

**Bills Committee on  
Smoking (Public Health) (Amendment) Bill 2005**

**Proposed fixed penalty system for smoking offence**

**PURPOSE**

This paper is to inform Members of the Administration's latest position on the proposed introduction of a fixed penalty system (FPS) for smoking offence.

**BACKGROUND**

2. At the Bills Committee meeting on 6 March 2006, we presented LC Paper No. CB(2)1283/05-06(01) on "Publicity and Enforcement Plan" with regard to the Smoking (Public Health) (Amendment) Bill 2005 (the Bill) to Members. In paragraph 32 of the paper, we informed Members that we would actively explore the feasibility of introducing a FPS in the longer run and we undertook to revert to this Committee.

3. Since then, we have conducted some preliminary studies on the proposed FPS for smoking offence in consultation with the relevant Government departments, and explored operational issues such as resource requirements and interfacing arrangements. We have come to the view that lead time is required for the setting up of this system and that the proposed system could be introduced some time after the enactment of the Bill when the public becomes more used to the indoor no smoking culture. This will also help to reinforce our effort to protect the public from passive smoking and have an effect of relieving the courts' workload of handling this offence.

**FIXED PENALTY SYSTEM (FPS)**

4. We think that a FPS is feasible for smoking offence. The proposed FPS will operate in a similar way to that being used for other minor offences, such as littering. Offender can discharge liability through payment of penalty. If the offenders dispute liability for the offence, they will have to attend court hearings to answer the summons. They may discharge liability at a later stage by paying to the court.

### Type of offence

5. The FPS will cover the offence of smoking or carrying a lighted cigarette, pipe or cigar in a statutory no smoking area, as specified under the Smoking (Public Health) Ordinance (Cap 371) (the Ordinance).

### Fixed penalty level

6. We are of the view that the penalty should be set at a level sufficient to achieve the desired deterrent without arousing too much public objection. Review of the existing penalty level of the same offence imposed by court suggested the range of \$500-\$600. Taking reference to the offence of littering, which is currently set at a level of \$1,500, we believe that \$500-\$600 for smoking offence under the new FPS may not achieve the desired effect. We therefore propose to fix the level at \$1,500, on a par with the offence for littering, both of which have an impact on public health. We also propose that the Legislative Council may amend the fine level by resolution, as in the case of fines for traffic and littering contraventions.

### Enforcement departments

7. The Bill, upon enactment, will empower public officers authorized by the Secretary for Health, Welfare and Food to take enforcement action under Cap 371. As a preliminary suggestion, we propose that all operational officers of the Department of Health (DH) holding the post of Tobacco Control Inspector and Police Officers of the Hong Kong Police Force be appointed under the subsidiary legislation to issue fixed penalty notice. We may review at a later stage whether it is necessary to involve other departments in the enforcement, taking into account the community's overall compliance with the smoking ban after the enactment of the Bill.

### **PREPARATIONS REQUIRED FOR SETTING UP THE FPS**

8. We propose that an enabling provision will be required to provide for a new subsidiary legislation to be made for the implementation of the FPS. Details such as the type of offence to be covered, the power of enforcement officers, the condition for issue/withdrawal of the fixed penalty notice, the recovery of fixed penalty, review of proceedings and additional penalty in proceedings on dispute of liability will be determined, will be set out in the proposed subsidiary legislation.

9. With regard to implementation, we propose that a Fixed Penalty Office for Smoking Offences to be set up in the Tobacco Control Office (TCO) of DH. It shall comprise clerical staff mainly responsible for (a) data input, (b) issue of fixed penalty demand notice in case penalty payment could not be received within the specific time and (c) preparation of documents for laying summon in case the offender disputes liability.

10. A computer system will be established to support the FPS, including the storage of details of the offences, processing of issued fixed penalty notices, tracking of payment through linkage with Treasury, Hongkong Post and Judiciary, referrals to Judiciary for court proceedings, and production of necessary reports and statistics.

11. DH will prepare an operation guideline for the enforcement staff and supporting staff. To ensure a consistent enforcement standard, the guideline will enlist the procedures and conditions for issuing and withdrawal of the fixed penalty notices, handling of disputes and complaints, judicial process and application of court orders. Police officers will be seconded to DH to train up the enforcement technique of the frontline staff.

## **FINANCIAL IMPLICATION**

12. With reference to the setting up cost of a similar system in the Food Environment and Hygiene Department, a preliminary estimation of the funding requirement for setting up the proposed system for DH is \$6.5 M which comprises the setup cost of the fixed penalty office and related computer system. The annual recurrent cost, comprising the costs involved in the maintenance of the computer system, office rental and staff salary, is estimated to be \$ 2.1 M. Detailed costing will be made nearer the time.

## **LEGISLATIVE AND IMPLEMENTATION TIMETABLE**

13. To implement the fixed penalty notice system, the Administration will need to prepare a new set of subsidiary legislation which is expected to be completed in 12-15 months. In parallel, interfacing arrangements with the Treasury, Judiciary and other enforcement departments will be required; and that DH will need time to prepare specification requirements and tendering procedures etc for the procurement and the setting up of the proposed computer system and training of staff. We estimate that the whole process will take 18-24 months to complete.

14. Subject to Members' views on the above proposal, we shall report progress to the Health Services Panel later this year and seek Members' views on details of the preparation of the FPS.

**ADVICE SOUGHT**

15. Members are requested to note the Administration's plan on the introduction of a FPS for smoking offence and Members' views are invited.

Health Welfare and Food Bureau  
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