

**For information**

**Legislative Council  
Panel on Administration of Justice and Legal Services**

**Judiciary's Proposed Removal of the Payment Collection Functions of  
Magistrates' Courts for Fixed Penalty in respect of  
Traffic Contraventions not Involving Court Proceedings**

**PURPOSE**

This paper aims to brief Members on the Judiciary's proposal to remove the present payment collection functions of the Magistrates' Courts for fixed penalty in respect of traffic contraventions before any court proceedings are initiated.

**BACKGROUND**

2. A notice of fixed penalty in relation to traffic contraventions ("Fixed Penalty Ticket") may be issued under the Fixed Penalty (Traffic Contraventions) Regulations (Cap. 237A), Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240A) or Housing (Traffic Contraventions) (Fixed Penalty) Bylaw (Cap. 283C). Currently, persons involved in such traffic contraventions may pay the fixed penalty prior to the commencement of court proceedings by any of the means specified in the above regulations or bylaw and the Fixed Penalty Tickets therein. The means of payment include:

- (a) by post addressed to the Treasury;
- (b) personally or through an agent, -
  - (i) at any Post Office<sup>1</sup> other than a post office letter box or a mobile post office; or
  - (ii) at any magistracy specified in the notice;
- (c) through any automated teller machine of a bank;

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<sup>1</sup> At present, there are 122 Post Offices.

- (d) by phone by using the service commonly known as PPS; or
- (e) through the Internet.

### **THE JUDICIARY'S PROPOSAL**

3. The Transport and Housing Bureau (THB) has received a proposal by the Judiciary to remove the present payment collection functions of the Magistrates' Courts for fixed penalty in respect of traffic contraventions before any court proceedings are initiated. From a practical point of view, with various means of making fixed penalty payments in respect of traffic contraventions before any court proceedings are initiated, as set out in paragraph 2 above, the proposal should not cause any significant inconvenience to persons intending to make such payments. In view of the above, the THB has no objection to the Judiciary's proposal. Details of the Judiciary's proposal and its justifications are at the **Annex**.

### **LEGISLATIVE TIMETABLE**

4. The Government plans to introduce the proposed amendments into the Legislative Council in the 2017/18 legislative year. Approval will be sought for the amendments to the provisions relating to means of payment under the Fixed Penalty (Traffic Contraventions) Regulations (Cap. 237A) and Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240A) under the negative vetting procedures, and the amendments by resolution to the provisions relating to means of payment under the Housing (Traffic Contraventions) (Fixed Penalty) Bylaw (Cap. 283C) under the positive vetting procedures.

**Transport and Housing Bureau**  
**Judiciary Administration**  
**July 2017**

**Proposed Removal of the Payment Collection Functions of Magistrates’ Courts for Fixed Penalty in respect of Traffic Contraventions not Involving Court Proceedings : Detailed Proposal and Justifications**

This Annex sets out the details and justifications of the Judiciary’s proposal to remove the present payment collection functions of the Magistrates’ Courts for fixed penalty in respect of traffic contraventions before any court proceedings are initiated.

**BACKGROUND**

*Procedures Relating to Imposition and Recovery of Fixed Penalty*

2. If the relevant law enforcement agent<sup>1</sup> has reasonable cause to believe that a person is committing or has committed a traffic offence/contravention under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237), the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) and the Housing (Traffic Contraventions) (Fixed Penalty) Bylaw (Cap. 283C), the person concerned may be given an opportunity to discharge his liability in respect of that contravention/offence by payment of a fixed penalty<sup>2</sup>. A notice in the prescribed form (the “Fixed Penalty Ticket”) shall be given to the person under the relevant legislative provisions<sup>3</sup>.

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<sup>1</sup> The law enforcement agent is the Police or an authorized officer of the Housing Authority.

<sup>2</sup> The relevant provisions are section 15 of Cap. 237, section 3 of Cap. 240 and section 8 of Cap. 283C.

<sup>3</sup> The prescribed forms are specified in the following :

- (a) the Schedule to the Fixed Penalty (Traffic Contraventions) Regulations (Cap. 237A), Form 1;
- (b) the Schedule to the Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240A), Form 1; and
- (c) Schedule 3 to Cap. 283C, Form 1.

3. If the fixed penalty is not paid within the time as specified in the Fixed Penalty Ticket, a notice in the prescribed form demanding payment (the “Demand Notice”) shall be served on that person<sup>4</sup>.

4. If the person pays the fixed penalty within the time stated in the Fixed Penalty Ticket or the Demand Notice, no court proceedings will be taken against that person in respect of the relevant traffic offence/contravention.

5. However, if the person wishes to dispute liability or has not paid fixed penalty in time, a court proceeding in the Magistrates’ Courts may be initiated in accordance with the relevant provisions<sup>5</sup>.

Payment of Fixed Penalty

6. According to the following relevant legislative provisions, fixed penalty payments can be made, within the time prescribed in the Fixed Penalty Ticket or Demand Notice, through various means, including payment at the Magistrates’ Courts –

- (a) regulation 3(1) and Schedule to the Fixed Penalty (Traffic Contraventions) Regulations (Cap. 237A);
- (b) regulation 3(1) and Schedule to the Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240A); and
- (c) section 9(1) and Schedule 3 to Cap. 283C.

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<sup>4</sup> The Demand Notice shall be served pursuant to section 15(3) of Cap. 237, section 3(3) of Cap. 240 and section 8(3) of Cap. 283C and they are given in the prescribed form as specified in the following :

- (a) the Schedule to Cap. 237A, Form 2;
- (b) the Schedule to Cap. 240A, Form 2; and
- (c) Schedule 3 to Cap. 283C, Form 2.

<sup>5</sup> The relevant provisions are section 16 of Cap. 237, section 3A of Cap. 240 and section 11 of Cap. 283C.

7. If the fixed penalty is not paid within the time prescribed, and court proceedings have been instituted, fixed penalty payments can be made to the Magistrates' Courts<sup>6</sup> or in the manner as ordered by the magistrate<sup>7</sup>.

## **PROPOSAL**

### *Proposed Removal of Non-Court Payment Collection Functions*

8. The Judiciary has recently reviewed the matter in the light of its institutional independence.

9. As a matter of principle, if no court proceeding is initiated, any collection of fixed penalty payments is a matter between the Government and the person concerned. The Judiciary should not be collecting such payments, which are not court payments, on behalf of the Government.

10. Moreover, as the Government will become one of the parties to a court case if so initiated later, the Judiciary does not consider it appropriate for the Magistrates' Courts to be involved in the payment processes before the initiation of the court case. This may affect the neutrality of the Judiciary, perceived or real.

11. On the other hand, after a court case is initiated, the Judiciary considers it appropriate for the Magistrates' Courts to continue to collect such payments. This is similar to the arrangements for other payments that may be ordered by the court arising from court proceedings.

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<sup>6</sup> Notwithstanding that proceedings have been instituted against a person who has notified the Commissioner of Police (for Cap. 237 and Cap. 240) or the Director of Housing (for Cap. 283C) that he wishes to dispute liability, payment of fixed penalty may still be made to any Magistrates' Court in accordance with section 20B of Cap. 237, section 9 of Cap. 240 and section 18 of Cap. 283C.

<sup>7</sup> The person against whom proceedings have been instituted (because he wishes to dispute liability or he has not paid the fixed penalty and has not notified that he wishes to dispute liability) may be ordered by the magistrate to pay fixed penalty under section 16 and 16A of Cap. 237, section 3A and 3B of Cap. 240, and section 11 and 12 of Cap. 283C.

Other Similar Legislation

12. In fact, the Magistrates' Courts no longer collect similar non-court payments under the relatively newer statutory provisions on fixed penalty payments<sup>8</sup>.

**PROPOSED LEGISLATIVE AMENDMENTS**

13. In light of the above, the Judiciary proposes that the Government amend Cap. 237A, Cap. 240A and Cap. 283C to –

- (a) repeal the relevant provisions which stipulate that a person receiving a Fixed Penalty Ticket or Demand Notice may pay the fixed penalty within the time prescribed at any of the Magistrates' Courts specified therein; and
- (b) remove references to various Magistrates' Courts, including their addresses and office hours, in the payment instructions from the Fixed Penalty Ticket and Demand Notice.

**Judiciary Administration  
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<sup>8</sup> Some examples are –

- (a) section 3 of the Fixed Penalty (Public Cleanliness and Obstruction) Regulation (Cap. 570A);
- (b) section 3 of the Fixed Penalty (Smoking Offences) Regulation (Cap. 600A);
- (c) section 21 of the Product Eco-Responsibility (Plastic Shopping Bags) Regulation (Cap. 603A); and
- (d) section 5 of the Motor Vehicle Idling (Fixed Penalty) Regulation (Cap. 611A).