

**立法會**  
**Legislative Council**

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LC Paper No. CB(2)2076/07-08  
(These minutes have been seen by  
the Administration)

**Bills Committee on  
Fixed Penalty (Smoking Offences) Bill**

**Minutes of the second meeting  
held on Monday, 28 April 2008, at 8:30 am  
in Conference Room A of the Legislative Council Building**

**Members present** : Hon Andrew CHENG Kar-foo (Chairman)  
Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Vincent FANG Kang, JP  
Hon LI Kwok-ying, MH, JP  
Dr Hon Joseph LEE Kok-long, JP  
Hon Alan LEONG Kah-kit, SC  
Hon WONG Ting-kwong, BBS

**Members absent** : Hon Martin LEE Chu-ming, SC, JP  
Hon LEUNG Kwok-hung  
Dr Hon KWOK Ka-ki

**Public Officers attending** : Item I

Mrs Ingrid YEUNG  
Deputy Secretary for Food and Health (Health)2

Miss Anita CHAN  
Principal Assistant Secretary for Food and Health  
(Health) Special Duty

Mr Alan CHONG  
Senior Government Counsel (Acting)  
Department of Justice

Dr Christine WONG  
Head of Tobacco Control Office  
Department of Health

**Clerk in attendance** : Miss Mary SO  
Chief Council Secretary (2) 5

**Staff in attendance** : Miss Winnie LO  
Assistant Legal Adviser 7

Ms Janet SHUM  
Senior Council Secretary (2)8

Ms Sandy HAU  
Legislative Assistant (2)5

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**I. Meeting with the Administration**

The Bills Committee deliberated (index of proceedings attached at **Annex**).

Enforcement officers of the proposed fixed penalty system

2. The Chairman was of the view that inspectors of the Food and Environmental Hygiene Department (FEHD) should also be empowered to issue fixed penalty notices (FPNs) for smoking offences which took place in the indoor areas of food premises.

3. The Administration responded that it was not practicable to empower FEHD inspectors to issue FPNs to people smoking in the indoor areas of food premises, as inspections to licensed food premises by FEHD inspectors focused mainly on the food rooms where food was handled and relatively less so on areas for serving patrons. Moreover, FEHD inspectors were not stationed at the licensed food premises, but only carried out inspections on a regular basis in accordance with the track record and risk classification of the premises ranging from once every four to 20 weeks. Hence, a better approach would be to help venue managers build up their capacity in requesting a smoker to extinguish a lighted cigarette, cigar or pipe or where the person failed to do so, requiring him to give his name and address and to produce proof of identity or leave the no smoking area.

4. The Chairman said that to empower FEHD inspectors to issue FPNs for smoking offences in the no smoking areas of food premises did not necessarily

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mean that FEHD inspectors had to inspect the indoor customer areas of food premises. Rather, the intention of such empowerment was to enable FEHD inspectors to issue FPNs for smoking offences if they happened to detect people smoking in statutory no smoking areas when conducting inspections to those food premises. The Chairman pointed out that although the work priority of Police officers was the upkeep of law and order, it was noted that Police officers would continue to take enforcement action by issuing FPNs in all venues where smoking or the carrying of a lighted cigarette, cigar or pipe was prohibited by law.

Admin

5. Mr Tommy CHEUNG asked whether staff of FEHD, the Leisure and Cultural Services Department and the Housing Department would wear uniform when taking enforcement action against smoking offences in the statutory areas under their management by issuing FPNs. The Administration undertook to revert in writing.

TCO complaint hotline

6. Mr Tommy CHEUNG said that many venue managers encountered much difficulty in reporting complaints in relation to smoking offence to TCO. The hotline was either very busy or their calls had to be diverted to a message box for recording because there was no operator available or the staff on duty was too busy to receive their calls personally.

Admin

7. The Administration responded that in order to increase the capacity of the complaint hotline, TCO had commissioned the Integrated Call Centre (ICC) to man the hotline since 1 February 2007. Furthermore, the hotline had been operating on a 24-hour basis since October 2007. To enable more effective handling of complaints, TCO would work with ICC on ways to ensure that more incoming calls could be received by staff personally.

8. The Chairman said that the existing arrangement of ICC transferring all complaints about smoking offences to TCO for follow-up was inefficient. To effect efficient handling of the complaints, the complaint hotline should be manned by TCO staff.

9. The Administration responded that although complaints in relation to smoking offences were received by ICC, information about these complaints was inputted into a computer system to which TCO had access. TCO would follow up all complaints received through ICC.

10. At the request of the Chairman, the Administration undertook to provide a response in writing to the following -

Admin

- (a) number of ICC staff manning the complaint hotline during and after office hours respectively;

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- (b) number of TCO staff on duty during and after office hours respectively; and
- (c) average time taken by TCO staff to process a complaint received during and after office hours respectively, and details of the procedures involved.

Manpower of TCO

11. The Chairman said that the introduction of the proposed fixed penalty system for smoking offences would not achieve the desired deterrent effect if the number of Tobacco Control Inspectors (TCIs) of TCO remained at only some 80, not to mention the additional workload after the deadline for implementing the smoking ban in the indoor areas of bars open to those aged 18 or above, mahjong parlors, commercial bathhouses and massage establishments on 1 July 2009 and the impending implementation of smoking ban in over 200 public transport interchanges across the territory. The Administration undertook to provide a response on TCO's manpower situation in writing.

Admin

TCO enforcement actions

12. The Administration was requested to provide a response in writing to the following -

- (a) of the some 3 800 summonses issued against smoking offences in 2007, the number of summonses which were complaints received by TCO complaint hotline and smoking offences detected by TCIs when conducting inspections to statutory no smoking areas respectively; and
- (b) number of assault cases on TCIs while taking enforcement actions.

Admin

Fixed penalty level for smoking offences

13. Mr Tommy CHEUNG expressed reservation about setting the penalty level for smoking offence at \$ 1,500, having regard to the fact that the fine level handed down by the court for smoking offence at present only averaged about \$700-\$800. It was also possible that offenders would choose to dispute liability in the hope that a lesser penalty would be imposed by the Court, hence defeating the purpose of having a fixed penalty system.

14. The Administration responded that the penalty level should be set at a level sufficiently high to achieve the desired deterrent effect without being unduly harsh. Hence, the proposal to fix the penalty level at \$1,500. This was on par with the

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fine level for public cleanliness offences which also had public health implications. The Administration further said that setting the penalty level at \$1,500 also attracted majority support during public consultation on the proposed fixed penalty system for smoking offences.

15. As for whether the \$1,500 penalty level would attract offenders to dispute liability, the Administration explained that should offenders do so -

- (a) the court was likely to consider the legislative intent in setting up a fixed penalty system and was unlikely to impose penalties of a lower level thereby allowing individuals to, through disputing liability, circumvent the fixed penalty fine level and the fixed penalty system;
- (b) the court would have regard to the consensus of the Legislative Council and of the public opinions represented by the Council over the penalty level when meting out penalties; and
- (c) the Bill contained a provision that if a person chose to dispute liability but offered no defence or a defence which was considered frivolous or vexations by the magistrate, the magistrate should, in addition to any other penalty and costs the court might impose, impose an additional penalty equal to the amount of the fixed penalty. This should be sufficient deterrent for those who had no defence but simply wanted to dispute liability in the hope of receiving a lower level penalty.

**II. Date of next meeting**

16. The Chairman reminded members that the next meeting had been scheduled for 3 May 2008 at 9:30 am to receive views from members of the public on the Bill.

17. There being no other business, the meeting ended at 9:50 am.

**Proceedings of the meeting of  
Bills Committee on Fixed Penalty (Smoking Offences) Bill  
on Monday, 28 April 2008, at 8:30 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000213	Chairman	Welcoming remarks	
000214 - 000711	Admin	Briefing on the Bill	
000712 - 001620	Chairman Admin	Manpower of Tobacco Control Office (TCO) of the Department of Health  Inspectors of the Food and Environmental Hygiene Department (FEHD) should also be empowered to issue fixed penalty notices (FPNs) for smoking offences which took place in the indoor areas of food premises, apart from the indoor areas of public markets and hawker bazaars under the management of FEHD	
001621 - 002053	Mr LI Kwok-ying Admin	Concern about people smoking outside public children's playground/play area	
002054 - 002518	Ms Audrey EU Admin	Deterrent effect of the proposed fixed penalty system for smoking offences  Reporting of smoking offences in statutory no smoking areas under the management of FEHD, Leisure and Cultural Services Department (LCSD) and Housing Department (HD)	
002519 - 004153	Mr Tommy CHEUNG Admin	Proposed penalty level for smoking offences  The Administration was requested to clarify whether staff of FEHD, LCSD and HD would wear uniform when taking enforcement action against smoking offences in the statutory areas under their management by issuing FPNs.  TCO complaint hotline	✓ (Admin to provide a written response)
004154 - 011622	Chairman Mr Tommy CHEUNG Admin	The Administration was requested to provide the following information -  (a) manpower of TCO to cope with additional workload after the expiry of the adaptation period for certain establishments and the impending implementation of smoking ban in public transport exchanges as well as to ensure the deterrent effect of the proposed fixed penalty system for smoking offences;  (b) number of Integrated Call Centre (ICC) staff manning the complaint hotline during and after office hours respectively;  (c) number of TCO staff on duty during and after office hours respectively;	✓ (Admin to provide written responses)

<b>Time marker</b>	<b>Speaker</b>	<b>Subject</b>	<b>Action required</b>
		(d) average time taken by TCO staff to process a complaint received during and after office hours respectively, and details of the procedures involved;  (e) of the some 3 800 summonses issued against smoking offences in 2007, the number of summonses which were complaints received by TCO complaint hotline and smoking offences detected by Tobacco Control Inspectors (TCIs) of TCO during inspections to statutory no smoking areas respectively; and  (f) number of assault cases on TCIs while taking enforcement actions	
011623 - 011821	Chairman Admin	Date of next meeting	

Council Business Division 2  
Legislative Council Secretariat  
27 May 2008