

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

**List of Follow-up Actions Arising from
Discussion at Meeting on 5 November 2010**

Administration's Response

- (a) *To consider amending clause 6(1) along the line as suggested by Members, i.e. to add “the director may grant the exemption on exceptional or reasonable grounds only, and / or without causing undue environmental nuisances”, and to provide that the exemption under this clause may be granted to driver(s) and vehicle(s) in special situation including the situation in section 2B(12) of the Toronto Municipal Code Chapter 517, i.e. the proposed idling prohibition will not apply to vehicles transporting a person where a medical doctor certifies in writing that for medical reason a person in a vehicle requires that temperature or humidity be maintained within a certain range.*

1. The Motor Vehicle Idling (Fixed Penalty) Bill (the Bill) has already provided an extensive list of exemptions that should cater for the operational needs of professional drivers. In addition, the three-in-sixty-minute grace period should serve the general driving needs of all drivers including those carrying in their vehicles an infirm or sick passenger, who should indeed not be left waiting in an idling vehicle for an unduly long time. As such, there will remain only very few exceptional cases that warrant the Director of Environmental Protection (the Director) to exercise the exemption power under clause 6 of the Bill. In considering such applications, the Director, as we explained in our earlier reply letters [LC Paper No. CB(1)2834/09-10(01) and LC Paper No. CB(1)278/10-11(01)], will consider a basket of factors, including whether there is a genuine need to idle the engine of the motor vehicle concerned when it is stationary, whether such idling is avoidable, having regard to the exemptions already provided under the Bill, and the environmental nuisances caused by idling of the vehicle concerned. In light of the above, we propose revising clause 6(1) of the Bill to read –

“(1) The Director may exempt a driver or class of drivers from section 5 subject to any conditions the Director thinks fit, if the Director is satisfied that –

- (a) *exceptional circumstances exist that make it impractical or unreasonable for the driver or drivers of the class to comply with section 5; and*

(b) the exemption will not cause undue environmental nuisance.”

2. Subject to the views of Bills Committee (BC), we could prepare draft Committee Stage Amendments (CSAs) accordingly.
 - (b) To advise whether the Secretary for the Environment (SEN) will include in his speech at the resumption of the Second Reading debate on the Bill that the enforcement agents will exercise discretion in their enforcement work and they will take enforcement actions in a reasonable manner.*
3. Upon passage of the Bill, we will provide adequate training and clear enforcement guidelines to the authorized officers to ensure that they will enforce the idling prohibition according to the law.
 - (c) To delete clause 2(2) and the example listed under section 7 of Schedule 1 to the Bill to address BC’s concern about using “examples” in the Bill while stating that the examples given to demonstrate the operation of provision(s) are neither exhaustive nor conclusive.*
4. While we consider that the use of examples in the Bill is appropriate, we understand that a request is to be made to the Panel on Administration of Justice and Legal Services to discuss generally the use of examples in legislation early next year. Therefore, to facilitate early passage of the Bill, we are prepared to delete clause 2(2) and the examples from the Bill.
 - (d) To consider a Member’s suggestion of revising the definition of “driver” by replacing “assisting in the control of” with “in the control of”, and to clarify whether it is the policy intent of the Bill that a person on board looking after an idling vehicle while the driver is away will be prosecuted.*
5. If “assisting in the control of” is replaced by “in the control of”, there would be a difference between the concept of “driver” in the Bill and in the Road Traffic Ordinance (Cap. 374). From a drafting point of view, it is undesirable to create such a difference unless a clear difference in meaning is intended and can be explained.
6. Our policy intent, as reflected in clause 5 of the Bill, is to impose the proposed idling prohibition on any driver who causes or permits the internal combustion engine of a stationary vehicle to operate for more than three minutes in a sixty-minute period, unless an exemption applies. In most cases, the responsible driver is the person who has switched on the engine. There could also be cases where the responsible driver is a person who has taken over the role of a driver for an idling vehicle from another driver and allows the engine of the vehicle to continue idling for more than three minutes in a sixty-minute period. If, however, the enforcement agent does not find the

driver inside the vehicle, he would then wait for the return of the driver for issuing a penalty notice to the driver.

(e) *To consider revising “通知書” in clause 8(1) as “罰款通知書”, and revising “通知書” in clause 11(2) as “繳款通知書”.*

7. The Chinese text of clauses 8(1) and 11(2) of the Bill as they are, correspond to the English text. Where a notice first appears [i.e. clause 8(1) for a penalty notice and clause 11(2) for a demand notice], it is described as “a notice in the prescribed form / 符合訂明格式的通知書”. “Penalty notice” is defined in clause 2(1) as meaning “a notice referred to in section 8”, whereas “demand notice” is defined as meaning “a notice served under section 11(2)”.

8. Since “penalty notice” and “defined notice” are defined by reference to the provisions where they first appear, the definition would become circular in meaning if we refer the defined term in those provisions. The relevant wordings of clauses 8(1) and 11(2) of the Bill are also consistent with that in section 15(2) of the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237). Where the relevant notice first appears in Cap. 237, it is described as a “notice in the prescribed form”. We therefore consider the current wordings in the Bill appropriate.

(f) *To consider revising the Chinese version of clause 11(3)(b) to read “當局不得在拒絕日期之後的6個月後”.*

9. Subject to the views of BC, we could prepare draft CSAs to revise the Chinese version of clause 11(3)(b) of the Bill to –

“(b) 第(1)(b)款適用，當局不得在罰款通知書遭拒絕接受當日後的6個月後送達繳款通知書。”

Environmental Protection Department
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