

**For information
on 28 October 2003**

LegCo Panel on Food Safety and Environmental Hygiene

**Public Consultation on
Proposed New Penalties for Repeat Cleanliness Offenders**

PURPOSE

This paper informs Members of the launch of a public consultation exercise on proposed new penalties for repeat cleanliness offenders.

BACKGROUND

2. As part of the wide-ranging measures to improve environmental hygiene in Hong Kong, the Administration has, since the outbreak of the Severe Acute Respiratory Syndrome (SARS) earlier this year, stepped up enforcement against cleanliness offences. The “zero tolerance” enforcement approach, coupled with the increase in fixed penalty from \$600 to \$1,500, has proved effective in deterring unhygienic practices generally. Our streets are cleaner than before and the number of offenders has reduced. In June, July, August and September 2003, we issued about 3 300, 2 200, 2 200 and 2 100 fixed penalty notices/summons respectively.

3. While the \$1,500 penalty level is high enough for first-time offenders, this does not seem to be the case for those repeat offenders who continually soil our environment and put public health at risk. Since introduction of the fixed penalty system in June 2002, there were 382 repeat offenders out of a total of about 26 100 offenders, of which 326 were second-time offenders while 56 have broken the cleanliness law thrice or more. To tackle this problem, Team Clean chaired by the Chief Secretary for Administration has explored the feasibility of a

number of options to enhance the deterrent effect against habitual offenders, namely –

- community service orders;
- publication of names of offenders;
- imprisonment terms; and
- imposition of criminal records.

THE PROPOSAL

4. After thorough deliberations, Team Clean has concluded that it would not be appropriate to take forward the last three options for the time being. As regards the imposition of community service orders, a new prosecution scheme is recommended to stiffen the penalties for repeat offenders –

- a first-time offender of any of the four cleanliness offences would be issued a fixed penalty notice of \$1,500;
- if the offender commits a second offence within a period of 24 months, the enforcement department will withdraw the fixed penalty notice issued to the offender and replace it with a summons and, at the Court hearing, apply to the Court for a penalty higher than \$1,500 and the award of a community service order. The level and form of penalties will be left to the discretion of the Court; and
- the four cleanliness offences will be counted as one type of offence under the scheme. In other words, a person who has committed a spitting offence and a dog-fouling offence will be treated as a repeat offender for the purpose of the scheme.

IMPLEMENTATION

5. Under the present regulatory framework for cleanliness offences, enforcement departments have the discretion to issue

summonses instead of fixed penalty notices under certain circumstances. For example, during the SARS outbreak earlier this year and prior to enactment of the legislative amendment to raise the fixed penalty to \$1,500, spitting offenders were generally issued with summonses in lieu of fixed penalty notices to achieve more deterrent effect. The fixed penalty regime in force also provides an avenue for enforcement departments to withdraw fixed penalty notices issued and replace them with Court summonses when circumstances warrant such withdrawal.

6. Under the Community Service Orders Ordinance (Cap 378), the Court may make a community service order against an offender aged 14 or over who is convicted of an offence punishable with imprisonment. The offender may be required to perform community service for a maximum of 240 hours under the supervision of a probation officer. The imposition of community service orders serves both rehabilitative and reparative purposes. To implement the proposal in paragraph 4, we may need to amend the Ordinance to enable the imposition of community service orders on repeat cleanliness offenders.

PUBLIC CONSULTATION

7. Before we proceed further, we would like to gauge views from the public on whether additional penalties should be imposed on repeat cleanliness offenders. Launched on 23 October 2003, the consultation exercise will last for a month. Members of the public are invited to fill in a questionnaire such that their views could be factored in the way forward.

ADVICE SOUGHT

8. Members are invited to note the public consultation exercise.

Health, Welfare and Food Bureau
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