

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 8 January 2016**

**Legal Service Division Report on
Fixed Penalty (Public Cleanliness Offences) (Amendment) Bill 2015**

I. SUMMARY

- 1. The Bill** The Bill seeks to amend the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570) to provide for a fixed penalty system for the offence of obstruction of public places under section 4A of the Summary Offences Ordinance (Cap. 228).

- 2. Public Consultation** The Administration conducted a four-month public consultation from March to July 2014. According to the Administration, the majority of the respondents supported the proposal.

- 3. Consultation with LegCo Panel** According to the Clerk to the Panel on Home Affairs, the Panel was consulted at its meeting on 22 December 2015 on the legislative proposal. Although members generally supported the proposal set out in the Bill, some members expressed concerns about the enforcement aspects of the proposal.

- 4. Conclusion** No difficulties in the legal and drafting aspects of the Bill have been identified. In view of the concerns expressed by members of the Panel on Home Affairs, Members may wish to consider whether a Bills Committee should be formed to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 6 January 2016. Members may refer to the LegCo Brief (File Ref.: HAD HQ CR/11/19/8/(C)) issued by the Home Affairs Department in December 2015 for further details.

Object of the Bill

2. The Bill seeks to amend the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570) to provide for a fixed penalty system for the offence of obstruction of public places under section 4A of the Summary Offences Ordinance (Cap. 228)¹ (the public obstruction offence).

Background

3. At present, prosecution for the public obstruction offence including shop front extensions² is instituted by way of summons issued under section 4A of Cap. 228 at the magistrates' courts. The maximum penalty for the offence is a fine of \$5,000 or imprisonment for three months. According to the LegCo Brief, the Administration considers that the deterrent effect of section 4A of Cap. 228 is limited by the long lead time of prosecution and the relatively light penalties imposed by the courts. As of June 2015, the average prosecution lead time was about two to four months. In the first half of 2015, the average fine imposed by the courts on persons convicted of the public obstruction offence was \$661. To address the limitation of the existing summons system, the Administration considers it necessary to introduce a fixed penalty system for the public obstruction offence as an additional measure to tackle the shop front extensions.

Provisions of the Bill

4. The Bill contains 10 clauses. The major provisions of the Bill are as follows —

¹ Under section 4A of Cap. 228, any person who without lawful authority or excuse sets out or leaves, or causes to be set out or left, any matter or thing which obstructs, inconveniences or endangers, or may obstruct, inconvenience or endanger, any person or vehicle in a public place shall be liable to a fine of \$5,000 or to imprisonment for 3 months.

² According to paragraph 2 of the LegCo Brief, shop front extensions broadly refer to the occupation of public places by shops or food premises in front of or adjacent to their premises for conducting or facilitating business activities at the expense of road access, pedestrian safety, environmental hygiene, amenity or the quality of city life.

- (a) Clause 3 seeks to amend the short title of Cap. 570 to expand the scope of application of Cap. 570 to cover the public obstruction offence;
- (b) Clause 4 seeks to add section 4A of Cap. 228 to Schedule 1 to Cap. 570 to make the public obstruction offence one of the scheduled offences which may be dealt with by the payment of a fixed penalty which is proposed to be \$1,500;
- (c) Clause 5 seeks to amend Schedule 2 to Cap. 570 so that the police officers and certain officers of the Food and Environmental Hygiene Department (FEHD) would be the authorities and public officers for enforcing the proposed fixed penalty system for the public obstruction offence;
- (d) Clauses 6 and 7 contain related and consequential amendments to the Fixed Penalty (Public Cleanliness Offences) Regulation (Cap. 570A), in particular, to the existing fixed penalty notice and certificate of identity of offender, address and non-payment of fixed penalty; and
- (e) Clauses 8 to 10 contain related and consequential amendments to other legislation including the Criminal Procedure Ordinance (Cap. 221), the Rehabilitation of Offenders Ordinance (Cap. 297) and the Securities and Futures (Licensing and Registration) (Information) Rules (Cap. 571S).

5. The legal effect of the above amendments is that —

- (a) a person who has committed the public obstruction offence would be offered an opportunity to discharge his liability to conviction for the offence by the payment of a fixed penalty; and
- (b) where the person has paid the full amount of the fixed penalty, he would not be liable to be prosecuted or convicted for the offence.

Commencement

6. The Bill, if passed, would come into operation on the expiry of six months beginning on the day on which the enacted Ordinance is published in the Gazette. According to paragraph 16 of the LegCo Brief, the proposed

commencement date is to allow sufficient time for publicizing the fixed penalty system and for the trade and other stakeholders to make necessary preparations.

Public Consultation

7. According to paragraphs 8 to 11 of the LegCo Brief, the Administration conducted a four-month public consultation from March to July 2014. During the consultation period, the Administration also conducted consultation with various stakeholders including the 18 District Councils, industry stakeholders and residents of Sham Shui Po and Kwai Tsing districts. Except for the industry stakeholders, majority of the respondents supported the proposal.

Consultation with LegCo Panel

8. According to the Clerk to the Panel on Home Affairs, the Panel was consulted at its meeting on 22 December 2015 on the legislative proposal. Although members generally supported the proposal set out in the Bill, some members expressed concerns about the sufficiency of enforcement manpower and the availability of clear enforcement guidelines for frontline police and FEHD officers to ensure effective implementation of the fixed penalty system.

Conclusion

9. No difficulties in the legal and drafting aspects of the Bill have been identified.

10. In view of the concerns expressed by members of the Panel on Home Affairs, Members may wish to consider whether a Bills Committee should be formed to study the Bill in detail.

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