

立法會
Legislative Council

LC Paper No. CB(2) 164/01-02
(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, 12 June 2001 at 10:45 am
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 CHEUNG Man-kwong
Hon Andrew CHENG Kar-foo
Dr Hon TANG Siu-tong, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung
Dr Hon LO Wing-lok
Hon Audrey EU Yuet-mee, SC, JP

Members Absent : Hon WONG Yung-kan
Hon WONG Sing-chi

Public Officers Attending : Mr David LAU
Principal Assistant Secretary for the Environment and Food (A)2

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

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 meeting on 31 May 2001

[LC Paper No. CB(2) 1787/00-01(01)]

At the invitation of the Chairman, Principal Assistant Secretary for Environment and Food (PAS(EF)) took members through the Administration's paper [LC Paper No. CB(2) 1787/00-01(01)] and highlighted the following points -

- (a) The Police had agreed to be empowered under the Bill to issue fixed penalty notices. However, the Police emphasised that, as they had stated before, they would concentrate on core areas of responsibility as their priority tasks.
- (b) The Administration had agreed to include "telephone number" in clause 4 of the Bill to provide legal basis for enforcement officers to obtain such personal information from an alleged offender.
- (c) On Mr Andrew CHENG's suggestion of requiring the alleged offender to make an undertaking or declaration on the accuracy of personal information provided, the Administration advised that enforcement officers would have to be made commissioner for oaths before they could take and receive statutory declarations. It was also necessary to provide training to the officers concerned to ensure that the declarations were taken and received in a manner as provided for in the Oaths and Declarations Ordinance. The Administration therefore proposed to make it an offence to knowingly provide false or misleading information,

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rather than adopting the use of statutory declarations. Examples of similar provisions in other legislation were provided at Annex B to the Administration's paper.

- (d) The Administration did not consider it necessary to add a new clause to empower the enforcement officers to arrest an offender who was suspected to have given false information. The reason was that if an alleged offender gave false information and was discovered on the spot, the enforcement officer would require the offender to provide the correct information instead of arresting him. If the offender concerned still provided false information or gave no information, he could be arrested under clause 4(3) for failing to comply with the requirements under clause 4(1) to give his personal information.
- (e) The Administration had agreed to add a provision to allow for the issue of "non-payment warrants" by the Magistrate. This was in line with the other fixed penalty legislation. The offender would, upon conviction, be imprisoned in accordance with section 68 of the Magistrates Ordinance.
- (f) The Administration welcomed members' views on the proposed reference point of a litter size of 0.5m³ (roughly two fruit carton boxes) for issuing summons.
- (g) The Administration had revised the draft operation guidelines, taking into account members' views.
- (h) The Administration would step up publicity before the introduction of the proposed fixed penalty system.
- (i) As regards members' earlier suggestion of imposing heavier penalty for the non-payment of the fixed penalty after the initial 21 days, the Administration advised that there was no similar provision in other fixed penalty legislation. The Administration did not see any need to depart from the current practice in relation to penalties for late payment.

2. PAS(EF) added that the Administration had proposed Committee Stage amendments (CSAs) along these lines for members' consideration.

3. Members welcomed the Police's decision to participate in the proposed fixed penalty system and proceeded to deliberate on the following issues.

Provision of false information

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4. Mr James TIEN sought clarification about the enforcement against the provision of false information. PAS(EF) said that although the Administration proposed to make it an offence for giving false information, it was not necessary to add a new provision to empower the enforcement officers to make arrests in these cases. She explained that if an alleged offender did not give accurate personal information, he could be arrested under clause 4(3) for failing to comply with the requirements in accordance with clause 4(1).
5. Mr Tommy CHEUNG sought clarification about the enforcement procedures if an alleged offender failed to provide personal information under clause 4(1).
6. Assistant Director (Headquarters) of Food and Environmental Hygiene Department (AD(HQ)) advised that a person who failed to comply with the requirement under clause 4(1) might be arrested and taken to the nearest police station.
7. Responding to Mr James TIEN, Senior Assistant Law Draftsman (SALD) said that the reference to "proof of identity" in clause 4(5) had the same meaning as in section 17B of the Immigration Ordinance, and it included Hong Kong Identity Cards and passports.

Tourists and visitors

8. Mr James TIEN asked whether the proposed fixed penalty system was also applicable to tourists; and if so, what actions the Administration would take if the tourist concerned failed to pay the fixed penalty and left Hong Kong.
9. PAS(EF) responded that the Bill had not proposed exemption for any person. Tourists who were issued with fixed penalty notices for committing a scheduled minor public cleanliness offence would also be required to pay the fixed penalty within the 21-day period. However, he acknowledged that there might be technical difficulties to send demand notes to tourists if they did not pay the fixed penalty within 21 days, as they would most likely have left Hong Kong. The Administration would nevertheless step up publicity on the fixed penalty system and put up posters at prominent locations at immigration control points.
10. Mr James TIEN said that while he appreciated that there were limitations in legislation to recover payments from overseas visitors, the Administration could consider the practice of other countries as to whether it was feasible to disallow the defaulters to leave or re-enter the territory. PAS(EF) responded that the Bill was mainly targeted at local residents, and the Administration could consider Mr TIEN's suggestion separately.

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11. The Chairman advised that the Administration should publicise the fixed penalty system so that the public and tourists would not commit the scheduled offences inadvertently.

Recovery of payments

12. Mr Andrew CHENG noted that the Administration did not want to impose a heavier penalty for non-payment after the initial 21 days and even after 10 days following the issue of a demand note. Mr CHENG pointed out that the Administration had advised earlier in LC Paper No. CB(2)1529/00-01(01) that it would consider imposing a heavier fine on late payment. He sought clarification on the Administration's stance on the matter.

13. SALD explained that under the present Bill, if an offender did not pay the fixed penalty or made no indication that he would dispute liability within 10 days after the issue of the demand note upon the expiry of the 21-day period, an application would be made to a magistrate under clause 7 for an ex parte order to be issued. The offender issued with the court order would have to pay the fixed penalty and an additional penalty equal to the amount of the fixed penalty within 14 days to the court. If the offender who disputed liability offered no defence or a defence which was frivolous or vexatious, he would have to pay double penalty plus costs. SALD advised that an offender who made no indication to dispute liability was not required to pay any court costs, even though he defaulted payment.

14. PAS(EF) supplemented that the Administration had considered members' views and had proposed to add new clauses 7(5) and (6) to allow a magistrate to impose imprisonment terms on a person, if the latter neglected the court order for payment, in accordance with section 68 of the Magistrates Ordinance. Responding to Mr Andrew CHENG, SALD said that the proposed new clauses 7(5) and (6) were modelled on similar provisions for non-payment of fixed penalties for traffic contraventions.

15. Mr Andrew CHENG said that he agreed that an offender who failed to pay the fixed penalty within the specified period and who indicated his wish to dispute liability should be required to pay double penalty plus costs, because extra work had been created for the court. Based on the same principle, he considered that if an ex parte court order had to be applied because an offender failed to pay the fixed penalty within 31 days and made no indication to dispute liability, the offender should also be required to pay the costs for the issue of the court order in addition to the double penalty. While he agreed that imprisonment terms could be imposed for neglect of court order under clause 7, he considered that it was a penalty for contempt of court rather than non-payment of fixed penalty. Mr CHENG urged the Administration to reconsider his suggestion of introducing an additional penalty to recover the costs incurred in issuing an ex parte court order.

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16. PAS(EF) said that Mr Andrew CHENG's proposal might have implications on other fixed penalty legislation. To ensure consistency in the relevant legislation, the Department of Justice and the relevant policy bureaux would have to be consulted on the proposed amendments. He suggested that Mr CHENG's proposal be considered in a separate exercise.

17. The Chairman invited members' views on Mr Andrew CHENG's proposal.

18. Mr Tommy CHEUNG said that it would create unfairness if an offender who had indicated his wish to dispute liability but decided to withdraw before commencement of proceedings was required to pay a double penalty plus a fixed amount of \$500 by way of costs, whereas a person who simply ignored the fixed penalty notice was only required to pay a double penalty. However, since the proposed fixed penalty system had been discussed in length by the former Urban Council, he considered that the system should be put into effect as early as possible. He agreed with the Administration that Mr CHENG's proposal could be examined at a later stage.

19. Regarding the payment of costs if a person withdrew his application for disputing liability, Mr Andrew CHENG said that as the court had already started to work on the case once an offender had indicated his wish to dispute liability, it would not be unreasonable to require the offender to pay \$500 by way of costs. Mr CHENG further said that extra work would be created for the court in issuing such court orders. He reiterated that additional penalty in the form of an "order fee" should be imposed for offenders in these cases.

20. AD(HQ) said that he appreciated Mr Andrew CHENG's concern. However, he pointed out that based on the Judiciary's experience, it would not be very costly to issue an ex parte order under clause 7 of the Bill. Moreover, the offender concerned was already required to pay double penalty. In the Administration's view, the proposed arrangement should provide sufficient deterrence against non-payment.

21. Dr LO Wing-lok enquired about the course of actions to be taken if an offender failed to pay the fixed penalty after the 31-day period. AD(HQ) said that the enforcement department would apply to a magistrate under clause 7 of the Bill for an ex parte order to be issued after the 31-day period. However, to cater for circumstances where the offender concerned might have paid the fixed penalty at the end of the 31-day period, a court order would normally be issued after 33 days following the issue of the fixed penalty notice.

22. Dr LO Wing-lok said that he agreed to the Administration's proposal that a person who withdrew his application to dispute liability before the commencement of

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proceedings should be required to pay double penalty plus \$500 by way of costs. Mr Tommy CHEUNG reiterated that he hoped that the proposed fixed penalty system could be introduced as early as possible. He said that he accepted the Administration's suggestion that Mr Andrew CHENG's concerns could be dealt with in a separate exercise.

23. Mr Andrew CHENG said that the Bills Committee had lengthy discussion on the matter at previous meetings and members had expressed general support for the proposal at that time. Regarding the Administration's comments that his proposal might have implications on other fixed penalty legislation, Mr CHENG was of the view that if there were problems or loopholes in a bill, the Administration should address the problems immediately and make consequential amendments to related legislation instead of deferring the necessary amendments to a future exercise.

24. Mr Michael MAK shared Mr Andrew CHENG's view. He said that members should not rush for the enactment of the Bill if there were loopholes.

25. SALD said that it was the established practice that the policy bureau would consult the Department of Justice on the appropriate level of penalty for a new offence and that the Department of Justice would make reference to the prevailing legislation in recommending the level of penalty. However, if there were strong policy justifications, the level of penalty for the new offence concerned might depart from the current practice. She said that members might wish to consider whether there was a strong policy need to introduce additional penalty to recover payments from a person who failed to pay the fixed penalty after 31 days and who did not indicate his wish to dispute liability, bearing in mind that this might result in inconsistency in existing fixed penalty legislation.

26. PAS(EF) stressed that his bureau would have to consult the relevant policy bureaux responsible for other fixed penalty legislation before taking a decision on Mr CHENG's proposal. His initial view was that if the relevant policy bureaux raised no objection to the proposal in principle, the Administration could take on board Mr CHENG's proposal.

27. Mr Andrew CHENG suggested that the Bills Committee should take up the amendment should the Administration decide not to pursue the proposal. Mr Tommy CHEUNG and Dr LO Wing-lok did not raise objection to Mr CHENG's suggestion. The Chairman advised that the Administration should consider the proposal of introducing an "Order Fee", which could be set at the level of \$300, in respect of cases where a Magistrate's Order had to be issued under clause 7(1) to recover payments from a person who failed to pay the fixed penalty after 31 days and who did not indicate his wish to dispute liability for the offence. The Chairman added that if the Administration decided not to pursue the proposal, he would move the amendment on

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behalf of the Bills Committee.

Other concerns

28. Ms Audrey EU asked why the Chinese rendition of "proof of identity" was "身分證明文件" instead of "身份證明文件" as adopted in the Basic Law. SALD explained that the Chinese term of "proof of identity" in the Bill was in line with the term used in the Immigration Ordinance. The Bilingual Laws Advisory Committee had carefully considered the Chinese version of "proof of identity" adopted in the Immigration Ordinance and decided that "身分證明文件" be adopted.

II. Clause-by-clause examination

Committee Stage amendments proposed by the Administration

29. Members noted that the Administration had proposed CSAs to the following clauses.

Clause 3

30. PAS(EF) said that the Administration had proposed to replace the term "面交發出對象" with "當面交付該人" in subclause (2). The Administration had also proposed a new clause 3(4) to ensure that the issue of the fixed penalty notice would not be frustrated by, for example, a refusal on the part of the offender to receive the notice.

Clause 4

31. PAS(EF) said that the Administration proposed to add "contact telephone number (if any)" to the personal information to be supplied to the enforcement officer on the spot. The Administration also proposed to add "without reasonable cause" in subclause (2) to ensure that offenders would not be unfairly punished for not being able to supply all the information requested when he had a reasonable explanation. A technical amendment was proposed to subclause (5) to better align the drafting of the bilingual text.

32. PAS(EF) further said that a new clause 4A on supply of false information was added to make it an offence to knowingly provide false or misleading information.

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Clauses 5 - 7

33. PAS(EF) said that these were technical amendments to better align the drafting of the bilingual text or to improve clarity.

34. PAS(EF) said that new clauses 7(5) and (6) were added to provide for the issue of non-payment warrants and imposing imprisonment terms by the magistrate.

Clauses 9 - 13

35. PAS(EF) said that apart from some technical amendments to clauses 9, 11 and 13 and the Chinese version of clause 10(c), the Administration also proposed an amendment to clause 10 to bring the method of issue of summons in line with that adopted in the Magistrates Ordinance. Assistant Legal Adviser 3 (ALA3) advised that the proposed CSA to clause 10 would spell out clearly that summons would be served by post or in person.

Clause by clause examination (from clause 14 onwards)

36. Members continued clause-by-clause examination of the Bill from clause 14 onwards.

Clause 14

37. ALA3 said that a similar provision was provided in the Public Health and Municipal Services Ordinance. Members did not raise any query.

Clause 15

38. PAS(EF) said that the Administration was working out a CSA in consultation with ALA3. ALA3 advised that the amendment was technical in nature, aiming to spell out clearly that the word "wilfully" qualified "obstructs", not "resists".

Clause 16

39. Members did not raise any query.

Clause 17

40. ALA3 advised that under this clause, the Legislative Council (LegCo) could, by resolution, increase, but not reduce, the fixed penalty.

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41. Mr Andrew CHENG pointed out that under the Fixed Penalty (Criminal Proceedings) Ordinance, LegCo could amend the level of fixed penalty. He considered that as the proposed fixed penalty system for minor public cleanliness offences was a new scheme, it would be prudent to evaluate its effectiveness and implications on the public at an appropriate time. With this in mind, he suggested that LegCo should be empowered to vary the fixed penalty, if deemed necessary. Members agreed. The Administration undertook to move an amendment to this effect.

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Clauses 18 - 20

42. Members did not raise any query on these clauses.

Schedules 1 and 2

43. PAS(EF) said that the Administration had proposed amendments to Schedule 1 to the Bill to include fouling of streets by dog faeces in the proposed fixed penalty system. The amendments to Schedules 1 and 2 were to make provision for the enforcement against dog fouling and to include Police in the list of Authorities for the enforcement of the proposed fixed penalty system.

44. Mr Andrew CHENG asked about the progress in making marine spitting a public cleanliness offence. PAS(EF) responded that while the existing legislation did not contain any provision against marine spitting, the Administration would examine whether there was need to amend the relevant legislation to make marine spitting an offence. The Chairman said that members were generally of the view that marine spitting should also be made an offence, and that the Administration should follow up the matter. At the request of members, PAS(EF) said that the Secretary for the Environment and Food would address the concern in her speech for the resumption of Second Reading debate on the Bill.

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Revised departmental guidelines on the issue of fixed penalty notices

45. Referring to Annex C to the Administration's paper, AD(HQ) said that the Administration had revised the operation guidelines. He elaborated on the following changes -

- (a) Paragraph 6 of the guidelines was revised so that the terms used were in line with the relevant provisions in the Bill. The requirements for obtaining an alleged offender's telephone number, and warning an alleged offender that it was an offence to knowingly give false or misleading information had been added to the guidelines. The enforcement officers were also reminded to take extra care in dealing

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with elderly persons and persons who spoke dialects in order to avoid misunderstanding.

- (b) Paragraph 17 of the guidelines was revised to include the enforcement of the proposed clauses 7(5) and (6) concerning the issue of non-payment warrants by the magistrate.
- (c) Paragraphs 18 and 19 were added to clarify that a person would discharge his liability if he had paid the full amount of the fixed penalty and the additional penalty shown in the court order.

46. As regards the proposal that 0.5m³ be adopted as the reference point of litter size for issuing summons, Mr Andrew CHENG asked about the examples which would warrant the issue of summons. AD(HQ) advised that summons would be issued if bulky litter or heavy articles were disposed of at public places without authorisation.

47. Mr Andrew CHENG suggested that a smaller size of 0.2m³, which was equivalent to a fruit carton box, be adopted. Members expressed support for the suggestion. The Administration agreed to consider the proposal.

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III. Any other business

48. As the Bills Committee had completed scrutiny of the Bill, members agreed that the next meeting originally scheduled for 21 June 2001 be cancelled. The Chairman suggested that the Administration should provide the revised CSAs as soon as possible, which would be circulated to members for consideration. He advised that if members and ALA3 raised no further queries on the revised CSAs, the Bills Committee would report to the House Committee on 22 June 2001 recommending resumption of the Second Reading debate on the Bill on 11 July 2001.

49. There being no other business, the meeting ended at 12:45 pm.

Legislative Council Secretariat
26 October 2001