

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

**Administration's Response to Issues Raised
at the Subcommittee Meeting on 19 May 2009**

PURPOSE

This paper sets out the Administration's response to issues raised by the Subcommittee at its meetings on 19 May 2009.

BACKGROUND

2. At the above meeting, Members raised the following issues and requested the Administration to provide a response in writing -

(a) Under the Smoking (Public Health) Ordinance (Cap. 371), public officers specified in the Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice may give fixed penalty notices (FPN) to offenders in all statutory no-smoking areas. However, in the paper provided by the Administration ((LC Paper No. CB(2)1581/08-09(02)), specified public officers of the Food, Environmental and Hygiene Department (FEHD), Housing Department (HD), and Leisure and Cultural Services Department (LCSD) can only enforce the law under specified relevant statutory no-smoking areas. Would the Administration explain and clarify to staff via the enforcement guidelines?

ADMINISTRATION'S RESPONSE

3. As proposed to the Bills Committee by the Government during the scrutiny of the Fixed Penalty (Smoking Offences) Bill by the Bills Committee in 2008, officers of the Tobacco Control Office (TCO) will be the primary enforcement officers to be empowered to issue FPNs in all statutory no-smoking areas. Likewise, police officers will also be entrusted with authority to take enforcement action by giving FPNs in all venues where smoking or the carrying of a lighted cigarette, cigar or pipe is prohibited by law although their work priority would still be the upkeep of law and order.

4. To cater for public venues managed by the Government and frequented by members of the public, the Government proposed to the Bills Committee that officers of LCSD, FEHD and HD would also be vested with enforcement power to issue FPNs for smoking offences in respect of those statutory no-smoking areas in public venues under their management. These public venues include:

- (1) Public bathing beaches, public pleasure grounds, public swimming pools, stadia and indoor areas of other public facilities under the management of the Leisure and Culture Department;
- (2) Indoor areas of public markets and hawker bazaars under the management of the Food and Environmental Hygiene Department; and
- (3) Statutory no-smoking areas within public housing estates under the management and control of the Housing Authority or Housing Department.

5. The above arrangements and the respective public venues and statutory no-smoking areas are set out in paragraphs 18-20 of the Report of the Legislative Council's Bills Committee on Fixed Penalty (Smoking Offences) Bill (LC Paper No. CB(2)2442/07-08). The arrangements for enforcement are also explained to this Council during the resumption of Second Reading debate of the Fixed Penalty (Smoking Offences) Bill 2 July 2008. We have also reported the same to the Panel on Health Services of this Council at its meeting on 20 April 2009. It should also be noted that the arrangements are similar to those for enforcing public cleanliness offences under the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap.570).

6. Section 17(1) of the Fixed Penalty (Smoking Offences) Ordinance 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 Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice ("the Notice") is an item of subsidiary legislation made under the above provision. There is no legal provision in these instruments specifying the no-smoking areas within which the Authority and public officers would take enforcement actions.

7. In reality, it would not be practical to expect the respective public officers of LCSD, FEHD and HD to take enforcement actions outside the public venues they manage. Administratively, the respective enforcement departments will make known the enforcement arrangements to their enforcement officers and members of the public. Working guidelines will also be drawn up by the respective enforcement departments for the enforcement officers, which will include the scope of their taking enforcement actions while on duty. The Government will launch a series of publicity activities to promote public awareness of the implementation of the fixed penalty system for smoking offences in no-smoking areas including those public venues.

(b) Are the public officers in LCSD, FEHD and HD empowered to issue FPNs for smoking offences required to wear uniform?

8. Whether public officers in LCSD, FEHD and HD empowered to issue FPNs in relation to smoking offences would wear uniform depend on the requirements of

their core duties of venue management. For instance, public officers of HD and LCSD would not be wearing uniform in performance of their duties. Public officers of HD would be carrying with them Departmental Identity Cards for identification purposes and public officers of LCSD would be carrying identification badges or departmental warrant cards when performing their duties. The officers' names, ranks and photographs are printed on these identity documents for identification purposes. FEHD officers who are directly involved in the day-to-day management of public markets and hawker bazaars will wear uniform. Please see Annex for details of which enforcement officers wear uniforms when performing their duties. It should be noted that the arrangements are similar to those for enforcing public cleanliness offences under the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap.570).

(c) Can the Department of Health Smoking Cessation Hotline in the notices in Form 1 or Form 2 in the Schedule to the Fixed Penalty (Smoking Offences) Regulation be made more prominent and easily identifiable?

9. References to the Department of Health Smoking Cessation Hotline in the notices in Form 1 or 2 in the Schedule to the Fixed Penalty (Smoking Offences) Regulation will be printed in fonts larger in size and in bold type to facilitate public viewing. Besides, information on smoking cessation will be attached to the Notice Demanding Payment of Fixed Penalty (i.e. Form 2) served by post on the offenders to encourage them to quit smoking.

(d) Is it possible for the fixed penalty to be substituted by a community service order?

10. At present, the smoking offence itself is not one that is punishable with imprisonment. There is no provision in the existing law which allows offences that are not punishable with imprisonment to have community service orders as an alternative penalty. However, if an offender of the smoking offence wishes to dispute the case, he/she can ask the enforcement department concerned to arrange a hearing of the case by the Court. If the offender is convicted, the Court will impose the level of fine it deems appropriate on the offender. The Court may exercise discretion to impose a lower fine on an offender who encounters financial difficulties in paying the fine.

(I) Public officers who will wear uniform in performance of their duties

Authority	Public Officer
Commissioner of Police	Police Officer*
Director of Health	Inspectors appointed by the Secretary for Food and Health under Section 15F of the Smoking (Public Health) Ordinance (Cap 371) **
Director of Food and Environmental Hygiene	Senior Health Inspector (Market Management) Senior Health Inspector (Hawkers and Markets) Senior Health Inspector (Hawkers) Health Inspector (Market Management) Health Inspector (Hawkers and Markets) Health Inspector (Hawker Casework) Principal Hawker Control Officer (Hawker Control Team) Chief Hawker Control Officer (Hawker Control Team) Senior Hawker Control Officer (Hawker Control Team) Hawker Control Officer (Hawker Control Team) Assistant Hawker Control Officer (Hawker Control Team) Overseer (Markets) Foreman (Markets) Market Assistant

* Plain clothes police officers will not wear uniform.

** Except where the enforcement operation requires plain clothes.



(II) Public officers who will not wear uniform in performance of their duties

Authority

Public Officer

Director of Housing

Housing Manager

Assistant Housing Manager

Housing Officer

Director of Leisure and
Cultural Services

Amenities Officer I

Amenities Officer II

Senior Amenities Assistant

Amenities Assistant I

Amenities Assistant II

Amenities Assistant III

Chief Librarian

Senior Librarian

Librarian

Assistant Librarian

Chief Manager, Cultural Services

Senior Manager, Cultural Services

Manager, Cultural Services

Assistant Manager, Cultural Services

Assistant Recreation and Sport Officer II

Chief Leisure Services Manager

Senior Leisure Services Manager

Leisure Services Manager

Assistant Leisure Services Manager I

Assistant Leisure Services Manager II