

**Bills Committee on Energy Efficiency  
(Labelling of Products) Bill 2007**

**The Administration's response to Action Items 1-3  
raised at the Bills Committee meeting on 17 January 2008**

**Defence provisions under clause 44 and 45**

At the Bills Committee meeting on 17 January 2008, Members were concerned that an employee would be liable under clause 5 even if the defence under clause 44 was applicable to him. Moreover, Members perceived that the original construction of clause 5 might allow the enforcement agency to compel employees to assist in its investigation through clause 45. Such is not our policy intention. In light of the comments of the Bills Committee, we propose to amend clause 5 to limit the application of the clause on employees.

2. We will propose a new clause 5(3) to exclude junior sales staff from the application of clause 5(1) and they are not expected to take steps to “ensure” as required under that provision. Only employees who exercise managerial functions are required to meet the “ensure” requirement. We will also add a new clause 5(4) to catch any employee who knowingly commits an offence.

3. Clause 45 provides a defence of due diligence. It is modelled on other statutory provisions, such as section 20G of the Waste Disposal Ordinance (Cap. 354); section 56B of the Electricity Ordinance (Cap. 406); section 24 of the Consumer Goods Safety Ordinance (Cap.456) and section 25 of the Toys and Children's Products Safety Ordinance (Cap. 424).

**Environment Bureau  
Electrical and Mechanical Services Department  
February 2008**