

立法會
Legislative Council

LC Paper No. CB(2)1581/08-09(03)

Ref : CB2/SS/11/08

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

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper gives an account of the past discussions by Members on the implementation of the fixed penalty system (FPS) for smoking offences.

Background

2. At the request of the Bills Committee formed to study the Smoking (Public Health) (Amendment) Bill 2005 (the Amendment Bill), the Administration undertook, amongst other things, to introduce a new legislation to provide for a FPS for smoking offences within a period of 18 months after the enactment of the Bill.

3. The Amendment Bill, which sought to amend the Smoking (Public Health) Ordinance (Cap. 371) to, inter alia, expand statutory no smoking areas was passed at the Council meeting of 19 October 2006. Statutory no smoking areas were expanded to include all indoor workplaces and indoor public places, swimming pools, bathing beaches and stadia under the management of the Leisure and Cultural Services Department (LCSD), the Hong Kong Wetland Park under the management of the Agriculture, Fisheries and Conservation Department, schools, hospitals and a number of other institutions with effect from 1 January 2007. The implementation date of the smoking ban for bars open to those aged 18 and above only, mahjong parlours, commercial bathhouses, massage parlours, mahjong clubs, and nightclubs is deferred to 1 July 2009, in order to allow a longer adaptation period for these establishments to transform their mode of operation, as well as to facilitate their smoker-customers to gradually adjust to the legislative requirements.

Fixed Penalty (Smoking Offences) Bill

4. The Fixed Penalty (Smoking Offences) Bill was enacted by the Legislative Council (LegCo) in July 2008. Under the Ordinance, anyone who smokes in a no smoking area or public transport carrier is liable to pay a fixed penalty of \$1,500.

Apart from Tobacco Control Inspectors (TCIs) of the Tobacco Control Office (TCO) under the Department of Health (DH) and Police officers who can carry out enforcement actions, the Ordinance also empowers officers of LCSD, the Food and Environmental Hygiene Department (FEHD) and the Housing Department (HD) to issue fixed penalty notices (FPNs) for smoking offences in respect of those statutory no smoking areas in public venues under their management. According to the Administration, it is estimated that about 10 months would be needed to put in place the practical arrangements necessary for supporting the operation of FPS including the information technology system after enactment of the primary legislation. The target is for the FPS to come into force in the first half of 2009.

Deliberations of the Bills Committee on Fixed Penalty (Smoking Offences) Bill

5. During the scrutiny of the Fixed Penalty (Smoking Offences) Bill by the Bills Committee, members noted that FEHD intended to authorise venue managers of public markets and hawker bazaars, i.e. staff directly involved in the day-to-day management of these venues, to issue fixed penalty notices. There were about 900 such staff members who were either from the Health Inspector, Hawker Control Officer and Foreman grades, or were Market Assistants employed on non-civil service contract terms. The specific ranks and number of officers to be authorised would be subject to the outcome of staff consultation. Regarding HD, it would authorise a total of 2 000 staff, comprising 1 500 Housing Officers, 500 Assistant Housing Managers and Housing Managers, to enforce the smoking ban. As for LCSD, they would authorise about the same number and ranks of officers presently authorised to enforce the Ordinance to enforce the smoking ban. The list of public officers authorised to exercise the powers and duties under the Bill would be published by notice in the Gazette, thereby necessitating vetting by LegCo.

6. Concern was raised about the high wastage rate of TCIs, i.e. 16.1% in 2006-2007 and 23.7% in 2007-2008. The Administration explained that the main reason for the departure of TCIs was the securing of new jobs. To improve retention of TCIs, the Administration was exploring the possibility of absorbing TCI positions into existing civil service grades as far as practicable. If there was no existing grade appropriate for absorbing TCI positions, the creation of a new civil service grade would be considered.

7. Members noted that the Government's Integrated Call Centre (ICC) began handling calls to the TCO hotline on 1 February 2007. At the initial stage, operator service was available daily from 9 am to 10 pm and incoming calls from 10 pm onwards until 9 am was routed to a voicemail box. Since October 2007, operator service had become available round the clock. There were on average 12 Customer Service Officers (CSOs) manning the TCO hotline from 9 am to 10 pm, and four such officers from 10 pm onwards. The performance target was to answer 80% of the calls within 12 seconds. If the CSO was not immediately available, the call would be put on a queue, or the caller might leave a voice message. ICC would reply to the callers who had left a voice message within three hours. All complaints received

were referred to TCIs in charge of the district immediately after the calls. TCO would then arrange unannounced inspections to follow up on the complaints.

8. Hon Andrew CHENG suggested that TCO should man the hotline itself to enable referral of complaints about smoking in statutory no smoking venues managed by FEHD, LCSD and HD to be made to these departments immediately, so that prompt action could be taken.

9. The Administration advised that it was exploring the feasibility of ICC referring a complaint relating to a venue managed by staff of FEHD, LCSD and HD to the relevant department's venue manager as well as to TCO, instead of referring it to TCO alone, immediately after the complaint call had been received.

10. At the request of the Bills Committee, the Administration agreed to explore the option of increasing the number of designated CSOs if the demand so justified.

Deliberations of the Panel on Health Services

11. At the special meeting of the Panel on Health Services (the Panel) on 17 October 2008 to receive a briefing from the Secretary for Food and Health on the new initiatives and progress of on-going initiatives relating to health matters set out in the 2008-2009 Policy Agenda, Members were advised that DH was taking steps in collaboration with the departments concerned to put in place an administrative mechanism and information system for implementing the FPS. It was expected that this would be completed in the second quarter of 2009. The Administration was also making subsidiary legislation to deal with the technical details of the FPS. In addition, DH would carry out adequate publicity so that the public could be fully aware of the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) before FPS came into operation.

12. The Administration briefed the Panel on 20 April 2009 on its plan to introduce two pieces of subsidiary legislation into LegCo within April 2009 to put the FPS into effect. The first would prescribe the FPNs to be served to offenders and certificates to be produced to magistrates as evidence of non-payment of the fixed penalty. The second would specify the list of public officers authorised to enforce Cap. 600. Subject to the passing of the subsidiary legislation, the Administration aimed to commence operation of the FPS on 1 September 2009.

13. Members noted that the departments entrusted with the authority to take enforcement actions under Cap. 600 had consulted their respective staff on the arrangements. DH had also drawn up enforcement guidelines in consultation with other enforcement departments to facilitate the public officers' discharge of enforcement duties under Cap. 600. TCO had started organising training programmes for the relevant staff of the enforcement agencies on the legal requirements and practical procedures of enforcement. Members further noted that TCO officers would remain the leading enforcement agency under the FPS, and were

empowered to issue FPNs in all statutory no smoking areas. Apart from being venue managers of designated no smoking areas in public venues they managed and empowered by Cap. 371, public officers of FEHD, LCSD and HD authorised to take enforcement actions would complement TCO's enforcement work. While enforcement under Cap. 600 would form part of the routine management duties of these departments, it would not overtake their current work priorities and was subject to the feasibility of manpower deployment of the departments concerned.

14. In response to members' enquiry about the preparation work to promote public awareness of the FPS before its commencement, the Administration advised that a series of publicity activities would be launched one month before the actual commencement of the FPS to ensure its smooth operation. These would 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 would also assist in placing the publicity materials on the FPS in venues under their management to enhance awareness and encourage compliance.

Relevant papers

15. Members are invited to access LegCo website (<http://www.legco.gov.hk>) for details of the report of the Bills Committee on Fixed Penalty (Smoking Offences) Bill and the relevant papers of the Panel.

Council Business Division 2
Legislative Council Secretariat
18 May 2009