

**Letterhead of Environment and Food Bureau Government Secretariat**

Our ref: EFB(CR)10/9/2  
Your ref:  
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29 May 2001

Mrs Constance LI  
Clerk to Bills Committee  
Legislative Council Building  
8 Jackson Road, Central  
Hong Kong  
(Fax: 2509 0775)

Dear Mrs Li,

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

Thank you for your letter of 16 May. I set out below the Administration's responses to the questions raised by Members at the last Bills Committee meeting -

- (a) Outline of the draft operation guidelines and the relevant parts on the enforcement by the six enforcement departments, in particular the enforcement in Housing Authority estates for which the management had been contracted out to private management companies

The draft "Departmental Guidelines on Issue of Fixed Penalty Notice" is attached at Annex A.

As regards the enforcement in Housing Authority public housing estates where the Housing Department has ultimate management responsibility but which day-to-day management has been contracted out, a mobile task

force led by Department staff has been set up to take enforcement action against littering and cleansing offences as and when necessary. The Department would also take joint operations with other Government departments against blackspots in and around public housing estates.

- (b) Breakdown of prosecution statistics in respect of the proposed scheduled offences in the past year

The prosecution and conviction statistics of the different enforcement departments for 2000 are at Annex B.

- (c) Request the Police to participate in enforcing the proposed fixed penalty system

The Police's view is that their broad strategy has for some time been to concentrate on core areas of responsibility, while providing the greatest possible support to departments requesting police assistance in situations where there is a possibility of criminal activity or the potential for disorder. An example of this would be the support given to FEHD in dealing with hawkers. Further, their view is that the proposal to empower some ten thousand Government officers from six departments will create a highly effective enforcement unit, which, in conjunction with an effective education programme should be more than adequate to carry on the campaign against littering. The Police will continue to take summons action against littering offences under existing legislation as and when necessary.

- (d) Re-consider the proposed arrangements for verification of address and the need for making the provision of inaccurate address a criminal offence

As set out in our previous letter to the Bills Committee, to ensure effective prosecution, it is necessary for the enforcement departments to obtain the correct address of the offender concerned. In this regard, we agree with Members views on heavier penalties for individuals who deliberately provides false information. We, therefore, propose that a provision be added to the Bill to make it any offence for any person who gives any

information which he knows to be false or misleading, and liable upon conviction to a fine of \$5,000 and to imprisonment for 6 months.

- (e) Whether "marine spitting" was within the meaning of marine littering under section 4D(1) of the Summary Offences Ordinance (Cap. 228)

The offence of "marine littering" under section 4D of the *Summary Offence Ordinance (Cap. 228)* is not wide enough to cover "marine spitting".

- (f) Delete "dog urine" from the proposed CSA

We agree with Members' suggestion and the revised CSA is at Annex C.

- (g) Including other relevant public officers such as the Director of Agriculture, Fisheries and Conservation, the Director of Housing and the Director of Leisure and Cultural Services as the Authorities in respect of offences in items 1, 4, 5 and 7 in Schedule 1.

As previously set out, the jurisdiction of each enforcement department has been provided for in the source legislation, and administratively governed by their set-up. It is not the intention of this Bill to alter such jurisdiction. However, we share Members' concern about possible "grey areas" in enforcement. In this regard, we would spell out clearly the respective jurisdictions, as well as the need to maintain good communication between departments in the operation guidelines

The following officers will attend the 4<sup>th</sup> Bills Committee meeting on 31 May -

*Environment and Food Bureau*

Mr David Lau, Principal Assistant Secretary (A)2

*Food and Environmental Hygiene Department*

Miss Sarah Wu, Deputy Director (Environmental Hygiene)

Mr W H Cheuk, Assistant Director (Headquarters)

*Department of Justice*

Ms Fanny Ip, Senior Assistant Law Draftsman

Ms Frances Hui, Senior Government Counsel

*Hong Kong Police Force*

Mr P R Morgan, Senior Superintendent SUP

Yours sincerely,

(David K K LAU)

For Secretary for the Environment and Food

**'DRAFT'**

**Departmental Guidelines on Issue of Fixed Penalty  
Notice (FPN)**

**(I) ENFORCEMENT**

**General points to note**

1. To avoid confusion to the public, officers should only take enforcement action whilst on duty. This must be strictly observed. Offence witnessed off-duty can be reported to duty staff for action. Uniformed staff should wear proper uniform and carry the Departmental Warrant Card, the book of FPN and the official notebook.
2. You should be vigilant, patient and courteous in the execution of duty.

**Steps to follow on witnessing the commission of any scheduled offences of the Fixed Penalty (Public Cleanliness Offences) Ordinance**

3. On seeing the commission of any of the scheduled offences specified in the First Schedule, you should, if circumstances allow, further observe for a while to satisfy that the suspect has no intention of remedying the wrong (e.g. picking up the litter in a littering case, or cleaning up the place in a dog fouling case). However, officers may take action immediately if there is clear evidence of the suspect's intention to commit the offence (e.g. deliberate acts to deposit the litter).
4. Approach the suspect, stop him and reveal your identity. For non-uniformed staff, you should inform the suspect that you are on duty and produce your Departmental Warrant Card for identification.

If he questions your identity, you can give him the telephone number of your supervisor for verification.

5. Point out to the suspect the offence he has just committed and inform him that he will be issued with a fixed penalty notice.
  
6. Ask for his personal particulars, including name, address[, telephone number] and the proof of identity. Inform him of the purpose for collecting his personal data. Carefully inspect his proof of identity and record his personal particulars in your notebook. The accuracy of the suspect's address is of utmost importance for follow-up action to be taken effectively. To ensure the accuracy of the address given by the suspect, the following steps should be taken -
  - (a) after taking down the address of the suspect, the enforcement officer should request the suspect to repeat the address for verification purpose;
  
  - (b) where appropriate, use the telephone number provided by the suspect to verify on the spot the truthfulness of the given information;] and
  
  - (c) the enforcement officer should show the address written down in the fixed penalty notice to the suspect for verification, and invite him to sign and confirm.

If he refuses to co-operate, you may arrest him and take him to the nearest police station or deliver him into the custody of a police officer, getting the assistance of the Police where necessary.

[If you believe that the suspect willfully gives wrong personal particulars, including [name and address] [name, address and telephone number], you may arrest him and consider taking summons against him.]

7. The suspect should be asked whether he wishes to give explanation of the alleged offence committed. Inform him that if he does, what

he says will be taken down and may be used as evidence in Court. He has a right to remain silent if he prefers not to say anything about the offence.

8. You should take out prosecution by filling in the FPN<sup>(Form 1)</sup> and serving the original copy of it to the suspect on the spot, on satisfying that the particulars have been correctly and legibly entered. You should explain to him the details of the offence, the time allowed for settlement of the penalty and inform him that he may have the right to notify the Authority that he wishes to dispute liability for the scheduled offence specified in the FPN.
9. You should properly record in your notebook all particulars of the case, including: details of the offence, any remarks put forward by the suspect, the action taken and the justifications for taking your course of action etc.
10. You should be patient and tactful in special situations such as dealing with juvenile suspects, elderly suspects or adult suspects who are accompanied by small children.
11. If a verbal warning is to be administered (e.g. for underaged suspect or technical breach of the law), it should be given to the suspect in a calm and courteous manner. All relevant details should be properly recorded in your notebook.
12. If the size of litter is greater than 0.5 cu metre or the circumstances or nature of the offence warrant special consideration by the court such as deposition of chemical wastes (even in a small amount), a summons should be issued instead.

## **(II) CASE VETTING**

13. An officer of at least one rank higher than the action officer should vet the issued FPN and any additional information supplementing the case.

14. If a suspect willfully gives wrong personal particulars, including [name and address] [name, address and telephone number], the Authority may consider taking summons against him. The case should be vetted and endorsed by a senior officer preferably at directorate level before initiating legal proceeding.

**(III) NON-PAYMENT CASE OF FIXED PENALTY NOTICE**

15. The computer system will screen the payment records of the issued FPNs and will automatically generate the demand note (D/N)<sup>(Form 2)</sup> for unsettled cases. The Authority will issue D/N, requiring the suspect to pay the penalty within 10 days or to notify Authority of his intent to dispute.

**(IV) NON-COMPLIANCE OF DEMAND NOTE**

16. If the suspect does not pay the fixed penalty within the date specified in the D/N, the Authority shall follow up the case and apply to the court for an order.
17. If the suspect fails to pay the penalty within one month from the date of the court order, the Authority shall apply to the court for an order to recover the penalty by distress and sale of any goods and chattels of the person.

**(IV) DISPUTE LIABILITY**

18. If the suspect wishes to dispute liability, the Authority shall follow the usual procedure to apply to court for the issue of summons.

Food and Environmental Hygiene Department



Prosecution and Conviction Statistics for 2000

	<b>FEHD</b>	<b>AFCD</b>	<b>LCSD</b>	<b>HD</b>	<b>MD</b>	<b>EPD</b>
<b>Littering/Flytipping</b>						
<i>Prosecution</i>	16153	516	50	96	113	128
<i>Conviction</i>	15231	516	50	96	113	117
<b>Spitting</b>						
<i>Prosecution</i>	3021	3	4	11	n/a	n/a
<i>Conviction</i>	2881	3	4	11		
<b>Bill posting</b>						
<i>Prosecution</i>	399	n/a	n/a	n/a	n/a	n/a
<i>Conviction</i>	357					
<b>Dog fouling</b>						
<i>Prosecution</i>	40	n/a	n/a	n/a	n/a	n/a
<i>Conviction</i>	46*					

\*some convictions carried over from prosecutions in late 1999

Environment and Food Bureau  
May 2001

<u>Clause</u>	<u>Amendment Proposed</u>
Schedule 1	By adding immediately after item 3 -  "3A. Section 13(1)(a) Fouling of street by dog faeces \$600".
Schedule 2	In column 1 -  (a) in the entry opposite to "Director of Agriculture, Fisheries and Conservation", by adding "3A," before "4";  (b) in the entry opposite to "Director of Food and Environmental Hygiene", by adding "3A" after "3";  (c) in the entry opposite to "Director of Housing", by adding ", 3A" after "3";  (d) in the entry opposite to "Director of Leisure and Cultural Services", by adding ", 3A" after "3".