

LEGISLATIVE COUNCIL BRIEF

Road Traffic (Construction and Maintenance of Vehicles) (Amendment) Regulation 1999

INTRODUCTION

Under Section 9 of the Road Traffic Ordinance (Cap. 374), the Secretary for Transport is empowered to make and amend the Road Traffic (Construction and Maintenance of Vehicles) Regulations (the Regulations) (Cap. 374 sub. leg.).

2. The Secretary for Transport is now exercising his power under Section 9 of the Road Traffic Ordinance to make the Amendment Regulation at **Annex A**. The Amendment Regulation enables the Commissioner for Transport to perform the administrative function of specifying models of smoke measuring apparatus by notices in the Gazette.

BACKGROUND AND ARGUMENT

3. A poorly maintained vehicle emits more polluting particulates. Regulation 31 of the Regulations requires every motor vehicle to be properly constructed and maintained so as not to emit excessive smoke. The smoke measuring apparatus is specified in column 1 of the Fourth Schedule of the Regulations whereas the maximum permitted smoke or visible vapour level are set out in columns 2 and 3 of the same schedule. (See **Annex B**)

4. The statutory requirement is being enforced by the following programmes:

- (i) All commercial diesel vehicles are required to undergo a smoke emission test during their annual roadworthy inspection at a Transport Department Vehicle Examination Centre or a designated Car Testing Centre.

- (ii) A vehicle being spotted emitting excessive smoke on the road is required to undergo a smoke emission test at a designated Vehicle Emission Testing Centre.
- (iii) The Police conducts a smoke emission test for a motor vehicle on the spot. Owners will be issued a fixed penalty ticket or a summons if the smoke emission level of their vehicles exceed the maximum permitted level.
- (iv) All passenger vehicles of six years or more are required to undergo a smoke emission test during their annual roadworthy inspection at a designated Car Testing Centre.

5. At present, the Fourth Schedule of the Regulations specifies Hartridge MK3 Smokemeter as the apparatus for measuring smoke. The Department of Justice has advised that Regulation 31 of the Regulations does not allow the use of smokemeter other than those being listed out in Fourth Schedule. As the Hartridge MK3 Smokemeter and its spare parts are no longer in production, we must replace it with other new models of equivalent or better measurement capability currently available in the market. As technology advances, new models of smokemeters of better performance and reliability will continue to be produced from time to time. A more flexible approach allowing the deployment of new models of smokemeters without having to amend the Regulations each and every time when new models of smokemeters are introduced is required.

AMENDMENT REGULATION

6. The Amendment Regulation enables the Commissioner for Transport to specify models of smoke measuring apparatus by a notice in the Gazette. The effect of this Amendment Regulation is to facilitate the introduction of new models of smoke measuring apparatus to enable the enforcement departments to perform duties in a more objective and efficient manner.

PUBLIC CONSULTATION

7. As the Amendment Regulation does not involve any alteration or tightening of permitted smoke level under the existing law, it is not considered necessary to conduct public consultation.

FINANCIAL AND STAFFING IMPLICATIONS

8. There are no financial and staffing implications.

ECONOMIC IMPLICATIONS

9. There are no economic implications.

LEGISLATIVE TIME TABLE

10. The Amendment Regulation will come into effect on 27 February 1999.

PUBLICITY

11. The Amendment Regulation will be gazetted on 15 January 1999.

**Transport Bureau
January 1999
(TRAN 1/12/132)**

**ROAD TRAFFIC (CONSTRUCTION AND MAINTENANCE OF VEHICLES)
(AMENDMENT) REGULATION 1999**

(Made under section 9 of the Road Traffic
Ordinance (Cap. 374))

1. Commencement

This Regulation shall come into operation on 27 February 1999.

2. Smoke, etc.

Regulation 31 of the Road Traffic (Construction and Maintenance of Vehicles)

Regulations (Cap. 374 sub. leg.) is amended -

(a) in paragraph (2) -

- (i) by repealing “the apparatus specified in column 1 of the Fourth Schedule” and substituting “any one of the apparatuses specified by the Commissioner from time to time by notice published in the Gazette”;
- (ii) by repealing “column 2 of that Schedule” and substituting “column 1 of the Fourth Schedule”;
- (iii) by repealing “column 3” and substituting “column 2”;

(b) by adding -

“(2A) For the avoidance of doubt, a notice under paragraph (2) is not subsidiary legislation.”.

3. Fourth Schedule substituted

The Fourth Schedule is repealed and the following substituted -

"FOURTH SCHEDULE

[reg. 31]

MAXIMUM PERMITTED SMOKE OR VISIBLE VAPOUR EMISSIONS
FROM MOTOR VEHICLES

Column 1	Column 2
Maximum permitted smoke or visible vapour level	Maximum permitted smoke or visible vapour level in absolute units of light absorption (M-1)
60 Hartridge Smoke Units	2.13".

Secretary for Transport

1999

Explanatory Note

This Regulation amends the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg.) to enable the Commissioner for Transport to specify models of smoke measuring apparatus by notice published in the Gazette. The effect of this Regulation is to facilitate the introduction of new models of smoke measuring apparatus of equivalent or better performance.

[Subsidiary]

31. Smoke, etc.

- (1) Every motor vehicle shall be so constructed and maintained that—
- (a) no excessive smoke or visible vapour is emitted therefrom;
 - (b) so far as is reasonably practicable, the products of combustion, ashes, steam, cinders, petrol, water or oil are not discharged on the road or in such manner as to be likely to cause damage to property or injury or danger or loss of amenity or annoyance to persons.

(2) For the purposes of paragraph (1)(a), smoke or visible vapour shall be deemed to be excessive if the smoke or visible vapour emitted from the vehicle measured by means of the apparatus specified in column 1 of the Fourth Schedule exceeds the maximum permitted smoke or visible vapour level specified in column 2 of that Schedule or the maximum permitted smoke or visible vapour level in absolute units of light absorption specified in column 3 of that Schedule.

(3) Every motor vehicle using solid fuel shall be fitted with an efficient appliance for the purpose of preventing the emission of sparks or grit.

- (4) It shall be a good defence in any proceedings in respect of a contravention of this regulation to prove that the emission or discharge was due to some temporary or accidental cause which could not be prevented by the exercise of reasonable care.

31. 煙霧等

- (1) 每部汽車須經構造及保養以符合以下的情況—

- (a) 汽車不得排放過量的煙霧及可見氣體；
- (b) 在合理切實可行範圍內，盡量不將燃燒產物、灰渣、蒸汽、爐渣、汽油、水或油等排出路面，或以任何其他方式排出，以致相當可能導致財產損壞，或導致他人受傷或產生危險，或導致他人失去舒適環境或令人煩擾等。

(2) 就第(1)(a)款而言，如由車輛排放的煙霧或可見氣體以附表4第1欄指明的器具測量時，超出該附表第2欄指明的最高許可煙霧或可見氣體水平，或超出該附表第3欄指明的以光吸收絕對單位計算的最高許可煙霧或可見氣體水平，則由該車輛排放的煙霧或可見氣體即當作過量。

- (3) 每部使用固體燃料的汽車，須裝配一個有效的器具，以防止噴出火花或碎粒。

(4) 就違反本條而進行的任何法律程序而言，如能證明排放或排出情況是由於一些臨時或意外的原因所引致，而該等原因在採取合理的謹慎措施下亦不能避免，即屬好的免責辯護。

FOURTH SCHEDULE

[reg. 31]

APPARATUS FOR THE MEASUREMENT OF SMOKE OR VISIBLE VAPOUR
EMISSIONS FROM MOTOR VEHICLES

Column 1	Column 2	Column 3
Type of apparatus	Maximum permitted smoke or visible vapour level	Maximum permitted smoke or visible vapour level in absolute units of light absorption (M-1)
Hartridge MK3 Smokemeter	60 Hartridge Smoke Units	2.13

附表 4

〔第 31 條〕

用作測量汽車排放的煙霧或可見氣體的器具

第 1 欄	第 2 欄	第 3 欄
器具類型	最高許可煙霧或可見氣體水平	以光吸收絕對單位計算的最高許可煙霧或可見氣體水平 (M-1)
哈特里奇*MK3 煙度計	60 哈特里奇煙單位	2.13