

**Bills Committee on  
Fixed Penalty (Smoking Offences) Bill**

**Administration's response to issues raised  
at the Bills Committee meeting  
on 30 May 2008**

**PURPOSE**

This paper sets out the Administration's response to issues raised by the Bills Committee at its meeting on 30 May 2008.

**BACKGROUND**

2. At the above meeting, Members raised a number of issues and requested the Administration to provide a response in writing.

**ADMINISTRATION'S RESPONSE**

(a) *The Administration was requested to consider replacing "有關的人" referred to in clause 3(2) of the Chinese text of the Bill with "該人".*

3. We are of the view that within a subsection, to use "該人" in a case where the reader has to search outside that subsection for the person being referred to is not consistent with the linguistic customs of the Chinese language. We prefer retaining "有關的人" in clause 3(2) as the term is unambiguous in the context.

(b) *Clause 4 - Power of inspecting proof of identity*

*The Administration was requested -*

(i) *to confirm whether the Government policy of empowering public officers to require members of the public to produce proof of identification for inspection had been expanded from the original purpose of detecting illegal immigrants to facilitating various enforcement works of the Government such as issuing fixed penalty notices for smoking offences, if so, the reasons concerned; and*

(ii) *to explain why an offender would be liable on conviction to a fine at level 3 (\$10,000) for failing to comply with a requirement without reasonable excuse under clause 4(2) of*

*the Bill, as opposed to a fine at level 2 (\$5,000) for a similar offence in the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570)*

*(iii) to provide the information on whether there was any person holding a Vietnamese refugee card in Hong Kong, if so, the number involved*

4. There has been no change or expansion of Government policy in empowering public officers to require members of the public to produce proof of identification for inspection. Throughout the years, the legislature has, by the enactment of different legislation, empowered relevant public officers to request for proof of identity under different circumstances for different purposes. For example, there are provisions under the Immigration Ordinance (Cap. 115), the Police Force Ordinance (Cap. 232), the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570), the Smoking (Public Health) Ordinance (Cap. 371), as well as many other ordinances that provide legal powers for law enforcement agencies to require members of the public to produce proof of identification for enforcing the concerned ordinances. The purpose of the requirement varies in accordance with the contents of the concerned ordinances and does not originate from any policy change.

5. On clause 4(2), we consider that it is more appropriate for the penalty level under this clause to be consistent with that prescribed under 7(2) of the Smoking (Public Health) Ordinance (Cap. 371) which deals with identical offences, as the Bill is introduced mainly to facilitate enforcement of the Ordinance.

6. According to the Immigration Department, there is still one Vietnamese refugee card in circulation. The holder has refused to accept offer of a Hong Kong ID Card and technically this person is pending resettlement overseas.

*(c) The penalty for supplying a false or misleading "proof of identity" referred to in section 17B of the Immigration Ordinance (Cap. 115)*

7. The maximum penalty for possession of forged ID cards is 10 years imprisonment in accordance with Section 7A(1) of Registration of Persons Ordinance (Cap. 177).

*(d) Clause 6 - the Administration was requested to consider replacing the word "may" referred to in clause 6(2) of the Bill with "shall" to ensure consistency in enforcement*

8. The Administration is prepared to make this change.

*(e) Clause 7 - the Administration was requested to specify the considerations for withdrawing a notice of fixed penalty under clause 7 of the Bill*

9. The Administration considers that it is necessary to retain clause 7 to allow for circumstances under which law enforcers have a practical need to withdraw a notice of fixed penalty. These include cases where the notice becomes defective due to wilful misrepresentation of personal details on the part of the offender or technical errors on the part of the law enforcement agencies. As it is impossible to cover all circumstances that may give rise to the need for withdrawal of a notice of fixed penalty, we consider it prudent to retain the wordings of clause 7 as it is.

(f) *The Administration was requested to consider deleting the word "so" referred to in clause 9(3)(c) of the Bill to better align with the meaning of the Chinese text of that clause.*

10. In order to enhance the clarity of the meaning of this provision in both the English and Chinese texts, we propose to amend it in the manner set out in the annex.

Food and Health Bureau  
June 2008

Annex

- 9(3) By deleting paragraph (c) and substituting -
- "(c) the address specified in the certificate was, at the date of the certificate, the address of the person."
- 9(3) 刪除(c)段而代以一
- “(c) 該證明書所指明的地址，在該證明書的日期，是該人的地址。”。