

Legislative Council Brief

**Fixed Penalty (Criminal Proceedings) Ordinance
(Chapter 240)**

**Resolution under section 12 to
increase fixed penalty for smoky vehicles**

INTRODUCTION

The Secretary for the Environment and Food has given notice to move the resolution at **Annex 1** at the Legislative Council meeting of 31 May 2000. The resolution which will be moved under section 12 of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) aims to increase the fixed penalty in relation to smoky vehicles from \$450 to \$1,000.

BACKGROUND AND JUSTIFICATIONS

2. Diesel vehicles are a major source of respirable suspended particulates (RSP) and smoke in the streets. In the urban area, diesel vehicles account for about half of the airborne RSP and 60% of the nitrogen dioxide in the ambient environment. Visible smoke from vehicles is also a nuisance and an eyesore. Standards of engine maintenance are a key factor in the emission performance of vehicles. A poorly maintained vehicle can emit up to 10 times the pollutants emitted by a properly maintained one. For diesel vehicles, an obvious sign of poor maintenance is the emission of black smoke. The emission of excessive smoke from a motor vehicle is a scheduled offence under the Fixed Penalty (Criminal Proceedings) Ordinance. The vehicle owner is liable for the scheduled offence.

3. Vigorous actions have been taken to promote better vehicle maintenance as part of the programme to reduce harmful emissions from the vehicle fleet. The objective of the measures is to ensure that vehicles on the roads are well maintained to reduce emission of pollutants. We have been working with the motor trade to develop testing and training programmes to improve maintenance and also to enforce emission standards so as to ensure compliance by vehicle owners. **Annex 2** sets out the latest progress on the various measures that are being taken.

4. In parallel with efforts to promote better vehicle maintenance and to reduce the number of smoky vehicles, there must be effective enforcement to provide a deterrent effect. The Environmental Protection Department (EPD) operates a Smoky Vehicle Control Programme that requires spotted smoky vehicles to undergo a smoke test within a specified period. To enhance the effectiveness of the programme, EPD introduced dynamometers for testing smoke for light duty vehicles below 5.5 tonnes in September last year. This test has been effective in detecting improperly maintained vehicles and helping to raise the awareness of vehicle owners of the need to maintain their vehicles properly. Similar smoke testing equipment for heavy duty vehicles (more than 5.5 tonnes) will be introduced later this year.

5. The Police assist EPD in carrying out joint operations against smoky vehicles. They have also been provided with portable smokemeters since April last year to allow them to carry out similar operations by themselves. In addition to issuing fixed penalty tickets for smoky vehicles caught by them, the Police also refer these vehicles to EPD for a follow-up smoke test.

6. The current fixed penalty fine of \$450 for smoky vehicles was set in 1994. At the existing level, a smoky vehicle offence carries the same penalty to that for relatively minor traffic offences, for example loading/unloading goods or picking up/setting down passengers in a restricted zone.

7. Having regard to the medical evidence that is available on the health impacts of air pollution (for example, there is a clear

correlation between increased hospital admissions and days with higher air pollution – see **Annex 3**) and the extent to which harmful air pollutants are associated with vehicle emissions, there are strong grounds for increasing the level of the fine in order to enhance its deterrent effect. It is proposed to increase the penalty for a smoky vehicle offence to a similar level as that for other traffic offences which threaten other people’s safety. Currently, an overloading offence carries a fixed penalty of \$1,000. We propose to increase the fixed penalty level for smoky vehicle offences to the same level.

8. We briefed the Legislative Council Panels on Transport and Environmental Affairs on 5 November, 16 December and 20 January on the proposal to increase the level of the fixed penalty. In response to members’ concerns about the need to improve vehicle maintenance standards, we undertook to introduce the amendment legislation during the current session and defer implementation until measures to improve maintenance standards had had a reasonable time to take effect.

The proposed resolution

9. Item 29 of the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance stipulates that the amount of the fixed penalty for an offence of emission of excessive smoke from a motor vehicle under Regulation 31(1)(a) of the Road Traffic (Construction and Maintenance Vehicles) Regulations (Cap 374, sub. Leg.) should be \$450. The level of the fixed penalty for the offence is also set out in Form 1 in the schedule to the Fixed Penalty (Criminal Proceedings) Regulation (Cap 240, sub. Leg.).

10. Under section 12 of the Fixed Penalty (Criminal Proceedings) Ordinance, the Legislative Council may, by resolution, amend the Schedule to the Ordinance. We propose to amend item 29 of the Schedule to increase the fixed penalty for excessive smoke from \$450 to \$1,000. Subject to the passage of the resolution, the Secretary for Transport will make a corresponding amendment to Form 1 in the Schedule to the Fixed Penalty (Criminal Proceedings) Regulation in exercise of his power under section 11 of the Ordinance.

11. The Secretary for the Environment and Food will appoint a day for both the resolution and the amendment regulation to come into operation by notice in the Gazette. Our intention is to bring the increased level into effect on 1 December 2000.

PUBLIC CONSULTATION

12. Numerous representations have been made from members of the public, calling for reduction in vehicle emissions to protect public health and to improve the environment for pedestrians. Calls have been made for more enforcement action and increasing the penalties for smoky vehicle offences.

13. The transport trades have objected to the proposed increase in the fixed penalty since the proposal was raised last year. They feel that the increase would impose a heavy burden on the trades which are already experiencing financial difficulties due to the downturn in the economy. Some members of the trades consider that the vehicle maintenance trade is unable to provide proper maintenance service to prevent emission of black smoke. Others also contend the recent introduction of the advanced smoke test by means of a chassis dynamometer has obviated the need for increasing the fixed penalty as vehicle owners will have to spend a considerable amount of money to repair the smoky vehicle, if caught.

14. We have considered the trades' arguments and public views carefully. On the upgrading of vehicle maintenance service, the Administration welcomes the commitment from many in the transport trades to improve the maintenance standards of their vehicles, and will continue to work with them to raise awareness, provide training and address their concerns.

15. At the same time, we also note the public concern about threats to health from vehicle emissions. Increasing the level of fine for smoky vehicles to that for other vehicle related offences that put other people at risk is justified. It will convey a clear message to all vehicle

owners of their responsibility to ensure proper maintenance of their vehicles to reduce the effect emissions have on others. This will reinforce the message that an owner should prevent his vehicle from emitting smoke.

16. To provide a reasonable time for the trades to improve the maintenance of their vehicles, we propose to bring the new level into effect on 1 December 2000.

17. There have been some suggestions that the Administration should impose an even heavier fixed penalty for repeated offenders. These suggestions will require amendment to the provisions of the Ordinance. We will consider whether to increase the fixed penalty further after the \$1,000 fine has come into effect.

BASIC LAW IMPLICATIONS

18. The Department of Justice advises that the proposed amendment is consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

19. The Department of Justice advises that the proposed amendment has no human rights implications.

FINANCIAL AND STAFFING IMPLICATIONS

20. The proposed increase in fixed penalty will not entail additional financial and staffing implications.

ECONOMIC IMPLICATIONS

21. Under the Road Traffic (Construction and Maintenance Vehicles) Regulations, vehicles shall be so maintained that no excessive smoke is emitted therefrom. Increasing the fixed penalty will only affect those who do not properly maintain their vehicles. Improving air quality will reduce the costs of health care and the resultant loss of productivity

due to air pollution and bring positive impacts on tourism as well as providing a better environment for all sectors of the community.

LEGISLATIVE TIMETABLE

22. The legislative timetable is –

Moving a resolution to amend item 29 of the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance	31 May 2000
Publication in the Gazette the corresponding amendment to the Fixed Penalty (Criminal Proceedings)(Amendment) Regulations	October 2000
Tabling the corresponding amendment regulation in the Legislative Council for negative vetting	October 2000
Publication in the Gazette a commencement notice	October 2000
Tabling the commencement notice in the Legislative Council for negative vetting	October 2000

ENQUIRIES

2. Enquiries on this brief can be directed to Mr Howard Chan, Principal Assistant Secretary (B)1 on telephone 2848 2551.

Environment and Food Bureau
April 2000

FIXED PENALTY (CRIMINAL PROCEEDINGS) ORDINANCE

RESOLUTION

(Under section 12 of the Fixed Penalty (Criminal Proceedings)
Ordinance (Cap. 240))

RESOLVED -

- (a) that the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance be amended in item 29 by repealing "\$450" and substituting "\$1,000"; and
- (b) that this Resolution shall come into operation on a day to be appointed by the Secretary for the Environment and Food by notice in the Gazette.

**Progress on Measures to Improve Vehicle Maintenance
and Reduce Smoky Vehicles**

Training and education programme

1. The Vocational Training Council (VTC) runs a wide range of training programmes for new entrants and is upgrading training for in-service vehicle mechanics and technicians.
2. To help the vehicle maintenance trade to upgrade their skills in tackling smoke emission problems from diesel vehicles, the VTC introduced in March 2000 new courses on the diagnosis and repair of smoky diesel vehicles including the use of dynamometer for emission tests. Based on a manpower survey conducted in 1998, the VTC estimated that the number requiring upgrading training on diesel vehicle engines is around 1,000. VTC can offer up to 2,000 training places a year for the new courses depending on the actual demand.
3. To promote better vehicle maintenance among the trade, in conjunction with HKPC and VTC, EPD has since August 1999 conducted 10 seminars for vehicle mechanics on proper engine repair to reduce smoke emissions. Some 750 persons attended these training sessions. EPD also held eight discussion sessions and one workshop with the transport trades and vehicle mechanics to promote their understanding of the requirements of the dynamometer smoke test. A vehicle supplier recently organised a workshop to help vehicle mechanics to maintain vehicles supplied by them.
4. To promote good driving habit and raise awareness among drivers of the importance of preventive maintenance to reduce smoke emissions, EPD has since end 1999 organised 4 seminars on eco-driving. EPD intends to organise 2 additional seminars this year.

Strengthened Inspection and Enforcement

5. Under the Smoky Vehicle Control Programme, smoky vehicles spotted by trained spotters will be required to pass a smoke test within a specified period. Failure to do so will result in cancellation of the relevant vehicle license. EPD introduced dynamometers for testing smoke for light duty vehicles (below 5.5 tonnes) in September 1999 and intended to introduce similar test to heavy duty vehicles (more than 5.5 tonnes) later this year. In 1997, 1998 and 1999, EPD issued 26,659, 31,822 and 37,833 emission testing notices.
6. The Police have been provided with 12 portable smokemeters to help step up their enforcement work. Smoky vehicles caught by the Police will be issued with a fixed penalty ticket and referred to EPD for a follow-up smoke test. In 1997, 1998 and 1999, the Police issued 1,085, 1,643 and 5,095 fixed penalty tickets against smoky vehicles.
7. Transport Department (TD) has randomly selected 10% of the commercial vehicles undergoing the annual worthiness inspection for a strengthened smoke test. TD will extend the strengthened smoke test to all vehicles undergoing the inspection later this year.

Introduction of dynamometer test

8. To help introduce the dynamometer test, the Environmental Protection Department (EPD) has stationed staff at the emission testing centres to provide on the spot advice and demonstration on proper engine tuning practice to those who have failed the test. The overall passing rate for the emission test has now reached 90%.
9. To promote better vehicle maintenance, EPD is also working to launch a campaign by middle of this year to allow vehicle owners at their own initiatives to test the smoke emissions of their vehicles at the vehicle emission testing centres.

Release of vehicle maintenance data

10. The Administration has discussed the release of service manuals with the Motor Traders' Association (MTA). The MTA is considering proposals to make available technical data that are essential for the maintenance of diesel vehicles to prevent smoke emission, and providing service data to training authorities such as VTC for training purpose. A vehicle supplier has, in a workshop organised by them, released some vehicle maintenance data for rectifying smoke emission problems. We will continue to liaise with the trade on the provision of such manuals.
11. In addition, VTC is studying the feasibility of establishing a database on vehicle maintenance.

Working Group on vehicle maintenance

12. A Working Group on Vehicle Maintenance Services comprising representatives from the trade, government departments and professional bodies was formed in January this year to consider ways to improve vehicle maintenance standards. The Working Group is studying both longer and short term improvement measures for implementation. The issues being studied include training of vehicle mechanics/technicians, making available of technical data for vehicle maintenance, feasibility of licensing system for vehicle mechanics, etc.. The target of the Working Group is to put forward recommended measures for the Administration's consideration by early next year.

Estimated Additional Hospital Admissions Vs Air Pollution (6.7.97 – 27.8.97)

