next meeting on 31 May 2001 at 10:45 am.

41. There being no other business, the meeting ended at 4:35 pm.

Legislative Council Secretariat

26 October 2001