

立法會
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**Paper for the House Committee Meeting
of the Legislative Council
on 2 March 2001**

**Legal Service Division Report on
Fixed Penalty (Public Cleanliness Offences) Bill**

Object(s) of the Bill

To introduce a fixed penalty system for various offences relating to public cleanliness.

LegCo Brief Reference

2. EFB(CR) 10/9/2 dated 14 February 2001 issued by the Environment and Food Bureau.

Date of First Reading

3. 28 February 2001.

Background

4. At present, offences relating to public cleanliness are provided for in various Ordinances such as the Public Health and Municipal Services Ordinance (Cap. 132) and the Country Parks Ordinance (Cap. 208). Examples of these public cleanliness offences are depositing of litter in public places or into the sea, depositing of litter in country parks, spitting in public places and in country parks and unauthorized display of bills or posters. Penalties for these offences range from a fine at level 2 (\$5,000) to a fine at level 4 (\$25,000) and imprisonment for 6 months. At present, prosecution for these offences is instituted by way of summons at the magistrates' courts. According to the Administration, the average fine imposed by the courts on persons convicted of minor public cleanliness offences is around \$500.

5. In December 1998, the Steering Committee on Healthy Living chaired by the Chief Secretary for Administration endorsed a proposal to introduce a fixed penalty system for minor public cleanliness offences, similar to the system applicable to certain traffic offences. Members of the former Joint Provisional Urban Council/Provisional Regional Council Keep Hong Kong Clean Steering Committee supported the proposal and had made recommendations on the implementation of the proposed fixed penalty system. Their recommendations are set out in paragraph 3 of the LegCo Brief.

Comments

6. The Bill seeks to implement the proposal of the Steering Committee on Healthy Living with a view to reinforcing the Government's effort to clean Hong Kong. The proposed fixed penalty system in the Bill is modelled on that for various traffic offences under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237) and Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240).

7. Under the Bill, a person who has committed certain offences relating to public cleanliness will be offered an opportunity to discharge his liability to conviction for the offences by the payment of a fixed penalty. These offences, which are set out in Schedule 1 to the Bill, include unauthorized display of bills or posters, depositing of litter or waste in public places and spitting in public places. The proposed fixed penalty for these offences is \$600 which may be increased by the Legislative Council by resolution. The effect of the proposed fixed penalty system is that where a person who has received a fixed penalty notice for an offence set out in Schedule 1 to the Bill and has paid the full amount of the fixed penalty shown in the notice, he will not be liable to be prosecuted or convicted for the offence specified in the notice.

8. The Bill proposes that the fixed penalty notices will be issued by public officers set out in Schedule 2 to the Bill. Most of these public officers are currently empowered under section 8A of the Magistrates Ordinance (Cap. 227) to prosecute public cleanliness offenders. The form of the fixed penalty notices will be prescribed by regulation by the Secretary for the Environment and Food.

9. To equip public officers with the necessary enforcement powers, the Bill proposes to empower them to require a person to state his name and address and produce proof of identity for the purpose of ascertaining the true identity of the person. A person who fails to comply with the requirement commits an offence and is liable to a fine at level 2 (\$5,000).

10. Other provisions of the Bill relate to recovery of fixed penalty, the proceedings before a magistrate when a person wishes to dispute liability for the offence specified in the fixed penalty notice and consequential amendments.

11. If enacted, the Bill will come into operation on a day to be appointed by the Secretary for the Environment and Food by notice published in the Gazette.

Public Consultation

12. The Advisory Council on Food and Environmental Hygiene and the Steering Committee on Clean Hong Kong have been consulted on the Bill in September 2000 and November 2000 respectively and they generally supported the proposal.

Consultation with the LegCo Panel

13. The Administration briefed the LegCo Panel on Food Safety and Environmental Hygiene on 8 January 2001. Although members generally supported the proposal set out in the Bill, some members suggested extending the fixed penalty system to other public cleanliness offences such as dog fouling and recommended a lower fixed penalty level.

Conclusion

14. We are seeking clarification from the Administration on the legal and drafting aspects of the Bill. In light of the views expressed by members of the Panel on Food Safety and Environmental Hygiene, it is recommended that a Bills Committee be set up to study the Bill in detail.

Prepared by

Fung Sau-kuen, Connie
Assistant Legal Adviser
Legislative Council Secretariat
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