

**立法會**  
***Legislative Council***

LC Paper No. LS129/99-00

**Paper for the House Committee Meeting of the  
Legislative Council  
on 5 May 2000**

**Legal Service Division Report on  
Resolution under section 12 of the  
Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240)**

The Secretary for the Environment and Food has given notice to move a motion to pass the above resolution at the Legislative Council meeting of 31 May 2000. The motion seeks the approval of the Legislative Council to increase the fine for motor vehicles emitting excessive smoke or visible vapour from \$450 to \$1,000.

2. Under regulation 31(1)(a) of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg.), every motor vehicle shall be so constructed and maintained that no excessive smoke or visible vapour is emitted therefrom. Regulation 121 of the same Regulations provides that any person who uses or causes or permits to be used on any road a vehicle which does not comply with the requirement commits an offence and is liable to a fine of \$10,000 and to imprisonment for 6 months.

3. Regulation 31(1)(a) is a scheduled offence under the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) ("the Ordinance"). Form 1 of the Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240 sub. leg.) prescribes the form of the fixed penalty notice, the fixed penalty, and that the owner of the vehicle is liable for the scheduled offence under regulation 31(1)(a). The effect is, if a police officer has reasons to believe that a vehicle is emitting excessive smoke or visible vapour, he may give the owner of the vehicle a notice in the prescribed form, offering the owner an opportunity to discharge any liability to conviction by payment of the fixed penalty.

4. In the Schedule to the Ordinance, the fixed penalty for an offence under regulation 31(1)(a) is \$450. Section 12 of the Ordinance provides that the Legislative Council may by resolution amend the Schedule. By this resolution the Administration seeks to increase the penalty to \$1,000, and to empower the Secretary for Environment and Food to appoint the commencement date.

5. The Administration has provided background and details in LegCo Brief No. EFB 9/55/01/127(2000)Pt.3 issued by the Environment and Food Bureau dated April 2000. According to the LegCo Brief, the Administration intends to bring the increased level into effect on 1 December 2000 in order to allow a period for vehicle owners to improve their vehicles. Pursuant to the power given to him under the Ordinance, the Secretary for Transport will make a corresponding amendment to the amount of fixed penalty stated in Form 1 of the Fixed Penalty (Criminal Proceedings) Regulations after passage of this resolution.

6. The Administration briefed the joint meetings of Panel on Environmental Affairs and Panel on Transport on 5 November 1999, 16 December 1999 and 20 January 2000, and the meeting of the Panel on Environmental Affairs on 7 April 2000, on the proposal to increase the fine for excessive emission. In the April meeting members of the Panel on Environmental Affairs asked the Administration to move the motion as soon as possible.

7. The legal aspects of the proposed resolution are in order.

Prepared by  
LEE Yu-sung  
Senior Assistant Legal Adviser  
Legislative Council Secretariat  
3 May 2000