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Paper for the House Committee Meeting on 24 November 2000

**Report of the Subcommittee on Fixed Penalty
(Criminal Proceedings)(Amendment) (No.3) Regulation and
Resolution of the Legislative Council (L.N.206 of 2000)
(Commencement) Notice 2000**

Purpose

This paper reports on the deliberations of the Subcommittee on the Fixed Penalty (Criminal Proceedings) (Amendment) (No.3) Regulation (the Amendment Regulation) and Resolution of the Legislative Council (L.N.206 of 2000) (Commencement Notice) 2000.

Background

2. At the Legislative Council meeting on 31 May 2000, the Secretary for the Environment and Food moved a resolution under section 12 of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) to increase the fixed penalty in relation to smoky vehicles from \$450 to \$1 000. In her speech made at the debate on the resolution, the Secretary said that the Administration proposes to bring the new level of fixed penalty into operation on 1 December 2000 to allow time for the vehicle maintenance trade and the transport trade to improve their maintenance standard. The resolution was passed by the Legislative Council at the meeting.

The Amendment Regulation and the Commencement Notice

3. The Fixed Penalty (Criminal Proceedings) (No.3) Regulation proposes a corresponding amendment to Form 1 in the Schedule to the Fixed Penalty (Criminal Proceedings) Regulations (Cap.240 sub. leg.) on the increase in fixed penalty in relation to emission of excess smoke or visible vapour by vehicles from \$450 to \$1 000.

4. The Resolution of the Legislative Council (L.N. 206 of 2000) (Commencement Notice) 2000 is to appoint 1 December 2000 as the day on which the Resolution on the increase in fixed penalty shall come into operation.

The Subcommittee

5. At the House Committee meeting on 27 October 2000, Members agreed to form a subcommittee to examine the Amendment Regulation and the Commencement Notice. Chaired by Hon James TIEN, the Subcommittee has held four meetings, including two meetings to listen to the views of the public and the transport and vehicle maintenance trades. The membership list of the Subcommittee is in **Appendix I**.

6. A list of organizations and persons who have given views to the Subcommittee is in **Appendix II**.

Deliberations of the Subcommittee

The level of fixed penalty for smoky vehicles

7. Members of the Subcommittee generally support the new level of fixed penalty for smoky vehicles to enhance the deterrent effect. Some Subcommittee members and public interest groups such as the Civic Exchange have also suggested a heavier penalty and cancellation of vehicle licence for repeated offenders. The Administration has responded that it will examine the need for heavier penalty for repeated offenders after the new level of fixed penalty has been put into operation for some time. The Administration has undertaken to consult the relevant Panels of the Legislative Council in due course.

The commencement date of the new level of fixed penalty

8. Most members of the Subcommittee have not raised objection to the Administration's proposal that the new level of fixed penalty should take effect on 1 December 2000. Some deputations urge Members not to postpone the effective date of the new level of fixed penalty for smoky vehicles, since a long grace period has already been allowed for the trade to improve their maintenance standard. They stress that roadside pollution caused by vehicle emissions has adversely affected public health and smoky vehicles should not be tolerated.

9. The transport and vehicle maintenance trades have, on the other hand, expressed much concern about the proposed implementation date of the increased fixed penalty. Some trade representatives have requested deferring the implementation date of the increased fixed penalty by one year, until the Administration has fully implemented all complementary measures to assist the trade in reducing vehicle emissions. The Subcommittee has discussed with the Administration ways to address the trade's concerns. The discussion is summarized below.

Vehicle maintenance standard

10. According to the Administration, the standard of engine maintenance is a key factor determining the emission performance of a vehicle. For diesel vehicles, emission of black smoke is an obvious sign of poor maintenance. The Administration has stressed that preventive vehicle maintenance is crucial in reducing smoke emissions. The view is supported by some depositions including the Vocational Training Council (VTC) and the Services Manager Association.

11. Some representatives of the transport and vehicle maintenance trades consider that there is insufficient maintenance data to enable the trade and vehicle owners to properly maintain their vehicles for the purpose of meeting the emission standards. Some Subcommittee members have pointed out that the Administration has made slow progress in making available maintenance information on all types of vehicles to the trade. A member considers that the maintenance trade has not yet acquired the necessary knowledge for repairing smoky vehicles. In this connection, she has made reference to the findings of a recent survey of the Hong Kong Productivity Council (HKPC) that about 60% of the vehicle maintenance mechanics have education either at Secondary 3 level or below or have no formal education or training qualifications.

12. The Administration has responded that joint efforts have been made with the vehicle maintenance trade to improve the maintenance standard. A Working Group on Vehicle Maintenance Services (the Working Group) comprising representatives from the trade, relevant government departments and professional bodies concerned was formed in January 2000 to consider ways to improve the maintenance standard. A series of workshops, seminars and training courses have been organized to enhance the trade's knowledge about engine maintenance and the use of chassis dynamometer for testing smoky vehicles. The VTC also offers training courses on the inspection and maintenance of smoky diesel vehicles for up to 2 000 trainees a year.

13. On the release of maintenance information, the Administration has advised that the Service Managers Association has already released the technical data on emission from pre-Euro diesel vehicles and the information has been mailed to operators of the trade in early November 2000. There is a suggestion that the maintenance data of all petrol and diesel vehicles should be made available to the trade, and the Working Group will continue to work on it. Moreover, the VTC will establish an Automotive Engineering Database Centre to enable the vehicle maintenance and transport trades to gain access to more detailed information on vehicle maintenance. In addition, a hotline enquiry service will be put in place by VTC to assist the trade to solve problems encountered in vehicle repairs and maintenance.

14. With regard to the HKPC survey, the Administration has pointed out that many of the mechanics surveyed actually have more than 10 years' experience

although they do not have a formal education or trade certificate. For longer term improvement of the maintenance standard, a registration or licensing system for the vehicle maintenance trade is now under consideration. The Administration is of the view that the trade has largely grasped the techniques for repairing smoky vehicles, as demonstrated by the high passing rate of the smoke emission test.

Installation of particulate traps and diesel catalysts

15. Some transport trade representatives have pointed out that the supply of particulate reduction device, such as particulate traps and diesel catalysts, is inadequate. They express concern that without such device, their vehicles may not be able to meet the smoke emission standards. Some members have also asked whether the Administration will give approval and provide financial assistance for the installation of particulate reduction device other than those pre-approved models.

16. The Administration has clarified that while such device can reduce the emission of particulates and nitrogen dioxide, it cannot reduce excessive smoke emission which is caused by improper vehicle maintenance. Nevertheless, the Administration has obtained assurance from the suppliers that there will be adequate supply of particulate reduction device. Regarding installation of diesel catalysts other than the pre-approved models, the Administration has confirmed that so long as the device is properly installed, the Transport Department will not require a vehicle to remove such a device during the roadworthiness test. The Administration will also consider applications for the installation of particulate reduction device other than the pre-approved models. The processing time will normally take two weeks, depending on the availability of information on the model under application.

Supply of LPG taxis

17. With regard to the transport industry's concern that there is inadequate supply of LPG taxis and refilling stations, the Administration has informed the Subcommittee that according to the suppliers, there will be an average of 1 000 to 1 200 new LPG taxis arriving in Hong Kong each month in the coming few months. The suppliers expect that the supply should meet the current demand. There will also be sufficient LPG refilling capacity for the entire taxi fleet by the end of 2001 with the opening of five dedicated refilling stations and additional stations. The Administration has however pointed out that the LPG taxi scheme is to reduce overall emissions from the local vehicle fleet and is not related to the responsibility of vehicle owners to keep their vehicles' emission system in good repair.

Enforcement against smoky vehicles

18. Some Subcommittee members and representatives of the transport trade have expressed concern about enforcement against smoky vehicles, in particular the passing rate of smoke tests in respect of heavy vehicles.

19. The Administration has explained that the Smoky Vehicle Control Programme is implemented through two measures. The first measure is carried out by spotters trained by the Environmental Protection Department (EPD) to report smoky vehicles. The vehicles spotted are required to attend EPD's smoke test within a specified period. Failure to pass the test will result in cancellation of the vehicle licence but no fixed penalty tickets will be issued. The second measure is implemented through the Police on-street checkpoints. If a vehicle is found emitting excessive smoke at the Police check-point, a fixed penalty ticket will be issued. In addition, the Police will refer the smoky vehicle to EPD for a smoke test. If the vehicle fails to pass the test within a specified period, the vehicle licence will be cancelled.

20. The Administration has advised that in September 2000, over 90% of the smoky vehicles spotted passed the smoke emission test after repair, as compared to a 40% passing rate in September 1999. More than 80% of the vehicles which passed the smoke test were of the pre-Euro design. Moreover, of the 12 099 heavy vehicles which were required to attend the smoke emission test during the period January to October 2000, about 99% eventually passed the test. This has shown that the maintenance trade has largely acquired the necessary techniques to repair smoky vehicles, even before the release of maintenance information, and before the implementation of the financial assistance scheme for installation of particulate reduction device.

Other issues

21. Some members have asked about the maintenance costs for vehicles to meet the smoke emission standard. They are concerned that the costs may impose heavy financial burden on vehicle owners. The Administration has advised that the cost depends on the condition of the vehicle concerned. For a properly maintained vehicle, the maintenance cost is within the range of a thousand dollars to a few thousand dollars.

22. Some public interest groups are of the view that Members should also consider the medical and social costs as smoke emissions are detrimental to public health. They consider that vehicle owners have the responsibility to properly maintain their vehicles, and that public health should have priority over private interests.

Views of the Subcommittee

23. At the last meeting of the Subcommittee held on 21 November 2000, most members present supported the Amendment Regulation and the Commencement Notice. A member indicated that she would give notice to defer the commencement date by one year in view of the trades' concerns.

Extension of the scrutiny period to 29 November 2000

24. To allow time for Members to consider the deliberations of the Subcommittee and to consider the need for amendments to the subsidiary legislation, the Subcommittee Chairman moved a resolution at the Council meeting on 22 November 2000 to extend the scrutiny period to 29 November 2000. The resolution was passed by the Council at the meeting on 22 November 2000.

Advice sought

25. Members are invited to note the deliberations of the Subcommittee.

Legislative Council Secretariat

22 November 2000

**Subcommittee on Fixed Penalty
(Criminal Proceedings) (Amendment) (No.3) Regulation and
Resolution of the Legislative Council (L.N. 206 of 2000)
(Commencement) Notice 2000**

Membership list

Chairman Hon James TIEN Pei-chun, JP (Chairman)

Members Hon Cyd HO Sau-lan
Hon LEE Cheuk-yan
Hon CHAN Kwok-keung
Hon Bernard CHAN
Hon LEUNG Yiu-chung
Hon Mrs Miriam LAU Kin-ye, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon LAW Chi-kwong, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon Henry WU King-cheong, BBS
Hon IP Kwok-him, JP

(Total: 15 members)

Clerk Mrs Constance LI

Legal Adviser Mr Stephen LAM

Date 4 November 2000

Appendix II

Subcommittee on Fixed Penalty (Criminal Proceedings) (Amendment) (No.3) Regulation and Resolution of the Legislative Council (L.N. 206 of 2000) (Commencement) Notice 2000

List of organizations and persons who have given views to the Subcommittee

Representatives of the industry

1. Environmental Vehicle (Taxi) Repair Association
2. Hong Kong Container Tractor Owner Association Ltd.
3. Hong Kong Dumper Truck Drivers Association
4. Hong Kong Institute of Vocational Education, Vocational Training Council
5. Hong Kong Vehicle Repair Merchants Association Ltd.
6. Hong Kong, Kowloon and New Territories Public & Maxicab Light Bus Merchants' United Association
7. Lantau Taxi Association
8. Motor Transport Workers General Union
9. North West Area Taxi Drivers & Operators Association
10. Public Light Bus General Association
11. Rambo Taxi Owners Association Ltd.
12. Sai Kung Taxi Operators Association Ltd.
13. Service Managers Association
14. Skytruck Transportation Limited
15. Taxi Dealers & Owners Association Ltd.
16. The Hong Kong Taxi and Public Light Bus Association Ltd.
17. The Kowloon Taxi Owners Association Ltd.
18. The Taxi Operators Association Ltd.
19. Monitoring Committee of the Diesel Oxidization Catalysts Trial

Public interest groups / individuals

1. Civic Exchange
2. Clear the Air
3. Friends of the Earth

4. Green Power *
5. Private Sector Committee on the Environment
6. Dr Brian F Walker
7. Mr Dellie Woodring *
8. Mr Edward Williams *
9. Mr John Jarman
10. The Body Shop (with about 13 000 signatures attached) *
11. Mr Bruce Knecht *
12. the American Chamber of Commerce in Hong Kong *

* Written submissions only

Legislative Council Secretariat

22 November 2000