

LEGISLATIVE COUNCIL BRIEF

Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237)

Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240)

Fixed Penalty (Traffic Contraventions) (Amendment) Regulation 2018 **Fixed Penalty (Criminal Proceedings) (Amendment) Regulation 2018**

INTRODUCTION

The Legislative Council (“LegCo”) passed a resolution on 17 January 2018 amending the fixed penalty charges of five traffic congestion-related offences specified in the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240). The amendments will take effect from 1 June 2018. Separately, the Judiciary proposes 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. To this end, in exercise of the power under section 25 of the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237) and section 11 of Cap. 240, the Secretary for Transport and Housing has respectively made the Fixed Penalty (Traffic Contraventions) (Amendment) Regulation 2018 (at **Annex 1**) and the Fixed Penalty (Criminal Proceedings) (Amendment) Regulation 2018 (at **Annex 2**) to amend the provisions of the Fixed Penalty (Traffic Contraventions) Regulations (Cap. 237A) and Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240A), as well as Forms 1 and 2 (i.e. “Fixed Penalty Ticket” and “Demand Notice”) in the Schedules therein.

JUSTIFICATIONS

Amending the relevant fixed penalty charges in Form 1 in the Schedule to Cap. 240A

2. The LegCo passed a resolution on 17 January 2018 to increase by 25% the fixed penalty charges for the following five congestion-related offences specified in the Schedule to Cap. 240, from the current levels of \$320 and \$450 to \$400 and \$560 respectively, with effect from 1 June 2018 :

- (a) unlawfully entering box junction;
- (b) picking up / setting down passengers in restricted zone;
- (c) ‘U’ turn causing obstruction;
- (d) unauthorised stopping at bus stop / public light bus stand / taxi stand / public light bus stopping place; and
- (e) stopping public bus, public light bus or taxi longer than necessary when picking up / setting down passengers.

3. As relevant fixed penalty charges are also set out in the list of offences and fixed penalty in Form 1 (i.e. “Fixed Penalty Ticket”)¹ in the Schedule to Cap. 240A, consequential amendments need to be made.

Removal of the present payment collection functions of the Magistrates’ Courts for fixed penalty in respect of traffic contraventions before any court proceedings are initiated

4. In this amendment exercise, we will also amend the provisions relating to means of payment, Form 1² (i.e. “Fixed Penalty Ticket”) and Form 2³ (i.e. “Demand Notice”) (hereinafter collectively referred to as “Notices”) in Cap. 237A and Cap. 240A to the effect of removing the present payment collection functions of the Magistrates’ Courts for fixed penalty in respect of traffic contraventions before any court proceedings are initiated. Pursuant to Section 3 of Cap. 237A and Section 3 of Cap. 240A, upon receipt of the Notices, persons involved in traffic contraventions may pay the fixed penalty by any of the means specified in the Notices before any court proceedings are initiated. The means of payment include :

- (a) by post addressed to the Treasury;

¹ The fixed penalty tickets issued under Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) shall be in accordance with Form 1 in the Schedule to the Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240A).

² Referring to Form 1 in the Schedule to Cap. 237A and Form 1 in the Schedule to Cap. 240A.

³ Referring to Form 2 in the Schedule to Cap. 237A and Form 2 in the Schedule to Cap. 240A.

- (b) personally or through an agent, -
 - (i) at any Post Office⁴ 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;
- (d) by phone by using the service commonly known as PPS; or
- (e) through the Internet.

5. In view of its institutional independence, the Judiciary considers that any collection of fixed penalty payments is a matter between the Government and the person concerned if no court proceeding is initiated. The Judiciary should not be collecting such payments, which are not court payments, on behalf of the Government. Moreover, if the Government subsequently initiates a court case, the Government will become one of the parties to that court case. Therefore, 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, as this may affect the neutrality of the Judiciary, perceived or real.

6. 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 arising from court proceedings that may be ordered by the court. In fact, the Magistrates' Courts no longer collect similar non-court payments under the relatively newer statutory provisions on fixed penalty payments⁵.

7. 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 4 above, the proposal should

⁴ At present, there are 121 post offices.

⁵ 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).

not cause any significant inconvenience to persons intending to make such payments.

Other amendments

8. We also propose that technical amendments be made to certain provisions and the Notices in Cap. 237A and Cap. 240A, including :

- (a) clearly specifying that the fixed penalties may be paid through the phone-banking service provided by banks;
- (b) updating the arrangements set out in the Notices regarding penalty payment via the Internet. The Treasury advised that the fixed penalty payments can no longer be made through the website or kiosks of the “Electronic Service Delivery” Scheme⁶ and the URL address of the Treasury’s website has changed;
- (c) removing the postal address of the Treasury set out in section 3(1)(a) of both Cap. 237A and Cap. 240A, retaining only the Treasury’s postal address shown on the Notices. This is in line with other relatively newer statutory provisions on fixed penalty payments; and
- (d) updating the URL address of the Hongkong Post’s website shown on the Notices.

THE AMENDMENT REGULATION

9. The details of the amendments in the Fixed Penalty (Traffic Contraventions) (Amendment) Regulation 2018 and the Fixed Penalty (Criminal Proceedings) (Amendment) Regulation 2018 are :

- (a) to update Form 1 in the Schedule to Cap. 240A to reflect the increase of certain fixed penalty charges specified in Cap. 240;
- (b) to repeal the relevant provisions of Cap. 237A and Cap. 240A which stipulate that a person receiving Form 1 or Form 2 may pay the fixed penalty within the time prescribed at any of the Magistrates’ Courts specified therein; and to remove references

⁶ The website and kiosks of the “Electronic Service Delivery” Scheme has already been terminated.

to various Magistrates' Courts, including their addresses and office hours, in the payment instructions in Form 1 and Form 2;

- (c) to specify in the provisions of Cap. 237A and Cap. 240A, as well as in Form 1 and Form 2 therein, that all fixed penalties prescribed in Cap. 237 and Cap. 240 may be paid through the phone-banking service provided by banks;
- (d) to update the information and payment arrangements set out in the provisions of Cap. 237A and Cap. 240A as well as in Form 1 and Form 2 in the Schedule therein; and
- (e) to stipulate the transitional provisions for Cap. 237A and Cap. 240A.

LEGISLATIVE TIMETABLE

10. The legislative timetable for the Fixed Penalty (Traffic Contraventions) (Amendment) Regulation 2018 and the Fixed Penalty (Criminal Proceedings) (Amendment) Regulation 2018 is as follows :

Publication in the Gazette	2 February 2018
Tabling at the LegCo for negative vetting	7 February 2018
Commencement date	1 June 2018

IMPLICATIONS OF THE PROPOSAL

11. The amendments to the regulations are technical in nature. The economic and financial implications of the amendments to increase the fixed penalty charges have been set out in the LegCo Brief entitled "Resolutions of the Legislative Council -- Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237) Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240)", issued in February 2017. The proposal has no civil service, environmental, sustainability, competition, productivity, family or gender implications. It is in conformity with the Basic Law, including provisions concerning human rights, and will not affect the current binding effect of Cap. 237 and Cap. 240 as well as their subsidiary legislation.

PUBLIC CONSULTATION

12. The amendments to increase certain fixed penalty charges stipulated in Cap. 240A are the consequential amendments to reflect the resolution previously passed by the LegCo under section 12 of Cap. 240 (see paragraph 2 above). Hence, no separate public consultation is considered necessary. Regarding the amendments relating to “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”, the Transport and Housing Bureau and Judiciary Administration tabled an information paper for the LegCo Panel on Administration of Justice and Legal Services on 18 July 2017. Members of the Panel raised no objection to the proposal. Other technical amendments are only updating of information or payment arrangements and do not involve policy changes.

PUBLICITY

13. A spokesperson will be available to answer media enquiries.

ENQUIRIES

14. Any enquiries concerning this brief can be directed to Mr Tony Li, Principal Assistant Secretary for Transport and Housing, at 3509 8192.

**Transport and Housing Bureau
January 2018**

Fixed Penalty (Traffic Contraventions) (Amendment) Regulation 2018

(Made by the Secretary for Transport and Housing under section 25 of the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237))

1. **Commencement**
This Regulation comes into operation on 1 June 2018.
2. **Fixed Penalty (Traffic Contraventions) Regulations amended**
The Fixed Penalty (Traffic Contraventions) Regulations (Cap. 237 sub. leg. A) are amended as set out in sections 3, 4 and 5.
3. **Regulation 3 amended (payment of fixed penalty)**
 - (1) Regulation 3(1)(a)—
Repeal
everything after “Treasury”
Substitute a semicolon.
 - (2) Regulation 3(1)—
Repeal subparagraph (b)
Substitute
“(b) personally or through the person’s agent at a counter of any post office other than a mobile post office;”.
 - (3) Regulation 3(1)(c), Chinese text—
Repeal the semicolon
Substitute
“繳付；”.
 - (4) Regulation 3(1)(d)—

Repeal

“or”.

- (5) Regulation 3(1)(e)—

Repeal the full stop

Substitute

“; or”.

- (6) After regulation 3(1)(e)—

Add

“(f) through the phone-banking service provided by a bank.”.

4. Regulation 3A added

After regulation 3—

Add

“3A. Transitional provision—Fixed Penalty (Traffic Contraventions) (Amendment) Regulation 2018

- (1) Despite regulation 3(1), if a person receives a notice in Form 1 or 2 in the pre-amended Schedule issued before 1 June 2018, the person may pay the fixed penalty within the period of time stated in the notice, personally or through the person’s agent, at any magistracy specified in the notice.
- (2) If a person pays a fixed penalty under paragraph (1), regulation 3(2), (3), (4) and (6) applies to the payment as if it were made under regulation 3(1) as in force immediately before 1 June 2018.
- (3) In this regulation—
pre-amended Schedule (原有附表) means the Schedule as in force immediately before 1 June 2018.

(4) This regulation expires at midnight on 21 June 2018.”.

5. Schedule amended

- (1) The Schedule, Form 1, payment instructions, paragraph 1(c), Chinese version—

Repeal

everything after “庫務署網站” and before “繳款時”

Substitute

“(URL 位址：<http://www.try.gov.hk>)。 ”.

- (2) The Schedule, Form 1, payment instructions, paragraph 1(c), English version—

Repeal

everything after “Treasury’s” and before “Please select”

Substitute

“website (URL address: <http://www.try.gov.hk>). ”.

- (3) The Schedule, Form 1, payment instructions, paragraph 1, Chinese and English versions—

Repeal everything after subparagraph (d)

Substitute

“(e) 在郵政局櫃位繳款

親自或由代理人在任何郵政局(流動郵政局除外)的櫃位繳款。如欲查詢有關地址及辦公時間，請致電香港郵政熱線：2921 2222 或瀏覽其網站(URL 位址：<https://www.hongkongpost.hk>)。本通知書必須保持完整並於繳款時出示。

“(e) At Post Office Counters

Payment may be made personally or by an agent at a counter of any post office (other than a mobile post office). For addresses and opening hours, please call the Hongkong Post Hotline: 2921 2222 or visit their website (URL address:

<https://www.hongkongpost.hk>). This notice must be kept intact and produced at the time of payment.

(f) 透過電話理財服務繳款

使用銀行提供的電話理財服務，透過有關的繳費服務繳款。詳情請瀏覽庫務署網站 (URL 位址：<http://www.try.gov.hk>)。

(f) Through Phone-banking Service

Pay through bill payment services by using the phone-banking service provided by banks. For details, please visit Treasury’s website (URL address: <http://www.try.gov.hk>). ”.

- (4) The Schedule, Form 2, payment instructions, paragraph 1(c), Chinese version—

Repeal

everything after “庫務署網站” and before “繳款時”

Substitute

“(URL 位址：<http://www.try.gov.hk>)。 ”.

- (5) The Schedule, Form 2, payment instructions, paragraph 1(c), English version—

Repeal

everything after “Treasury’s” and before “Please select”

Substitute

“website (URL address: <http://www.try.gov.hk>). ”.

- (6) The Schedule, Form 2, payment instructions, paragraph 1, Chinese and English versions—

Repeal everything after subparagraph (d)

Substitute

“(e) 在郵政局櫃位繳款

親自或由代理人在任何郵政局(流動郵政局除外)的櫃位繳款。如欲查詢有關地址及辦公時間，請致電香港郵政熱線：2921 2222 或瀏覽其網站(URL 位址：

<https://www.hongkongpost.hk>)。

本通知書必須保持完整並於繳款時出示。

(f) 透過電話理財服務繳款

使用銀行提供的電話理財服務，透過有關的繳費服務繳款。詳情請瀏覽庫務署網站(URL 位址：

<http://www.try.gov.hk>)。

(e) At Post Office Counters

Payment may be made personally or by an agent at a counter of any post office (other than a mobile post office). For addresses and opening hours, please call the Hongkong Post Hotline: 2921 2222 or visit their website (URL address:

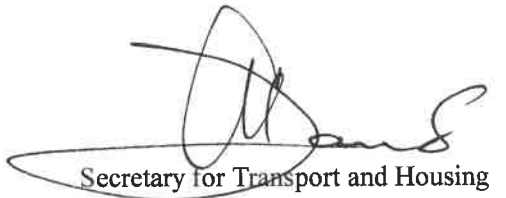
<https://www.hongkongpost.hk>).

This notice must be kept intact and produced at the time of payment.

(f) Through Phone-banking Service

Pay through bill payment services by using the phone-banking service provided by banks. For details, please visit Treasury's website (URL address:

<http://www.try.gov.hk>).



Secretary for Transport and Housing

29 January 2018

Explanatory Note

This Regulation amends the Fixed Penalty (Traffic Contraventions) Regulations (Cap. 237 sub. leg. A) (*principal Regulations*)—

- (a) to remove certain references related to the magistracies in the principal Regulations, so that the fixed penalty payable under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237) may no longer be paid at the magistracies;
- (b) to specify that the fixed penalty may be paid through the phone-banking service provided by banks;
- (c) to update Forms 1 and 2 in the Schedule to the principal Regulations; and
- (d) to provide for transitional arrangements.

Fixed Penalty (Criminal Proceedings) (Amendment) Regulation 2018

(Made by the Secretary for Transport and Housing under section 11 of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240))

1. Commencement

This Regulation comes into operation on 1 June 2018.

2. Fixed Penalty (Criminal Proceedings) Regulations amended

The Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240 sub. leg. A) are amended as set out in sections 3, 4 and 5.

3. Regulation 3 amended (payment of fixed penalty)

(1) Regulation 3(1)(a)—

Repeal

everything after “Treasury”

Substitute a semicolon.

(2) Regulation 3(1)—

Repeal paragraph (b)

Substitute

“(b) personally or through the person’s agent at a counter of any post office other than a mobile post office;”.

(3) Regulation 3(1)(c), Chinese text—

Repeal the semicolon

Substitute

“繳付;”.

(4) Regulation 3(1)(d)—

Repeal

“or”.

(5) Regulation 3(1)(e)—

Repeal the full stop

Substitute

“; or”.

(6) After regulation 3(1)(e)—

Add

“(f) through the phone-banking service provided by a bank.”.

4. Regulation 3A added

After regulation 3—

Add

“3A. Transitional provision—Fixed Penalty (Criminal Proceedings) (Amendment) Regulation 2018

(1) Despite regulation 3(1), if a person receives a notice in Form 1 or 2 in the pre-amended Schedule issued before 1 June 2018, the person may pay the fixed penalty within the period of time stated in the notice, personally or through the person’s agent, at any magistracy specified in the notice.

(2) If a person pays a fixed penalty under subregulation (1), regulation 3(2), (3) and (5) applies to the payment as if it were made under regulation 3(1) as in force immediately before 1 June 2018.

(3) In this regulation—

pre-amended Schedule (原有附表) means the Schedule as in force immediately before 1 June 2018.

(4) This regulation expires at midnight on 21 June 2018.”.

5. Schedule amended

(1) The Schedule, Form 1—

Repeal

“

\$1 000	\$600	\$450	\$320	\$230
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”.

Substitute

“

\$1,000	\$600	\$560	
\$450	\$400	\$320	\$230

”.

(2) The Schedule, Form 1, payment instructions, paragraph 1(c), Chinese version—

Repeal

everything after “庫務署網站” and before “繳款時”

Substitute

“(URL 位址：<http://www.try.gov.hk>)。 ”.

(3) The Schedule, Form 1, payment instructions, paragraph 1(c), English version—

Repeal

everything after “Treasury’s” and before “Please select”

Substitute

“website (URL address: <http://www.try.gov.hk>).”.

(4) The Schedule, Form 1, payment instructions, paragraph 1, Chinese and English versions—

Repeal everything after subparagraph (d)

Substitute

“(e) 在郵政局櫃位繳款

親自或由代理人在任何郵政局(流動郵政局除外)的櫃位繳款。如欲查詢有關地址及辦公時間，請致電香港郵政熱線：2921 2222 或瀏覽其網站(URL 位址：<https://www.hongkongpost.hk>)。本通知書必須保持完整並於繳款時出示。

(e) **At Post Office Counters**

Payment may be made personally or by an agent at a counter of any post office (other than a mobile post office). For addresses and opening hours, please call the Hongkong Post Hotline: 2921 2222 or visit their website (URL address: <https://www.hongkongpost.hk>). This notice must be kept intact and produced at the time of payment.

(f) 透過電話理財服務繳款

使用銀行提供的電話理財服務，透過有關的繳費服務繳款。詳情請瀏覽庫務署網站 (URL 位址：<http://www.try.gov.hk>)。

(f) **Through Phone-banking Service**

Pay through bill payment services by using the phone-banking service provided by banks. For details, please visit Treasury’s website (URL address: <http://www.try.gov.hk>).”.

(5) The Schedule, Form 1, list of offences and fixed penalty, code number 9—

Repeal

“\$320” (wherever appearing)

Substitute

“\$400”.

(6) The Schedule, Form 1, list of offences and fixed penalty, code number 12—

Repeal

“\$450” (wherever appearing)

Substitute

“\$560”.

- (7) The Schedule, Form 1, list of offences and fixed penalty, code number 18—

Repeal

“\$320” (wherever appearing)

Substitute

“\$400”.

- (8) The Schedule, Form 1, list of offences and fixed penalty, code number 20—

Repeal

“\$320” (wherever appearing)

Substitute

“\$400”.

- (9) The Schedule, Form 1, list of offences and fixed penalty, code number 48—

Repeal

“\$320” (wherever appearing)

Substitute

“\$400”.

- (10) The Schedule, Form 2, payment instructions, paragraph 1(c), Chinese version—

Repeal

everything after “庫務署網站” and before “繳款時”

Substitute

“(URL 位址：<http://www.try.gov.hk>)”。

- (11) The Schedule, Form 2, payment instructions, paragraph 1(c), English version—

Repeal

everything after “Treasury’s” and before “Please select”

Substitute

“website (URL address: <http://www.try.gov.hk>)”.

- (12) The Schedule, Form 2, payment instructions, paragraph 1, Chinese and English versions—

Repeal everything after subparagraph (d)**Substitute****“(e) 在郵政局櫃位繳款**

親自或由代理人在任何郵政局(流動郵政局除外)的櫃位繳款。如欲查詢有關地址及辦公時間，請致電香港郵政熱線：2921 2222 或瀏覽其網站(URL 位址：<https://www.hongkongpost.hk>)。本通知書必須保持完整並於繳款時出示。

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使用銀行提供的電話理財服務，透過有關的繳費服務繳款。詳情請瀏覽庫務署網站

(f) Through Phone-banking Service

Pay through bill payment services by using the phone-banking service provided by

(URL 位址：
<http://www.try.gov.hk>)

banks. For details, please visit
Treasury's website (URL
address:
<http://www.try.gov.hk>).



Secretary for Transport and Housing

29 January 2018

Explanatory Note

This Regulation amends the Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240 sub. leg. A) (*principal Regulations*)—

- (a) to update Form 1 in the Schedule to the principal Regulations to reflect the increase of certain fixed penalties payable under the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) (*Ordinance*);
- (b) to remove certain references related to the magistracies in the principal Regulations, so that all fixed penalties payable under the Ordinance may no longer be paid at the magistracies;
- (c) to specify that all fixed penalties payable under the Ordinance may be paid through the phone-banking service provided by banks;
- (d) to further update Forms 1 and 2 in the Schedule to the principal Regulations; and
- (e) to provide for transitional arrangements.