

Letterhead of Environment and Food Bureau Government Secretariat

Our ref: EFB(CR)10/9/2
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9 June 2001

Mrs. Constance LI
Clerk to Bills Committee on
Fixed Penalty (Public Cleanliness Offences) Bill
Legislative Council Building
8 Jackson Road, Central
Hong Kong
(Fax: 2509 0775)

Dear Mrs. Lie,

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

Thank you for your letter of 1 June 2001. I set out below the Administration's responses to the points raised in your letter -

- (a) To reconsider members' request that the Police should also be empowered to issue fixed penalty tickets for the scheduled offences, and to clarify whether the Marine Police has agreed to issue fixed penalty tickets in respect of minor marine littering offences

After giving careful consideration to members' request, the Police have agreed to be empowered under the Bill to issue fixed penalty tickets. The necessary amendment to the schedule has been incorporated into the consolidated Cases at Annex A. However, the

Police would like to emphasize that, as stated before, they would concentrate on core areas of responsibility as their priority tasks.

- (b) To provide statistics in the past year on the number of summons which could not be delivered because of false address

In 2000, there were 177 cases handled by the relevant departments where summons could not be delivered. However, the departments are unable to provide details as to how many of these were due to false addresses.

- (c) To consider including "telephone number" in clause 4 to the Bill to provide legal basis for enforcement officers to obtain such information

The proposed amendment is at clause 4(a) of the consolidated Cases.

- (d) To provide examples in other legislation which also criminalize the deliberate provision of false information

It is a fairly common feature in our statute books to make it an offence to knowingly provide false or misleading information. The following are just a few examples of such provisions -

- (i) Section 63 of the *Employment Ordinance (Cap. 57)*;
- (ii) Section 30 of the *Weights and Measures Ordinance (Cap. 68)*;
- (iii) Regulation 43 of the *Abattoirs Regulation (sub. leg. to Cap. 132)*;
- (iv) Regulation 37 of the *Libraries Regulation (sub. leg. to Cap. 132)*;
- (v) By-law 42 of the *Mass Transit Railways By-laws (sub. leg. to Cap. 556)*.

Extracts of the above legislation are at Annex B.

- (e) To consider the Hon Andrew Cheng's suggestion of including an undertaking or declaration on the accuracy of personal information provided, instead of creating an offence for the provision of false information

Under section 12 of the *Oaths and Declarations Ordinance (Cap. 11)*, only a "justice, notary, commissioner [for oaths] or other person authorized by law to administer an oath" may take and receive the declaration of an individual. Any person who knowingly or willfully makes a statement false in material particular in a statutory declaration commits an offence under section 36 of the *Crimes Ordinance (Cap. 200)*.

In order for the enforcement officers to take and receive statutory declarations, it would be necessary to make them commissioner for oaths. Such officers would need to take and receive such declarations in a manner provided in the *Oaths and Declarations Ordinance*. To ensure that the declarations are taken and received in the appropriate manner, extensive training would be required as the relevant officers would have no prior experience in handling such matters.

On the other hand, if a statutory declaration is required by law but the enforcement officers are not made commissioner for oaths, then the officers would have to bring the offenders concerned before an authorized person to make that declaration which would be operationally difficult to achieve.

As shown by paragraph 1(d) above, there are many other examples in existing legislation that makes it an offence to knowingly provide false or misleading information. It is, therefore, proposed to incorporate such a provision in the Bill (the new clause 4A in the consolidated Cases), rather than adopting the use of statutory declarations.

- (f) To consider whether the Bill should empower the enforcement officers under clause 4 to arrest a person who, without reasonable excuse,

provides false information under clause 4(1) (Paragraph 6 of the draft Department Guidelines refer)

On reflection, we do not consider it necessary to empower the enforcement officers to make arrest for giving false information. If a suspect gives false information and is discovered on the spot, the enforcement officer would require him to provide the correct information instead of arresting him outright. If the suspect continues to provide false information or no information, he may be arrested under clause 4(3) for failing to comply with the requirement under clause 4(1) to give his name, address, contact telephone number and produce his proof of identity.

- (g) Whether the Administration has taken a view on adopting the practice in connection with non-payment of penalties of traffic contraventions

The Administration have considered the matter and propose to follow the practice of other fixed penalty legislation and incorporate into the Bill the necessary provisions (the new clauses 7(5) and (6) in the consolidated Cases) to allow for the issue of non-payment warrants by the Magistrate and, upon conviction, be imprisoned in accordance with section 68 of the *Magistrates Ordinance (Cap. 227)*.

- (h) To explain why a size greater than 0.5m³ is adopted for the issue of summons instead of a fixed penalty ticket and to provide examples

The size of 0.5m³ (about 2'8" x 2'8" x 2'8" = 19 feet³, roughly two fruit carton boxes) is adopted as a reference point. Depositing litter of larger size justifies and deserves special consideration by the Court for imposition of a penalty it deems fit. We welcome members' view on the proposed reference point.

- (i) To improve the draft Departmental Guidelines on Issue of Fixed Penalty to ensure that the powers described therein and the wording used are consistent with the provisions in the Bill and the principal legislation, e.g. the procedures for arrest and summons in paragraph 6

The revised guidelines are attached at Annex C for members' reference.

- (j) To conduct publicity and public education programmes on the fixed penalty scheme well before implementation

Upon the passage of the Bill, we plan to step up publicity, including television and radio APIs, posters and banners. This should enable the public to better understand the provisions of the new legislation, their rights and responsibilities, and to solicit their support in keeping Hong Kong clean.

The consolidated Cases also include other amendments which are highlighted here -

- (a) Clause 3 -

- (i) Taking members' views into account, a revised Chinese version of subclause (2).
- (ii) New subclause (4) to ensure that the issue of the fixed penalty ticket would not be frustrated by, for example, a refusal on the part of the offender to receive the ticket.

- (b) Clause 4 -

- (i) Adding "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 has a reasonable explanation. For example, if the offender has no access to a contact telephone number, then he should not be punished for not being able to provide that information when requested by the enforcement officers.

- (ii) A technical amendment in subclause (5) to better align the drafting of the bilingual text.
- (c) Clause 5 - Technical amendments to the Chinese version of subclauses (1) and (2) to better align the drafting of the bilingual text.
- (d) Clause 6 - Revised subclause (1) to make the presentation clearer.
- (e) Clause 7 - A technical amendment to the Chinese version of subclause (1) to better align the drafting of the bilingual text.
- (f) Clause 9 - Technical amendments to the Chinese version of subclauses (1)(b), (3) and (4) to better align the drafting of the bilingual text.
- (g) Clause 10 -
 - (i) Technical amendments to the Chinese version of clause 10(c) to improve the wording.
 - (ii) Amendment to clause (10) to bring the method of issue of summons in line with that for the Magistrates Ordinance.
- (h) Clause 11 - Technical amendments to the Chinese version to improve the drafting.
- (i) Clause 13 - Technical amendments to the Chinese version of subclause (1) to better align the drafting of the bilingual text.
- (j) Clause 15 - Technical amendments to improve the drafting.
- (k) Schedules 1 and 2 - Amendments to make provision for the enforcement action against dog fouling.

As regards members' earlier suggestion for heavier penalty for the non-payment of the fixed penalty after the initial 21 days, we have examined other fixed penalty legislation. Neither the *Fixed Penalty (Traffic*

Contraventions) Ordinance (Cap. 237), nor the *Fixed Penalty (Criminal Proceedings) Ordinance* (Cap. 240) provide for such heavier penalty. The procedures adopted by the current Bill for the processing of fixed penalty essentially follow the two existing fixed penalty Ordinances. The Administration see no need to depart from current practice in relation to the penalties for late payment.

The following officers will attend the 5th Bills Committee meeting on 12 June -

Environment and Food Bureau

Mr David Lau, Principal Assistant Secretary (A)2

Food and Environmental Hygiene Department

Mr W H Cheuk, Deputy Director (Environmental Hygiene)

Department of Justice

Ms Fanny Ip, Senior Assistant Law Draftsman

Ms Frances Hui, Senior Government Counsel

Yours sincerely,

(David K K LAU)

For Secretary for the Environment and Food

c.c. DFEH (Attn: Mr Warner Cheuk)

D of J (Attn: Ms Fanny IP Ms Frances Hui)

FIXED PENALTY (PUBLIC CLEANLINESS OFFENCES) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary
for the Environment and Food

| <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|---|
| 3 | <p>(a) In subclause (2), by deleting "面交發出對象" and substituting "當面交付該人".</p> <p>(b) By adding -</p> <p style="padding-left: 40px;">"(4) The operation of this section and sections 5, 7 and 10 shall not be affected by a failure to comply with subsection (2)."</p> |
| 4 | <p>(a) In subclause (1), by deleting "state his name and address" and substituting "supply his name, address and contact telephone number (if any)".</p> <p>(b) In subclause (2), by adding ", without reasonable excuse," after "who".</p> <p>(c) In subclause (5), by adding "to whom the notice is to be given as" after "the person".</p> |
| New | By adding - |

ClauseAmendment Proposed**"4A. Supply of false information**

A person who, in complying with a requirement made under section 4(1), supplies any particular of his name, address or contact telephone number which he knows to be false or misleading, commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months."

- 5 (a) In subclause (1) -
- (i) by deleting "翌日" where it first appears;
- (ii) in paragraph (c) -
- (A) by deleting "不論是該項繳款或通知" and substituting "該項繳款或通知(視屬何情況而定)";
- (B) by deleting "翌日".
- (b) In subclause (2), by deleting "翌日".
- 6 By deleting subclause (1) and substituting -
- "(1) Where a notice under section 3(1) or 5(1) has been given or served on a person, the Authority may -
- (a) at any time before the commencement of any proceedings

ClauseAmendment Proposed

against that person in respect of the offence specified in the notice; and

- (b) where an order under section 7(1) has been applied for, before such order is made,

withdraw that notice, and may serve on that person a notice in writing informing him that the notice has been withdrawn."

7

- (a) In subclause (1), by deleting "खैरु" .

- (b) By adding -

"(5) Where a person against whom an order under subsection (1) has been made fails to pay the amount of the fixed penalty and additional penalty, he shall, for the purposes of section 68 of the Magistrates Ordinance (Cap. 227), be deemed to have failed to pay the sum adjudged to be paid by a conviction and shall be liable to be imprisoned under that section.

(6) Where a person against whom an order under subsection (1) has been made pays the full amount of the fixed penalty and additional penalty shown in the order, he shall not be liable to be prosecuted or convicted for the

| <u>Clause</u> | <u>Amendment Proposed</u> |
|----------------------------|---|
| | scheduled offence to which the order relates.". |
| 9(1)(b), (3) and (4) | By deleting "翌日". |
| 10 | (a) in paragraph (c) - <ul style="list-style-type: none"> (i) by deleting "已有法律程序"; (ii) and adding "法律程序" after "起". |
| | (b) By deleting "by sending it by post to his address" and substituting "in accordance with section 8 of the Magistrates Ordinance (Cap. 227)". |
| 11 | By deleting "答辯" where it twice appears and substituting "免責辯護". |
| 13(1) | By deleting "翌日". |
| 15 | By deleting "wilfully obstructs or resists" and substituting "resists or wilfully obstructs". |
| Schedule 1 | By adding immediately after item 3 - <p style="text-align: center;">"3A. Section Fouling of street by dog \$600". 13(1)(a) faeces</p> |

ClauseAmendment Proposed

- Schedule 2 (a) In column 1 -
- (i) in the entry opposite to "Director of Agriculture, Fisheries and Conservation", by adding "3A" before "4";
 - (ii) in the entry opposite to "Director of Food and Environmental Hygiene", by adding ", 3A" after "3";
 - (iii) in the entry opposite to "Director of Housing", by adding ", 3A" after "3";
 - (iv) in the entry opposite to "Director of Leisure and Cultural Services", by adding ", 3A" after "3".
- (b) By adding before the entry in relation to Director of Agriculture, Fisheries and Conservation -
- "1, 2, 3, 3A, Commissioner of Police
4, 5, 6, 7 Police Officer".

**BLIS ON
INTERNET**

Annex B

Section of Enactment

PART XIII

OFFENCES AND PENALTIES

- (1) Any employer who wilfully and without reasonable excuse contravenes any of the provisions of section 11E or 11F(3) or (4) shall be guilty of an offence. (Amended 71 of 1970 s. 4; 48 of 1984 s. 26; 24 of 1988 s. 2)
- (2) Any employer who-
- (a) without reasonable excuse, fails-
 - (i) to grant to any employee any rest day which he is required to grant under Part IV; or
 - (ii) (Repealed 103 of 1995 s. 19)
 - (b) contravenes section 19,
- shall be guilty of an offence. (Added 23 of 1970 s. 4)
- (3) Any person who wilfully contravenes section 67(2) shall be guilty of an offence. (Added 71 of 1970 s. 4)
- (4) Any employer who without reasonable excuse fails-
- (a) to grant to any employee any holiday which he is required to grant under section 39; or
 - (b) to pay to any employee-
 - (i) any sickness allowance which he is required to pay under section 33; or
 - (ii) any holiday pay which he is required to pay under section 40 or 40A(2); or (Amended 48 of 1984 s. 26)
 - (c) to give to any employee any leave which he is required to grant or allow by section 41AA or 41F(3); or (Replaced 53 of 1990 s. 5)
 - (d) to grant to any employee any rest day or holiday which he is required to grant under section 41A.1(6); or (Amended 53 of 1990 s. 5)
 - (e) to pay to an employee-
 - (i) pay as regards leave which he is required to grant or allow under section 41AA or 41F(3); or
 - (ii) a sum or compensation which he is required to pay under section 41D. (Replaced 53 of 1990 s. 5)
- shall be guilty of an offence. (Added 39 of 1973 s. 6. Amended 53 of 1977 s. 7)
- (5) Any person who contravenes section 40A(1) or 41B shall be guilty of an offence. (Replaced 103 of 1995 s. 19)
- (5A) Any person who-
- (a) fails to comply with a requirement made by any officer under any of the provisions of section 72 other than subsection (1)(a), (b) and (c) of that section;
 - (b) wilfully or recklessly gives information which is false in a material particular or withholds information as to any of the matters in respect of which information is required to be given under any of the provisions of section 72 other than subsection (1)(b) and (c) of that section; or
 - (c) (Repealed 24 of 1988 s. 2)
 - (d) fails to comply with any condition imposed on the granting of any exemption under section 73(2),
- shall be guilty of an offence. (Added 55 of 1979 s. 2. Amended 31 of 1992 s. 2)
- (5B) (a) Any person who makes a payment in contravention of section 41E(1) shall be guilty of an offence.
- (b) In any proceedings for an offence under this subsection the onus shall be on the defendant to show that any payment to which the offence relates was made pursuant to an agreement duly made under section 41E(2). (Added 53 of 1990 s. 5)
- (5C) Any employer who contravenes section 41EA shall be guilty of an offence. (Added 53 of 1990 s. 5)
- (6) Any person who fails to comply with the requirements of a notice in writing or a notice published in the Gazette under section 48(1) shall be guilty of an offence.
- (7) A person who is guilty of an offence under this section shall be liable on conviction to a fine at level 5. (Amended 24 of 1988 s. 2; 103 of 1995 s. 19)

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INTERNET**

Section of Enactment

Chapter: 08 Title: WATERS AND TREASURES ORDINANCE
Section: 30 Heading: Obstruction, etc. Enacted Number: 30/06/1987
Version Date: 30/06/1997

- (1) Any person who-
- (a) obstructs the Commissioner or an authorized officer in the exercise or performance of any function under this Ordinance;
 - (b) without reasonable excuse fails to comply with any requirement, direction or demand given or made by the Commissioner or an authorized officer in the exercise or performance of any such function; or
 - (c) without reasonable excuse fails to supply information which an authorized officer may reasonably require of him under section 24(2)(d),
- commits an offence and is liable to a fine of \$20000 and to imprisonment for 6 months.
- (2) Any person who-
- (a) knowingly makes a false report, or
 - (b) furnishes any false or misleading information,
- to the Commissioner or an authorized officer performing any function under this Ordinance commits an offence and is liable to a fine of \$20000 and to imprisonment for 6 months.

(Enacted 1987)

**BLIS ON
INTERNET**

Section of Enactment

Chapter: 132A Title: ABATTOIRS REGULATION (Gazette Number: L.N. 120 of 1999)
Section: 43 Heading: Offences to give false information Version Date: 01/01/2000

PART VI

MISCELLANEOUS

Any person who, in any form required by, under or for the purposes of this Regulation, makes any statement or furnishes any information which he knows or reasonably ought to know to be false in a material particular shall be guilty of an offence and shall be liable on conviction to a fine at level 4 and to imprisonment for 6 months.

(L.N. 284 of 1987; L.N. 177 of 1996; 78 of 1999 s. 7)

**BLIS ON
INTERNET**

Section of Enactment

Chapter: 133A Part: LIBRARIES REGULATION Gazette Number: L.N. 320 of 1999
Section: 37 Offence: False information. Commencement Date: 01/01/2000

No person shall-
(a) for the purpose of entering any part of a library;
(b) in an application for a library card; (L.N. 211 of 1995; 78 of 1999 s. 7)
(ba) (Repealed 78 of 1999 s. 7)
(c) for the purpose of obtaining the use of any of the facilities of a library,
make a statement or furnish any information which he knows or reasonably ought to know to be false in a material particular.
(L.N. 235 of 1991)

**BLIS ON
INTERNET**

Section of Enactment

| | | | | | |
|-----------|------|----------|--|----------------|------------------|
| Chapter | 556B | Title | MASS TRANSIT RAILWAY BY-LAWS | Gazette Number | L.N. 126 of 1986 |
| Enactment | 42 | Repealed | Removal of provisions relating to railway premises | Enacted | 16/07/2000 |

PART IX

ENFORCEMENT AND PENALTIES

- (1) Any person who is reasonably suspected by an official of committing or attempting to commit any breach of these by-laws, while in or upon any part of the railway premises shall, when required to do so by such official-
- (a) give to that official true and correct particulars of his name and address and of his telephone number, if any, and produce proof to that effect for inspection; and
 - (b) produce to that official proof of his identity for inspection. (L.N. 8 of 1998)
- (1A) No person shall wilfully-
- (a) fail to comply with a requirement under paragraph (1); or
 - (b) in complying or attempting to comply with a requirement under paragraph (1)(a), give false particulars of his name, address or telephone number or particulars of his name, address or telephone number that are misleading in a material particular. (L.N. 8 of 1998)
- (2) Every official shall have the power to remove (if necessary by the use of reasonable force) from the railway premises any person whom he reasonably suspects of having committed, or attempting to commit any breach of these by-laws; without prejudice to any penalty or surcharge which may be imposed in accordance with these by-laws and in the case where such breach is an offence as herein provided he shall have power to detain such person until he can be delivered into the custody of a police officer to be dealt with according to law. (L.N. 201 of 1994)

(Enacted 1986)

'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, contact telephone number (if any) and the proof of identity. Inform him of the purpose for collecting his personal data and remind him that it is an offence to knowingly give false or misleading information to a public officer in the enforcement of this law. Carefully inspect his proof of identity and record his personal particulars in your notebook. Extra care should be taken in recording the suspect's address and telephone number, if the suspect is an elderly person or a person with an accent, to avoid wrong entry due to low audibility or misunderstanding. 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 a suspect without reasonable excuse fails to comply with the requirement to give his name, address and contact telephone number (if any) and/or produce his proof of identity, you may arrest him and take him to the nearest police station or deliver him into the custody of a police officer.

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 fill in the FPN^(Form 1) 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 suspected 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 offence specified in the FPN.
9. You should properly record in your notebook all particulars of the case, including : details of the suspected 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 [or Form 1A (where applicable)] 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 wilfully gives wrong personal particulars, including 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)^(Form 2) 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 14 days from the date of the court order, the suspect shall, for the purposes of section 68 of the Magistrates Ordinance (Cap 227), be deemed to have failed to pay the sum adjudged to be paid by a conviction and shall be liable to be imprisoned under that section.
18. If the suspect has paid the full amount of the fixed penalty and additional penalty shown in the order, he shall not be liable to be prosecuted or convicted for the offence to which the order relates.
19. Alternatively, 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

20. 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