

**Bills Committee on Smoking (Public Health) (Amendment) Bill 2005
Administration's Reply to Members' Question raised on 15 June 2006**

PURPOSE

At the Bills Committee meeting on 15 June 2006, Hon Audrey Eu SC raised the question on the effect on the operation of clause 11 of the Bill if the proposed “grandfathering and notation” provision is not added to clause 11.

ADMINISTRATION'S RESPONSE

2. If the proposed “grandfathering and notation” provision is not added to clause 11, any person being charged with an offence under section 10(3) (as amended by clause 11 of the Bill without the “grandfathering and notation” provision) of the Smoking (Public Health) Ordinance (Cap. 371) may challenge the amended section 10(3) of Cap. 371 on the basis that it is inconsistent with the property right protection under BL105. In addition, an owner of an affected trade mark may institute judicial review proceedings to challenge the constitutionality of the amended section 10(3) of Cap. 371 (even if there is no criminal proceedings against him) in order to seek a declaration from the court that the amended section 10(3) of Cap. 371 is unconstitutional.

3. As explained in the Administration's paper provided to the Bills Committee on 15 June 2006 and elaborated by the Administration at the Bills Committee meeting on 15 June 2006, there is a serious risk that the cumulative effect of clause 11 and other provisions of the Bill (particularly those relating to tobacco advertisements) and the existing law as contained in the Smoking (Public Health) Ordinance would amount to a (de facto) deprivation.