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Report of the Bills Committee on Motor Vehicle Idling (Fixed Penalty) Bill

Purpose

This paper reports on the deliberations of the Bills Committee on Motor Vehicle Idling (Fixed Penalty) Bill (the Bill).

Background

2. Many drivers in Hong Kong leave the engines of their vehicles idling while they are waiting. While some do so for reasons that most members of the public would accept (e.g. drivers of emergency vehicles who keep the engines of their vehicles running while stationary for operational reasons and drivers of goods vehicles with a built-in refrigerator carrying frozen food), most others leave their engines on to keep the air-conditioning running mainly for their comfort, particularly during hot weather, at the expense of air quality. A comparison of the emissions by an idling engine and an engine of a moving vehicle is given in **Appendix I**.

3. Banning idling vehicles with running engines is amongst the Government measures to reduce emissions from the transport sector and improve air quality. To tackle roadside air pollution, the Chief Executive announced in the 2007-2008 Policy Address that, subject to

public consultation, the Government would introduce a statutory prohibition against idling vehicles (idling prohibition). The Administration subsequently conducted a five-month public consultation from November 2007 to March 2008. According to the Administration, the outcome of the public consultation reflected broad-based community support for the proposal. While the transport trades expressed in principle support for the proposal, some of them raised a number of concerns regarding its impact on their operations and requested further exemptions. The green groups, however, cautioned that too many exemptions would nullify the effect of the idling prohibition and demanded more stringent control.

4. Having considered the views of the community, the concerns of the transport trades, the effectiveness of the proposal in mitigating environmental nuisances caused by idling vehicles and enforcement practicability, the Administration put forward a revised proposal, which included further exemptions for drivers of taxis, green minibuses (GMBs), red minibuses (RMBs), non-franchised buses (NFBs) and commercial vehicles equipped with turbochargers, to the Panel on Environmental Affairs (EA Panel) of the Legislative Council (LegCo) for discussion in January and February 2009¹. The trades, notably taxi and minibus drivers, however, remained of the view that the revised exemption arrangements could not adequately address their concerns. They pointed out that if the taxis waiting in line for passengers at a stand had to switch on and off their engines frequently, it would increase the wear-and-tear of the engines, resulting in higher maintenance and repair costs. It was also impractical for taxi drivers to switch off their engines and air-conditioning on very hot or rainy days.

5. Having further considered the views received, the Administration has proposed to further expand the scope of exemption. Compared with the proposal for public consultation, the Bill includes the following major revised proposals -

- (a) providing a grace period of three-in-sixty-minutes to drivers of all motor vehicles;

¹ Members of the Panel on Transport and major stakeholders such as representatives of the transport trades and green groups were also invited to the meetings.

- (b) expanding the scope of exemption at taxi stands from the first two taxis to the first five taxis;
- (c) expanding the scope of exemption at GMB stands from the first two GMBs to the first two GMBs of each route;
- (d) expanding the scope of exemption at RMB stands from the first two RMBs to the first two RMBs, a RMB with at least one passenger on board, and a RMB which is immediately behind it; and
- (e) exempting NFBs with one or more passengers on board.

The Bill

6. The Bill seeks to prohibit idling vehicles, provide exemptions from the prohibition, impose a fixed penalty for contravention of the prohibition, provide for recovery of the fixed penalty and provide for incidental and related matters.

Idling prohibition

7. It is proposed that, unless an exemption applies, a driver (who is the person in charge of, or assisting in the control of, a motor vehicle) should be prohibited from causing or permitting any internal combustion engine (ICE) of a motor vehicle to operate while the vehicle is stationary². However, the idling prohibition only applies if the motor vehicle has been idled for more than three minutes in any sixty-minute period. Besides, the idling prohibition applies to all motor vehicles on all roads, including private roads.

8. The Bill will apply to all motor vehicles and drivers, including those of the Government and of the Offices set up by the Central People's

² Electric vehicles are not powered by ICEs, and they do not emit pollutants during operation or idling. The Administration considers that the idling prohibition, therefore, should not apply to them. Likewise, the idling prohibition should not apply to hybrid vehicles when operating in electric mode (when hybrid vehicles are operating in electric mode, they will not have any vibration, emission or noise; in contrast, when they are operating in fuel mode, they will vibrate, emit exhaust fumes and make engine noise, similar to idling vehicles powered by petrol, diesel or liquefied petroleum gas).

Government in the Hong Kong Special Administrative Region³.

Fixed Penalty System

9. A fixed penalty system is proposed under the Bill to enforce the idling prohibition, which is largely modeled on the Fixed Penalty (Traffic Contraventions) Ordinance (FP(TC)O) (Cap. 237), the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570) and the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600). The proposed fixed penalty is \$320, which is the same as that for illegal parking under FP(TC)O. The enforcement provisions of the Bill are primarily based on the enforcement provisions of FP(TC)O .

The Bills Committee

10. At the House Committee meeting on 30 April 2010, a Bills Committee was formed to study the Bill. The membership list of the Bills Committee is in **Appendix II**.

11. Under the chairmanship of Hon Audrey EU, the Bills Committee has held 13 meetings with the Administration, and at two of these meetings met with representatives of various groups/organizations (including the transport trades and green groups) and individuals to gauge their views on the Bill. A list of the organizations and individuals who have given views to the Bills Committee is in **Appendix III**.

12. On 26 July and 9 September 2010, Bills Committee members conducted site visits to bus termini, public transport interchanges, taxi stands, minibus stands and areas in the vicinity of schools to gain a better understanding of environmental nuisances caused by idling vehicles, the impact of the Bill on the operation of the transport trades and the views of

³ “Offices set up by the Central People’s Government in the Hong Kong Special Administrative Region” means the Liaison Office of the Central People’s Government in the Hong Kong Special Administrative Region, the Office of the Commissioner of the Ministry of Foreign Affairs of the People’s Republic of China in the Hong Kong Special Administrative Region and the Hong Kong Garrison of the Chinese People’s Liberation Army (the Garrison).

stakeholders. Bills Committee members boarded stationary buses/coach/minibuses/taxis and they noted that the cabin temperature of some of these vehicles was over 40°C when their engines were switched off.

13. In the course of scrutiny of the Bill, Bills Committee members have also made reference to the relevant overseas legislation prohibiting idling vehicles.

Deliberations of the Bill Committee

Definition of "driver"

[Clause 2(1)]

14. Under clause 2(1) of the Bill, "driver" is defined to mean, in relation to a motor vehicle, any person who is in charge of, or assisting in the control of, the vehicle. Members have sought clarification on the expression "assisting in the control of", and the reasons for including the word "*assisting*".

15. The Administration has explained that the definition of "driver" in the Bill is essentially the same as that in the Road Traffic Ordinance (Cap. 374) which has been in operation for over 30 years. It is necessary to include the word "*assisting*" so that the definition would also cover staff hired by operators (e.g. NFB operators) who has the keys of the vehicles concerned and is authorized to board the parked vehicles to switch on the engines.

16. Members have asked whether the definition as currently drafted would render a passenger on board an idling vehicle while the driver is away to be prosecuted. The Administration has advised that, unless an enforcement agent sees with his own eyes that it is the passenger who has switched on the engine while the driver is away, the passenger on board an idling vehicle would not be prosecuted. When the enforcement agent finds a stationary vehicle to continue idling for longer than the permitted grace period but that the driver is not on board, the enforcement agent would wait for the return of the driver for issuing a penalty notice to the

driver.

17. The Administration has also pointed out that to qualify as a "driver" under clause 2(1), there is no requirement that a person who is in charge of, or assisting in the control of, a motor vehicle must hold a driving licence or permit.

Definition of "road"

[Clause 2(1)]

18. The Bills Committee notes that by the definition of "road" in the Bill, the proposed idling prohibition will apply to all motor vehicles on private roads as well as on other roads, including any car parks. At the request of the Bills Committee, the Administration will, after passage of the Bill, step up the publicity efforts including encouraging operators of car parks to put up posters at conspicuous locations of their car parks.

Drivers to whom idling prohibition does not apply

[Clause 5(2) and Schedule 1]

19. The Bills Committee notes that it is proposed in the Bill that the idling prohibition does not apply to –

- (a) a driver of a motor vehicle that is stationary because of traffic conditions, such as traffic congestion, traffic accident and stopping as directed by a traffic light, traffic sign, road marking or police officer;
- (b) a driver who cannot prevent a motor vehicle from idling because of a mechanical difficulty over which he or she has no control;
- (c) a driver of a motor vehicle while a passenger is boarding or alighting from the vehicle;
- (d) a driver of any of the first five taxis at a taxi stand (subject to the size of the taxi stand concerned⁴);

⁴ As the size of taxi stands varies, the Bill does not provide a fixed number of exempted

- (e) a driver of a taxi which is in a queue of taxis any of which is moving into a taxi stand;
- (f) a driver of any of the first two GMBs on a particular scheduled service at a GMB stand (subject to the size of the GMB stand concerned);
- (g) a driver of any of the first two RMBs at a RMB stand (subject to the size of the RMB stand concerned);
- (h) a driver of a RMB at a RMB stand with any passenger on board;
- (i) a driver of a RMB at a RMB stand which is immediately behind another RMB at the stand with any passenger on board;
- (j) a driver of a NFB with any passenger on board;
- (k) a driver who must idle a specified medical, emergency or law enforcement vehicle, such as an ambulance, a fire engine or a police patrol car, for conducting an operational activity, including a training activity, related to any medical, emergency or law enforcement purpose;
- (l) a driver who must idle a motor vehicle for assisting in emergency or accident;
- (m) a driver who must idle a specified motor vehicle carrying any live animal for conducting a related operational activity or protecting public health, such as a vehicle of the Agriculture, Fisheries and Conservation Department;

taxis but instead allows the exemption to be made by subsidiary legislation. For those taxi stands which could accommodate less than five taxis, the number of exempted taxis would be reduced to the maximum number permissible. As set out in the relevant LegCo Brief, the Administration proposed using suitable road signs to identify the exempted areas at all taxi stands to facilitate taxi drivers' compliance with the idling prohibition.

- (n) a driver who must idle a security transit vehicle which is operated by a licensee under the Security and Guarding Services Ordinance (Cap. 460) as described in Schedule 1 to the Bill;
- (o) a driver who must idle a motor vehicle of the Garrison for conducting an operational activity, including a training activity of the Garrison;
- (p) a driver who must idle a motor vehicle, which is lawfully designed for a purpose other than carriage of the driver, any passenger and their personal effects, for the primary purpose of such vehicle⁵; and
- (q) a driver who must idle a motor vehicle for emissions testing or vehicle repairs.

20. The Bills Committee also notes that under clause 6 of the Bill, the Director of Environmental Protection (the Director) may exempt a driver or class of drivers from complying with the idling prohibition, subject to any conditions he or she thinks fit.

Further exemption proposals considered by the Bills Committee

21. Since the introduction of the Bill, the transport trades have still expressed concerns about the impact of the Bill on their operations. While they generally agreed that the idling prohibition would reduce environmental nuisances caused by emissions from vehicles waiting on the road to nearby pedestrians and residents, the transport trades have expressed the worry that, to comply with the idling prohibition, they would need to switch off the air-conditioning and restart their engines frequently, thus leading to extensive wear-and-tear of starters and batteries as well as higher maintenance costs. Drivers of passenger transport vehicles, in particular, have pointed out that they would need to

⁵ Five examples of such vehicles are set out under section 7 of Schedule 1 to the Bill. At the request of the Bills Committee, the Administration has agreed to delete these five examples from the Bill. Details of relevant discussion are set out in paragraphs 91-94 of this report.

keep their engines running to maintain their air-conditioning while waiting for passengers particularly in the hot weather or when it is raining.

22. Bills Committee members in general are supportive of the policy intent of the Bill. Some members, however, have expressed the view that the proposed control should not be over stringent or cause such undue nuisance to the trades concerned as to affect their normal operations. Bills Committee members have also expressed concerns about whether the health of the driver and the passengers of a passenger vehicle could be adversely affected if its engine, hence, air-conditioning, has to be switched off while waiting on very hot days. The Bills Committee also considers that the proposed control and enforcement criteria should be clear and objective to avoid enforcement difficulties. On these premises, the Bills Committee has examined whether there are justified needs to grant further exemptions to drivers and in circumstances such as very hot weather and rainy days.

Taxis

[Section 2(1) of Schedule 1]

23. The Bill proposes that a driver of any of the first five taxis at a taxi stand (subject to the size of the taxi stand concerned⁶) is exempted from the idling prohibition. The Bills Committee notes that 283 taxi stands (or 61%) of all taxi stands in Hong Kong have a capacity for five taxis or less. Under the proposal in the Bill, drivers of all taxis at these relatively small taxi stands will be exempted under section 2(1)(a) of Schedule 1. Some members have queried the reasons for not extending the exemption to the remaining 181 taxi stands which accommodate more than five taxis, instead of exempting only the first five taxis at these stands. The Administration has explained that providing a blanket exemption to cover drivers of all taxis at these large stands would undermine the effectiveness of the proposal in reducing environmental

⁶ As the size of taxi stands varies, the Bill does not provide a fixed number of exempted taxis but instead allows the exemption to be made by subsidiary legislation. For those taxi stands which could accommodate less than five taxis, the number of exempted taxis would be reduced to the maximum number permissible. As set out in the relevant LegCo Brief, the Administration proposed using suitable road signs to identify the exempted areas at all taxi stands to facilitate taxi drivers' compliance with the idling prohibition.

nuisances caused by idling vehicles having regard to the sizes of the large taxi stands.

24. Some members including Hon Miriam LAU, Hon LI Fung-ying and Hon WONG Kwok-hing, however, consider that drivers of taxis at all taxi stands should be exempted, or else those waiting in the queue would have to bear high cabin temperature during hot weather. The frequent switching on and off of the engines would also increase the wear-and-tear of the engines. As a result, the drivers in the queue might just keep circulating on the road instead of switching off the engine, and this would aggravate traffic and air pollution problems. These members have also queried the enforceability of the proposal under section 2(1)(b) of Schedule 1 to exempt a driver of a taxi which is in a "moving queue" waiting for his turn to pick up passengers, as the judgment of the presence of a "moving queue" at a specific point of time might be subject to disputes between the enforcement agent and the taxi driver concerned.

25. On review, the Administration considers that there is an arguable case to provide further exemption to taxis waiting at taxi stands, taking account of their mode of operation (relatively short time required for boarding and alighting of passengers) and the potential environmental impact on the vicinity of the taxi stands. The Administration has pointed out that as a number of taxi stands are located at open area, such as outside MTR train stations, the environmental nuisances posed by idling taxis at taxi stands to the public might not be significant. The Administration subsequently agrees to move a Committee Stage amendment (CSA) to section 2 of Schedule 1 to provide that the idling prohibition does not apply to a driver of a taxi that is at a taxi stand. Drivers in a queue of taxis into a taxi stand would be covered by the exemption in section 1(a) of Schedule 1 which exempts drivers of vehicles that are stationary because of traffic conditions.

Minibuses

[Section 2(2)&(3) of Schedule 1]

26. Some Bills Committee members consider it inadequate to exempt only the first two minibuses of each route at a stand, and propose extending the exemption from the first two minibuses to the first three

minibuses of each route to better meet the operational needs of minibus drivers. These members referred to an incident occurring in July 2010 in which a minibus driver reportedly died after collapsing with heatstroke in his minibus with the engine turned off while queuing up in the third place at a minibus stand in Mong Kok, and urged the Administration to re-consider the need for the said extension. While agreeing that drivers may wait outside their minibuses when the engines of their vehicles are switched off, these members have pointed out that many minibus stands are located at narrow streets without space for provision of shelters for drivers to take cover from the heat or rain when necessary.

27. The Administration has responded that, unlike taxi stands in general, minibus stands are often situated at busy streets in close proximity to shops/pedestrians and hence poses great impact on roadside air quality and people working or living nearby the roads. Compared with taxis, the process of boarding and alighting from minibuses at designated stands in general takes a longer time for their larger passenger capacity. The Administration has advised that having considered the coverage of the proposed exemptions, as well as the time required for filling a minibus with passengers and for minibuses at the end of the queue to move up, it is unjustifiable to further extend the exemption to cover the third minibus of each route at a stand.

28. The Administration has also advised that as the Bill does not oblige drivers to stay inside a minibus with the engine stopped for a long period of time, drivers may wait outside the minibus when there is a long queue at the stand. They may also choose to stay inside the first or second minibus waiting at the front of the queue which would be exempted from the idling prohibition. The Administration would follow up to improve the environment at minibus stands, such as by providing covers and shades and other supporting facilities as far as it is practicable to do so.

Franchised buses

[Section 2(4) of Schedule 1]

29. The Bills Committee has considered a request from the franchised bus companies for bus drivers to turn on the air-conditioner of

the bus for at least 10 minutes before boarding of passengers for the comfort and health of drivers and passengers. The Administration has pointed out that since franchised buses provide scheduled services, the departure time of buses from bus termini is clearly set out in the service timetable of the respective bus routes. Under the proposed exemption arrangements in the Bill, once passengers start boarding the bus according to the timetables, the bus drivers can switch on the engines, and thus the air-conditioner of the bus, and start driving off the bus within a short period of time. If the buses are allowed to idle their engines for an extended period at the bus termini, say, 10 minutes as suggested by the franchised bus companies, the passengers waiting nearby would have to suffer from the heat, noise and emission generated by idling engines simultaneously. The adverse impact caused to the passengers is more prominent at public transport interchanges where dispersion of emission exhaust is less efficient.

30. Hon Miriam LAU has queried that the exemption arrangement for franchised bus drivers as explained by the Administration is, however, not reflected in Schedule 1 to the Bill. To address the concern, the Administration has agreed to move CSAs to add a new section 2(5) to Schedule 1 to clearly stipulate that the idling prohibition does not apply to a driver of franchised bus once the bus is available for boarding by passengers, and to delete "other than a franchised bus" from section 2(4) of the same Schedule to avoid any misunderstanding that franchised buses are excluded from the exemption applicable to a driver of a bus that has any passenger on board.

Non-franchised buses

[Section 2(4) of Schedule 1]

31. The Bills Committee has considered a request from the passenger coach trade for granting an exemption, similar to that for minibuses, to coaches, i.e. exempting the first two coaches at a coach stand. The Administration has advised that coaches belong to NFBs, and unlike minibuses, most NFBs do not operate from public stands (or termini). The Administration notes that coaches have to provide tailor-made services to specific groups of passengers. In consideration of their operational mode and sealed window design, it is proposed in the Bill to

exempt drivers of NFBs with one or more passengers on board so that they could run the air conditioning system to maintain sufficient ventilation. Together with the three-in-sixty-minutes grace period as well as other exemptions related to passenger boarding and alighting and traffic conditions as proposed in the Bill, the Administration considers the current proposal to exempt drivers of NFBs with one or more passengers on board in the Bill should be able to cater for the operational needs of NFBs.

School private light buses

32. The Bills Committee notes that the Bill adopts the same definition of "bus" as that provided in Cap. 374, where defines that the carriage capacity of a bus is more than 16 passengers. The exemptions applicable to a franchised bus or NFB under the Bill, therefore, do not apply to a school private light bus (SPLB), which is not classified as "bus" for its small carriage capacity. Hon Miriam LAU is of the view that it is unreasonable that NFBs, which are larger in carriage capacity, can enjoy an exemption from the idling prohibition when there are one or more passengers on board, whereas SPLBs, which are smaller in capacity and for carriage of students (who can be vulnerable kindergarten pupils), are not exempted. She is concerned that without any specific exemption from the idling prohibition, escorts on SPLBs may arrange students to stay outside the SPLB while waiting for other students, and it would have safety implications for the students concerned. Other members including Hon CHAN Kam-lam and Hon WONG Kwok-hing share the views of Hon Miriam LAU. They have requested the Administration to allow SPLBs to enjoy the same exemption arrangement as that applicable to NFBs in order to cater for young children. After discussion, the Administration has taken on board members' views and it will move CSAs to -

- (a) add new section 2(4)(b) to Schedule 1 to exempt a driver of a SPLB that has any passenger on board; and
- (b) provide for a definition of SPLB (same as that provided in Cap. 374⁷) under section 2(6) of Schedule 1.

⁷ The carriage capacity of a SPLB is not more than 16 passengers according to Cap. 374.

Taxis/minibuses at "informal" taxi/minibus stands

33. Some members have enquired whether all the exemption arrangements applicable to taxi and minibus stands would also be applicable to the "informal" taxi and RMB stands, which have existed for years in places such as Mong Kok, Causeway Bay and Tsuen Wan in response to passengers' transport needs.

34. The Administration has explained that according to TD, there are no such "informal taxi and RMB stands" in the territory. The existing arrangement is that other than designated taxi/RMB stands, taxis and RMBs like other motor vehicles are allowed to pick up and drop off passengers at non-restricted zones at the kerbside, but not for waiting of passengers. To address members' concerns about the regulatory arrangements for the so-called "informal" taxi/RMB stands, TD would consider proposals for designation of taxi/RMB stands received by taking account of the operational need, traffic impact and site conditions, etc.

35. The Bills Committee has agreed to make referral to the Transport Panel (TP Panel) for follow up.

Extreme weather

36. Some members including Hon Miriam LAU, Hon LI Fung-ying, Hon WONG Kwok-hing, Hon LEE Cheuk-yan and Hon Cyd HO have requested the Administration to consider granting a blanket exemption from the idling prohibition to all drivers during hot months, such as from June to September or October. They have highlighted the fact that the ambient temperature inside a vehicle is higher than the air temperature, reaching as high as over 40°C on a hot day. Bills Committee members have urged the Administration to carefully assess the health impact of the idling prohibition on professional drivers as they drive for long hours and the vehicle compartment is their workplace. The Bills Committee has also urged the Administration to carefully consider the health impact of the idling prohibition on elderly passengers and small children, who may have difficulty in coping with the heat stress inside a vehicle with the engines turned off.

37. Bills Committee members have also expressed grave concern about the inconvenience brought to drivers and passengers during heavy rain, as the operation of the idling prohibition would require drivers to open the windows of their vehicles for ventilation. Some members consider that there are practical needs for drivers to keep the air-conditioning on during heavy rain to avoid fogging of glass panels in order to ensure safety of driving, and to avoid passengers and seats from getting wet.

38. In the course of scrutiny of the Bill, a minibus driver reportedly died in early July 2010 after collapsing with heatstroke in his minibus with the engine of his minibus turned off while queuing up at a minibus stand in Mong Kok. The Bills Committee has expressed grave concern about the incident. Some members have further urged the Administration to come up with concrete proposals to address the concerns raised by the transport trades about the health impact of the idling prohibition on professional drivers especially on very hot days.

39. After further discussion with the Bills Committee, the Administration considers that there are strong views in the community in favour of providing suitable exemption from the idling prohibition during inclement weather, e.g., on very hot days. The Administration has subsequently proposed that exemptions from the idling prohibition should be allowed on days on which a "Very Hot Weather Warning"⁸ (VHWW) or a "rainstorm warning signal" (RWS) is issued. In this connection, the Administration has proposed to move CSAs to add new section 9(1) and (2) in Schedule 1 to provide that -

- (a) all drivers are exempted at any time when a VHWW or an amber, red or black RWS⁹ is in force, and
- (b) if a VHWW or an amber, red or black RWS is in force for

⁸ The issue of VHWW by the Hong Kong Observatory (HKO) is essentially based on the forecast maximum temperatures of HKO headquarters, taking into consideration the effects of relative humidity and winds. Consideration would also be given to high temperatures generally recorded or forecast elsewhere in Hong Kong. In 2009, there were 40 days on which VHWW was issued.

⁹ In 2009, there were 17 days and two days on which the "Amber RWS" and the "Red RWS" were issued respectively. No "Black RWS" was issued in 2009.

part of a day only, the exemption would still be applicable at any time during the part of that day remaining after the warning signal has ceased to be in force.

40. As regards the proposed amendment in paragraph 39(b) above, the Administration has explained that it aims to address the situation that drivers may not be aware of the taking off of a warning.

41. The Bills Committee notes that the dissemination of weather warnings by HKO to the public, including RWS and VHWW, is essentially made through four channels - radio, TV, HKO websites and HKO Dial-a-weather service.

Hot weather (but not up to the temperature threshold for the issue of a Very Hot Weather Warning)

42. Some members opine that the temperature threshold for the issuance of VHWW for granting the exemption is too high considering that the ambient temperature inside a vehicle is much higher than the air temperature. These members have suggested that the Administration should make reference to the relevant legislation in Toronto, which exempts a vehicle when the ambient temperature inside is more than 27°C, and provide a similar exemption. Some members including Hon Miriam LAU and Hon LI Fung-ying maintain the view that consideration should be given to granting a blanket exemption from the idling prohibition to all drivers during hot months in which relatively more days with VHWW issued have been recorded in the past. The Bills Committee has also sought the Administration's views on a suggestion of exempting all drivers from the idling prohibition when the temperature reaches 27°C.

43. The Administration has responded that a wide range of exemptions has already been proposed in the Bill (such as a three-in-sixty-minute grace period as well as an extensive list of exemptions) to cater for the specific operational requirements of different transport trades. Moreover, it has been further proposed to grant exemption to drivers of taxis at all taxi stands, and to all drivers on days with the VHWW or the "Amber, Red or Black RWS" issued. If exemption is granted when the temperature reaches 27°C, the number of

days on which the exemption would be granted may amount to half a year. In fact, based on data in the ten-year period in 2000-2009, there were on average 182 days per year with a maximum temperature of 27°C or above.

44. The Administration has also advised that some of the days in the months from July to October are not very hot, and granting a blanket exemption on those days is not justifiable. Moreover, if the proposal of granting a blanket exemption during hot months is adopted, any hot day, even if with VHWW issued, cannot be covered by the exemption arrangements if it falls outside the exempted months. The Administration considers that its proposed targeted approach for drawing up exemption arrangements would better help deliver the objectives of the Bill and cater for the specific needs of the transport trades.

45. Regarding the exemption in the relevant Toronto legislation applicable when the ambient temperature inside the vehicle is more than 27°C, the Administration has informed the Bills Committee that the exemption arrangement will be abolished without any alternative arrangement for its replacement. The Administration also considers that the exemption would lead to enforcement difficulties as disputes would likely arise from determining the ambient temperature inside a vehicle.

46. Hon Cyd HO has requested the Administration to consider whether the "VHWW" System could be made a graded system as that for rainstorm signals, so that drivers could be exempted from the idling prohibition even when the weather is not hot enough to warrant the issue of the conventional "VHWW". The Administration has responded that making the "VHWW" System as a graded system to cover not-so-hot conditions will significantly increase the number of days with a warning by many times. This approach is not recommended as it will lower the awareness of the general public to genuinely very hot weather and reduce the effectiveness of the warning.

Heavy rain (but not up to the triggering point for the issue of a rainstorm warning signal)

47. Some members consider that the proposed exemption for all

drivers on days with the “Amber, Red or Black RWS” issued cannot cater for the situation where the rain is heavy but not up to the triggering point for the issue of any RWS. These members are concerned that the operations of passenger transport vehicles, such as taxis, will be particularly affected. Hon Miriam LAU has proposed that exemption should also be granted to all drivers when the "Thunderstorm Warning" is issued.

48. The Administration has advised that a great majority of taxis have been installed with rain deflectors, which allow the drivers to partially open the windows for ventilation on rainy days. The use of rain deflectors, together with the various exemptions provided in the Bill [e.g. drivers in a queue of taxis into a taxi stand would be covered by the exemption in section 1(a) of Schedule 1 which exempts drivers of vehicles that are stationary because of traffic conditions], as well as the new proposal of exempting drivers of taxis at all taxi stands, should keep the inconvenience to taxi drivers and passengers to an acceptable level.

49. As regards the suggestion of granting exemption to all drivers when the "Thunderstorm Warning" is issued, the Administration considers that the suggestion is not tenable as thunderstorms may not necessarily come with heavy rain. If the rain that comes with a thunderstorm is so heavy as to raise concern about difficulty of compliance with the idling prohibition, an appropriate RWS would have been issued and the exemption would take effect for the whole day as proposed.

Exemption to cater for the needs of drivers in general

50. Hon CHAN Kam-lam and Hon Miriam LAU are of the view that as many of the new exemptions proposed by the Administration are to cater for the needs of professional drivers only, drivers of private cars in general may be aggrieved if insufficient flexibility is allowed for the implementation of the idling prohibition. They consider that the exemption of a three-in-sixty-minute grace period applicable to all drivers may be too short to cater for practical needs in real-life situations. Hon CHAN Kam-lam has requested for further exemptions on rainy days or a longer grace period.

51. The Administration has responded that having considered all the views received, including those from drivers of private cars, it has proposed to include a three-in-sixty-minute grace period as well as an extensive list of exemptions covering drivers of different motor vehicles and various circumstances in the Bill. The Administration considers that 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. In addition, exemption will also be granted to all drivers on days when VHWW or RWS has been issued. The Administration trusts that these proposals would strike a reasonable balance between catering for the needs of drivers and reducing environmental nuisances caused by idling vehicles. It would defeat the objective of the Bill if a longer grace period or further exemptions, e.g. exemption during rainy days (where there were as many as 210 days in 2009), are provided without considering whether there is any genuine need to idle the vehicle concerned and whether such idling is avoidable.

52. Hon CHAN Kam-lam has indicated that he may move a CSA to provide that the idling prohibition does not apply to a driver of a motor vehicle at any time when it is raining.

53. Some members have requested providing enforcement agents with some flexibility in considering requests from persons with genuine needs for exemptions. In this regard, the Administration is requested to consider adding a new provision under Schedule 1 to provide that the idling prohibition does not apply to a driver of a vehicle carrying passenger(s) who need(s) continued supply of air-conditioning on medical grounds. The Administration has responded that the proposed provision might create enforcement problems as the enforcement officer would have difficulties in ascertaining whether or not the passenger concerned has a genuine need, and it could give rise to abuses.

Motor vehicle that is stationary because of traffic conditions

[Section 1(1)(a) in Schedule 1]

54. Section 1(1)(a) in Schedule 1 to the Bill provides that the idling

prohibition does not apply where a motor vehicle is stationary because of traffic conditions or where a person other than the driver is boarding or alighting. Hon Miriam LAU and Hon WONG Kwok-hing have specifically asked whether the exemption is applicable to vehicles queuing up for entry into a car park, a container terminal, a landfill or a petrol filling station. The Administration has responded in the positive.

55. The Administration has further advised that for easy understanding by the public, examples of “traffic conditions” under section 1(a) of Schedule 1 and examples of “vehicles necessarily idling for certain purposes” under section 7 of Schedule 1 will be given in the publicity materials. At the request of the Bills Committee, the Secretary for the Environment (SEN) will also include in his speech at the resumption of the Second Reading debate on the Bill an explanation of the traffic conditions and the types of motor vehicles intended to be covered under sections 1(1)(a) and 7 respectively of Schedule 1.

Vehicles idling for medical, emergency or law enforcement purposes
(Section 3 in Schedule 1)

56. The exemption proposed in section 3 of Schedule 1 aims to enable a driver of a motor vehicle listed in section 3(2) to idle the vehicle if the idling is necessary for conducting an operational activity (including a training activity) for or related to medical, emergency or law enforcement purposes. The Bills Committee has requested the Administration to explain the types of activities that will be regarded as an “operational activity” under section 3(1)(a).

57. The Administration has advised that some examples of such activities would include operation of medical equipment on an ambulance, operation of communication equipment on a law enforcement vehicle, operation of a prisoners' escorting vehicle when there are prisoners aboard and operation of water pump and ladder on a fire engine. On the other hand, if an operational activity is related to any of the three purposes but does not require idling of the vehicle, the exemption would not be applicable to the driver. For example, in the case of a prisoners' escorting vehicle with prisoners aboard, when the person under custody has alighted from the vehicle and the windows of the vehicle can be

opened for ventilation, the operational activity requiring idling of the vehicle ceases to exist, hence the driver will no longer be exempted from the proposed idling prohibition.

58. In response to members' concern as to whether drivers of Government vehicles are also required to strictly comply with the idling prohibition, the Administration has responded that these drivers are no exception, and they would be issued with a fixed penalty notice and subject to disciplinary actions if they fail to observe the requirement of the idling prohibition after enactment of the Bill. To facilitate drivers of Government vehicles and other relevant bodies in observing the requirements upon passage of the Bill, the relevant departments and bodies would prepare detailed guidelines on the applicability of this exemption in consultation with the Environmental Protection Department.

Applicability to consular personnel

59. The Bills Committee is advised by the Administration that the proposed idling prohibition would in general be applicable to consular personnel except in cases where additional privileges and immunities have been provided under the bilateral consular agreements concluded by the Central People's Government with other foreign States and applied to the Hong Kong Special Administrative Region. In such cases, whether the consular personnel of the country concerned might enjoy immunity from the idling prohibition would be confirmed with the Protocol Division of the Office of the Chief Secretary for Administration on a case-by-case basis.

Exemptions by the Director of Environmental Protection

(Clause 6)

60. Clause 6 provides that the Director may exempt a driver or class of drivers from complying with the idling prohibition, subject to any conditions he or she thinks fit. Members have queried the reasons for giving the Director such power and the factors which the Director would consider in exercising the power.

61. The Administration has explained that clause 6 aims to cater for

some unique circumstances that may warrant the Director to exercise the exemption power. The Administration, however, expects such cases to be rare as the Bill has already provided an extensive list of exemptions to meet the operational needs of professional drivers and the three-in-sixty-minute grace period applicable to all drivers. In deciding whether to grant an exemption under clause 6, 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. Notwithstanding the Administration's explanation, members still consider it necessary to expressly provide the criteria in the Bill.

62. To allay members' concern, the Administration has agreed to move CSAs to provide that the Director may grant the exemption, if he or she is satisfied that exceptional circumstances exist that make it impractical or unreasonable for compliance with the proposed idling prohibition, and that the exemption will not cause undue environmental nuisance. Hon LI Fung-ying and Hon Miriam LAU are of the view that there is no need to specify the environmental consideration, lest the inclusion of this additional criterion may defeat the purpose of clause 6 which is to cater for unique circumstances where the Director would decide whether there is a genuine need for granting an exemption. The Administration has taken on board the suggestion and proposed to delete the additional criterion regarding environmental nuisance.

Application for the exemption under clause 6 and identification of exempted drivers

63. The Administration has explained that to apply for an exemption under clause 6, 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, the Director 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).

64. 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.

Exempting drivers of rehabuses under clause 6

65. Several parents' associations of persons with disabilities have made a joint submission to the Bills Committee requesting that rehabuses should be exempted from the idling prohibition. The Administration holds the view that rehabuses, like tourist coaches, may also need to pick up passengers at various locations and therefore may need to idle while waiting. Having regard to the operational mode of rehabuses, the Administration has agreed to consider granting exemption to rehabuses.

66. The Administration has, however, pointed out that there is no definition provided for "rehabuses" in Cap. 374. Given the difficulties to define "rehabuses" as reference could not be drawn to Cap. 374 or any other existing ordinances, there would be difficulty to provide an explicit exemption for rehabuses in the Bill. The Administration has, instead, proposed that a rehabilitation organization (e.g. the Hong Kong Society for Rehabilitation) could apply for exemption to drivers of rehabuses under clause 6. Upon receipt of such an application, the Social Welfare Department would be consulted to ascertain the nature of services provided by the organizations concerned. If an exemption is granted, a written notice would be issued by the Director to the applicant specifying the driver of which vehicle(s) that has(have) been granted exemption from the idling prohibition under clause 6. Details of the vehicles concerned such as the licence plate numbers would be stated in the written notice for identification purpose. In approving the relevant application, the Director would impose conditions such as requiring that there should be one or more passengers on board.

67. At the request of the Bills Committee, the Administration has explained to the parents' associations concerned as well as the Hong Kong Society for Rehabilitation about the proposal to exempt drivers of rehabuses and other motor vehicles serving similar purpose under clause 6 of the Bill and the application procedure. The Administration has confirmed that the proposed arrangements are agreeable to them. SEN will also include in his speech at the resumption of the Second Reading debate on the Bill an explanation of how a rehabilitation organization may apply for exemption for drivers of rehabuses under clause 6, and the performance pledge as to the time needed for processing and approving such applications.

Amendment of Schedule 1 (circumstances in which the idling prohibition does not apply)

(Clause 32)

68. The Bills Committee notes that SEN may, by notice published in the Gazette, amend Schedule 1 or 2 to the Bill. Amendments to Schedule 1 or 2 under clause 32 are subsidiary legislation. They will be scrutinized by LegCo under the negative vetting procedure.

69. Bills Committee members in general consider that insofar the Bill is concerned, exemption matters are the fundamental core issues which require detailed deliberation by LegCo Members. The Bills Committee has therefore requested amending clause 32 to stipulate that Schedule 1 to the Bill would be amended in the form of subsidiary legislation subject to the positive vetting procedure.

70. The Administration however considers it appropriate to retain the present drafting of clause 32. The Administration assures members that when proposing an amendment to Schedule 1 or 2, the Administration will first consult the relevant stakeholders as well as the EA Panel and thoroughly consider the Panel's views. Except in exceptional circumstances where the notice must take effect immediately, the Administration will set the commencement date in such a way as to allow for the entire negative vetting period to run its full course before the notice comes into effect. Moreover, under the negative vetting procedure, any LegCo Member who finds a proposed amendment

unsatisfactory may move a motion to amend or repeal it. Hon Tanya CHAN, however, maintains the view that Schedule 1 to the Bill should be amended in the form of subsidiary legislation subject to the positive vetting procedure. At the request of the Bills Committee, the Administration has undertaken that the consultation on any proposed amendments to Schedule 1 or 2 with LegCo would also include the TP Panel.

Occupational health of professional drivers

71. Bills Committee members are concerned that the idling prohibition may pose adverse health impact to professional drivers on hot days, as these drivers may stay inside their vehicles with the engines stopped for a long period of time. The Bills Committee has requested the Labour Department (LD) to assess, from the perspective of occupational safety and health, the risk of diseases (such as heatstroke) that may be posed, and to give expert advice on the appropriate range of temperature, humidity and level of radiant heat inside a vehicle as a suitable working environment for professional drivers.

72. LD has pointed out that the Bill does not oblige drivers to stay inside their motor vehicles with the engines stopped. Notwithstanding that, in the event that some drivers have to stay inside their vehicles for various reasons when the engines are turned off on hot, humid days in summer, the risk of heat stroke to these drivers depends mainly on the environmental condition within the vehicles (air temperature, air movement, humidity and radiant heat), and the health condition of the drivers themselves (elderly, having cardiovascular diseases, on treatment with drugs affecting sweating and hydration of the body, and acclimatization to heat). The duration the drivers are staying inside their vehicles would also be an important consideration.

73. LD has further advised that to minimize the potential health impact, drivers should, as far as practicable, avoid staying or at least shorten the duration of stay inside their vehicles with the engines stopped. Drivers should also take appropriate preventive measures, e.g. opening the windows and doors of their vehicles, increasing air flow with portable fans, drinking cool potable water, using cooling towels or similar

products to cool down their bodies, etc. LD has published relevant guidelines, namely “Prevention of Heat Stroke at Work in a Hot Environment” and “Risk Assessment for the Prevention of Heat Stroke at Work”, for general information on risk factors, symptoms and mitigation measures for heat stress.

74. To address members' concerns, LD has undertaken that it will follow up with the relevant transport trades on the applicability of the guidelines to their situations under the idling prohibition, after the exemptions to be provided by the Bill have been finalized by the Environment Bureau.

Suggestion of review of the Occupational Safety and Health Ordinance (Cap. 509) (OSHO) to enhance protection of professional drivers

75. In response to some members' concerns about the need to review and extend the coverage of OSHO to the driving work of professional drivers, LD has advised that the safety of drivers performing driving work is, in fact, related to a number of factors. These factors include the design and maintenance of vehicles and roads, driving skills and attitude of drivers, use of safety equipment such as seat-belts, and the use of roads by other users. Control of these aspects is already stipulated in the road traffic legislation administered by TD.

76. LD is of the view that as a comprehensive set of legislation¹⁰ is already in place for protecting the safety of drivers and members of the public on road, it is unnecessary to extend the coverage of OSHO to the driving work of professional drivers. However, when professional drivers perform other non-driving work assigned by their employers, their safety and health are protected by OSHO.

Provision of shades and covers at public transport stands

¹⁰ The relevant legislation includes the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374A) which govern the construction and maintenance of vehicles, including their safety after alteration; the Road Traffic (Safety Equipment) Regulations (Cap. 374F) which govern vehicle safety equipment; the Road Traffic (Traffic Control) Regulations (Cap. 374G) and the Road Traffic (Driving Licences) Regulations (Cap. 374B).

77. The Bills Committee has urged the Administration to expedite the provision of covers or planting of trees at public transport stands, where feasible, to provide shelter to queuing taxis/minibuses with engines switched off. The Administration has responded that with the recent proposal of granting exemption to all taxis queuing inside taxi stands, the provision of more covers / shades for queuing taxis at designated taxi stands is no longer an issue.

78. As regards designated minibus stands where covers / shades are currently not available, TD's review indicates that the majority of some 700 existing minibus stands are provided either with purpose-built shelters / covers for passenger protection, or having canopies /trees on pavements providing shades in close proximity to the minibus stands. These shelters and shades enable minibus drivers to stop their vehicle engines and to wait outside their vehicles when there is a long queue at the stands. For some 180 minibus stands that are without any form of shelters or shades, about 160 of them have two or less vehicle spaces, which are exempted from the idling prohibition, whilst only some 20 minibus stands may require special attention to facilitate compliance with the idling prohibition. TD will consider the feasibility of providing shelters or shades at the aforesaid 20 minibus stands, taking into account operational need, traffic management and site conditions of these stands together with the relevant parties. In this connection, the Bills Committee has referred the matter to the TP Panel for follow up.

Development of a retrofit device to enable the operation of air-conditioning system by battery when the engine is switched off

79. The Administration has informed the Bills Committee that the Hong Kong Productivity Council (HKPC) has received funding from the Government for developing a retrofit device to enable the operation of air-conditioning system by battery when the engine is switched off. Some members consider it desirable for HKPC to make available the retrofit device for use by the transport trades when the Bill comes into operation, in order to mitigate the impact of the idling prohibition on the trades' operations. The Administration has advised that HKPC has purchased a private car and a light goods vehicle for testing its developed automatic engine idle-stop system and the two types of air conditioning

systems (using electric and phase change material respectively). Subject to the satisfactory performance during testing, HKPC's plan is to showcase the developed systems into the testing vehicles and develop the tried system into preliminary system design that would be applicable to taxis, minibuses, different types of private cars or other vehicles. It is also HKPC's plan to conduct further testing during the summer in 2011 to confirm the reliability of the systems.

80. Hon Miriam LAU has expressed the view that although it is her wish that the Bills Committee could also explore the development of relevant supporting facilities which could facilitate implementation of the Bill, she does not object to the resumption of the Second Reading debate on the Bill without waiting for completion of the development of the retrofit device, in order not to delay the passage of the Bill. The Bills Committee has agreed to refer the matter to the EA Panel and TP Panel for follow-up discussion. As the Bill is expected to come into operation about six months after its passage (paragraph 95 refers), some Bills Committee members have expressed the view that the retrofit device should be made available before the Bill comes into operation. The Administration will encourage the market to develop appropriate devices to meet demand.

Proposed fixed penalty system

(Clauses 7 to 26)

81. The Bills Committee notes that clause 7 imposes a fixed penalty of \$320 on a person who contravenes the idling prohibition. The amount of the fixed penalty may be amended by resolution of LegCo under the positive vetting procedure.

Enforcement, issuance of penalty notices and demand notices

82. The Administration has advised that traffic wardens (TWs) and senior traffic wardens (STWs) will be the main enforcement agents. At the same time, while the main duty of environmental protection inspectors (EPIs), senior environmental protection inspectors (SEPIs) and chief environmental protection inspectors (CEPIs) is to conduct publicity and educational programmes, they will also have the power to enforce the

idling prohibition in order to supplement the enforcement action of TWs and STWs during blitz operations.

83. Schedule 2 to the Bill specifies the Authority [defined in clause 2(1)] and the public officers authorized to exercise the powers and perform the duties under the Bill.

84. The Bills Committee notes that clause 8 allows an authorized officer who has reason to believe that a person is contravening or has contravened the idling prohibition to give the person a penalty notice. The authorized officer may require the person to supply his or her personal particulars and produce his or her proof of identity and a driving licence or permit, if any, for inspection. Clause 10 creates an offence for a person to supply any information that he or she knows to be false or misleading.

85. The Bills Committee notes that upon receipt of a penalty notice, a person should pay the fixed penalty within 21 days. However, if the person does not pay the fixed penalty during this period, or if he or she refuses to accept the penalty notice intended to be given to him or her, the enforcement authority (who is intended to be the Commissioner of Police if the penalty notice is issued by a TW or STW, or the Director if the penalty notice is issued by an EPI, a SEPI or CEPI) may serve another notice (i.e. a demand notice) to the person by post, requiring him or her, within 10 days, to pay the fixed penalty or notify the enforcement authority that he or she wishes to dispute liability.

Recovery of fixed penalty if default

86. Under the Bill, a person should be considered to have defaulted in payment of the fixed penalty if he/she still does not pay the fixed penalty in full or notify the enforcement authority of his or her intention to dispute liability for the contravention within 10 days after the date of service of the demand notice. The enforcement authority, in the name of the Secretary for Justice (SJ), may make an application to the magistrate for an order requiring the person to pay the fixed penalty, an additional penalty equal to the amount of the fixed penalty and costs of \$300 (i.e. \$940 in total) within 14 days.

Dispute of liability

87. Under clause 11, if a person wishes to dispute liability for the contravention, he or she may do so by notifying the enforcement authority of his or her intention in writing within 10 days after the date of service of the demand notice. The enforcement authority should apply for a summons from a magistrate for the person. If the person later changes his or her mind and wishes to discharge liability by paying the fixed penalty, he or she may do so not later than two clear days before the hearing date by paying the fixed penalty, an additional penalty equal to the amount of the fixed penalty and costs of \$500 (i.e. \$1,140 in total).

88. Under clause 20, if the person offers no defence or a defence that is frivolous or vexatious at the hearing, or the complaint is heard in the absence of the person, it is proposed to provide that the magistrate should order him or her to pay the fixed penalty, an additional penalty equal to the amount of the fixed penalty and costs of \$600 to \$1,500 (i.e. \$1,240 to \$2,140 in total).

89. To deter non-payment, it is proposed in the Bill that if a person does not pay any judgment amount in full within one month after the date of the order to pay, the enforcement authority, in the name of SJ, may make an application to a magistrate for an order levying the judgment amount and costs of \$50 to \$320 on any goods of the person by distress and sale.

90. The Bills Committee notes that clauses 7 to 26 provide for the above matters related to the fixed penalty system. In the light of members' comments on drafting and technical issues regarding these provisions, the Administration will introduce CSAs to -

- (a) amend the expression "有關通知書可當面交付有關的人，或以張貼於有關汽車上的方式給予" in the Chinese text of clause 8(2) to read " 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" to enhance clarity;

- (b) amend the expression "personal attention" in clauses 14(2) and 15(1) to read "personal notice" and to revise "知悉" in the same clauses to read "本身知悉" for consistency with the wording of the relevant provisions in FP(TC)O;
- (c) amend clause 19(2) to clarify the meaning of "at that time" and "at any later time", and to add the phrase "without leave of the magistrate" to the end of clause 19(2) to empower the magistrate hearing a complaint to give leave to the defendant to dispute or adduce evidence regarding a fact stated in a certificate under clause 24 at a later stage;
- (d) amend clause 20(2) to clarify that the "costs ordered in the proceedings" in that clause are the costs referred to in clause 21(2); and
- (e) amend the term "a person / the person" in clauses 17, 18, 21 and 23 to read "the defendant" for easy understanding.

Use of examples in the Bill

[Clause 2(2) and section 7 of Schedule 1]

91. The Bills Committee has expressed concern about the drafting of clause 2(2) and the inclusion of examples in section 7 of Schedule 1 to the Bill. Clause 2(2) provides the following -

"Where this Ordinance includes an example of the operation of a provision –

- (a) the example is not exhaustive; and*
- (b) if the example is inconsistent with the provision, the provision prevails."*

92. The Bills Committee notes that under proposed section 7 of Schedule 1 (vehicles necessarily idling for certain purposes), idling prohibition does not apply to a driver of a motor vehicle if the vehicle is lawfully designed primarily for a purpose other than the carriage of the driver, any passengers and their personal effects and idling the vehicle is

necessary for a purpose for which the vehicle is primarily designed. Five examples are set out under that provision in smaller print¹¹.

93. Bills Committee members have expressed concern about the appropriateness of using examples in legislation and the Bill since inclusion of examples in a legislative provision is a relatively new approach in law drafting in Hong Kong. Some members consider that by including an example of the operation of a provision of the Bill, the Administration should ensure that the example falls squarely within that provision and the example fulfils all the conditions/requirements of that provision. However, the effect of clause 2(2) seems to be that where an example is included in the Bill, it is neither exhaustive nor conclusive. Some members consider that it is not desirable to include examples in a legislative provision.

94. The Administration has explained that the examples given in the Bill are a form of reader aid aiming to assist the readers to understand the exemption requirements. Nevertheless, the Administration has agreed to delete clause 2(2) and the examples from the Bill to address members' concern. Regarding the issue of use of examples in legislation, the Bills Committee has agreed to refer the matter to the Panel on Administration of Justice and Legal Services for follow-up discussion.

Implementation of the Bill

95. The Administration has advised that, taking into account the time required for making the necessary regulations under clause 31 of the Bill, as well as other preparation work such as drawing up the relevant administrative procedures, setting up the computer system for the fixed penalty system, the Bill is expected to come into operation about six months after its passage. Alongside the preparation, the Administration

¹¹ The five examples are -

1. A refrigerator truck carrying perishable freight that is required to be kept at a low temperature.
2. A tipper lorry that is required to idle to operate a tipping system for loading and unloading refuse.
3. A recovery vehicle that is required to idle to provide vehicle recovery and towing services.
4. A refuse collection vehicle that is required to idle to provide refuse collection services.
5. A street washing vehicle that is required to idle to provide street washing services.

will undertake a publicity programme to disseminate information on the proposed idling prohibition. The Administration's plan is that, upon implementation of the ban, it would allow a suitable grace period during which warnings instead of penalty notices would be given to the offenders.

Committee Stage amendments

96. Apart from the major CSAs highlighted above, the Administration will also move minor and consequential amendments. A full set of CSAs to be moved by the Administration and agreed by the Bills Committee is in **Appendix IV**.

97. Hon CHAN Kam-lam has indicated that he may move a CSA to provide that the idling prohibition does not apply to a driver of a motor vehicle at any time when it is raining (paragraph 52 refers).

Resumption of the Second Reading debate

98. Subject to the moving of the proposed CSAs by the Administration, the Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting on 2 March 2011.

Advice sought

99. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 1
Legislative Council Secretariat
17 February 2011

**Comparison of Exhaust Emissions
between a Running Engine and an Idling Engine**

Emissions of a running engine as compared to those of an idling engine				
	Nitrogen Oxides	Particulates	Carbon Monoxide	Hydrocarbon
Private Car	Two times more	Difference negligible	23% more	25% more
Diesel Taxi	26% more	Four times more	40% more	One and a half times more
Diesel Light Bus	Double	Four times more	Double	Three and a half times more
Heavy Goods Vehicles	Double	13 times more	Double	Four times more

Note: Assuming the vehicle is moving at a speed of 25 kilometres per hour and with the air-conditioning on.

Source: Administration's paper on "Proposal to Control Idling Engines" (LC Paper No. CB(1)652/00-01(01))

Bills Committee on Motor Vehicle Idling (Fixed Penalty) Bill

Membership list

Chairman	Hon Audrey EU Yuet-mee, SC, JP
Members	Hon LEE Cheuk-yan Hon CHAN Kam-lam, SBS, JP Hon LEUNG Yiu-chung Hon Miriam LAU Kin-yee, GBS, JP Hon LI Fung-ying, SBS, JP Hon WONG Kwok-hing, MH Hon LEE Wing-tat Hon Andrew LEUNG Kwan-yuen, GBS, JP Hon CHEUNG Hok-ming, GBS, JP Hon KAM Nai-wai, MH Hon Cyd HO Sau-lan Hon CHAN Hak-kan Hon IP Wai-ming, MH Hon Mrs Regina IP LAU Suk-yee, GBS, JP (up to 9 July 2010) Dr Hon PAN Pey-chyou Hon LEUNG Kwok-hung (since 28 May 2010) Hon Tanya CHAN (since 18 May 2010)
	(Total: 17 Members)
Clerk	Ms Joanne MAK
Legal Adviser	Miss Kitty CHENG
Date	21 July 2010

Bills Committee on Motor Vehicle Idling (Fixed Penalty) Bill

List of organizations/individuals which/who have submitted views to the Bills Committee

1. Association for the Rights of Liberty Taxi Drivers
2. Association for the Rights of Taxi Drivers
3. Association of Engineering Professionals in Society Ltd.
4. Association of N.T. Radio Taxicabs Ltd.
5. Business Coalition on the Environment
6. Canadian International School of Hong Kong
7. Child Welfare Scheme
8. China Hong Kong and Macau Boundary Crossing Bus Association
9. Chinese International School
10. Chit Fai Motors Co. Ltd.
11. Citybus Limited
12. Civic Exchange
13. Clean Air Action
14. Clean Air Network
15. Clear The Air
16. Coalition of Hong Kong Newspaper and Magazine Merchants
17. CTOD Association Company Limited
18. Danish Chamber of Commerce
19. Democratic Alliance for Betterment and Progress of Hong Kong
20. Designing Hong Kong Ltd.
21. Dr CHAN Yee Shing (Paediatrician, Vice-President, Hong Kong Medical Association)
22. Dr Henry YEUNG Chiu Fat (Paediatrician, President, Hong Kong Doctors Union)
23. Dr KONG Ming Hei, Bernard (Geriatrician, President, Hong Kong

- Geriatric Society)
24. Dr TAM, Alfred (Paediatrician, President, Hong Kong Asthma Society)
 25. Dr YU Chak Man (Paediatrician, Immediate past president, Hong Kong Paediatric Society)
 26. Electric Transport System Ltd
 27. Front Line Taxi Driver Association
 28. G.M.B. Maxicab Operators General Association Ltd.
 29. Green Power
 30. Green Sense
 31. Greeners Action
 32. H.K. Vehicle Transportation Association
 33. Happy Taxi Operator's Association Ltd.
 34. HK Public Light Bus Owner & Driver Association
 35. Hong Kong and Kowloon Taxi Merchants' Joint Committee
 36. Hong Kong (Cross Border) Transportation Drivers' Association
 37. Hong Kong (Four Seas) Taxi Drivers Association Ltd.
 38. Hong Kong Association for Parents of Persons with Physical Disabilities
 39. Hong Kong Association of Aircargo Truckers Ltd.
 40. Hong Kong Automobile Association
 41. Hong Kong Bus Suppliers Association
 42. Hong Kong Container Tractor Owner Association
 43. Hong Kong District Tourists and Passengers Omnibus Operators Association
 44. Hong Kong Doctors Union
 45. Hong Kong Early Childhood Development Research Foundation
 46. Hong Kong Kowloon & New Territories Taxi Association
 47. Hong Kong Kowloon Taxi & Lorry Owners' Association Ltd.

48. Hong Kong Logistics Association
49. Hong Kong Taxi Association
50. Hong Kong Waste Disposal Industry Association
51. Lung Fu Shan Environmental Concern Group
52. Mini Spotters
53. Motor Transport Workers General Union
54. Motor Transport Workers General Union Driving Instructors Division
55. Motor Transport Workers General Union Kowloon Division
56. Motor Transport Workers General Union Non-franchised Bus Division
57. Motor Transport Workers General Union Organization Executive
58. Motor Transport Workers General Union Public Light Bus Division
59. Motor Transport Workers General Union Taxi Drivers Division
60. Mr Anders Ejendal
61. Mr Andre LEE
62. Mr HO
63. Mr Markus WOHLGENANNT
64. Mr Martin OEI
65. Mr Rummen YEUNG
66. Mr YEUNG Wai-sing, Eastern District Councillor
67. Ms Amy NG
68. Ms Christine FONG, Sai Kung District Councillor
69. Ms CHUNG
70. Ms Susanna LEE (President, The Hong Kong Paediatric Nurses Association)
71. Ms Tania WILLIS
72. N. W. Area Taxi Drivers & Operators Association
73. Neighbourhood and Workers' Service Centre

74. New Lantao Bus Co. (1973) Ltd.
75. New Territories Taxi Drivers' Rights Alliance
76. New Territories West Buses/Coaches Association
77. New World First Bus Services Limited
78. Non-franchised Public Bus Workers Association
79. Public Light Bus General Association
80. Public Omnibus Operators Association Limited
81. Right Hand Drive Motors Association (H.K.) Ltd.
82. Rights of Taxi (Si Hai) Telecommunication Centre Limited
83. Sai Kung District Council
84. Senior Citizen Home Safety Association
85. Shun On Motors Trading Limited
86. Sun Hing Taxi Radio Association
87. Sun Hing Taxi Radio Service General Association
88. Swedish Chamber of Commerce
89. Tai Wo Motors Ltd.
90. Taxi & Bus Passengers for Clean Air
91. Taxi & P.L.B. Concern Group
92. Taxi Dealers & Owners Association Limited
93. Taxi Drivers & Operators Association
94. The Association of Parents of the Severely Mentally Handicapped
95. The Australian Chamber of Commerce in Hong Kong and Macau
96. The Conservancy Association
97. The Office of Dr YANG Mo, Southern District Councillor
98. The Hong Kong Asthma Society
99. The Hong Kong Geriatric Society
100. The Hong Kong Institution of Engineers
101. The Hong Kong Paediatric Society
102. The Hong Kong Paediatric Nurses Association

- 103.The Hong Kong Society of Paediatric Respiriology
- 104.The Hong Kong Taxi & Public Light Bus Association Limited
- 105.The Institute of the Motor Industry H.K.
- 106.The Kowloon Motor Bus Co. (1933) Ltd.
- 107.The Kowloon Taxi Owners Association Ltd.
- 108.The Lion Rock Institute
- 109.The Parent's Association of Pre-school Handicapped Children
- 110.Traffic Services Employees Association
- 111.Transport Industry Committee of the Federation of Hong
Kong and Kowloon Labour Unions
- 112.Travel Industry Council of Hong Kong
- 113.United Friendship Taxi Owners & Drivers Association Ltd.
- 114.Urban Taxi Drivers Association Joint Committee Ltd.
- 115.Wai Yik H.K. KLN. & N.T. Taxi Owners Association
- 116.Yuen Long District Tourists and Passengers Omnibus
Operators Association Ltd.
- 117.全港的士反停車熄匙聯盟

MOTOR VEHICLE IDLING (FIXED PENALTY) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Environment

Clause

Amendment Proposed

- 2 (1) In the definition of "driving authority", by deleting
"driving authority" (駕駛權限) and substituting
"driving licence or permit" (駕駛執照或許可證).
- 2 By deleting subclause (2).
- 6 (1) By adding ", if the Director is satisfied that
exceptional circumstances exist that make it
impractical or unreasonable for the driver or drivers
of the class to comply with section 5" after "fit".
- 8 In the Chinese text, by deleting subclause (2) and
substituting -

“(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。”。

- 9 In the heading, by deleting **“authority”** and substituting **“licence or permit”**.
- 9(1)(b) By deleting **“authority”** and substituting **“licence or permit”**.
- 11(3)(b) In the Chinese text, by deleting **“有關的拒絕的日期後”** and substituting **“罰款通知書遭拒絕接受當日後”**.
- 14(2) (a) In the English text, by deleting **“attention”** and substituting **“notice”**.
- (b) In the Chinese text, by adding **“本身”** after **“申請人”**.
- 15(1) (a) In the English text, by deleting **“attention”** and substituting **“notice”**.
- (b) In the Chinese text, by adding **“本身”** after **“信**

納申請人”。

- 17 By deleting “the person who is the subject of” and substituting “the defendant in relation to”.
- 18(1) (a) By deleting “a person served with a summons” and substituting “the defendant”.
- (b) By adding “of a complaint” after “the hearing”.
- (c) By deleting “the person” and substituting “the defendant”.
- 18(2) (a) By deleting “of the person” and substituting “of the defendant”.
- (b) In paragraph (a), by adding “on the defendant” after “the summons”.
- (c) In paragraph (b), by deleting “person” and substituting “defendant”.
- 18(3) By deleting “person” and substituting “defendant”.

- 18(4) (a) By deleting "person" and substituting
"defendant".
- (b) By deleting "person's" and substituting
"defendant's".
- 19(2) By adding "and, if the defendant does not at that stage
expressly put in issue any allegation of fact stated
in a certificate under section 24 that has been
produced by the complainant, the defendant cannot at
any later stage dispute or adduce evidence to
contradict that fact without the leave of the
magistrate" after "defence".
- 19 By deleting subclause (3).
- 20(2) By adding "under section 21(2)" after "proceedings".
- 21(2) (a) By deleting "a person" and substituting "the

defendant".

(b) By deleting "the person" and substituting "the defendant".

23(1) By deleting "person who is served with a summons to answer" and substituting "defendant who has been served with a summons in relation to".

23(2) and (5) By deleting "person" and substituting "defendant".

New By adding -

"33. Consequential amendments

(1) Section 113C(1)(c) of the Criminal Procedure Ordinance (Cap. 221) is amended by repealing "or the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600)" and substituting ", the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) or the Motor Vehicle Idling (Fixed Penalty) Ordinance (of

2011)".

(2) Section 2(1B) and (3) of the Rehabilitation of Offenders Ordinance (Cap. 297) is amended by repealing "or the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600)" and substituting ", the Fixed Penalty (Smoking Offences) Ordinance (Cap. 600) or the Motor Vehicle Idling (Fixed Penalty) Ordinance (of 2011)".

Schedule 1,
section 2

(a) In the heading, by deleting "**Taxis, green and red minibuses and buses**" and substituting "**Passenger transport vehicles**".

(b) By deleting subsection (1) and substituting -
"(1) Section 5 does not apply to a driver of a taxi that is at a taxi stand."

(c) By deleting subsection (4) and substituting -
"(4) Section 5 does not apply to a driver of either of the following vehicles that has any

passenger on board -

(a) a bus;

(b) a school private light bus.

(4A) Section 5 does not apply to a driver of a franchised bus at any time when the bus is available for boarding by passengers."

(d) In subsection (5), by deleting the definition of "designated area".

(e) In subsection (5), in the Chinese text, in the definition of "綠色小巴士", by deleting the full stop and substituting a semicolon.

(f) In subsection (5), by adding -

"school private light bus" (學校私家小巴) has the same meaning as in the Road Traffic Ordinance (Cap. 374);".

Schedule 1,
section 7

By deleting everything after paragraph (b).

Schedule 1,
section 8

(a) In the heading, by deleting "**Emissions**" and

substituting "**Vehicles necessarily idling for compliance**".

- (b) By deleting paragraph (a) and substituting -
- "(a) testing the vehicle in accordance with a requirement under the Road Traffic Ordinance (Cap. 374) or to determine whether the vehicle complies with the Air Pollution Control Ordinance (Cap. 311) or the Noise Control Ordinance (Cap. 400); or".

Schedule 1

By adding -

"9. Rainstorms and very hot weather

(1) Section 5 does not apply to a driver of a motor vehicle -

- (a) at any time when a rainstorm warning or very hot weather warning is in force; and

- (b) if the warning is in force for

part of a day only, at any time
after the warning has ceased to
be in force until midnight on
that day.

(2) In this section -

"rainstorm warning" (暴雨警告) means a warning
issued by the Director of the Hong Kong
Observatory by the use of the heavy
rainstorm signal commonly referred to as
Amber, Red or Black;

"very hot weather warning" (酷熱天氣警告) means a
warning issued by the Director of the Hong
Kong Observatory commonly referred to as
a very hot weather warning."