

**President's ruling on
Committee Stage amendments to
Fixed Penalty (Smoking Offences) Bill
proposed by Hon Andrew CHENG Kar-foo**

Hon Andrew CHENG Kar-foo has given notice to move Committee Stage amendments (CSAs) to the Fixed Penalty (Smoking Offences) Bill (the Bill), if the motion for the Second Reading of the Bill is agreed to at the meeting of the Legislative Council (LegCo) of 2 July 2008. Before making a ruling on the admissibility of these CSAs, I have invited the Secretary for Food and Health (SFH) to offer his comments on the CSAs, and Mr CHENG to offer his response. I have also sought the advice of Counsel to the Legislature.

Hon Andrew CHENG Kar-foo's proposed CSAs

2. Mr CHENG's proposed CSAs seek to add to the fixed penalty scheme, as proposed in the Bill, an alternative means for a person who has committed a certain smoking-related offence to discharge his liability to conviction. That alternative means is the reporting to a smoking cessation counselling service, completion of the counselling and the payment of a fee upon completion of the counselling.

The Administration's views and the Member's response

3. SFH submits that Mr CHENG's proposed CSAs are outside the scope of the Bill and, therefore, are not be admissible under Rule 57(4)(a) of the Rules of Procedure (RoP). SFH also submits that the proposed CSAs have a charging effect under Rule 57(6) of RoP and, without the Chief Executive's written consent, may not be moved. Mr CHENG does not agree to SFH's views.

4. I shall first deal with the admissibility of the proposed CSAs under Rule 57(4)(a) of RoP. Rule 57(4)(a) provides that an amendment relating to a bill must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates. The relevant views of SFH and Mr CHENG are summarized in the **Appendix**.

Advice of Counsel to the Legislature

5. Counsel of the Legislature has given his opinion which is summarized in the following paragraphs.

6. Counsel points out that the main thrust of Mr CHENG's argument is that his proposed CSAs are covered by "related matters" referred to in the long title of the Bill. Mr CHENG refers to the following to support his argument:

- (a) the Administration considered in its reply the two suggestions for encouraging cessation of smoking, i.e. to provide information on smoking cessation services when issuing fixed penalty notices and to encourage persons who could not afford to pay the fixed penalty and repeated offenders to undergo smoking cessation counselling, as "constructive proposals";
- (b) the purpose of his proposed CSAs is to offer offenders a choice between paying a fixed penalty and completing and paying for smoking cessation counselling; and
- (c) offering smokers with the choice to receive smoking cessation services and stop smoking is consistent with the Bill's purpose of making better utilization of public resources and deter smoking.

7. In Counsel's opinion, it is wrong in principle to argue for the admission of a proposed CSA on the basis that it falls within "related matters" in the long title solely on policy grounds. Rule 50(3) of RoP provides: "The bill shall be given a long title setting out the purposes of the bill in general terms.". The long title should, therefore, cover everything in the Bill. The use of the expression "related matters" or expressions having similar meaning is but a drafting technique to refer to matters covered in a bill which are not specified in the rest of the long title. It does not have the effect of expanding the scope or changing the subject matter of the bill as represented by the provisions contained in it.

8. Counsel considers that Mr CHENG's proposed CSAs do not appear to have any substantive relation with any of the provisions in the Bill. In view of the nature and purpose of this Bill as represented by the provisions of the Bill and its long title, Counsel advises that the proposed CSAs are not relevant to the subject matter of the Bill, i.e. the legislative proposal of a fixed penalty scheme in respect of the offences specified in the Schedule, and therefore, fail to comply with Rule 57(4)(a) of RoP.

9. Both SFH and Mr CHENG have made detailed submissions regarding whether the proposed CSAs have a charging effect under Rule 57(6) of RoP. However, if the President accepts the Counsel's advice in paragraph 8, then it would not be necessary to rule on the charging effect issue.

My opinion

10. Mr CHENG argues that his CSAs are within the scope of the Bill as smoking cessation counselling introduced by the CSAs is one of the "related matters" stated in the long title of the Bill. He supports his argument by pointing out that smoking cessation counselling was frequently discussed at meetings of the Bills Committee on the Bill, and that the Administration had undertaken that information on smoking cessation counselling would be printed on fixed penalty notices and provided to offenders when a notice under clause 6(2) of the Bill was issued.

11. I accept Counsel's advice that the use of the expression "related matters" in the long title of a bill does not have the effect of expanding the scope or changing the subject matter of the bill as represented by the provisions in it. Moreover, I have stated in my past rulings that what was discussed in a Bills Committee does not necessarily become relevant to the subject matter of the bill being scrutinized by the Bills Committee.

12. It is clear to me that by studying its long title, provisions, Explanatory Memorandum and LegCo Brief, the subject matter of the Bill is to provide for a fixed penalty scheme in respect of certain smoking-related offences. No option, other than the payment of a fixed penalty, is provided or allowed by the Bill for a person who has committed such an offence to discharge his liability to conviction; whereas Mr CHENG's proposed CSAs seek to provide an additional option. I therefore consider that the proposed CSAs not relevant to the subject matter of the Bill.

13. Regarding whether Mr CHENG's proposed CSAs have a charging effect, as I have already formed the opinion that Mr CHENG's proposed CSAs are outside the scope of the Bill, I do not consider it necessary to deal with the issue any further for the purpose of this ruling.

Ruling

14. Having considered SFH's comments, Mr CHENG's response and the advice of Counsel to the Legislature, I rule that Mr CHENG's proposed CSAs are not relevant to the subject matter of the Bill, and hence not admissible under Rule 57(4)(a) of RoP.

(Mrs Rita FAN)
President
Legislative Council

30 June 2008

Fixed Penalty (Smoking Offences) Bill

Summary of Hon Andrew CHENG Kar-foo's proposed Committee Stage amendments (CSAs), Secretary for Food and Health's comments on the admissibility of the CSAs under Rule 57(4)(a) of the Rules of Procedure and the Member's response to such comments

CSAs	Secretary for Food and Health's comments	Member's response
<p>To amend clauses 2(1), 2(2), 3(1), 3(3) and 6(1)(a) and the schedule, as well as to add new clauses 3A and 18A and new schedule 2</p>	<p>The CSAs are outside the scope of the Bill, and are therefore not in accordance with Rule 57(4)(a) of RoP.</p> <p>The purposes of the bill are limited to the fixed penalty or related matters, as set out in the long title. These purposes are reflected in the Explanatory Memorandum and the LegCo Brief and also in the substantive provisions of the bill. The major provisions of the Bill deal with notices of payment of the fixed penalty and the recovery of the fixed penalty. Where an offender wishes to dispute liability or fails to pay the fixed penalty, proceedings may be brought against him. Other forms of penalty are not mentioned in the Bill and cannot easily fit into it.</p> <p>The CSAs would provide for an additional choice for offenders, that of "smoking cessation counseling". This is not a concept that is envisaged within the purposes of the bill. It is not mentioned either in the long title or in the substantive provisions. It does not appear in the Explanatory Memorandum or in the LegCo Brief. It is not related to the fixed penalty</p>	<p>According to the long title of the Bill, in addition to the provision of a fixed penalty for certain offences under the Smoking (Public Health) Ordinance and its recovery, the scope of the Bill also covers "related matters".</p> <p>The Administration could not deny that smoking cessation services is one of the "related matters" of the Bill which was frequently discussed at meetings of the Bills Committee. Members' recommendations raised at the meeting on 3 May 2008 that information on smoking cessation services should be issued together with the issuing of fixed penalty notices for smoking offences by authorized enforcement officers and that persons who could not afford to pay the fixed penalty for smoking offences and repeated offenders be encouraged to undergo smoking cessation counselling were considered as "constructive proposals" in the Administration's reply¹. The Administration also promised that information of smoking cessation services should be printed on Fixed Penalty Notices and enclosed in notices issued under clause 6(2).</p>

¹ The Administration's response to issues raised at the meeting with deputations on 3 May 2008 (LC Paper No. CB(2) 2022/07-08(01))

CSAs	Secretary for Food and Health's comments	Member's response
	<p>scheme in any way. It is a totally new concept.</p> <p>The main purpose of the Bill, as stipulated in all documents concerned, is to provide for a fixed penalty for the offence concerned, in order to save the time and resources of the Government and the Judiciary. To discourage smoking has never been the objective of the Bill, although it is a policy objective of the Government in the wider public health context. Smoking by itself is not an offence under the Bill or under the Smoking (Public Health) Ordinance (Cap. 371). It was mentioned in the LegCo Brief that the Bill might have the effect of encouraging smokers to quit or reduce their consumption of tobacco products thereby improving the health conditions of the general population and that the Bill was in line with the sustainability principle of pursuing policies which promote and protect the physical health of the people of Hong Kong. However this was mentioned in the context of the sustainability implications of the Bill.</p> <p>The scheme proposed by the CSAs would give rise to complicated implementation issues that could only be resolved by sophisticated implementation arrangements, some of which have to be provided for in the Bill and some of which to be provided for by administrative means. The whole scheme would be inconsistent with the fundamental principle underlying the Bill, namely to provide for a simple fixed penalty system to achieve savings in enforcement resources and court time. This principle was reiterated specifically in a paper submitted to the Bills Committee. A complicated penalty system</p>	<p>The purpose of the CSAs is to offer a person who is believed to have violated the smoking ban the choice between paying a fixed penalty or completing and paying for a smoking cessation counseling. Clearly, the CSAs are one of the "related matters" of the fixed penalty and are therefore within the scope of the Bill.</p> <p>Regarding the other argument of the Administration that the main purpose of the Bill is to save the time and resources of the Government and the Judiciary, instead of to discourage smoking, the Administration's mistake in emphasizing administrative convenience over and above deterring smoking is disappointing. In the LegCo Brief, it is mentioned in the paragraphs of justifications that the introduction of the fixed penalty scheme is to "better utilize the limited resources of the government and the courts", so that the government "would increase the strength and effectiveness of the whole enforcement strategy". The other justification mentioned is to give "a stronger deterrent" on offenders. The purpose of the Bill is therefore to make better utilization of public resources and deter smoking against the Smoking (Public Health) Ordinance. Offering smokers with the choice to receive smoking cessation services and stop smoking is thus consistent with this purpose of the Bill.</p>

CSAs	Secretary for Food and Health's comments	Member's response
	allowing offenders to choose the applicable penalty is outside the scope of the Bill and in fact contrary to the purpose of the Bill.	

Abbreviations

CSAs Committee Stage amendments
 LegCo Legislative Council
 RoP Rules of Procedure