

立法會
Legislative Council

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**Bills Committee on the Shipping Legislation (Control of
Smoke Emission) (Amendment) Bill 2014**

Background brief

Purpose

This paper provides information on the background of the Shipping Legislation (Control of Smoke Emission) (Amendment) Bill 2014 ("the Bill") and relevant views and concerns expressed by Members.

Background

2. At present, non-local and local vessels are respectively regulated by Shipping and Port Control Ordinance (Cap. 313) ("SPC Ordinance") and the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) ("MSLV Ordinance"). Non-local vessels predominately comprise ocean-going vessels ("OGVs") but also include cross-boundary passenger ferries and a small number of other vessels. Under the said Ordinances, it is an offence for a non-local and local vessel respectively to emit smoke in Hong Kong waters in such quantity as to be a nuisance. In relation to a non-local vessel, the offence is punishable with a maximum fine of \$10,000 upon first conviction and \$20,000 upon any subsequent conviction. For a local vessel, the offence is punishable with a maximum fine of \$10,000 upon first conviction and \$25,000 upon any subsequent conviction.

3. According to the Administration, given that there is no definition in the Ordinances for the extent of emission which constitutes a nuisance, whether there is any nuisance caused by such emission has to be decided by the court on a case by case basis. As such, the Administration has proposed to assess the intensity of any smoke which is emitted from any such vessel with reference to the Ringelmann Chart and to make it an offence for any such

vessel which emits smoke that reaches a certain level of intensity as specified on the Chart.

The Bill

4. The Bill seeks to amend the said Ordinances to re-formulate the offence, so that in future it is the emission of smoke reaching a certain intensity of shade of grey (i.e. as dark as or darker than shade 2 on the Ringelmann Chart) for 3 minutes or more that would constitute an offence. Further, the Bill proposes that –

- (a) for non-local vessels, the maximum fines be increased from the current \$10,000 to \$25,000 for a first offence, and from the current \$20,000 to \$50,000 for any subsequent offence; and
- (b) for local vessels, the maximum fines will remain unchanged, which is \$10,000 for a first offence and \$25,000 for any subsequent offence.

Views and concerns expressed by Members

5. The Panel on Economic Development was consulted on 27 May 2013 on the legislative proposal to amend the said Ordinances to strengthen enforcement against dark smoke emission from vessels in Hong Kong waters as described in paragraph 4 above. Panel members in general supported the proposal for adopting the Ringelmann Chart as a reference for measuring the dark smoke emitted from such vessels in order to determine whether the proposed offence has been committed. Views and concerns expressed by members are set out in the ensuing paragraphs.

Using the Ringelmann Chart for measuring dark smoke

6. Noting that the use of the Ringelmann Chart for measuring dark smoke would require officers of the Marine Department ("MD") to assess dark smoke visually, some members expressed concern about the effectiveness of the reliance on such visual survey in assessing dark smoke. There was also doubt about the effectiveness of taking enforcement actions at night as it would be difficult to detect dark smoke by visual survey.

7. The Administration advised that as officers of MD had been assessing the dark smoke emission from vessels by making reference to the Ringelmann Chart since 2007, they had accumulated substantial experience in visual survey over the years. The Ringelmann Chart had provided an objective benchmark for taking prosecution actions. While acknowledging the difficulty in detecting dark smoke at night at open sea, the Administration pointed out that coastal waters near residential areas at night were often sufficiently bright for spotting dark smoke emission from vessels.

Effectiveness and sufficiency of the legislative proposal

8. Regarding the setting of the threshold for the offence in dark smoke emission at three minutes, a member asked whether the Administration would consider imposing stricter control on cargo vessels and passenger-carrying vessels which were plying more regularly than other vessels in the harbour. The Administration held the view that having made reference to overseas practice, it was appropriate to adopt the three minutes as the threshold for the offence in dark smoke emission.

9. There was doubt about the adequacy of the legislative proposal in curbing emission of dark smoke from vessels. Noting that the SPC Ordinance provided that the Chief Executive in Council might make regulations for controlling the emission of smoke from vessels, a member asked whether the Administration would take the opportunity to make regulations for the control of emission of dark smoke from vessels. The Administration held the view that it was sufficient to amend the SPC Ordinance to give effect to adopting the Ringelmann Chart as reference to measure dark smoke emission from vessels objectively and that regulations made specifically for the purpose were not necessary in the meantime. Notwithstanding, the Administration would keep in view the need for making regulations specifically for the control of dark smoke emission and if necessary, consult the Legislative Council on proposal for such regulations.

Enforcement matters

10. A member suggested that closed-circuit television ("CCTV") cameras should be installed at locations along the several major navigation routes taken by vessels in the harbour as this could help spotting contravention in dark smoke emission as well as unsafe navigation. The Administration advised that it had already installed CCTV cameras covering certain waters for the purpose of marine traffic management. In the course of investigating complaints about vessel emission, MD would check the CCTV recordings if the location of the vessel was within the coverage of CCTVs.

11. Enquiry was raised as to whether river trade vessels from the Mainland could comply with the proposed requirement. The Administration advised that if a vessel was properly operated and maintained, it would not emit dark smoke. According to the Administration, operators of river trade vessels were well aware of the requirement and had expressed confidence that they could comply with the requirement.

Penalty levels

12. A member enquired whether the varying penalties for local vessels and OGVs were in line with international practice, and whether it was appropriate to apply the same penalties for local vessels and river trade vessels. The Administration advised that the proposal for setting the maximum fines for OGVs at a higher level than that for local vessels and river trade vessels was made on the ground that the power ratings of engines fitted on board OGVs were relatively larger and hence the proportionally more dark smoke emission in the event of improper engine maintenance. The Administration also considered it appropriate that penalties for river trade vessels and local vessels were the same because the power ratings of engines and sizes of both types of vessels were similar.

Assistance to vessel operators

13. Some members raised enquiries about whether the Government would render assistance to operators of local vessels in switching to more expensive low sulphur fuel or in purchasing vessel engines and new ships for replacement.

Council questions

14. Members have raised questions in relation to the control of smoke emission from vessels at the Council meetings, including questions by Hon Paul TSE on 3 November 2010, and by Hon James TO on 14 December 2011 and 17 July 2013.

Relevant papers

15. The links to the relevant papers are as follows –

Legislative Council Brief on the Shipping Legislation (Control of Smoke Emission) (Amendment) Bill 2014 (File Ref: THB(T)PMLCR 8/10/60/4)
http://www.legco.gov.hk/yr13-14/english/bills/brief/b201402281_brf.pdf

Minutes of meeting of the Panel on Economic Development on 27 May 2013 (LC Paper No. CB(1)579/13-14)
<http://www.legco.gov.hk/yr12-13/english/panels/edev/minutes/edev20130527.pdf>

Legal Service Division Report on Shipping Legislation (Control of Smoke Emission) (Amendment) Bill 2014 (LC Paper No. LS33/13-14)
<http://www.legco.gov.hk/yr13-14/english/hc/papers/hc03211s-33-e.pdf>

Council question raised by Hon Paul TSE on 3 November 2010
<http://www.info.gov.hk/gia/general/201011/03/P201011030150.htm>

Council question raised by Hon James TO on 14 December 2011
<http://www.info.gov.hk/gia/general/201112/14/P201112140161.htm>

Council question raised by Hon James TO on 17 July 2013.
<http://www.info.gov.hk/gia/general/201307/17/P201307170300.htm>

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