

Fines and Fixed Penalties (Public Cleanliness and Obstruction) (Miscellaneous Amendments) Bill 2023

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A BILL

To

Amend the Public Cleansing and Prevention of Nuisances Regulation, the Country Parks Ordinance (including its subsidiary legislation) and the Summary Offences Ordinance to adjust the maximum fines that may be imposed for certain offences relating to public cleansing or obstruction; to amend the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance to adjust the fixed penalties in relation to offences specified in that Ordinance; and to make related, minor or technical amendments to those Ordinances, their subsidiary legislation and a related enactment.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Fines and Fixed Penalties (Public Cleanliness and Obstruction) (Miscellaneous Amendments) Ordinance 2023.

- (2) This Ordinance comes into operation on the expiry of 3 months after the day on which this Ordinance is published in the Gazette.

2. Enactments amended

The enactments specified in Part 2 are amended as set out in that Part.

Part 2

Amendments to Enactments

Division 1—Amendments to Public Cleansing and Prevention of Nuisances Regulation (Cap. 132 sub. leg. BK)

3. **Section 23 amended (offences and penalties)**

(1) Section 23(1)(a)—

Repeal

“8A”

Substitute

“8A(2)”.

(2) Section 23(1)(a)—

Repeal

“13”

Substitute

“13(1)(b)”.

(3) After section 23(2)—

Add

“(2A) A person who contravenes section 8A(1) commits an offence and is liable—

(a) on a first conviction—to a fine at level 3; and

(b) on each subsequent conviction—to a fine at level 4.

(2B) A person who contravenes section 13(1)(a) commits an offence and is liable—

(a) on a first conviction—to a fine at level 3; and

(b) on each subsequent conviction—to a fine at level 4.”.

(4) Section 23(3)—

Repeal

“or (2)”

Substitute

“, (2), (2A) or (2B)”.

Division 2—Amendment to Country Parks Ordinance (Cap. 208)

4. Section 26 amended (regulations)

Section 26(3)—

Repeal

“level 2”

Substitute

“level 3”.

Division 3—Amendments to Country Parks and Special Areas Regulations (Cap. 208 sub. leg. A)

5. Regulation 20 amended (offences and penalties)

(1) Regulation 20(1)—

Repeal

“12”

Substitute

“12(1)(a), (b), (d), (f), (g) or (h)”.

(2) After regulation 20(3)—

Add

“(3AA) Any person who contravenes regulation 12(1)(c) or (e) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 3 months and, where the offence is a continuing offence, to an additional fine of \$100 for each day during which the offence has continued.”.

Division 4—Amendment to Summary Offences Ordinance (Cap. 228)

6. Section 4A amended (obstruction of public places)

Section 4A—

Repeal

“level 2”

Substitute

“level 4”.

Division 5—Amendments to Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap. 570)

7. Section 2 amended (interpretation)

(1) Section 2(1), definition of *scheduled offence*—

Repeal

“Schedule 1.”

Substitute

“Schedule 1;”.

(2) Section 2(1)—

Add in alphabetical order

“*specified form* (指明格式) means a form specified under section 17A.”.

8. Section 3 amended (fixed penalty notice given by public officer)

(1) Section 3(1), English text—

Repeal

“he”

Substitute

“the public officer”.

(2) Section 3(1)—

Repeal

“prescribed form offering him”

Substitute

“specified form offering the person”.

(3) Section 3(1)—

Repeal

“his”

Substitute

“the person’s”.

(4) Section 3(3)—

Repeal

“shown in the notice, he shall not be”

Substitute

“in accordance with the notice within the period of 21 days beginning on the date on which the notice is given, the person is not”.

- (5) Section 3(3), Chinese text—

Repeal

“他”

Substitute

“該人”.

9. Section 6 amended (fixed penalty notice issued by Authority)

- (1) Section 6(1)—

Repeal

“21 days from the date of the giving of the notice, the Authority shall serve on the person a notice in the prescribed form”

Substitute

“the period mentioned in section 3(3), the Authority must serve on the person a notice in the specified form”.

- (2) Section 6(1)(b)—

Repeal

“he wishes”

Substitute

“the person wishes”.

- (3) Section 6(1)(b)—

Repeal

“offence he should notify the Authority in writing”

Substitute

“offence, the person should notify the Authority in writing (*notification*)”.

(4) Section 6(1)—

Repeal paragraph (c)

Substitute

“(c) stating—

- (i) that the payment must be made within the period of 10 days beginning on the date of the notice so served (*10-day period*) and in the manner specified in the notice; and
- (ii) that, if the person wishes to dispute liability for the offence, the notification must be given to the Authority within the 10-day period and in the manner referred to in subparagraph (i).”.

(5) Section 6(4)—

Repeal

“shown in the notice, he shall not be”

Substitute

“in accordance with the notice, the person is not”.

(6) Section 6(4), Chinese text—

Repeal

“他”

Substitute

“該人”.

10. Section 9 amended (proof in proceedings under section 8)

(1) Section 9(2)—

Repeal

“prescribed form”

Substitute

“specified form”.

- (2) Section 9(2)(b)—

Repeal

“he”

Substitute

“the person”.

- (3) Section 9(2), English text—

Repeal

“shall be admitted”

Substitute

“is to be admitted”.

- (4) Section 9(2)(i) and (ii), English text—

Repeal

“shall be”

Substitute

“is”.

11. Section 17 substituted

Section 17—

Repeal the section

Substitute

“17. Power to make regulations

The Secretary for Environment and Ecology may by regulation provide for the better carrying out of the provisions of this Ordinance.”.

12. Sections 17A and 17B added

After section 17—

Add

“17A. Power of Secretary for Environment and Ecology to specify forms

- (1) The Secretary for Environment and Ecology (*Secretary*)—
 - (a) may specify the form of a notice that may be given under section 3;
 - (b) may specify the form of a notice that is required to be served under section 6; and
 - (c) may specify the form of a certificate for the purposes of section 9(2).
- (2) The Secretary must, as soon as practicable after a form is specified under subsection (1), publish the specified form in the Gazette.

17B. Power of Director of Accounting Services to return or refund amounts that have been paid

- (1) If any amount is paid otherwise than in accordance with this Ordinance (including otherwise than in accordance with a notice given or served under this Ordinance), the Director of Accounting Services may return the amount to the payer.
- (2) If the amount paid for a fixed penalty is in excess of the amount of the fixed penalty required to be paid under this Ordinance, the Director of Accounting Services may refund the excess to the payer.”.

13. Schedule 1 amended (scheduled offence)

- (1) Schedule 1, items 1, 2, 3, 4, 5 and 6—

Repeal

“\$1,500”

Substitute

“\$3,000”.

- (2) Schedule 1, item 6A—

Repeal

“\$1,500”

Substitute

“\$6,000”.

- (3) Schedule 1, item 7—

Repeal

“\$1,500”

Substitute

“\$3,000”.

- (4) Schedule 1, item 8—

Repeal

“\$1,500”

Substitute

“\$6,000”.

14. Schedule 2 amended (Authorities and public officers)

- (1) Schedule 2, entry relating to Authority “Director of Agriculture, Fisheries and Conservation”, column 1, after “7”—

Add

“, 8”.

- (2) Schedule 2, entry relating to Authority “Director of Environmental Protection”, column 1, before “8”—

Add

“, 2”.

- (3) Schedule 2, entry relating to Authority “Director of Food and Environmental Hygiene”, column 1, after “7”—

Add

“, 8”.

- (4) Schedule 2, entry relating to Authority “Director of Housing”, column 1, after “4”—

Add

“, 8”.

- (5) Schedule 2, entry relating to Authority “Director of Housing”, column 3, after “Housing Officer”—

Add

“Senior Foreman
Foreman”.

- (6) Schedule 2, entry relating to Authority “Director of Leisure and Cultural Services”, column 1, after “7”—

Add

“, 8”.

**Division 6—Repeal of Fixed Penalty (Public Cleanliness
and Obstruction) Regulation (Cap. 570 sub. leg. A)**

**15. Fixed Penalty (Public Cleanliness and Obstruction) Regulation
repealed**

Fixed Penalty (Public Cleanliness and Obstruction)
Regulation—

Repeal the Regulation.

**Division 7—Amendment to Waste Disposal (Charging for
Municipal Solid Waste) (Amendment) Ordinance 2021 (25
of 2021)**

**16. Section 38 amended (Schedule 2 amended (authorities and public
officers))**

Section 38(2)—

Repeal

“after “7””

Substitute

“after “8””.

Explanatory Memorandum

The main purpose of this Bill is to—

- (a) amend the Public Cleansing and Prevention of Nuisances Regulation (Cap. 132 sub. leg. BK) (**Cap. 132BK**), the Country Parks Ordinance (Cap. 208) and its subsidiary legislation (**Cap. 208**) and the Summary Offences Ordinance (Cap. 228) (**Cap. 228**) to increase the maximum fines for certain offences relating to public cleansing or obstruction; and
- (b) amend the Fixed Penalty (Public Cleanliness and Obstruction) Ordinance (Cap. 570) (**Cap. 570**)—
 - (i) to increase the fixed penalties in relation to offences specified in Cap. 570 (*scheduled offences*); and
 - (ii) to provide for related matters, including—
 - (A) enabling the Director of Environmental Protection and certain public officers to enforce the fixed penalty system against the offence of depositing litter or waste in public places; and
 - (B) enabling the Director of Agriculture, Fisheries and Conservation, the Director of Food and Environmental Hygiene, the Director of Housing, the Director of Leisure and Cultural Services and certain public officers to enforce the fixed penalty system against the offence of unlawfully depositing waste.

2. The Bill is divided into 2 Parts.

Part 1—Preliminary

3. Clause 1 sets out the short title and provides for commencement.

Part 2—Amendments to Cap. 132BK, Cap. 208, Cap. 228 and Cap. 570

4. Clauses 3 to 6 amend certain provisions of Cap. 132BK, Cap. 208 and Cap. 228 to increase the maximum fines for certain offences relating to public cleansing or obstruction.
5. Clause 13 amends Schedule 1 to Cap. 570 to increase the fixed penalties for scheduled offences.
6. Clause 14 amends Schedule 2 to Cap. 570 to empower the relevant Authorities and public officers to enforce the fixed penalty system against the offences of depositing litter or waste in public places and unlawfully depositing waste.
7. Clauses 7 to 12 introduce related, minor or technical amendments to Cap. 570.
8. Clause 15 repeals the Fixed Penalty (Public Cleanliness and Obstruction) Regulation (Cap. 570 sub. leg. A).
9. Clause 16 makes a related amendment to the Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Ordinance 2021 (25 of 2021).