

立法會
Legislative Council

LC Paper No. CB(4)844/13-14
(These minutes have been seen
by the Administration)

Ref: CB4/BC/1/13

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

**Minutes of the first meeting held on
Tuesday, 29 April 2014, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Members present : Dr Hon Kenneth CHAN Ka-lok (Chairman)
Hon Cyd Ho Sau-lan
Hon Steven HO Chun-yin
Hon Frankie YICK Chi-ming
Hon Kenneth LEUNG
Hon SIN Chung-kai, SBS, JP

**Public Officers
attending** : **Agenda item II**

Transport and Housing Bureau

Ms Jenny CHAN
Principal Assistant Secretary (Transport) 10

Mr CHIU Hon-chim
Assistant Secretary (Transport) 10B

Marine Department

Mr CHUNG Siu-man
Assistant Director (Planning and Services)

Department of Justice

Miss Cindy CHEUK
Government Counsel

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (4)5

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Ms Anki NG
Senior Council Secretary (4)5

Ms Angela CHU
Council Secretary (4)1

Ms Linda MA
Legislative Assistant (4)5

Miss Shanice LOK
Clerical Assistant (4)4

Action

I. Election of Chairman

Election of Chairman

Ms Cyd HO, the member with the highest precedence among those present at the meeting, presided over the election of the Chairman of the Bills Committee. She invited nominations for the chairmanship of the Bills Committee.

2. Dr Kenneth CHAN was nominated by Mr Kenneth LEUNG and the nomination was seconded by Mr SIN Chung-kai. Dr Kenneth CHAN accepted the nomination. There being no other nomination, Dr CHAN was elected Chairman of the Bills Committee.

3. Members agreed that there was no need to elect a Deputy Chairman.

II. Meeting with the Administration

- (LC Paper No. CB (3)443/13-14 -- The Bill
- File Ref: THB(T)PMLCR 8/10/60/4 -- Legislative Council Brief issued by the Transport and Housing Bureau
- LC Paper No. LS33/13-14 -- Legal Service Division Report
- LC Paper No. CB(4)611/13-14(01) -- Marked-up copy of the Bill prepared by the Legislative Service Division (Restricted to members only)
- LC Paper No. CB(4)611/13-14(02) -- Letter from the Assistant Legal Adviser to the Administration dated 18 March 2014
- LC Paper No. CB(4)611/13-14(03) -- Administration's response to the Assistant Legal Adviser's letter dated 21 March 2014
- LC Paper No. CB(4)611/13-14(04) -- Paper on Shipping Legislation (Control of Smoke Emission) (Amendment) Bill 2014 prepared by the Legislative Council Secretariat (background brief))

Discussion

4. The Bills Committee deliberated (Index of proceedings attached at **Annex**).

Follow-up actions to be taken by the Administration

Admin

- 5. The Administration was requested to provide the following information –
 - (a) in relation to the means to measure, regulate and control the emission of smoke/dark smoke by vessels, information regarding any latest technology/methodology (other than the use of a

Action

Ringelmann Chart) which had been adopted by any major port (including the respective ports of Singapore, Busan, Dubai, Rotterdam, Hamburg, Los Angeles, Antwerp and Long Beach) in its waters and, if there was any such means, details of the means;

- (b) if the Ringelmann Chart had been adopted by any major port to control and regulate dark smoke emission, information on any means and/or equipment which had been employed together with the Chart by the concerned authorities to enforce the law; and
- (c) details on the investigation, enforcement and prosecution procedures concerning the offence of emission of dark smoke which was proposed to be regulated, including steps that would be taken, supplementary aids which would be used and manpower involved.

Way forward

6. The Bills Committee completed clause-by-clause examination of the Bill. Members agreed to invite the public and relevant organizations to give views in writing on the Bill. Depending on the submissions received and the intention of interested parties to make oral representations, the Bills Committee might decide whether to meet with deputations at the next meeting.

(Post-meeting note: Invitation letters were sent to the Chairmen of 18 District Councils and relevant organizations/individuals for written submissions on 5 May 2014. A notice on invitation for written submissions was also posted on the Website of the Legislative Council on the same date. By the closing deadline on 21 May 2014, the Bills Committee received five submissions. As four deputations indicated intention to make oral representations, the Chairman decided that the Bills Committee would meet with them at the next meeting.)

Date of next meeting

7. Members agreed that the next meeting be held in early June 2014 so as to allow sufficient time for the Administration to conduct the relevant research and prepare its written response for the Bills Committee's consideration.

(Post-meeting note: With the concurrence of the Chairman, the next meeting was to be held on 3 June 2014.)

Action

8. There being no other business, the meeting ended at 12:00 noon.

Council Business Division 4
Legislative Council Secretariat
18 June 2014

**Proceedings of the first meeting of
the Bills Committee on Shipping Legislation (Control of Smoke Emission)
(Amendment) Bill 2014
on Tuesday, 29 April 2014, at 10:45 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Election of Chairman			
000254 – 000350	Ms Cyd HO Mr Kenneth LEUNG Dr Kenneth CHAN Mr SIN Chung-kai	Election of Chairman	
Agenda item II – Meeting with the Administration			
000510 – 000818	Chairman Administration	Briefing by the Administration on the Shipping Legislation (Control of Smoke Emission) (Amendment) Bill 2014 ("the Bill").	
000819 – 001121	Chairman Mr Kenneth LEUNG Administration	<p>Mr LEUNG expressed support to the policy direction. He enquired about-</p> <ul style="list-style-type: none"> (a) the difference between Ringelmann Chart and "micro"-Ringelmann Chart in measuring the intensity of emitted dark smoke; (b) whether there existed a direct correlation between the sulphur content of the diesel used by a vessel and the dark smoke emitted from it; and (c) the types of particles contained in dark smoke and its impact on human health. <p>The Administration replied that-</p> <ul style="list-style-type: none"> (a) the "micro"-Ringelmann Chart was a mini-version of the Ringelmann Chart and the use of them in measuring dark smoke was the same; (b) dark smoke was emitted because of incomplete combustion of the diesel by the engine of the vessel. There was no direct relationship between the emitted dark smoke and the sulphur content of the diesel used; and (c) dark smoke consisted of carbon particles given rise by the incomplete combustion of the diesel fuel. People might feel discomfort if they inhaled 	

Time marker	Speaker	Subject(s)	Action required
		dark smoke at a near distance.	
001122 – 001734	Chairman Mr SIN Chung-kai Administration	<p>Mr SIN understood that Ringelmann Chart had been in use for more than 120 years. He enquired about-</p> <ul style="list-style-type: none"> (a) the latest technology or methodology adopted by major ports in controlling and regulating the emission of smoke by vessels; and (b) how the Administration adduced relevant evidence. <p>The Administration replied that-</p> <ul style="list-style-type: none"> (a) as far as it understood, there were two ways adopted by major ports in controlling and regulating the emission of smoke, i.e. by assessing whether the emitted smoke had been in such quantity as to be causing a nuisance, or through observing the intensity of the dark smoke against the Ringelmann Chart; (b) the proposed legislative amendments conformed with the existing legal provisions of regulating smoke emission from facilities on land in that the Ringelmann Chart was stipulated for use as a reference in measuring the intensity of the emitted dark smoke; and (c) in addition to his/her representations to the court, the Marine Department ("MD") officers in patrol launches conducting the visual survey would take photographs or videos to substantiate the offence. 	The Administration to follow up as per paragraphs 5(a) and (b) of the minutes
001735 – 001957	Chairman Mr Frankie YICK	Mr YICK said that to reduce vessels' emissions of sulphur dioxide, the statutory requirement that marine light diesel must not contain more than 0.05% sulphur by weight had come into effect on 1 April 2014. However, the Bill sought to control emissions of dark smoke from vessels which was a separate matter due to improper engine operation or maintenance.	

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		<p>As regards technology used to detect emissions, Mr YICK understood that the Administration had been providing one-off subsidy for vehicle owners to replace the catalytic converters of their liquefied petroleum gas taxis and light buses, and using roadside remote sensing equipment for controlling and regulating excessive emissions of vehicles.</p>	
001958 – 002213	<p>Chairman Mr SIN Chung-kai Administration</p>	<p>Upon Mr SIN's further enquiry, the Administration said that it was not aware of any other method adopted by other major ports in controlling and regulating the emission of dark smoke from vessels apart from the two ways mentioned earlier.</p>	
002214 – 002546	<p>Chairman Mr Frankie YICK Administration</p>	<p>Mr YICK enquired why the proposed offence under the Bill did not apply to the emission of dark smoke in circumstances affecting the safety of life or of the vessel (Clauses 4(3) and 6(3)).</p> <p>The Administration responded that the two clauses in question were textual amendments only, and the proposed offence did not apply to certain circumstances, for example, when a vessel might emit excessive dark smoke as its engine was operated in a way to avoid an imminent collision.</p>	
002547 – 003037	<p>Chairman Mr Steven HO Administration</p>	<p>Mr HO enquired about the enforcement and prosecution procedures of the proposed offence, as there might be disagreement between the trade and the Administration on the detection and assessment of dark smoke emitted from vessels. He suggested that the Administration should distribute the Ringelmann Chart to the ship owners during ship surveys for issuance or renewal of vessel licences.</p> <p>The Administration advised that apart from regular surveys, MD would act on complaints in enforcing the Bill, if passed. MD officers in patrol launches would take random visual surveys of vessels in the waters of Hong Kong, and observe the emission of the vessel being surveyed by comparing the level of darkness of the smoke emitted against the Ringelmann Chart and the duration of the emission. The</p>	

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		<p>observation would be supplemented with photographs or videos to be presented before the court.</p> <p>Upon receiving a complaint, MD would take a survey of the vessel concerned. If there was no evidence of the proposed offence, MD would collect evidence from the complainant, e.g., the intensity of the emitted dark smoke against the Ringelmann Chart and the duration of the emission. The MD officer would also take evidence from the ship owner and master/coxswain concerned in deciding whether to take prosecution actions.</p> <p>Nevertheless, the Administration would continue its education and publicity efforts in this regard.</p>	
003038 – 003624	Chairman Mr Frankie YICK Administration	<p>As different models of cameras might give rise to different shades of dark smoke captured at the same time, Mr YICK suggested the Administration to consider designating a model to be used by the trade and MD with a view to avoiding such dispute.</p> <p>The Administration stressed that the MD officers in patrol launches were well-versed with the relevant legal provisions and experienced in their enforcement. If the shade of the emitted smoke observed was not the same as that in the photographs or videos, MD would not consider making prosecution. On Mr YICK's suggestion of designating a model of camera to be used, the Administration reiterated that photographs and videos were just evidence supplementary to the MD officer's representations before the court.</p> <p>In response to the Chairman's enquiry, the Administration said that there were sufficient MD officers in patrol launches to, amongst other duties, detect excessive emission of dark smoke from vessels plying in Hong Kong waters, the instances of which had been greatly reduced in recent years.</p>	
003625 – 003822	Chairman Mr SIN Chung-kai Mr Steven HO	Invitation of written views.	The Administration to follow up as per paragraphs 5(a) and

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003823 – 004336	Chairman Assistant Legal Adviser 10 ("ALA10") Administration	Discussions on the definition of "smoke" in the long title (CB(4)611/13-14(02) and (03)). The Administration advised that the law did not define the extent of smoke emission which constituted a "nuisance". The present definition of "smoke" in Cap. 313 and Cap. 548 included substances causing the emission of dark smoke (e.g. soot, ash, etc.). Thus, all along it had been the nuisance caused by dark smoke emitted from vessels that was being regulated under the two Ordinances. However, as "nuisance" was a matter of subjective judgment, the Bill sought to introduce an objective criteria for measuring dark smoke emission. The policy intent of regulating the emission of dark smoke was therefore reflected in the long title of the Bill.	(b) of the minutes.
004337 – 004635	Chairman Mr Frankie YICK Administration	<p>The Chairman expressed concern that under the Bill, odour of the emitted smoke from vessels causing nuisance would not be regulated.</p> <p>The Administration responded that although MD received some complaints against vessels emitting dark smoke, the complainants at a far distance did not feel any discomfort. In the absence of "nuisance", apart from advising the vessel concerned to control the emission, MD could not proceed with enforcement.</p> <p>Mr YICK said that as he understood, "nuisance" was either odour of the smoke which was inevitable or soot/ash which was now seldom seen due to the use of cleaner fuel. He supported the regulation of dark smoke which was more objective.</p>	
Clause-by-clause examination of the Bill (CB(4)611/13-14(01))			
004636 – 005522	Chairman Mr Steven HO Administration Mr Frankie YICK	<p>Part 1</p> <p>Preliminary</p> <p><u>Clause 1 – Short title</u></p> <p><u>Clause 2 – Enactments amended</u></p> <p>Part 2</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>Amendments to Shipping and Port Control Ordinance (Cap. 313)</p> <p><u>Clause 3 – Section 49 amended (interpretation)</u></p> <p><u>Clause 4 – Section 50 amended (emission of smoke from vessels)</u></p> <p>In reply to Mr HO's enquiry, the Administration advised that the Air Pollution Control (Smoke) Regulations (Cap. 311C) sought to regulate dark smoke emission from chimney or relevant plant which were land facilities with structures and operation different from vessels, and hence subject to different regulatory standard.</p> <p>On the Chairman's enquiry about the duration of the emission to be regulated by overseas ports, the Administration advised that some ports in the United Kingdom and United States had adopted the same reference standard for enforcement and prosecution, i.e. dark smoke emitted from vessels as dark as, or darker than, shade 2 on the Ringelmann Chart for three minutes or more.</p> <p>In response to Mr HO and Mr YICK's concern about the liability of the owner's agent of the vessel under Cap. 313, the Administration explained that if the vessel concerned was found contravening the proposed section 50(1) of that ordinance, in addition to the owner and master of the vessel, the owner's agent would also commit an offence (Clause 4(4)). As non-local vessels predominately comprised ocean-going vessels ("OGVs") whose owners were not in Hong Kong, prosecution would normally be taken against the master of the vessel and the owner's agent and both of them had the responsibility for maintaining and operating the vessel.</p> <p>In reply to the Chairman, the Administration advised that after the passage of the Bill, the Amendment Ordinances would come into effect on the day they were gazetted.</p>	

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005522 – 010231	Chairman Mr Steven HO Administration Mr Frankie YICK	<p>Part 3</p> <p>Amendments to Merchant Shipping (Local Vessels) Ordinance (Cap.548)</p> <p><u>Clause 5 – Section 46 amended (interpretation)</u></p> <p><u>Clause 6 – Section 51 amended (emission of smoke from local vessel)</u></p> <p>In response to the Chairman's enquiry regarding the difference in penalty levels for local and non-local vessels, the Administration advised that the power ratings of engines of OGVs were relatively larger and hence the amount of dark smoke emission would be proportionally greater in the event of improper engine maintenance. The proposed higher level of maximum fines for OGVs was to commensurate with the greater severity of pollution problem caused by them.</p> <p>Noting that the owner of the local vessel, his agent and the coxswain of the vessel would each commit an offence if the vessel concerned contravened the proposed section 51(1) of Cap. 548 (Clause 6(4)), Mr YICK said that the coxswain was an employee of the vessel owner and therefore should not be made liable for the offence. The Administration explained that the coxswain of local vessels had the responsibility of informing the owner the operation and maintenance needs of the vessel, and not to operate the vessel concerned should it emit dark smoke. In fact, they were held liable under the existing legislation.</p> <p><u>Clause 7 – Section 51A added</u></p>	
010232 – 011226	Chairman ALA10 Administration Mr Frankie YICK	<p><u>CB(4)611/13-14(02) and (03)</u></p> <p>In reply to the Chairman's enquiry about the meaning of "deliver" in the proposed section 51A(1) of Cap. 548, the Administration said that according to dictionaries, "deliver" meant "bring and hand over" and the Chinese equivalent was "交付". Under the proposed section 51A of Cap. 548, the authorities concerned could direct the owner/coxswain of local vessels to deliver the vessel for inspection</p>	The Administration to follow up as per paragraph 5(c) of the minutes.

Time marker	Speaker	Subject(s)	Action required
		at a specified time and place. In reply to ALA10's enquiry on why the inspection requirement did not apply to non-local vessels, the Administration advised that non-local vessels were manned by qualified engineers at all times, and they would be able to take immediate action to rectify the problem if dark smoke was found to have emitted from the vessel. Should they fail to rectify the problem, the Administration would take prosecution actions accordingly.	
Agenda item III – Any other business			
011127 – 011410	Chairman Mr Frankie YICK	Date of next meeting	

Council Business Division 4
Legislative Council Secretariat
18 June 2014