

立法會 *Legislative Council*

LC Paper No. CB(2)1564/07-08(03)

Ref : CB2/BC/5/07

Bills Committee on Fixed Penalty (Smoking Offences) Bill

Background brief prepared by the Legislative Council Secretariat on the proposed introduction of a fixed penalty system for smoking offences

Purpose

This paper gives an account of the past discussions by the Panel on Health Services (the Panel) on the proposed introduction of a fixed penalty system (FPS) for smoking offences.

Background

2. Under section 7 of the Smoking (Public Health) Ordinance (Cap. 371), any person who contravenes the statutory smoking prohibition in a statutory no smoking area is liable on summary conviction to a maximum fine of \$5,000. During the discussions of the Bills Committee set up to scrutinise the Smoking (Public Health) (Amendment) Bill 2005, members asked the Administration to introduce an FPS for persons found smoking in statutory no smoking areas, instead of conviction by summary offence, because the process is effective and efficient, as clearly shown in the case of littering offences. The Administration undertook to design and put in place such a system. As a new legislation is necessary, the Administration estimated that the whole process would take 18 to 24 months to complete after the passage of the Amendment Bill. The Amendment Bill came into force in October 2006.

Past discussions

3. The Administration briefed the Panel on 1 June 2007 on the latest progress of the proposal to introduce an FPS for smoking offences. Major views/concerns of members and the Administration's responses are set out in the ensuing paragraphs.

Penalty level

4. Members were advised that the proposed penalty level at \$1,500 was on par with public cleanliness offences which equally had public health implications. Hon Fred LI suggested that in formulating the penalty level for repeated offenders of smoking offences, reference should be drawn from the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570).

Operation of the proposed FPS

5. Members noted that under the proposed FPS for smoking offences, the Tobacco Control Office (TCO) of the Department of Health would remain the leading enforcement authority to be empowered to issue fixed penalty notices in all statutory no smoking areas. Likewise the Police would continue to take enforcement work by issuing fixed penalty notices to persons found smoking in statutory no smoking areas, although their work priority would still be the upkeep of law and order. To cater for public venues managed by government departments where a relatively higher volume of enforcement actions was expected, the Leisure and Cultural Services Department (LCSD), the Food and Environmental Hygiene Department (FEHD) and the Housing Department (HD) were also proposed to be vested with powers to issue fixed penalty notices for smoking offences in respect of those statutory no smoking areas in public venues under their purview. The management of LCSD, FEHD and HD would respectively consult their staff before deciding which ranks of staff should be vested with the authority to issue the fixed penalty notices.

6. Hon LI Kwok-ying was of the view that FEHD inspectors should also be involved in issuing fixed penalty notices for smoking offences which took place at food premises.

7. The Administration considered it not practicable to do so as inspections to food premises by FEHD inspectors focused mainly on the kitchen and related food preparation areas, rather than areas for serving patrons. Moreover, FEHD inspectors were not stationed at the food premises, but only carried out inspection to the premises on a regular basis in accordance with the track record and risk classification of the premises ranging from once every four to 20 weeks. The Administration further pointed out that as managers of statutory no smoking areas were empowered under the Smoking (Public Health) Ordinance to take immediate remedial actions and to mitigate the situation on the spot, a more practical approach was to help these managers to build up their capacity in this regard.

8. Hon Audrey EU suggested incorporating the fixed penalty notice form for smoking offences into the prescribed form for public cleanliness offences, so as to provide convenience to those enforcement departments vested with the authority to issue both types of fixed penalty notices.

9. The Administration advised that it would be complicated to do so, as the fixed penalty notices for smoking offences would be underpinned by a separate primary legislation and mechanism. Nevertheless, it would be possible for all enforcement

departments for the FPS for smoking offences to use the same prescribed form of the fixed penalty notice for smoking offences.

10. Members also raised concern about the adequacy of TCO manpower to enforce the smoking prohibition, and requested the provision of more funding to TCO for the recruitment of additional Tobacco Control Inspectors.

11. The Administration advised that the number of Tobacco Control Inspectors would increase from 34 in 2006-2007 to 71 in 2007-2008. It, however, pointed out that despite the increase in manpower and no matter how large the establishment would become, it would not be practicable or reasonable to expect Tobacco Control Inspectors to arrive at the scene instantly when someone was reported to be breaching/or to have breached the law, in view of the nature of the smoking offences which took place within a very short time. The Administration considered that the most effective way to ensure compliance of the smoking ban was through education. Nevertheless, the Administration would continue to closely monitor the manpower of TCO and the effectiveness of its strategy to combat smoking.

Relevant papers

12. Members are invited to access the Legislative Council's website (<http://www.legco.gov.hk>) for details of the relevant papers and minutes of the meeting of the Panel and the Bills Committee on Smoking (Public Health) (Amendment) Bill 2005.

Council Business Division 2
Legislative Council Secretariat
10 April 2008