

**立法會**  
**Legislative Council**

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**Paper for the House Committee meeting on 5 June 2009**

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

**Purpose**

This paper reports on the deliberations of the Subcommittee on Fixed Penalty (Smoking Offences) Regulation and Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice.

**Background**

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

3. The Fixed Penalty (Smoking Offences) Bill was enacted by the Legislative Council in July 2008. Under the Fixed Penalty (Smoking Offences) Ordinance (26 of 2008) (the Ordinance), anyone who violated the smoking prohibition under section 7(1) of the Smoking (Public Health) Ordinance (Cap. 371), i.e. smoking or carrying a lighted cigarette, cigar or pipe in a statutory no smoking area or a public transport carrier, is liable to pay a fixed penalty of \$1,500. Officers of the Tobacco Control Inspectors of the Tobacco Control Office under the Department of Health (DH) would be the primary enforcement officers to be empowered to issue fixed penalty notices (FPNs) in all statutory no-smoking areas. Likewise, police officers would 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. To cater for public venues managed by the Government and frequented by members of the public, officers of the Leisure and Cultural Services Department (LCSD), the Food and Environmental Hygiene

Department (FEHD) and the Housing Department (HD) would issue FPNs for smoking offences in respect of those statutory no smoking areas in public venues under their management. These public venues include -

- (a) public bathing beaches, public pleasure grounds, public swimming pools, stadia and indoor areas of other public facilities under the management of LCSD;
- (b) indoor areas of public markets and hawker bazaars under the management of FEHD; and
- (c) statutory no-smoking areas within public housing estates under the management and control of the Housing Authority or HD.

4. The Administration intends to commence the operation of the FPS for smoking offences on 1 September 2009.

#### **The Fixed Penalty (Smoking Offences) Regulation**

5. The Fixed Penalty (Smoking Offences) Regulation, made under section 16 of the Ordinance, prescribes the relevant forms and certificate and provides for the manner of payment of a fixed penalty. Specifically, Form 1, Form 2 and Form 3 in the Schedule to the Penalty (Smoking Offences) Regulation are prescribed for the purposes of section 3(1), section 6(2) and section 9(2) of the Ordinance respectively.

6. Section 3(1) of the Ordinance provides that if an enforcement officer has reason to believe that a person is committing or has committed a scheduled offence, namely, smoking or carrying a lighted cigarette, cigar or pipe in areas designated as no smoking areas or in public transport carriers, 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 for the offence within 21 days from the date of the giving of the notice.

7. Section 6(2) of the Ordinance provides that if a person who has been given a notice under section 3(1) does not pay the fixed penalty within the time specified in the notice or refuses to accept a notice, the specified Authority shall serve on the person another notice in the prescribed form demanding for payment of the fixed penalty for the scheduled offence and such payment shall be made within 10 days from the notice so served and, informing the person that if he wishes to dispute liability for the offence, he shall inform the authority in writing within 10 days from the notice so served.

8. 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 under section 8(1) to recover the fixed penalty, an additional penalty and fixed legal costs. Section 9(2) of the Ordinance requires that in an application for an order under section 8(1), a certificate in prescribed form stating the matters specified in subsection (3) and purporting to be signed by or for the Authority shall be admitted in evidence without further proof upon its production to the magistrate.

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

9. The Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice specifies the persons and classes of public officers respectively as the "Authority" and "public officer" referred to in the provisions of the Ordinance relating to that scheduled offence.

10. The scrutiny period of the Fixed Penalty (Smoking Offences) Regulation and the Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice has been extended from 27 May 2009 to 17 June 2009 by a resolution of the Council.

### **The Subcommittee**

11. At the meeting of the House Committee on 8 May 2009, members agreed that a subcommittee should be formed to study the Fixed Penalty (Smoking Offences) Regulation and the Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice. Under the chairmanship of Dr Hon Joseph LEE Kok-long, the Subcommittee held one meeting with the Administration. The membership list of the Subcommittee is in **Appendix I**.

### **Deliberations of the Subcommittee**

12. Hon Tommy CHEUNG has pointed out that the Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice, as presently drafted, would empower public officers of LCSD, FEHD and HD to give FPNs to offenders in all statutory no smoking areas, other than those under their management outlined in paragraph 3 above. To avoid confusion, the Administration should specify in the Notice the specific statutory no smoking areas to which each class of the public officers would be empowered to issue FPNs for smoking offences.

13. The Administration has advised that section 17(1) of the 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. There is no legal basis under section 17(1) to specify that the specified Authority or class of public officers could only take enforcement actions in the no smoking areas where they usually manage. 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.

14. Hon Audrey EU has asked whether public officers in LCSD, FEHD and HD empowered to issue FPNs for smoking offences would be required to wear uniform.

15. The Administration has advised that 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 the performance of their duties, whereas FEHD officers who are directly involved in the day-to-day management of public markets and hawker bazaars will wear uniform. 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. Details on which enforcement officers will wear uniform when performing their duties are in **Appendix II**. The Administration has further advised that the arrangements for LCSD, FEHD and HD are similar to those for enforcing public cleanliness offences under the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570).

16. Hon WONG Ting-kwong has suggested that warning on the harmful effect of smoking should be printed on FPNs for smoking offences.

17. The Administration has advised that references to DH 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.

18. Hon Albert CHAN has requested the Administration to consider an option of community service order for the offenders who have financial difficulty to pay the fixed penalty.

19. The Administration has advised that 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 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.

**Advice sought**

20. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2  
Legislative Council Secretariat  
4 June 2009

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

**Membership list**

**Chairman** Dr Hon Joseph LEE Kok-long, JP

**Members** Hon Andrew CHENG Kar-foo  
Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon WONG Ting-kwong, BBS  
Hon CHAN Hak-kan

(Total : 6 Members)

**Clerk** Miss Mary SO

**Legal Adviser** Mr YICK Wing-kin

**Date** 19 May 2009

## Appendix II

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