

立法會
Legislative Council

LC Paper No. CB(2) 163/01-02
(These minutes have been seen by
the Administration)

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

**Minutes of meeting
held on Thursday, 31 May 2001 at 10:45 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
Hon Tommy CHEUNG Yu-yan, JP
Dr Hon LO Wing-lok
Hon WONG Sing-chi
Hon Audrey EU Yuet-mee, SC, JP
- Members Absent** : Dr Hon TANG Siu-tong, JP
Hon Michael MAK Kwok-fung
- Public Officers Attending** : Mr David LAU
Principal Assistant Secretary for the Environment and Food (A)
- 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

Ms Francis HUI
Senior Government Counsel
Department of Justice

Mr S G Chandler
Assistant Commissioner of Police (Support)

Mr P R Morgan
Senior Superintendent SUP
Hong Kong Police Force

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 15 May 2001

[LC Paper No. CB(2) 1685/00-01(01)]

The Chairman said that the Administration had provided written response to issues raised by members at the last meeting [LC Paper No. CB(2) 1685/00-01(01)]. The meeting proceeded to discuss the Administration's response.

Marine spitting

2. Noting from the Administration's paper that the offence of "marine littering" under section 4D of the Summary Offences Ordinance was not wide enough to cover "marine spitting", Ms Audrey EU said that the Administration should seriously

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consider including marine spitting in the proposed fixed penalty system. If this could not be dealt with in this Bill, the Administration should amend the relevant legislation to make marine spitting a public cleanliness offence as well.

3. Mr WONG Yung-kan said that it would be extremely difficult, if not impossible, to enforce marine spitting. He considered it meaningless to include marine spitting in the proposed fixed penalty system if this was not enforceable. Mr James TIEN and Mr Andrew CHENG said that they did not agree with Mr WONG Yung-kan. They were of the view that spitting at the seaside and spitting into the sea should not be treated differently. They requested the Administration to consider amending the relevant legislation to include marine spitting as an offence.

4. Ms Audrey EU stressed that it was an important principle that there should be consistent standards for spitting on land and spitting into the sea.

5. The Chairman said that the principal ordinance would have to be amended if marine spitting was to be made a public cleanliness offence. In view of members' comments, the Chairman said that it was the majority view of the Bills Committee that the Administration should consider amending the relevant provisions in the principal ordinance in order to make marine spitting an offence.

6. Principal Assistant Secretary for Environment and Food (PAS(EF)) responded that as the meaning of "marine spitting" was not expressly provided for under the Summary Offences Ordinance, marine spitting would not be covered by the proposed fixed penalty system. Nevertheless, he noted members' concerns and agreed to consider the proposal as a separate exercise.

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Enforcement by the Police

7. Mr James TIEN said that he fully agreed that the Police should give priority to its core responsibilities such as maintaining law and order. However, he was concerned that there would be different enforcement practices for the same public cleanliness offences, if the Police would continue to issue summons for such offences while the other enforcement departments would issue fixed penalty notices. Mr TIEN was of the view that prosecution by summons was expensive, as it would require much time and efforts on the part of the court and the defendant. He said that he did not understand why the Police insisted on issuing summons, rather than participating in a much simpler system of issuing fixed penalty notices.

8. Assistant Commissioner of Police (Support) (ACP(Sup)) replied that the Police did not often issue summons in respect of public cleanliness offences, but rather gave verbal warnings to offenders in most of the cases. He said that while the Police firmly supported Government in combatting littering problems, these problems did not

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involve a safety issue like traffic offences, hence it would not be necessary to empower the Police to issue fixed penalty notices for littering offences. He believed that the primary purpose of introducing the proposed fixed penalty system was to facilitate FEHD staff taking enforcement actions against public cleanliness offences. He stressed that the Police were most willing to provide support to the enforcement departments in carrying out their duties.

9. Mr James TIEN asked about the time taken by a police officer to issue summons as compared with that for issuing a fixed penalty notice. ACP(Sup) said that the crux of the matter was whether the Police should be the lead agency in the proposed fixed penalty system since there were already six enforcement departments. From the Police's point of view, it would want to concentrate its efforts on providing better service to the public in respect of its prime responsibilities. The Police considered that it should act as a supporting agency to the six enforcement departments under the proposed fixed penalty system.

10. Mr James TIEN clarified that he was not asking the Police to play a leading role in the proposed fixed penalty system. However, as the Police were a highly credible enforcement agency, he considered that it should also be empowered as the other six departments to issue fixed penalty notices for minor public cleanliness offences. Mr Tommy CHEUNG and the Chairman added that for the sake of consistency, there should not be different enforcement actions to be taken by the Police and the six departments in respect of the same minor public cleanliness offences. They stressed that the proposed fixed penalty system was a much simpler system than prosecution by summons. They urged the Administration to reconsider the request. ACP(Sup) agreed to consider.

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11. Mr Andrew CHENG said that he was given to understand that the Marine Police had agreed to participate in the proposed fixed penalty system and that the Administration would propose amendments to the Bill to add the Marine Police to the list of authorised public officers in Schedule 2 to the Bill. He further said that members might consider proposing similar amendments to the Bill to empower the Police to issue fixed penalty notices.

12. ACP(Sup) clarified that the role of the Marine Police was to assist other enforcement departments in taking enforcement actions against littering offences. As far as he was aware, the Marine Police would only issue summons for such offences. The Chairman requested the Administration to clarify the form of "assistance" to be provided by the Marine Police in the proposed fixed penalty system. The Chairman added that the Bills Committee strongly requested that the Police to be empowered to issue fixed penalty notices for minor public cleanliness offences so as to ensure consistency in enforcement. PAS(EF) noted the request.

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Verification of offender's identity and address

13. Mr Andrew CHENG noted that the Administration proposed in paragraph (d) of its paper that a provision would be added to the Bill to make it an offence for any person who knowingly gave false or misleading information. Mr CHENG said that he had suggested at the last meeting that an offender could be required to make a declaration that the information provided was true and accurate. This would obviate the need to create an offence in the Bill for provision of false or misleading information. He requested the Administration to provide a response to his suggestion.

14. PAS(EF) advised that according to his understanding, under present legislation, only commissioners for oaths and notaries public could take and receive statutory declarations. As such, the enforcement officers had to be authorised by law to administer an oath, and this would pose operational difficulties. The Administration proposed instead that a provision be added to the Bill to make it an offence for a person to knowingly provide false or misleading information. PAS(EF) assured members that the offenders concerned would be clearly informed of the consequences of providing false or misleading information. Any decision to prosecute an offender for the provision of false information would only be taken by a senior officer and after careful consideration.

15. Mr Andrew CHENG asked how the Administration could prove the intent of providing false or misleading information. He expressed concern that incorrect information might be supplied erroneously or unintentionally.

16. Responding to the Chairman, PAS(EF) said that there were similar provisions in existing legislation that criminalised deliberate provision of false information. He agreed to provide such examples after the meeting. He stressed that the prosecution would need to prove that the false information was provided deliberately.

17. Assistant Legal Adviser 3 (ALA3) advised that the Mass Transit Railway By-laws contained similar provisions empowering authorised staff to obtain personal information from passengers who had allegedly breached the By-laws. Provision of false information was an offence under these By-laws. While agreeing that there would be operational difficulties in requiring an alleged offender to make a statutory declaration, ALA3 suggested that the Administration might consider requiring the alleged offender to sign an undertaking on the spot that the information provided was true and accurate. This could be evidence to prove that an offender deliberately provided false information.

18. Deputy Director of Food and Environmental Hygiene (Environmental Hygiene) (DD(EH)) clarified that the purpose of the new provision was to ensure that the offender would not provide false information. In this connection, the enforcement

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staff would be given training on the procedures to obtain the offenders' address and identity. The offenders would also be required to sign on the fixed penalty notice to confirm the accuracy of the personal information supplied. Prosecution action against supplying false information would only be taken when all efforts to trace an offender who did not pay the fixed penalty failed. She stressed that the provision only aimed to provide deterrence against provision of false information.

19. Mr James TIEN said that he did not envisage much problem in this respect, as the majority of offenders would pay the fixed penalty, and the provision against supply of false information would not need to be invoked in these cases. However, he expressed concern that the proposed penalty for supplying false address might be too severe if an offender gave inaccurate personal information simply because he wished to dispute liability. Assistant Director (Headquarters) of Food and Environmental Hygiene (AD(HQ)) said that an offender who defaulted payment could dispute liability within the specified period as provided in the Bill. Moreover, if an offender could not be contacted by mail, the enforcement department could try to contact the offender by other means such as by telephone before taking prosecution actions.

20. Mr Tommy CHEUNG agreed that a penalty should be imposed if the offender deliberately provided false information and did not pay the fixed penalty. However, he queried why the penalty for providing false information was more severe than the fixed penalty itself. He also expressed reservations about the need for obtaining personal information, other than identity card number, from the alleged offender. He considered that the enforcement departments would be able to trace the offenders concerned through other departments or available records if necessary.

21. AD(HQ) said that it was necessary to obtain the personal information of the offender on the spot, in order to save time and effort to trace the offender subsequently if he failed to pay the fixed penalty. AD(HQ) added that the personal information to be obtained was the same as that required for issuing summons. He further said that the procedures for obtaining and verifying the personal particulars of the alleged offenders were simple, and these were described in paragraph 6 of the draft operation guidelines. He clarified that it was not always necessary for an enforcement officer to verify an offender's address by telephone on the spot unless he had doubts. Regarding the proposed penalty for providing false information, he said that the Administration had an open mind and would welcome views from members. He added that as proposed in paragraph 14 of the draft operation guidelines, the decision to institute proceedings against an offender who was suspected to have provided false information would rest with a senior officer, preferably a directorate officer, responsible for reviewing the case.

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22. Dr LO Wing-lok agreed with AD(HQ) that it was not cost-effective to trace an offender after a fixed penalty notice was issued. He considered the proposed steps for obtaining personal information from an alleged offender acceptable.

23. The Chairman said that it was important to strike a balance between providing sufficient deterrence against deliberate provision of false information and protecting the interest of the alleged offenders. He considered that the operation guidelines should spell out clearly the steps for the enforcement officers to obtain and verify the personal information from the offenders, pay special attention to the old and illiterate, and those who spoke other dialects. Mr Tommy CHEUNG agreed with the Chairman.

24. Mr James TIEN said that he had no strong views on the proposed penalty for deliberate provision of false information. He commented that if the offenders settled the payment within the specified period, there was no need for the enforcement departments to verify the accuracy of the addresses supplied. He believed that there should not be much problem in this respect if the number of default cases was small. Mr TIEN requested the Administration to step up publicity before the implementation of the fixed penalty system, so that the public was well aware of the procedures and the additional penalty for default.

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25. DD(EH) agreed with Mr TIEN that the accuracy of address was important only when it was necessary to trace an offender who defaulted payment. She also agreed to provide statistics in the past year on the number of summons issued for minor public cleanliness offences that could not be delivered because of false address.

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26. DD(EH) also agreed that the Administration would state clearly in the operation guidelines the procedures for enforcing and reviewing individual cases. The fixed penalty notice would spell out the penalty to be imposed if false information was supplied. The Administration would also launch publicity programmes and step up staff training before implementation of the fixed penalty system.

Size of litter

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27. The Chairman referred to paragraph 12 of the draft operation guidelines and asked about the rationale for setting the criterion that litter of a size of greater than 0.5m³ would require the issue of summons instead of a fixed penalty notice. He also requested the Administration to provide examples. DD(EH) agreed to provide the information after the meeting.

Power of arrest

28. The Chairman referred to paragraph 6 of the draft operation guidelines and asked how enforcement officers would exercise the power of arrest.

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29. ALA3 pointed out that a public officer was empowered to arrest a person who, without reasonable excuse, failed to provide proof of identity and address in accordance with clause 4 of the Bill. However, the conditions for exercising the power of arrest was not clearly spelt out in the draft operation guidelines. She suggested that the terminology used in the draft operation guidelines should be consistent with that in the Bill. She further said that the Administration might consider including in the operation guidelines that the enforcement officer should caution the offender on arresting the person, and that the person arrested should be taken to the nearest police station or given into the custody of a police officer. She added that as the authorised public officers were not empowered to prosecute under clause 4 of the Bill, any prosecution action would have to be instituted by the Police. As regards the proposal in the draft operation guidelines that an authorised public officer might arrest a suspect who wilfully gave wrong personal particulars, ALA3 pointed out that such power of arrest should also be spelt out in the Bill. The Administration agreed to consider ALA3's suggestion.

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30. The Chairman asked whether summons would be served immediately if an offender refused to receive a fixed penalty notice issued by an enforcement officer. AD(HQ) responded that if the personal particulars of an offender were obtained, a fixed penalty notice would be issued. If the offender refused to take the fixed penalty notice, he would be regarded as indicating his wish to dispute liability. The procedure for disputing liability would apply.

31. Referring to paragraph 6 of the draft operation guidelines, Mr WONG Yung-kan pointed out that as the offender was required to produce his identity card, it was unlikely that he would give the wrong name to the enforcement officer. The Administration agreed to delete "name" from the wrongful information in paragraph 6 of the operation guidelines.

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II. Clause-by-clause examination

Clause 1

32. Mr Andrew CHENG enquired about the commencement date for the proposed fixed penalty system. PAS(EF) advised that the proposed fixed penalty system would likely be put into operation at the end of 2001, if the Bill was enacted in July 2001. The Administration would launch publicity before the commencement date.

Clause 2

33. Members did not raise any query.

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Clause 3

34. Referring to LC Paper No. CB(2)1200/00-01(03), ALA3 said that she had sought clarification as to whether non-compliance with subclause (2), such as refusal of the alleged offender to receive a fixed penalty notice, would affect the operation of the fixed penalty system. She advised that the Fixed Penalty (Traffic Contraventions) Ordinance contained a provision that failure to give a notice by the public officer personally to the offender would not affect the operation of the fixed penalty system.

35. PAS(EF) said that the Administration had agreed to take on board ALA3's suggestion to add a proviso to the Bill in line with that for the traffic contraventions.

36. In reply to Mr WONG Sing-chi, AD(HQ) said that the draft operation guidelines would clearly spell out that the enforcement officer should serve the fixed penalty notice to the offender on the spot.

37. Mr Andrew CHENG opined that the Administration should consider improving the Chinese version of "given by the public officer personally" as "面交" was not clear. The Administration noted Mr CHENG's suggestion.

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Clause 4

38. PAS(EF) said that subject to members' views, the Administration would add a new subclause (4) to make it an offence for any person who gave any information which he knew to be false or misleading.

39. ALA3 said that the Administration had agreed to change "state" to "give" in clause 4(1) before "his name and address and produce proof of identity". She also advised that if the enforcement officers were required to obtain the telephone number of the offender as stipulated in the draft operation guidelines, this should be spelt out in clause 4(1) in the Bill.

40. AD(HQ) agreed that enforcement officers should also be empowered under the Bill to obtain the telephone number of the offender. He said that subject to members' agreement, the Administration would move amendments to the Bill to this effect. To cater for circumstances where an alleged offender did not have a telephone, Senior Assistant Law Draftsman (SALD) said that an offender with "reasonable excuse" might not be required to provide such information.

41. The Chairman said that the proposed amendment would facilitate the effective operation of the proposed fixed penalty system.

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Clause 5

42. Members did not raise any query.

Clause 6

43. Mr Andrew CHENG enquired about the purpose of clause 6(3). DD(EH) explained that it provided for the withdrawal of notice before the commencement of proceedings, if the Authority considered that it was more appropriate to serve a summons for the offence.

Clause 7

44. ALA3 said that she had asked the Administration earlier to clarify whether a person who had paid the full amount of the fixed penalty and additional penalty as shown in the magistrate order made under subclause (1) would still be liable to be prosecuted or convicted for the scheduled offence. She had also asked whether a provision similar to section 3A(5) of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) should be included in the Bill. ALA3 further said that the Administration had advised that such person would be considered as having paid the full amount under clause 5(4), and therefore would not be liable to prosecution or conviction for the scheduled offence. The Administration would move an amendment similar to section 3A(5) of Cap. 240.

Clause 8

45. Responding to Mr Andrew CHENG's enquiry, SALD said that clause 8 provided for the proof in proceedings in an application for recovery of fixed penalty. The Authority would not be required to produce further proof to the magistrate after producing a certificate in the prescribed form.

Clause 9

46. Mr Andrew CHENG asked whether the Administration had taken a view on his suggestion that an offender should be required to pay the fixed penalty plus an additional penalty equal to the amount of the fixed penalty and costs for issuing the order. AD(HQ) said that the Administration would revert to the Bills Committee later.

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Clause 10

47. ALA3 pointed out that service of summons issued by a magistrate was governed by section 8 of the Magistrates Ordinance. If it was intended that a different

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mode of service should apply to summons issued in proceedings in respect of a scheduled offence under the Bill, this should be specified in clause 10.

48. SALD said that the service of summons under the Bill basically followed section 8 of the Magistrates Ordinance, which provided that the summons might be served either by post or by hand. For the avoidance of doubt, the Administration would move an amendment to the Bill.

Clauses 11 & 12

49. Members did not raise any query.

Clause 13

50. AD(HQ) said that the Administration had advised at the previous meeting that it was considering whether to follow the practice for non-payment of penalties of traffic contraventions. The Administration would revert to the Bills Committee later.

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III. Any other business

51. Members agreed to hold the next two meetings on 12 June and 21 June 2001 at 10:45 am and 2:30 pm respectively.

52. There being no other business, the meeting ended at 12:40 pm.

Legislative Council Secretariat

26 October 2001