

**The Administration's Response to Paragraph 2(g) of the Minutes of Bills Committee meeting held on 9 December 2004**

Under the present provisions in the Undesirable Medical Advertisements Ordinance (Cap. 231) (UMAO), no statutory defence is provided for any person who publishes or causes to be published any advertisement likely to lead to the use of medicine for treatment of specified diseases or conditions. Such regime, which has been operating since 1988, has served us well. The amendments proposed in the Bill are not related to, and do not affect, this regulatory regime.

In the context of the Public Health and Municipal Services Ordinance (Cap. 132) (PHMSO), section 50(3) stipulates that no persons shall sell or advertise any food rendered injurious to health or drugs injuriously affected in its quality. Section 50(4) stipulates that any person who contravenes any of the provisions of subsection (3) shall be guilty of an offence. Section 50(6) provides a statutory defence, i.e. in any proceedings for an offence under section 50(4) consisting of the advertisement for sale of any food or drug, it shall be a defence for the person charged to prove that, being a person whose business it is to publish, or arrange for the publication of, advertisements, he received the advertisement for publication in the ordinary course of business. Unlike the UMAO which provides for specific schedules of prohibited advertisements, there is no such a list in PHMSO.

In the context of UMAO, we do not see the need to provide for a statutory defence. We consider that the system of providing warning letters to distributors and publishers are adequate to address for the concerns of publishers and distributors who inadvertently placed prohibited advertisement.