

**Bills Committee on
Motor Vehicle Idling (Fixed Penalty) Bill**

**List of Follow-up Actions Arising from
Discussion at Meeting on 25 October 2010**

Administration's Response

- (a) *To advise the length of time expected between the passage and the date of the Motor Vehicle Idling (Fixed Penalty) Bill (the Bill) coming into operation, as some time might be required for implementing public education and publicity on the Bill before its actual implementation, and the enforcement approach (e.g. whether there would be a grace period during which warnings instead of penalty notices would be given).*
1. Taking into account the time required for making regulations under clause 31 of the Bill, as well as other preparation work such as drawing up the relevant administration procedures, setting up the computer system for the fixed penalty system, etc., we expect that the Bill could come into operation about six months after its passage. Alongside the preparation, we will undertake a publicity programme to disseminate information on the proposed idling prohibition including the exemptions so as to prepare the community, particularly drivers, for its introduction. Our plan is that, upon implementation of the ban, we would allow a suitable grace period during which warnings instead of penalty notices would be given to the offenders.
- (b)(c) *To consider substituting “driving authority” in clause 9 with “driving licence” or “driving permit”, and providing a definition for “driving licence” or “driving permit” in clause 2. To consider deleting “driving authority” in clause 2.*
2. Subject to the views of the Bills Committee (BC), we could prepare draft Committee Stage Amendments (CSAs) to replace the term “driving authority” under clause 2(1) of the Bill with “driving licence or permit”.
- (d) *To consider defining “complainant” in clause 2 to provide that a complainant refers to any person or class of persons whom the Secretary for Justice may appoint to make a complaint under clause 16(3), and to explain the government personnel who may be so appointed.*
3. The enforcement provisions of the Bill are primarily based on the enforcement provisions of the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237). That Ordinance refers to “complainant” in a number

of sections that are the equivalent of clauses in the Bill, for example section 20A, and there is no definition of the term. The Fixed Penalty (Traffic Contraventions) Ordinance has been in operation for over 30 years and we are not aware of any enforcement problem caused by the lack of a definition of the term. Therefore, for the sake of consistency, it is not desirable to include a definition of the term “complainant” in the Bill.

4. For complaints related to a penalty notice issued by an environmental protection inspector, a senior environmental protection inspector or a chief environmental protection inspector (CEPI), our plan is that the Secretary for Justice (SJ) will appoint CEPIs, environmental protection officers and senior environmental protection officers to make the complaints under clause 16(3) of the Bill. For complaints related to a penalty notice issued by a traffic warden or a senior traffic warden, we plan to have court prosecutors appointed by SJ to make the complaints.
- (e) *To confirm whether the proposed idling prohibition is applicable to consular personnel, notwithstanding the Administration’s earlier reply letter [LC Paper No. CB(1)2834/09-10(01)] where stated “consular officers shall enjoy personal inviolability except in the case of a grave crime and in execution of a judicial decision of final effect”, and to confirm that the consular officers have the same understanding in this regard.*
5. The proposed idling prohibition is applicable to consular personnel. Consular personnel are aware of their obligation, without prejudice to their privileges and immunities, to respect local laws and regulations.
- (f) *To clearly explain the factors which the Director of Environmental Protection (the Director) would consider in deciding whether or not to grant exemption under clause 6 to a driver or class of drivers, the mechanism for applying for such exemptions and how the enforcement agents could be made aware of which persons have been granted such exemption.*
6. As explained in our earlier reply letter [LC Paper No. CB(1)2834/09-10(01)], in deciding whether to grant an exemption under clause 6 of the Bill to a driver or a class of drivers, the Director will consider whether there is a genuine need to idle the engine of a motor vehicle when it is stationary, and whether such idling is avoidable, having regard to the exemptions already provided under the Bill. Besides, the Director will consider the environmental nuisances caused by idling of the vehicle concerned, and whether granting the exemption would unduly undermine the objective of the Bill and the principles for formulating exemption arrangements. However, with the extensive list of exemptions covering drivers of different motor vehicles and various circumstances as well as the three-in-sixty-minute grace period to all drivers, only very exceptional cases will warrant the Director to

exercise the exemption power under clause 6, and therefore we expect such cases to be rare.

7. To apply for an exemption under clause 6 of the Bill, a driver has to submit a written application to the Director providing sufficient information to support his or her case. If the Director is satisfied that there is a justified case after considering the information, he or she would exercise the power under clause 6 to exempt the driver (or the class of drivers) from complying with the proposed idling prohibition, subject to any condition he or she thinks fit, by issuing a written notice to the applicant (or publishing a notice of exemption in the Gazette if the exemption is granted to a class of drivers). To facilitate the enforcement agents to identify an individual driver who is so exempted, the Director will, as a condition of the exemption, request a driver who is granted the exemption under clause 6 to produce the written notice to the enforcement agents where necessary to support his or her exemption status. For a class of drivers exempted under clause 6, we will keep the enforcement agents informed of the latest list of exempted classes of driver by updating of guidelines and regular briefing.

(g) To improve the Chinese version of the expression “或以張貼於有關汽車上的方式給予” in clause 8(2).

8. Subject to the views of BC, we could prepare draft CSAs to revise the Chinese version of clause 8(2) of the Bill to “(2)給予有關通知書的方式是將之當面交付有關的人，或附著於或張貼於有關汽車上。”.

(h) To review the appropriateness of using “examples” as a general drafting policy and in the Bill, and to explain the legal effect of clause 2(2).

9. Please refer to the reply letter from the Department of Justice to the Assistant Legal Adviser of the Legislative Council of 28 October 2010.

**Environmental Protection Department
November 2010**