

立法會
Legislative Council

Ref : CB2/SS/11/08

LC Paper No. CB(2)1874/08-09
(These minutes have been seen by
the Administration)

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

**Minutes of meeting
held on Tuesday, 19 May 2009, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Dr Hon Joseph LEE Kok-long, JP (Chairman)
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

Member attending : Hon Albert CHAN Wai-yip

Public Officers attending : Item II

Miss Anita CHAN
Principal Assistant Secretary for Food and Health
(Health)

Miss LI Wan-in
Assistant Secretary for Food and Health (Health)

Dr Ronald LAM
Head of Tobacco Control Office
Department of Health

Dr FUNG Ying
Senior Medical Officer
Tobacco Control Office
Department of Health

Ms Leonora IP
Senior Assistant Law Draftsman (Acting)
Department of Justice

Clerk in attendance : Miss Mary SO
Chief Council Secretary (2) 5

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Ms Maisie LAM
Senior Council Secretary (2) 7

Ms Sandy HAU
Legislative Assistant (2) 5

I. Election of Chairman

Dr Joseph LEE was elected Chairman of the Subcommittee.

II. Meeting with the Administration

[L.N. 66 of 2009, L.N. 67 of 2009, LC Paper Nos. LS60/08-09, CB(2)1582/08-09(02) and (03)]

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

Fixed Penalty (Smoking Offences) Regulation

3. Mr WONG Ting-kwong was of the view that warning on the harmful effect of smoking should be printed on the fixed penalty notices (FPNs) for smoking offences. Ms Audrey EU was, however, of the view that the forms should not carry additional wording that did not pertain to their contents.

4. The Administration advised that the Department of Health Smoking Cessation Hotline was printed on Form 1 and Form 2 provided in the Schedule to the Fixed Penalty (Smoking Offences) Regulation (the Regulation). At the request of the Chairman, the Administration agreed to make the print of the Department of Health Smoking Cessation Hotline on Form 1 and Form 2 more prominent.

Action

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

5. Mr Tommy CHEUNG pointed out that the Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice (the Notice) as presently drafted would empower public officers of the Leisure and Cultural Services Department (LCSD), the Food and Environmental Hygiene Department (FEHD) and the Housing Department (HD) to issue FPNs for smoking offences committed in all statutory no smoking areas, other than those under their management outlined in paragraph 10 of the Administration's paper. To avoid public confusion, Mr CHEUNG said that the Administration should specify in the Notice the statutory no smoking areas to which these public officers would be empowered to issue FPNs for smoking offences. Mr CHEUNG also asked whether specified enforcement officers of LCSD, FEHD and HD would issue FPNs for smoking offences when they were off-duty.

6. Ms Audrey EU disagreed with the suggestion to specify in the legislation the statutory no smoking areas to which the relevant specified public officers would be empowered to issue FPNs for smoking offences.

7. The Administration responded as follows -

- (a) it might not be appropriate to specify in the Notice the statutory no smoking areas to which the specified enforcement officers of LCSD, FEHD and HD would be empowered to issue FPNs for smoking offences, as section 17(1) of the Fixed Penalty (Smoking Offences) Ordinance (the Ordinance) (Cap. 600) provided that the Secretary for Food and Health might, 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;
- (b) in any event, there was no cause for concern that the specified enforcement officers would issue FPNs to persons smoking or carrying a lighted cigarette, cigar or pipe in statutory no smoking areas, other than those mentioned in paragraph 10 of the Administration's paper, as these public officers would only issue FPNs for smoking offences when they were on duty. Hence, the chance of them issuing FPNs for smoking offences to persons smoking or carrying a lighted cigarette, cigar or pipe in statutory no smoking areas, other than those mentioned in paragraph 10 of the Administration's paper, was slim. Moreover, all specified enforcement officers, with the exception of Police officers, would be required to return all unused FPNs to their respective Departments for safekeeping every day before leaving work. Clear

Action

administrative guidelines on where and when specified enforcement officers of LCSD, FEHD and HD could issue FPNs for smoking offences would be drawn up; and

- (c) the publicity activities to promote public awareness of the fixed penalty system (FPS), to be launched by the Tobacco Control Office under the Department of Health one month before the actual commencement of the FPS planned for 1 September 2009, would also highlight the arrangements that public officers of LCSD, FEHD and HD specified in the Notice would only issue FPNs for smoking offences committed in venues under their management and while they were on duty.

8. At the request of Ms Audrey EU, the Administration undertook to revert in writing which specified enforcement officers of LCSD, FEHD and HD were required to wear uniform on duty.

9. Mr Albert CHAN was of the view that managers of Government buildings and other public buildings, such as the Legislative Council Building, should also be empowered to issue FPNs for smoking offences.

Recovery of fixed penalty fine

10. Mr WONG Ting-kwong asked whether, and if so, how the Administration would recover outstanding fixed penalty fine from visitors who had left Hong Kong.

11. The Administration responded that summons would not be served to people outside Hong Kong to recover outstanding payments to the Government. The Administration would keep in view of the situation of default payment by visitors to Hong Kong and make adjustments where warranted.

12. Mr Albert CHAN was of the view that persons who did not have the means to pay the fixed penalty fine for smoking offences should be allowed to perform community service instead.

13. The Administration responded that community service orders could only be imposed to offenders who had committed an offence punishable with imprisonment as an alternative penalty.

14. Mr Albert CHAN requested the Administration to consider providing in the Ordinance that judges could exercise discretion to allow persons who did not have the means to pay the fixed penalty fine for smoking offences to perform community service instead.

III. Way forward

15. Members agreed that no further meeting would be held unless members decided otherwise upon receipt of the Administration's responses to issues raised at the meeting.

16. As the deadline for giving notice of amendment to the two pieces of subsidiary legislation was 20 May 2009, the Chairman would give notice to move a motion at the Council meeting on 27 May 2009 to extend the scrutiny period of the Regulation and the Notice to 17 June 2009.

17. There being no other business, the meeting ended at 3:43 pm.

Council Business Division 2
Legislative Council Secretariat
12 June 2009

**Proceedings of the meeting of the
Subcommittee on Fixed Penalty (Smoking Offences) Regulation
and Fixed Penalty (Smoking Offences)
(Specification of Authorities and Public Officers) Notice
on Tuesday, 19 May 2009, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject	Action required
000000 - 000035	Mr Andrew CHENG Dr Joseph LEE	Election of Chairman	
000036 - 000238	Chairman	Opening remarks Members' agreement to extend the scrutiny period of the Fixed Penalty (Smoking Offences) Regulation (the Regulation) and the Fixed Penalty (Smoking Offences) (Specification of Authorities and Public Officers) Notice (the Notice) to 17 June 2009	
000239 - 000759	Admin	Briefing by the Administration on the purpose and content of the Regulation and the Notice (LC Paper No. CB(2)1581/08-09(02))	
000800 - 003149	Mr Tommy CHEUNG Admin Chairman ALA8	The policy intent that the specified public officers of the Leisure and Cultural Services Department (LCSD), the Food and Environmental Hygiene Department (FEHD) and the Housing Department (HD) were vested with enforcement power to give fixed penalty notices (FPNs) for smoking offences only in those statutory no smoking areas under their management but not in all statutory no smoking areas Whether off-duty enforcement officers would issue FPNs for smoking offences	✓ (Admin to provide written response)
003150 - 004240	Mr WONG Ting-kwong Admin	Recovery of outstanding fixed penalty fine for smoking offences Consultation with the relevant staff of the enforcement departments Health advice to persons served with FPNs for smoking offences	
004241 - 004405	Mr WONG Ting-kwong Admin Chairman	The Administration agreed to draw up clear guidelines on where and when specified enforcement officers of LCSD, FEHD and HD would issue FPNs for smoking offences	
004406 - 004558	Chairman Mr WONG Ting-kwong Admin	The Administration was requested to make the print of the Department of Health Smoking Cessation Hotline on Form 1 and Form 2 in the Schedule to the Regulation more prominent	✓ (Admin to act on the request)

Time marker	Speaker	Subject	Action required
004559 - 004714	Mr WONG Ting-kwong Chairman	Default payment under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237)	
004715 - 010301	Mr CHAN Wai-yip Admin Chairman	<p>Inspectors of FEHD should be empowered to issue FPNs for smoking offences committed or were being committed in the indoor areas of food premises when conducting inspections to these premises</p> <p>Double penalty for tenants of public housing estates under the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) and the Marking Scheme for Estate Management Enforcement</p> <p>Enforcement of smoking ban in Government buildings and other public buildings</p> <p>The Administration was requested to consider providing in the Fixed Penalty (Smoking Offences) Ordinance that judges could exercise discretion to allow persons who did not have the means to pay the fixed penalty fine for smoking offences to perform community service instead</p>	<p>✓ (Admin to provide a written response)</p>
010302 - 010959	Ms Audrey EU Admin Chairman	<p>Enforcement of the fixed penalty system for smoking offences by specified officers of LCSD, FEHD and HD</p> <p>The Administration was requested to provide information on which specified enforcement officers of LCSD, FEHD and HD were required to wear uniform on duty</p>	<p>✓ (Admin to provide a written response)</p>
011000 - 011458	Ms Audrey EU Admin Chairman	Form 1 in the Schedule to the Regulation	
011459 - 011818	Chairman Mr Tommy CHEUNG Clerk	Members' agreement that no further meeting would be held unless members decided otherwise upon receipt of the Administration's responses to issues raised by members at the meeting	