

For information

19 May 2009

**Subcommittee on Fixed Penalty (Smoking Offences) Regulation
and Fixed Penalty (Smoking Offences)
(Specification of Authorities and Public Officers) Notice**

Purpose

This paper informs Members of the purpose and content of the Fixed Penalty (Smoking Offences) Regulation and the Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice tabled before the Legislative Council on 29 April 2009.

The Fixed Penalty (Smoking Offences) Regulation

2. The Fixed Penalty (Smoking Offences) Ordinance (26 of 2008) (“the Ordinance”) provides for a fixed penalty system (FPS) for offences related to violation of the smoking prohibition under section 7(1) of the Smoking (Public Health) Ordinance (Cap. 371). The Ordinance provides for the giving, by specified enforcement authorities and their respective public officers (the “enforcement officers”) of fixed penalty notices and reminder for fixed penalty notices to offenders, and, in applications for the recovery of fixed penalties, certificates to be produced to magistrates as evidence of non-payment of the fixed penalty. These provisions are described in the ensuing paragraphs.

3. Under section 3(1) of the Ordinance, if an enforcement officer has reason to believe that a person is committing or has committed an offence under section 7(1) of the Smoking (Public Health) Ordinance, he may give the person a notice in the prescribed form offering that person an opportunity to discharge his liability to conviction by payment of the fixed penalty within 21 days, though the person may also choose to dispute liability for the offence.

4. Under section 6(2) of the Ordinance, if a person who has been given a notice under section 3(1) does not pay the fixed penalty within 21 days or refuses to accept a notice intended to be given to him under section 3(1), the

relevant enforcement authority shall serve by post on the person another notice in the prescribed form to demand for payment of the fixed penalty within 10 days, and to inform the person that if he wishes to dispute liability for the offence, he should inform the authority in writing within 10 days.

5. If a person served with a notice under section 6(2) fails to pay the fixed penalty or notify the enforcement authority that he wishes to dispute liability for the offence, the enforcement authority may apply, in the name of the Secretary for Justice, to the magistrate for an order to recover the fixed penalty, an additional penalty and costs. Section 9(1) of the Ordinance requires, in an application for an order, the production of a certificate in prescribed form referred to in section 9(2) stating that payment of the fixed penalty specified in the notice under section 6(2) was not made, that the person who was served with the notice had not notified the enforcement authority before the date of the certificate that he wished to dispute liability, and that the address of the person in the certificate was, at the date specified in the certificate in relation of the address, the address of the person.

6. Section 16 of the Ordinance empowers the Secretary for Food and Health to make regulations to -

- (a) prescribe any notice or certificate which under the Ordinance is to be or may be prescribed;
- (b) specify the persons to whom and the places at which a fixed penalty, an additional penalty or any other sums payable under the Ordinance may be paid;
- (c) specify the manner of payment of a fixed penalty, an additional penalty or any other sums payable under the Ordinance; and
- (d) provide for the better carrying out of the provisions of the Ordinance.

7. The Fixed Penalty (Smoking Offences) Regulation is thus made under section 16 of the Ordinance to prescribe the relevant forms and certificate, and provide for the manner of payment of a fixed penalty. Specifically, Form 1, Form 2 and Form 3 in the Schedule to the Fixed Penalty (Smoking Offences)

Regulation are prescribed for the purposes of section 3(1), section 6(2) and section 9(2) of the Ordinance respectively.

Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice

8. The purpose of the Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice is to specify Authorities and public officers under section 17(1) of the Ordinance, which provides that the Secretary for Food and Health may, for the purposes of the Ordinance and in relation to a scheduled offence, specify by notice published in the Gazette -

- (a) the Authority; and
- (b) a public officer or a class of public officers.

The notice is an item of subsidiary legislation.

9. Section 2(3) of the Ordinance provides that in applying a provision of the Ordinance in relation to a scheduled offence -

- (a) a reference to “Authority” in that provision shall be construed as a reference to a person specified by the Secretary for Food and Health as the Authority by notice under section 17(1)(a); and
- (b) a reference to “public officer” in that provision shall be construed as a reference to a public officer or a member of a class of public officers specified by the Secretary for Food and Health by notice under section 17(1)(b).

10. During the scrutiny of the Fixed Penalty (Smoking Offences) Bill in 2008, the Bills Committee agreed that, apart from the Tobacco Control Inspectors of the Tobacco Control Office (TCO) under the Department of Health and Police officers of the Police Force, specified public officers of the following departments who were the venue managers or who assisted in the management should also be empowered to give fixed penalty notices to offenders in order to enhance the enforcement capacity in these venues. The Government departments concerned and the relevant statutory no smoking areas as agreed are as follows -

Enforcement Departments	Relevant Statutory No Smoking Areas
Leisure and Cultural Services Department (LCSD)	Bathing beaches Public pleasure grounds Public swimming pools Stadia Indoor areas of other public facilities under the management of LCSD
Food and Environmental Hygiene Department (FEHD)	Indoor areas of public markets (including cooked food markets) and hawker bazaars (including cooked food hawker bazaars) under the management of FEHD
Housing Department (HD)	Statutory no smoking areas within public housing estates under the management and control of the Housing Authority/Housing Department

11. Officers of the TCO will remain the leading enforcement agency under the FPS, and will give fixed penalty notices in all statutory no smoking areas. Apart from being venue managers of designated no smoking areas in public venues they manage and empowered by the Smoking (Public Health) Ordinance, public officers of FEHD, LCSD and HD authorized to take enforcement actions will complement TCO's enforcement work. Police officers are also specified by the Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice and therefore may give fixed penalty notices for smoking offences. While enforcement under the Ordinance will form part of the routine management duties of these departments, it will not overtake their current work priorities and is subject to the feasibility of manpower deployment of the departments concerned.

12. The concerned enforcement departments have consulted their staff and agreed on the list of public officers who would be entrusted with the authority to take enforcement actions under the Ordinance. The Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice specifies such public officers under section 17(1) of the Ordinance.

Publicity

13. As we informed the Health Services Panel of the Legislative Council at its meeting on 20 April 2009, the Administration intends to commence operation of the FPS on 1 September 2009. To promote public awareness of the fixed penalty system well in advance, TCO will launch a series of publicity activities starting about one month before the actual commencement of the fixed penalty system. These will include press/media interviews, broadcast of announcements in public interest in radio and television, display and distribution of relevant posters, banners and pamphlets. Other enforcement departments will also assist in placing the publicity materials on the fixed penalty system in venues under their management to enhance awareness and encourage compliance.

Advice Sought

14. Members are invited to note the contents of this paper.

Food and Health Bureau

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