

C009-E

Provide for a fixed penalty to be payable for certain offences, for the recovery of the fixed penalty, and for connected purposes.

Enacted by the Legislative Council.

PART 1

Preliminary

1. Short title and commencement

(1) This Ordinance may be cited as the Fixed Penalty (Public Cleanliness Offences) Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for the Environment and Food by notice published in the Gazette.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires---
"fixed penalty" (定額罰款), in relation to a scheduled offence, means the fixed penalty set out opposite to the offence in column 4 of Schedule 1;
"proceedings" (法律程序) means proceedings before a magistrate in respect of a scheduled offence;
"scheduled offence" (表列罪行) means an offence that is described in columns 2 and 3 of Schedule 1.

(2) A description in column 3 of Schedule 1 indicates for convenience of reference only the general nature of the offence under the provision set out opposite to that description in column 2 of the Schedule.

(3) In applying a provision of this Ordinance in relation to a scheduled offence---

(a) a reference to "Authority" in that provision shall be construed as a reference to the Authority set out in column 2 of Schedule 2 opposite to the offence; and

(b) a reference to "public officer" in that provision shall be construed as a reference to a public officer set out in column 3 of Schedule 2 opposite to the offence.

PART 2

Fixed Penalty

3. Fixed penalty notice given by public officer

(1) If a public officer has reason to believe that a person is committing or has committed a scheduled offence, he may give the person a notice in the prescribed form offering him an opportunity to discharge his liability to conviction for that offence by payment of the fixed penalty for that offence.

(2) A notice under subsection (1) shall be given by the public officer personally to the person.

(3) Subject to section 6, where a person has received a notice under subsection (1) and has paid the full amount of the fixed penalty shown in the notice, he shall not be liable to be prosecuted or convicted for the scheduled offence specified in the notice.

4. Power of inspecting proof of identity

(1) In exercising his power under section 3(1), the public officer may require a person to whom the notice is to be given to state his name and address and produce proof of identity for inspection.

(2) A person who fails to comply with a requirement made under subsection (1) commits an offence and is liable on conviction to a fine at level 2.

(3) A public officer may arrest a person who, without reasonable excuse, fails to comply with a requirement made under subsection (1).

(4) A public officer who arrests any person under subsection (3) shall forthwith take him to the nearest police station or give him into the custody of a police officer.

(5) In this section, "proof of identity" (身分證明文件), in relation to the person referred to in subsection (1), has the same meaning as in section 17B of the Immigration Ordinance (Cap. 115).

5. Fixed penalty notice issued by Authority

(1) If the fixed penalty for a scheduled offence in respect of which a notice has been given to a person under section 3(1) is not paid within 21 days from the date of the giving of the notice, the Authority shall serve on the person a notice in the prescribed form---

(a) demanding payment of the fixed penalty;

(b) informing the person that if he wishes to dispute liability for the offence he should notify the Authority in writing; and

(c) stating that the payment or notification (as the case may be) shall be made within 10 days from the date of the notice so served.

(2) No notice shall be served under subsection (1) after the expiry of 6 months from the date of the notice given under section 3(1).

(3) A notice under subsection (1) may be served on the person by sending it by post to his address.

(4) Subject to section 6, where a person has received a notice under subsection (1) and has paid the full amount of the fixed penalty shown in the notice, he shall not be liable to be prosecuted or convicted for the scheduled offence specified in the notice.

6. Withdrawal of notice of fixed penalty

(1) Where a notice under section 3(1) or 5(1) has been given or served on a person,

the Authority may, at any time before the commencement of any proceedings against that person in respect of the offence specified in the notice and whether or not an order under section 7(1) has been applied for, but 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.

(2) Where such a notice is withdrawn under this section and any sum of money has been paid pursuant to the notice, the Director of Accounting Services shall, on demand by the person on whom the notice was given or served, repay him the sum so paid.

(3) A notice withdrawn under this section shall not be a bar to any proceedings in respect of the scheduled offence specified in the notice.

7. Recovery of fixed penalty

(1) Where a person on whom a notice under section 5(1) has been served has not paid the fixed penalty and has not notified the Authority, in accordance with that notice, that he wishes to dispute liability for the offence, a magistrate shall, on an application mentioned in subsection (2), order him to pay the fixed penalty, together with an additional penalty equal to the amount of the fixed penalty, within 14 days from the date of service of notice of the order.

(2) An application under subsection (1)---

(a) may be made in the absence of the person on whom the notice under section 5(1) has been served;

(b) shall be made in the name of the Secretary for Justice, who may appoint any person or class of persons to make the application.

(3) Where an order is made under subsection (1) against a person, the magistrate shall cause notice of the order to be served on that person.

(4) Notice of the order made under subsection (1) may be served on that person by sending it by post to his address.

8. Proof in proceedings under section 7

(1) Notwithstanding any provisions of the Magistrates Ordinance (Cap. 227), in an application under section 7(1), an order under that section shall be made upon the production by the applicant to the magistrate of---

(a) a copy of the notice served under section 5(1) together with a certificate of posting of that notice under section 29 of the Evidence Ordinance (Cap. 8); and

(b) a certificate referred to in subsection (2).

(2) In an application under section 7(1), a certificate in the prescribed form stating---

(a) that payment of the fixed penalty in respect of the offence specified in a notice under section 5(1) was not made before the date specified in the certificate;

(b) that the person specified in it had not, before the date specified in the

certificate, notified the Authority that he wished to dispute liability for the offence; and

(c) that the address specified in it was at the time so specified the address of that person,

and purporting to be signed by or for the Authority shall be admitted in evidence without further proof on its production to the magistrate and, unless there is evidence to the contrary---

(i) it shall be presumed that the certificate is so signed; and

(ii) the certificate shall be evidence of the facts stated in it.

9. Review of proceedings

(1) Where a magistrate is satisfied that a notice served under section 5(1) has not come to the personal notice of the person to whom it relates without any neglect by that person, the magistrate may, on an application of which reasonable notice has been given to the Authority, rescind the order made under section 7(1) in respect of the notice and---

(a) if that person wishes to dispute liability for the offence, give leave to that effect; or

(b) if he does not wish to dispute liability---

(i) order him to pay the fixed penalty concerned within 10 days from the date of the order; and

(ii) order that, if he fails to pay that fixed penalty within that period, he shall be liable to pay immediately that fixed penalty, together with an additional penalty equal to the amount of the fixed penalty.

(2) An application under subsection (1) may be made in person or by counsel or solicitor on behalf of the applicant and the magistrate, for the purpose of securing the attendance of witnesses and generally for conducting the proceedings, shall have all the powers of a magistrate hearing a complaint under the Magistrates Ordinance (Cap. 227).

(3) An application under subsection (1) shall be made within 14 days from the date that the magistrate is satisfied is the earliest date on which the order mentioned in section 7(1) came to the personal notice of the person to whom that order relates.

(4) Where a magistrate gives leave under subsection (1)(a), proceedings may be taken, notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), within 6 months from the date when the magistrate gives the leave.

(5) A magistrate may for good cause, on an application by the Authority at any time, rescind any order for the payment of a fixed penalty and any other order made in the same proceedings.

10. Service of summons

Where---

- (a) a person fails to pay the fixed penalty in accordance with a notice served on him under section 5(1);
 - (b) he notifies the Authority that he wishes to dispute liability for the scheduled offence specified in the notice, or he is given leave under section 9(1)(a); and
 - (c) proceedings are taken against him in respect of the offence,
- then a summons issued in those proceedings may be served on the person by sending it by post to his address.

11. Additional penalty in proceedings
on dispute of liability

Where a person---

- (a) having notified the Authority, in accordance with a notice under section 5(1), that he wished to dispute liability for the scheduled offence concerned; or
 - (b) having been given leave under section 9(1)(a),
- and having been served with a summons and appeared before a magistrate, offers no defence or a defence which is frivolous or vexatious, the magistrate shall, in addition to any other penalty and costs, impose an additional penalty equal to the amount of the fixed penalty for that offence.

12. Payment of fixed penalty
after issue of summons

(1) Notwithstanding that proceedings have been instituted against a person who has notified the Authority in accordance with the notice served on him under section 5(1) that he wishes to dispute liability, the person may pay the fixed penalty concerned together with an additional penalty equal to the amount of the fixed penalty in accordance with subsection (2), and, if at the same time the person also pays the sum of \$500 by way of costs, the proceedings shall thereupon terminate.

(2) Payment under subsection (1) shall be made at any magistracy not less than 2 days before the day specified in the summons for the person's appearance, and the summons shall be produced at the time of payment.

(3) No public holiday shall be included in the computation of the 2 days' period mentioned in subsection (2).

13. Distress in case of default

(1) If a person who has been ordered under this Ordinance to pay any penalty fails within 1 month from the date of the order to pay the penalty, an application may be made in the absence of that person to a magistrate for an order directing that--

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- (a) the penalty to be paid, or where the application for an order under this section is in respect of more than one penalty to be paid, the total of such penalties; and

(b) the costs of the application for an order under this section, be levied on any goods and chattels of the person by distress and sale thereof.

(2) An application under subsection (1) shall be made in the name of the Secretary for Justice, who may appoint any person or class of persons to make the application.

PART 3

Miscellaneous

14. Protection for public officers acting in good faith

(1) A public officer shall not be personally liable in respect of any act done by him while exercising any of his powers under this Ordinance and within the scope of his employment, if he did that act in the honest belief that he was entitled to do it.

(2) Nothing in this section shall be construed as relieving the Government from liability in respect of the acts of public officers.

(3) In this section, "public officer" (公職人員) includes any Authority set out in column 2 of Schedule 2.

15. Obstruction of officers in the exercise of their duty

A person who wilfully obstructs or resists a public officer exercising his powers under this Ordinance commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 6 months.

16. Power to make regulations

The Secretary for the Environment and Food may by regulation---

(a) prescribe any notice or certificate which under this Ordinance is to be or may be prescribed;

(b) specify the persons to whom and the places at which a fixed penalty or an additional penalty may be paid;

(c) specify the manner of payment of a fixed penalty or an additional penalty; and

(d) provide for the better carrying out of the provisions of this Ordinance.

17. Revision of fixed penalty

The Legislative Council may, by resolution, increase the fixed penalty in relation to a scheduled offence.

18. Amendment of Schedule 2

The Chief Executive in Council may by order amend Schedule 2.

Consequential Amendments

Criminal Procedure Ordinance

19. Provision for fines for offences

Section 113C of the Criminal Procedure Ordinance (Cap. 221) is amended, in

subsection (1)(c), by repealing "or the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240)" and substituting ", the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) or the Fixed Penalty (Public Cleanliness Offences) Ordinance (of 2001)".

Rehabilitation of Offenders Ordinance

20. Protection of rehabilitated individual

Section 2(1B) and (3) of the Rehabilitation of Offenders Ordinance (Cap. 297) is amended, by repealing "or the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240)" and substituting ", the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) or the Fixed Penalty (Public Cleanliness Offences) Ordinance (of 2001)".

SCHEDULE 1 [s. 2 & Sch. 2]

Scheduled Offence

Section or Item	Regulation Description	Fixed Penalty
Public Health and Municipal Services Ordinance (Cap. 132)		
1.	Section 104A(2) Display of bills or posters without permission	\$600
Public Cleansing and Prevention of Nuisances Regulation (Cap. 132 sub. leg.)		
2.	Section 4(1) Depositing of litter or waste in public places	\$600
3.	Section 8A(1) Spitting in public places	\$600
Country Parks and Special Areas Regulations (Cap. 208 sub. leg.)		
4.	Regulation 12(1)(c) Depositing of litter in country parks and special areas	\$600
5.	Regulation 12(1)(e) Spitting in country parks and special areas	\$600
Summary Offences Ordinance (Cap. 228)		
6.	Section 4D(1) Marine littering	\$600
Waste Disposal Ordinance (Cap. 354)		
7.	Section 16A(1) Unlawful depositing of waste	\$600

SCHEDULE 2 [ss. 2, 14 & 18]

Authorities and Public Officers

Scheduled Offence*	Authority	Public Officer
4, 5, 6	Director of Agriculture, Fisheries and Conservation	Forestry Officer Field Officer
	Field Assistant	
	Forest Guard	

Fisheries Officer
Fisheries Supervisor
7 Director of Environmental Protection Environmental Protection Officer
Protection Assistant Environmental Protection Officer
Assistant Pollution Control Officer
Chief Environmental Protection Inspector
Senior Environmental Protection Inspector
Environmental Protection Inspector
Pollution Control Inspector
1, 2, 3, 6 Director of Food and Senior Superintendent of Environmental Health
Environmental Hygiene Superintendent of Environmental Health
Chief Health Inspector
Senior Health Inspector
Health Inspector I
Health Inspector II
Senior Overseer
Overseer
Senior Foreman
Foreman
Principal Hawker Control Officer
Chief Hawker Control Officer
Senior Hawker Control Officer
Hawker Control Officer
Assistant Hawker Control Officer
2, 3 Director of Housing Housing Manager
Assistant Housing Manager
Housing Officer
2, 3, 6 Director of Leisure and Amenities Officer
Cultural Services Amenities Assistant
Senior Foreman
Foreman
Librarian
Manager, Cultural Services
Recreation and Sports Officer
6 Director of Marine Marine Officer
Marine Controller
Assistant Marine Controller
Senior Assistant Shipping Master

Marine Inspector I

Marine Inspector II

* In this column, a scheduled offence is described by reference to the item number set out opposite to the scheduled offence in column 1 of Schedule 1.

Explanatory Memorandum

The purpose of this Bill is to enable a person who has committed certain offences relating to public cleanliness to discharge his liability to conviction by the payment of a fixed penalty.

2. Clause 3 provides that a public officer who has reason to believe that a person is committing or has committed a scheduled offence may give the person an opportunity to discharge his liability to conviction by the payment of a fixed penalty. This is done by giving the person a notice requiring the payment of the fixed penalty within 21 days. The scheduled offences for which fixed penalties are so payable are set out in Schedule 1.

3. Clause 4 empowers a public officer to require a person to state his name and address and proof of identity for giving a fixed penalty notice. A person who fails to comply with the requirement commits an offence.

4. Clause 5 provides that where a person fails to pay a fixed penalty within 21 days from the date of the giving of a notice under section 3(1), the Authority may issue a further notice. This notice will not only demand payment of the fixed penalty but also require the person to notify the Authority if he wishes to dispute liability. The respective Authorities in respect of the offences are set out in Schedule 2.

5. Clause 6 provides that a notice given under clause 3(1) or 5(1) may be withdrawn. The clause also provides for the repayment of a penalty paid under a withdrawn notice.

6. Clause 7 provides that where the notice served under clause 5(1) is not acted upon, the magistrate may order payment of the fixed penalty and an additional penalty equal to the fixed penalty. Notice of this order is to be served on the person liable.

7. Clause 8 provides for the proof in proceedings in an application under clause 7(1).

8. Clause 9 provides for the review of an order made under clause 7(1).

9. Clause 10 provides for postal service of a summons in proceedings instituted following a person's notification to the Authority that he wishes to dispute liability for the offence, or where a person has been given leave to dispute liability for the offence.

10. Clause 11 provides for the imposition of an additional penalty where the person liable offers no defence or one which is frivolous or vexatious.

11. Clause 12 enables a person to pay the fixed penalty after the institution of proceedings, but he must also pay an additional penalty equal to the amount of the

fixed penalty and the fixed costs of \$500.

12. Clause 13 provides for distress to recover amounts due.

13. Clause 14 exempts a public officer from personal liability in respect of any act done by him while exercising his powers under the Bill if the requirements set out in that clause are satisfied.

14. Clause 15 creates an offence. It is an offence for a person to wilfully obstruct or resist a public officer exercising his powers under the Bill.

15. Clause 16 enables regulations to be made by the Secretary for the Environment and Food for the carrying out of the provisions of the Bill.

16. Clause 17 empowers the Legislative Council to increase the fixed penalty by resolution.

17. Clause 18 empowers the Chief Executive in Council to amend Schedule 2.

18. Clauses 19 and 20 deal with consequential amendments necessitated by the Bill.