

## **LEGISLATIVE COUNCIL BRIEF**

Shipping and Port Control Ordinance(Cap. 313)  
Merchant Shipping (Local Vessels) Ordinance (Cap. 548)

### **Shipping Legislation (Control of Smoke Emission) (Amendment) Bill 2014**

#### **INTRODUCTION**

At the meeting of the Executive Council on 18 February 2014, the Council ADVISED and the Chief Executive ORDERED that the Shipping Legislation (Control of Smoke Emission) (Amendment) Bill 2014 (the Bill), at Annex A, should be introduced into the Legislative Council.

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#### **JUSTIFICATIONS**

##### **Existing legislative provision**

2. Excessive dark smoke emission from vessels is usually an indicator of improper engine operation or maintenance. At present, there are provisions in the legislation regulating emission of smoke from vessels. Local vessels are regulated by the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) (the Local Vessels Ordinance) (see section 51). Vessels other than local vessels are regulated under the Shipping and Port Control Ordinance (Cap. 313) (the Shipping Ordinance) (see section 50), and they predominately comprise ocean-going vessels (OGVs) but also include cross-boundary passenger ferries and a small number of other vessels. The provisions in the two pieces of legislation require that a vessel in the waters of Hong Kong must not emit smoke in such quantity as to be a nuisance. The law, however, does not define the extent of emission which constitutes a “nuisance”. Without a clear or objective definition, whether the emission has caused a nuisance is a matter of subjective judgment to be proven to the Court on a case by case basis.

##### **Enforcement by Marine Department**

3. To facilitate enforcement, Marine Department (MD) has been making reference to the Ringelmann Chart (at Annex B) in assessing the level of dark smoke emission from vessels. The Chart is a device with four shades of gray of different intensity to measure the level of dark smoke

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from vessels and is used in other ports such as those in the United Kingdom. The practice adopted by MD is that if the intensity of emission is found to be as dark as or darker than Shade 2 on the Ringelmann Chart and that such emission has lasted for three minutes or more, it will be used as supporting evidence that a nuisance has been caused.

4. Since 2005, MD has also adopted the same reference to the Ringelmann Chart (viz. Shade 2) in conducting the smoke emission test for local vessels during their applications for the issue or renewal of a certificate of survey annually or biennially (as the case may be). MD will ensure that the vessel's emission is lighter than Shade 2 before a certificate of survey is issued to the vessel owner.

5. With the above measures as well as other educational and publicity efforts in place to remind ship masters / coxswains of ways to prevent excessive smoke emission, the number of vessels with visible emission as noted in the monitoring surveys conducted by MD has dropped from 40.8% in 2007 to 1.2% in 2012.

#### **Director of Audit's observations**

6. The Audit Commission noted in its Report No.59<sup>1</sup> that notwithstanding the MD's visual surveys in recent years having shown decreased dark smoke emission from vessels, in order to provide an effective means to control such emission, the Administration should expedite action to seek legislative support to give effect to adopting the Ringelmann Chart as a reference to measure dark smoke emission from vessels.

#### **Proposals**

##### ***Objective benchmark for enforcement and prosecution***

7. MD has researched into overseas practice and noted that some ports in the UK and the US have adopted a similar reference standard to the Ringelmann Chart, viz. Shade 2, as the benchmark for taking prosecution actions against excessive smoke emission from vessels.

8. In the light of experience gained locally since 2005 and in line with overseas practice, we propose that the Local Vessels Ordinance and the Shipping Ordinance be amended to refer expressly to the Ringelmann Chart to the effect that vessels regulated under the respective Ordinances

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<sup>1</sup> Section 3.38 in Chapter 2 "Implementation of air-quality improvement measures".

are not allowed to emit dark smoke which is as dark as or darker than shade 2 on the Ringelmann Chart for 3 minutes or more continuously at any one time.

### ***Penalty Levels***

9. At present, both local vessels and non-local vessels are subject to a maximum fine of \$ 10,000 for a first breach of the provision prohibiting smoke emission. We have taken the opportunity to review the respective penalty levels for local vessels and non-local vessels. Our view is that compared to local vessels, the power ratings of engines fitted on board OGVs, which are the predominant type of non-local vessels, are relatively larger and hence the amount of dark smoke emission would be proportionally greater in the event of improper engine maintenance. To reflect the greater severity of pollution problem caused by OGVs and to maintain proportionality in penalty levels for better deterrence, we propose that the maximum fines for non-local vessels regulated under the Shipping Ordinance be set at a level higher than that for local vessels under the Local Vessels Ordinance. The proposed amendment would allow the court to impose a higher maximum fine for offences involving more serious emission from OGVs.

10. Specifically, we propose that –

- (a) for non-local vessels regulated under the Shipping Ordinance, the maximum fines be increased from the current \$10,000 to level 4 (viz. \$25,000) for a first offence, and from the current \$20,000 to level 5 (viz. \$50,000) for any subsequent offence; and
- (b) for local vessels under the Local Vessels Ordinance, the maximum fines will remain unchanged, which is at level 3 (viz. \$10,000) for a first offence and at level 4 (viz. \$25,000) for any subsequent offence.

### **SHIPPING LEGISLATION (CONTROL OF SMOKE EMISSION) (AMENDMENT) BILL 2014 (THE BILL)**

11. The main provisions of the Bill are as follows –

- (a) **Clause 1** sets out the short title.
- (b) **Clauses 3 and 5** add the definitions of ***dark smoke*** and ***specified chart*** to section 49 of the Shipping Ordinance and section 46 of the Local Vessels Ordinance respectively.

- (c) **Clause 4** amends section 50 of the Shipping Ordinance to provide that a non-local vessel in the waters of Hong Kong must not emit dark smoke for 3 minutes or more continuously and to revise the level of fines.
- (d) **Clause 6** amends section 51 of the Local Vessels Ordinance to provide that a local vessel in the waters of Hong Kong must not emit dark smoke for 3 minutes or more continuously.
- (e) **Clause 7** adds a new section 51A to the Local Vessels Ordinance to empower an authorized officer to direct certain persons to deliver a local vessel for inspection under certain circumstances.

### **LEGISLATIVE TIMETABLE**

12. The Bill will be published in the Gazette on 28 February 2014 and introduced into the Legislative Council on 19 March 2014.

### **IMPLICATIONS OF THE PROPOSAL**

13. The Bill has no financial, civil service, productivity, family, environmental, economic or sustainability implications. It is in conformity with the Basic Law, including provisions concerning human rights. It will not affect the current binding effect of the Ordinances.

### **PUBLIC CONSULTATION**

14. We consulted the Legislative Council Panel on Economic Development on 27 May 2013. Members in general supported the legislative proposals. The Local Vessel Advisory Committee and the Port Operations Committee, which comprise various stakeholders in the shipping industry, also endorsed the legislative proposals.

### **PUBLICITY**

15. A press release will be issued on 26 February 2014. A spokesperson will be available to handle enquires.

### **BACKGROUND**

16. Apart from strengthening the control of dark smoke emission from vessels, actions by the Government are also in hand to reduce other

emissions from vessels. The Environment Bureau tabled a draft regulation before Legislative Council on 22 January 2014 on the proposed imposition of a sulphur cap of 0.05% on local marine diesel with effect from 1 April 2014. It is also preparing a draft regulation to require OGVs to switch to cleaner fuel while berthing in Hong Kong from January 2015. In addition, the Government has commissioned a study on installing onshore power supply facilities in Kai Tak Cruise Terminal. Subject to the findings, the Government will consult the relevant Legislative Council panels on the proposed way forward.

## **ENQUIRIES**

17. Any enquiries on this brief can be addressed to Mr H.C. Chiu, Assistant Secretary for Transport and Housing (Transport) (Tel: 3509 8261) or Mr Andrew Ng, Senior Marine Officer (Dangerous Goods & Prosecution) of Marine Department (Tel: 2852 4538).

***Transport and Housing Bureau  
26 February 2014***

# A BILL To

Amend the Shipping and Port Control Ordinance and the Merchant Shipping (Local Vessels) Ordinance to enhance the control of emission of dark smoke from vessels in the waters of Hong Kong; and to provide for related matters.

Enacted by the Legislative Council.

## Part 1

### Preliminary

1. **Short title**  
 This Ordinance may be cited as the Shipping Legislation (Control of Smoke Emission) (Amendment) Ordinance 2014.
  2. **Enactments amended**  
 The enactments specified in Parts 2 and 3 are amended as set out in those Parts.
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## Part 2

### Amendments to Shipping and Port Control Ordinance (Cap. 313)

3. **Section 49 amended (interpretation)**
  - (1) Section 49, English text, definition of *smoke*—  
**Repeal the full stop**  
**Substitute a semicolon.**
  - (2) Section 49—  
**Add in alphabetical order**  
*“dark smoke (黑煙) means smoke which would appear to be as dark as, or darker than, shade 2 on a specified chart; specified chart (指明圖表) means a shade chart of the type known on the commencement date of the Shipping Legislation (Control of Smoke Emission) (Amendment) Ordinance 2014 ( of 2014) as a Ringelmann Chart and includes a Micro-Ringelmann Chart.”.*
4. **Section 50 amended (emission of smoke from vessels)**
  - (1) Section 50, heading, before “smoke”—  
**Add**  
**“dark”.**
  - (2) Section 50(1)—  
**Repeal**  
**“smoke in such quantity as to be a nuisance”**

**Substitute**

“dark smoke for 3 minutes or more continuously at any one time”.

- (3) Section 50(2), before “smoke”—

**Add**

“dark”.

- (4) Section 50(3)—

**Repeal**

everything after “the vessel”

**Substitute**

“and the owner’s agent each commits an offence.”.

- (5) After section 50(3)—

**Add**

- “(4) Each person who commits an offence under subsection (3) is liable—
- (a) if the person has never committed the offence in relation to the vessel, to a fine at level 4; or
  - (b) if the person has previously committed the offence in relation to the vessel, to a fine at level 5.”.
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**Part 3**

**Amendments to Merchant Shipping (Local Vessels)  
Ordinance (Cap. 548)**

**5. Section 46 amended (interpretation)**

- (1) Section 46, English text, definition of *smoke*—

**Repeal the full stop**

**Substitute a semicolon.**

- (2) Section 46—

**Add in alphabetical order**

“*dark smoke* (黑煙) means smoke which would appear to be as dark as, or darker than, shade 2 on a specified chart; *specified chart* (指明圖表) means a shade chart of the type known on the commencement date of the Shipping Legislation (Control of Smoke Emission) (Amendment) Ordinance 2014 ( of 2014) as a Ringelmann Chart and includes a Micro-Ringelmann Chart.”.

**6. Section 51 amended (emission of smoke from local vessel)**

- (1) Section 51, heading, before “smoke”—

**Add**

“dark”.

- (2) Section 51(1)—

**Repeal**

“smoke in such quantity as to be a nuisance”

**Substitute**

“dark smoke for 3 minutes or more continuously at any one time”.

- (3) Section 51(2), before “smoke”—

**Add**

“dark”.

- (4) Section 51(3)—

**Repeal**

everything after “the vessel”

**Substitute**

“each commits an offence.”.

- (5) After section 51(3)—

**Add**

“(4) Each person who commits an offence under subsection (3) is liable—

- (a) if the person has never committed the offence in relation to the vessel, to a fine at level 3; or
- (b) if the person has previously committed the offence in relation to the vessel, to a fine at level 4.”.

**7. Section 51A added**

Part IX, after section 51—

**Add**

**“51A. Inspection of local vessel emitting dark smoke**

- (1) If an authorized officer has reasonable grounds for suspecting that section 51(1) has been contravened in relation to a local vessel, the officer may direct the owner or coxswain of the vessel, or the owner’s agent, to

deliver the vessel, within the time and at the place specified in the direction, to the Director for ascertaining whether dark smoke emits from the vessel.

- (2) A person who without reasonable excuse fails to comply with a direction given to that person commits an offence and is liable to a fine at level 2.”.
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### Explanatory Memorandum

The purpose of this Bill is to amend the Shipping and Port Control Ordinance (Cap. 313) (*SPC Ordinance*) and the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) (*MSLV Ordinance*) to enhance the control of emission of dark smoke from vessels in the waters of Hong Kong.

2. Clause 1 sets out the short title.
3. Clauses 3 and 5 add the definitions of *dark smoke* and *specified chart* to section 49 of the SPC Ordinance and section 46 of the MSLV Ordinance respectively.
4. Clause 4 amends section 50 of the SPC Ordinance—
  - (a) to provide that a vessel (other than a local vessel) in the waters of Hong Kong must not emit dark smoke for 3 minutes or more continuously; and
  - (b) to revise the level of fines.
5. Clause 6 amends section 51 of the MSLV Ordinance to provide that a local vessel in the waters of Hong Kong must not emit dark smoke for 3 minutes or more continuously.
6. Clause 7 adds a new section 51A to the MSLV Ordinance to empower an authorized officer to direct certain persons to deliver a local vessel for inspection under certain circumstances.

