

**立法會**  
**Legislative Council**

Ref : CB2/BC/5/07

LC Paper No. CB(2)2191/07-08  
(These minutes have been seen by  
the Administration)

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

**Minutes of the fifth meeting  
held on Friday, 30 May 2008, at 8:30 am  
in Conference Room A of the Legislative Council Building**

**Members present** : Hon Andrew CHENG Kar-foo (Chairman)  
Hon Martin LEE Chu-ming, SC, JP  
Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon Vincent FANG Kang, JP  
Dr Hon Joseph LEE Kok-long, JP  
Hon Alan LEONG Kah-kit, SC

**Members absent** : Hon LI Kwok-ying, MH, JP  
Hon LEUNG Kwok-hung  
Dr Hon KWOK Ka-ki  
Hon WONG Ting-kwong, BBS

**Public Officers attending** : Item I

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

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

Dr Cindy LAI, JP  
Assistant Director of Health  
Department of Health

Mr Sunny CHAN  
Senior Assistant Law Draftsman  
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

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Action

**I. Meeting with the Administration**

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

Clause-by-clause examination of the Bill

2. The Administration was requested to provide a response in writing to the following issues raised by members at the meeting -

- (a) to specify the Authority and the list of public officers authorised to exercise the powers and perform the duties under the Bill in a schedule to the Bill, as had been done in the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570), to enable scrutiny by the Legislative Council;
- (b) to consider replacing "有關的人" referred to in clause 3(2) of the Chinese text of the Bill with "該人";
- (c) to explain why an offender would be liable on conviction to a fine at level 3 (\$10,000) for failing to comply with a requirement without reasonable excuse under clause 4(2) of the Bill, as opposed to a fine at level 2 (\$5,000) for a similar offence in Cap. 570;

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- (d) to confirm whether the Government policy of empowering public officers to require members of the public to produce proof of identification for inspection had been expanded from the original purpose of detecting illegal immigrants to facilitating various enforcement works of the Government such as issuing fixed penalty notices for smoking offences, if so, the reasons concerned;
- (e) to consider replacing the word "may" referred to in clause 6(2) of the Bill with "shall" to ensure consistency in enforcement;
- (f) to specify the considerations for withdrawing a notice of fixed penalty under clause 7 of the Bill; and
- (g) to consider deleting the word "so" referred to in clause 9(3)(c) of the Bill to better align with the meaning of the Chinese text of that clause.

3. The Administration also undertook to provide the following information requested by members in writing -

- (a) whether there was any person holding a Vietnamese refugee card in Hong Kong, if so, the number involved; and
- (b) what was the penalty for supplying a false or misleading "proof of identity" referred to in section 17B of the Immigration Ordinance (Cap. 115).

4. Members noted the Administration's plan -

- (a) to amend clause 10(2) of the Bill, as under clause 8 of the Bill, an application to be made to the magistrate for a court order to recover the defaulted payment of the fixed penalty could be made by a person other than the Authority;
- (b) to replace "的2天前" referred to clause 13(2) of the Chinese text of the Bill by "不少於2天前" to tally better with "not less than 2 days" in the English text of the same; and
- (c) to amend the Schedule to the Bill by replacing section 3(2) and section 4(1) of the Smoking (Public Health) Ordinance (Cap. 371) in column 2 of the Schedule with section 7(1) of Cap. 371 (as section 7(1) is the provision which creates the offence of a contravention of section 3(2) or section 4(1) of that Ordinance) and to make the necessary consequential changes to that Schedule.

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**II. Date of next meeting**

5. The next meeting originally scheduled for 2 June 2008 at 8:30 am would be cancelled to allow more time for the Administration to prepare responses to issues at this and previous meetings.

*(Post-meeting note: The next meeting was re-scheduled to 5 June 2008 at 10:45 am.)*

6. There being no other business, the meeting ended at 10:25 am.

Council Business Division 2  
Legislative Council Secretariat  
6 June 2008

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

Time marker	Speaker	Subject	Action required
000000 - 000125	Chairman	Opening remarks	
000126 - 000317	Admin	Administration's response to issues raised at the meeting on 23 May 2008 (LC Paper No. CB(2)2111/07-08(01)) concerning conversion of non-civil service contract Tobacco Control Inspectors positions into civil service positions	
000318 - 000424	Chairman Admin	The Administration would provide responses in writing to issues raised by members at the previous meetings	✓ (Admin to provide written responses)
000425 -002106	Chairman Mr Martin LEE Admin	<u>Clause-by-clause examination of the Bill</u>  <i>Clause 1 - Short title and commencement</i>  <i>Clause 2 - Interpretation</i>  Members noted the Administration's plan to amend the Schedule to the Bill by replacing section 3(2) and section 4(1) of the Smoking (Public Health) Ordinance (Cap. 371) in column 2 of the Schedule with section 7(1) of Cap. 371 (as section 7(1) is the provision which creates the offence of a contravention of section 3(2) or section 4(1) of that Ordinance) and to make the necessary consequential changes to that Schedule	
002107 - 003011	Admin Chairman Mr Martin LEE ALA7	<i>Clause 3 - Fixed penalty notice given by public officer</i>  The Administration was requested to consider replacing "有關的人" referred to in clause 3(2) of the Chinese text of the Bill with "該人"	✓ (Admin to provide a written response)
003012 - 004359	Admin Chairman Mr Martin LEE	<i>Clause 4 - Power of inspecting proof of identity</i>  The Administration was requested -  (a) to confirm whether the Government policy of empowering public officers to require members of the public to produce proof of identification for inspection had been expanded from the original purpose of detecting illegal immigrants to facilitating various enforcement works of the Government such as issuing fixed penalty notices for smoking offences, if so, the reasons concerned; and	✓ (Admin to provide written responses)

Time marker	Speaker	Subject	Action required
		<p>(b) to explain why an offender would be liable on conviction to a fine at level 3 (\$10,000) for failing to comply with a requirement without reasonable excuse under clause 4(2) of the Bill, as opposed to a fine at level 2 (\$5,000) for a similar offence in the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570)</p> <p>The Administration was also requested to provide the information on whether there was any person holding a Vietnamese refugee card in Hong Kong, if so, the number involved</p>	
004400 - 004514	Admin Mr Martin LEE Chairman	<p><i>Clause 5 - Supply of false information</i></p> <p>The Administration undertook to provide information on the penalty for supplying a false or misleading "proof of identity" referred to in section 17B of the Immigration Ordinance (Cap. 115)</p>	<p>✓ (Admin to provide a written response)</p>
004515 - 010904	Admin Chairman ALA7 Mr Martin LEE Mr Alan LEONG	<p><i>Clause 6 - Further fixed penalty notice served by Authority</i></p> <p>The Administration was requested to consider replacing the word "may" referred to in clause 6(2) of the Bill with "shall" to ensure consistency in enforcement</p>	<p>✓ (Admin to provide a written response)</p>
010905 - 011659	Admin Mr Martin LEE Chairman	<p><i>Clause 7 - Withdrawal of notice of fixed penalty</i></p> <p>The Administration was requested to specify the considerations for withdrawing a notice of fixed penalty under clause 7 of the Bill</p>	<p>✓ (Admin to provide a written response)</p>
011700 - 012132	Admin	<p><i>Clause 8 - Recovery of fixed penalty</i></p>	
012133 - 012819	Admin Mr Martin LEE	<p><i>Clause 9 - Proof produced for application under section 8</i></p> <p>The Administration was requested to consider deleting the word "so" referred to in clause 9(3)(c) of the Bill to better align with the meaning of the Chinese text of that clause</p>	<p>✓ (Admin to provide a written response)</p>
012820 - 014009	Admin Chairman	<p><i>Clause 10 - Review of order</i></p> <p>Members noted the Administration's plan to amend clause 10(2) of the Bill, as under clause 8 of the Bill, an application to be made to the magistrate for a court order to recover the defaulted payment of the fixed penalty could be made by a person other than the Authority</p>	
014010 - 014316	Admin	<p><i>Clause 11 - Service of summons of proceedings</i></p> <p><i>Clause 12 - Additional penalty imposed in proceedings on liability</i></p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject</b>	<b>Action required</b>
014317 - 014610	Admin ALA7	<i>Clause 13 - Payment of fixed penalty after issue of summons</i>  Members noted the Administration's plan to replace "的 2 天前" referred to clause 13(2) of the Chinese text of the Bill by "不少於 2 天前" to tally better with "not less than 2 days" in the English text of the same	
014611 - 014805	Admin	<i>Clause 14 - Protection for public officers acting in good faith</i>	
014806 - 014845	Admin	<i>Clause 15 - Obstruction of public officers</i>	
014846 - 015024	Admin Chairman	<i>Clause 16 - Power to make regulation</i>  <i>Clause 17 - Specification of Authority and public officer</i>  The Administration was requested to specify the Authority and the list of public officers authorised to exercise the powers and perform the duties under the Bill in a schedule to the Bill, as had been done in Cap. 570, to enable scrutiny by the Legislative Council	✓ (Admin to provide a written response)
015025 - 015114	Admin Chairman	<i>Clause 18 - Revision of fixed penalty</i>  <i>Clause 19 - Consequential amendments</i>	
015115 - 015447	Chairman Admin	Date of next meeting	

Council Business Division 2  
Legislative Council Secretariat  
6 June 2008