

LEGISLATIVE COUNCIL BRIEF

Magistrates Ordinance
(Chapter 227)
Fixed Penalty
(Public Cleanliness Offences) Ordinance
(Chapter 570)

MAGISTRATES ORDINANCE (AMENDMENT OF FOURTH SCHEDULE) ORDER 2005

FIXED PENALTY (PUBLIC CLEANLINESS OFFENCES) ORDINANCE (AMENDMENT OF SCHEDULE 2) ORDER 2005

INTRODUCTION

At the meeting of the Executive Council on 22 February 2005, the Council ADVISED and the Chief Executive ORDERED that:-

_____ (a) under section 135 of the Magistrates Ordinance, the Magistrates Ordinance (Amendment of Fourth Schedule) Order 2005, at Annex A; and

_____ (b) under section 19 of the Fixed Penalty (Public Cleanliness Offences) Ordinance, the Fixed Penalty (Public Cleanliness Offences) Ordinance (Amendment of Schedule 2) Order 2005, at Annex B,

should be made to specify the ranks of public officers of Leisure and Cultural Services Department (LCSD) in the respective schedules under these Ordinances to maintain consistency and to remove certain references to obsolete ranks from these Schedules.

JUSTIFICATIONS

2. It is the legislative intention that all ranks of the LCSD grades listed in the Schedules have the related law enforcement power and responsibilities. It is however noted that some departments, such as Food and Environmental Hygiene Department and Housing Department, etc., have specified the ranks of the public officers in the Schedules instead of listing out the grades. In order to remove ambiguity, it is advisable for LCSD to specify the ranks of Amenities Officer, Amenities Assistant, Leisure Services Manager, Recreation and Sport Officer, Curator, Cultural Services Manager and Librarian grades in the Schedules.

3. With the merger of the Amenities Officer grade and the Recreation and Sport Officer grade into the Leisure Services Manager grade in September 2002, there remains only a few officers staying at the obsolescent ranks of Amenities Officer I, Amenities Officer II and Assistant Recreation and Sport Officer II that are required to be included in the Schedules.

4. Since there is no more Senior Foreman or Foreman in LCSD, opportunity is taken to delete them from the Schedules.

THE ORDERS

Magistrates Ordinance (Amendment of Fourth Schedule) Order 2005

5. The Magistrates Ordinance empowers a public officer specified in the Fourth Schedule to the Ordinance to serve on a person who is suspected of having committed an offence specified in that Schedule personally a notice requiring him to appear before a magistrate. Section 135 of the Ordinance empowers the Chief

Executive in Council to amend the Fourth Schedule by order published in the Gazette. The Order repeals and substitutes the entry relating to LCSD in order to bring up to date the list of public officers in LCSD who are empowered to serve the notice under the Ordinance. The existing Schedule being amended is at Annex C.

Fixed Penalty (Public Cleanliness Offences) Ordinance (Amendment of Schedule 2) Order 2005

6. The Fixed Penalty (Public Cleanliness Offences) Ordinance empowers a public officer specified in Schedule 2 to the Ordinance to give a person, whom he has reason to believe is committing or has committed an offence described in Schedule 1, in person a notice, offering that person an opportunity to discharge the liability to conviction for that offence by payment of a fixed penalty. Section 19 of the Fixed Penalty (Public Cleanliness Offences) Ordinance provides that the Chief Executive in Council may, by order published in the Gazette, amend Schedule 2 thereto. The Order updates the list of public officers in LCSD who are empowered to give the notice under the Ordinance. The existing Schedule being amended is at Annex D.

IMPLICATIONS OF THE PROPOSAL

7. As the proposal aims to clarify the law enforcement powers and responsibilities conferred to designated public officers in LCSD, it has no financial and civil service implications. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity, environmental, economic or sustainability implications. The proposal does not affect the binding effect of the Magistrates Ordinance and the Fixed Penalty (Public Cleanliness Offences) Ordinance.

PUBLIC CONSULTATION

8. The proposed amendments are technical in nature and are meant to clarify the legislative intention of empowering the listed public officers with the

relevant responsibilities. Public consultation is not considered necessary.

PUBLICITY

9. The Orders will be published in the Gazette on 4 March 2005 and tabled at the Legislative Council for negative vetting on 9 March 2005. A spokesman will be available to answer media enquiries.

ENQUIRIES

10. For enquires, please contact Mr Eddie POON, Principal Assistant Secretary for Home Affairs (Recreation and Sport) of Home Affairs Bureau at 2594 6616 and Mr Alan CHONG, Government Counsel of Department of Justice at 2867 4427.

Home Affairs Bureau

2 March 2005

LEGISLATIVE COUNCIL BRIEF

Magistrates Ordinance (Chapter 227) Magistrates Ordinance (Amendment of Fourth Schedule) Order 2005

Fixed Penalty (Public Cleanliness Offences) Ordinance (Chapter 570) Fixed Penalty (Public Cleanliness Offences) Ordinance (Amendment of Schedule 2) Order 2005

Annexes

Annex A	Magistrates Ordinance (Amendment of Fourth Schedule) Order 2005
Annex B	Fixed Penalty (Public Cleanliness Offences) Ordinance (Amendment of Schedule 2) Order 2005
Annex C	Magistrates Ordinance (Chapter 227) Schedule 4
Annex D	Fixed Penalty (Public Cleanliness Offences) Ordinance (Chapter 570) Schedule 2

MAGISTRATES ORDINANCE (AMENDMENT OF FOURTH SCHEDULE) ORDER 2005

(Made by the Chief Executive in Council under section 135 of the Magistrates Ordinance (Cap. 227))

1. Fourth Schedule amended

The Fourth Schedule to the Magistrates Ordinance (Cap. 227) is amended by repealing the entry relating to Leisure and Cultural Services Department and substituting –

<p>“Leisure and Cultural Services Department</p> <ul style="list-style-type: none"> (i) Amenities Officer I (ii) Amenities Officer II (iii) Senior Amenities Assistant (iv) Amenities Assistant I (v) Amenities Assistant II (vi) Amenities Assistant III (vii) Assistant Recreation and Sport Officer II (viii) Chief Leisure Services Manager (ix) Senior Leisure Services Manager (x) Leisure Services Manager (xi) Assistant Leisure Services Manager I (xii) Assistant Leisure Services Manager II 	<p>(a) Any offence under Part III of the Public Health and Municipal Services Ordinance (Cap. 132).</p>
<ul style="list-style-type: none"> (i) Amenities Officer I (ii) Amenities Officer II (iii) Senior Amenities Assistant (iv) Amenities Assistant I (v) Amenities Assistant II (vi) Amenities Assistant III (vii) Chief Curator (viii) Curator (ix) Assistant Curator I (x) Assistant Curator II (xi) Chief Librarian (xii) Senior Librarian 	<p>(b) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132 sub. leg. BK).</p>

<ul style="list-style-type: none"> (xiii) Librarian (xiv) Assistant Librarian (xv) Chief Manager, Cultural Services (xvi) Senior Manager, Cultural Services (xvii) Manager, Cultural Services (xviii) Assistant Manager, Cultural Services (xix) Assistant Recreation and Sport Officer II (xx) Chief Leisure Services Manager (xxi) Senior Leisure Services Manager (xxii) Leisure Services Manager (xxiii) Assistant Leisure Services Manager I (xxiv) Assistant Leisure Services Manager II 	(c) Any offence under section 4D(1) of the Summary Offences Ordinance (Cap. 228).
<ul style="list-style-type: none"> (i) Amenities Officer I (ii) Amenities Officer II (iii) Senior Amenities Assistant (iv) Amenities Assistant I (v) Amenities Assistant II (vi) Amenities Assistant III (vii) Assistant Recreation and Sport Officer II (viii) Chief Leisure Services Manager (ix) Senior Leisure Services Manager (x) Leisure Services Manager (xi) Assistant Leisure Services Manager I (xii) Assistant Leisure Services Manager II 	

Clerk to the Executive Council

COUNCIL CHAMBER

2005

Explanatory Note

Section 8A of the Magistrates Ordinance (Cap. 227) ("the Ordinance") empowers a public officer specified in the Fourth Schedule to the Ordinance to serve on a person who is suspected of having committed an offence specified in that Schedule personally a notice requiring him to appear before a magistrate.

2. This Order repeals and substitutes the entry relating to Leisure and Cultural Services Department in the Fourth Schedule to the Ordinance to bring up to date the list of the public officers in the Department who are empowered to do so under that section.

**FIXED PENALTY (PUBLIC CLEANLINESS OFFENCES)
ORDINANCE (AMENDMENT OF SCHEDULE 2)
ORDER 2005**

(Made by the Chief Executive in Council under section 19 of the
Fixed Penalty (Public Cleanliness Offences)
Ordinance (Cap. 570))

1. Authorities and public officers

Schedule 2 to the Fixed Penalty (Public Cleanliness Offences)
Ordinance (Cap. 570) is amended, in the entry relating to Scheduled Offence "2,
3, 4, 7", by repealing everything in column 3 and substituting –

"Amenities Officer I

Amenities Officer II

Senior Amenities Assistant

Amenities Assistant I

Amenities Assistant II

Amenities Assistant III

Chief Librarian

Senior Librarian

Librarian

Assistant Librarian

Chief Manager, Cultural Services

Senior Manager, Cultural Services

Manager, Cultural Services

Assistant Manager, Cultural Services

Assistant Recreation and Sport Officer II

Chief Leisure Services Manager

Senior Leisure Services Manager

Leisure Services Manager

Assistant Leisure Services Manager I

Assistant Leisure Services Manager II".

Clerk to the Executive Council

COUNCIL CHAMBER

2005

Explanatory Note

Section 3 of the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570) ("the Ordinance") empowers a public officer specified in Schedule 2 to the Ordinance to give a person whom he has reason to believe is committing or has committed an offence that is described in Schedule 1 personally a notice, offering the person an opportunity to discharge the liability to conviction for that offence by payment of a fixed penalty.

2. This Order amends Schedule 2 to the Ordinance to update the list of the public officers in the Leisure and Cultural Services Department who are empowered to do so under that section.

Chapter:	227	MAGISTRATES ORDINANCE	Gazette Number	Version Date
Schedule:	4		L.N. 89 of 2002	07/06/2002

[sections 8A & 135]

Public Officer

Offences

Agriculture, Fisheries and Conservation
Department (Amended L.N. 331 of 1999)

- (i) Forestry Officer
- (ii) Field Officer
- (iii) Field Assistant
- (iv) Forest Guard
- (v) Agricultural Officer
- (vi) Fisheries Officer
- (vii) Fisheries Supervisor
- (viii) Veterinary Officer
- (i) Forestry Officer
- (ii) Field Officer
- (iii) Field Assistant
- (iv) Forest Guard
- (i) Fisheries Officer
- (ii) Senior Fisheries Supervisor
- (iii) Fisheries Supervisor I
- (iv) Fisheries Supervisor II

(a) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg.). (Replaced 78 of 1999 s. 7)

(b) (Repealed 78 of 1999 s. 7)

(c) Any offence under the Country Parks and Special Areas Regulations (Cap 208 sub. leg.).

(d) Any offence under section 4D(1) of the Summary Offences Ordinance (Cap 228).

Fire Services Department

- (i) Divisional Officer
- (ii) Assistant Divisional Officer
- (iii) Senior Station Officer
- (iv) Station Officer

(a) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg.). (Replaced 78 of 1999 s. 7)

(b) (Repealed 78 of 1999 s. 7)

Food and Environmental Hygiene Department

- (i) Senior Overseer
- (ii) Overseer
- (iii) Senior Foreman
- (iv) Foreman
- (v) Health Inspector
- (vi) Principal Hawker Control Officer
- (vii) Chief Hawker Control Officer
- (viii) Senior Hawker Control Officer
- (ix) Hawker Control Officer
- (x) Assistant Hawker Control Officer
- (i) Director of Food and Environmental Hygiene
- (ii) Deputy Director of Food and Environmental Hygiene
- (iii) Assistant Director
- (iv) Senior Overseer
- (v) Overseer
- (vi) Senior Foreman
- (vii) Foreman
- (viii) Health Inspector
- (ix) Transport Supervisor
- (x) Principal Hawker Control Officer
- (xi) Chief Hawker Control Officer
- (xii) Senior Hawker Control Officer
- (xiii) Hawker Control Officer
- (xiv) Assistant Hawker Control Officer
- (i) Director of Food and Environmental Hygiene
- (ii) Deputy Director of Food and Environmental Hygiene

(a) Any offence under Part III of the Public Health and Municipal Services Ordinance (Cap 132).

(b) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg.).

(c) Any offence under section 4D(1) of the Summary Offences Ordinance (Cap 228). (Added 78 of 1999 s. 7)

- (iii) Assistant Director
 - (iv) Senior Overseer
 - (v) Overseer
 - (vi) Senior Foreman
 - (vii) Foreman
 - (viii) Health Inspector
 - (ix) Principal Hawker Control Officer
 - (x) Chief Hawker Control Officer
 - (xi) Senior Hawker Control Officer
 - (xii) Hawker Control Officer
 - (xiii) Assistant Hawker Control Officer
- Highways Department
- (i) Senior Engineer
 - (ii) Engineer
 - (iii) Assistant Engineer
 - (iv) Chief Technical Officer
 - (v) Inspector of Works I
 - (vi) Inspector of Works II
 - (vii) Assistant Inspector of Works
- Housing Department
- (i) Housing Manager
 - (ii) Assistant Housing Manager
 - (iii) Housing Officer (Amended L.N. 109 of 1990)
- Labour Department
- (i) Factory Inspector
 - (ii) Factory Inspector I
 - (iii) Factory Inspector II
 - (iv) Labour Inspector I
 - (v) Labour Inspector II
- Lands Department (Amended L.N. 283 of 1993)
- (i) Senior Land Executive
 - (ii) Land Executive
 - (iii) Senior Survey Officer (Estate)
- Leisure and Cultural Services Department
- (i) Amenities Officer
 - (ii) Amenities Assistant
 - (iii) Senior Foreman
 - (iv) Foreman
 - (v) Leisure Services Manager (Added L.N. 89 of 2002)
 - (i) Amenities Officer
 - (ii) Amenities Assistant
 - (iii) Curator
 - (iv) Senior Foreman
 - (v) Foreman
 - (vi) Librarian
 - (vii) Manager, Cultural Services
 - (viii) Recreation and Sports Officer
 - (ix) Leisure Services Manager (Added L.N. 89 of 2002)
 - (i) Amenities Officer
- (a) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg.). (Replaced 78 of 1999 s. 7)
 - (b) (Repealed 78 of 1999 s. 7)
 - (a) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg.). (Replaced 78 of 1999 s. 7)
 - (b) (Repealed 78 of 1999 s. 7)
 - (a) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg.). (Replaced 78 of 1999 s. 7)
 - (b) (Repealed 78 of 1999 s. 7)
 - (a) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg.). (Replaced 78 of 1999 s. 7)
 - (b) (Repealed 78 of 1999 s. 7)
 - (a) Any offence under Part III of the Public Health and Municipal Services Ordinance (Cap 132).
 - (b) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg.).
 - (c) Any offence under section 4D(1) of the

- (ii) Amenities Assistant
 - (iii) Senior Foreman
 - (iv) Foreman
 - (v) Recreation and Sports Officer
 - (vi) Leisure Services Manager (Added L.N. 89 of 2002)
- Summary Offences Ordinance (Cap 228).
(Added 78 of 1999 s. 7)

Marine Department

- (i) Marine Officer
 - (ii) Assistant Marine Officer
 - (iii) Marine Inspector I
 - (iv) Marine Inspector II
- (a) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg.). (Replaced 78 of 1999 s. 7)
 - (b) (Repealed 78 of 1999 s. 7)
 - (c) Any offence under section 4D(1) of the Summary Offences Ordinance (Cap 228).

Transport Department

- (i) Transport Controller I
 - (ii) Transport Controller II
 - (iii) Transport Assistant I
 - (iv) Transport Assistant II
- (a) Any offence under the Public Cleansing and Prevention of Nuisances Regulation (Cap 132 sub. leg.). (Replaced 78 of 1999 s. 7)
 - (b) (Repealed 78 of 1999 s. 7)

(Fourth Schedule replaced L.N. 407 of 1987. Amended L.N. 131 of 1996; L.N. 339 of 1996; 21 of 1999 s. 32; 78 of 1999 s. 7)

Chapter:	570	FIXED PENALTY (PUBLIC CLEANLINESS OFFENCES) ORDINANCE	Gazette Number	Version Date
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Schedule:	2	AUTHORITIES AND PUBLIC OFFICERS	L.N. 90 of 2002	07/06/2002
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[sections 2, 15 & 19]

Scheduled Offence*	Authority	Public Officer
1, 2, 3, 4, 5, 6, 7, 8	Commissioner of Police	Police Officer
4, 5, 6, 7	Director of Agriculture, Fisheries and Conservation	Forestry Officer Field Officer Field Assistant Forest Guard Fisheries Officer Fisheries Supervisor
8	Director of Environmental Protection	Environmental Protection Officer 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, 4, 7	Director of Food and Environmental Hygiene	Senior Superintendent of Environmental Health 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, 4	Director of Housing	Housing Manager Assistant Housing Manager Housing Officer
2, 3, 4, 7	Director of Leisure and Cultural Services	Amenities Officer Amenities Assistant Senior Foreman Foreman Librarian Manager, Cultural Services Recreation and Sports Officer Leisure Services Manager (Added L.N. 90 of 2002)
7	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.