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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 18 December 2013

**Proposed resolution under the
Interpretation and General Clauses Ordinance**

The Secretary for the Environment will move, at the Council meeting of 18 December 2013, a proposed resolution under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) in relation to the Air Pollution Control (Air Pollutant Emission) (Controlled Vehicles) Regulation, published in the Gazette as Legal Notice No. 160 of 2013. The proposed resolution is attached for Members' consideration. The President has directed that it be printed in the terms in which it was handed in on the Agenda of the Council.

2. The speech, in both Chinese and English, which the Secretary will deliver when moving the proposed resolution is also attached.

(Odelia LEUNG)
for Clerk to the Legislative Council

Encl.

Interpretation and General Clauses Ordinance

Resolution

(Under section 34(2) of the Interpretation and General Clauses Ordinance
(Cap. 1))

Air Pollution Control (Air Pollutant Emission) (Controlled Vehicles) Regulation

Resolved that the Air Pollution Control (Air Pollutant Emission)
(Controlled Vehicles) Regulation, published in the Gazette as Legal Notice
No. 160 of 2013 and laid on the table of the Legislative Council on 30
October 2013, be amended as set out in the Schedule.

Schedule

Amendments to Air Pollution Control (Air Pollutant Emission) (Controlled Vehicles) Regulation

1. Section 6 amended (exemption by Authority)

(1) Section 6(1)—

Repeal

everything after “for a controlled vehicle”

Substitute

“to comply with this Regulation, may exempt the vehicle from
the application of this Regulation for not more than 1 year.”.

(2) Section 6(3)—

Repeal

“For exempting a controlled vehicle”

Substitute

“If a controlled vehicle is exempted”.

(3) Section 6—

Repeal subsections (4) and (5).

Air Pollution Control (Air Pollutant Emission) (Controlled Vehicles) Regulation

Motion to Amend Section 6 of the Regulation

Speech by the Secretary for the Environment

President, I move that the Air Pollution Control (Air Pollutant Emission) (Controlled Vehicles) Regulation be amended, so as to take an important step forward in improving the roadside air quality by regulating the retirement arrangements of diesel commercial vehicles.

First of all, I would like to express my sincere appreciation to the Subcommittee for their efforts scrutinizing the Regulation in the vetting period and the invaluable views they offered, in particular the leadership of Hon Cyd HO Sau-lan, the Chairman of the Subcommittee. In view of the comments of the Subcommittee, we have proposed the motion of amendment and obtained the support of the Subcommittee on it.

To improve roadside air quality and better protect public health, the Chief Executive proposed in the 2013 Policy Address to phase out some 80,000 pre-Euro IV diesel commercial vehicles through an incentive-cum-regulatory approach and to limit the service life of newly registered diesel commercial vehicles at 15 years. The implementation of this proposal can reduce vehicular emissions of respirable suspended particulates and nitrogen oxides by 80% and 30% respectively, contributing to the attainment in 2020 of the new Air Quality Objectives that will take effect soon. Since the World Health Organization classified diesel engine exhaust as carcinogenic mid last year, phasing out these vehicles can also reduce the cancer risk associated with exposure to diesel engine exhaust fumes. Besides, setting a service life limit of 15 years for newly registered diesel commercial vehicles enables timely replacement of diesel commercial vehicles in the long run for improving roadside air quality continuously.

Having consulted the relevant stakeholders of the transport trades and the Legislative Council (LegCo) Panel on Environmental Affairs, we will implement this measure through an incentive-cum-regulatory approach in which:

- (i) an ex-gratia payment ranging from 27% to 33% of the average taxable values of new vehicles will be offered to eligible vehicle owners for phasing out their pre-Euro IV diesel commercial vehicles. These vehicles include

goods vehicles, non-franchised buses and light buses. The payment level will inversely correlate with the age of the vehicles to be phased out and will remain the same throughout the scheme period. This will give extra impetus for vehicle owners to take actions earlier. The ex-gratia payment level will only be linked with the age of the phased-out vehicles and will have no effect on whether vehicle owners procure new vehicles;

- (ii) pre-Euro IV diesel commercial vehicles will be phased out in phases with reference to their respective dates of first registration. The retirement deadline for the most polluting pre-Euro diesel commercial vehicles is 1 January 2016, while that for Euro I vehicles is 1 January 2017, Euro II vehicles is 1 January 2018 and Euro III vehicles is 1 January 2020; and
- (iii) a service life limit of 15 years will be set for newly registered diesel commercial vehicles.

To implement the above control measures, I made the Regulation under section 43 of the Air Pollution Control Ordinance (Cap.311). The Regulation provides the retirement deadlines for pre-Euro IV diesel commercial vehicles with reference to their first registration dates and the service life limit of 15 years for diesel commercial vehicles first registered on or after 1 February 2014. The controlled vehicles, including goods vehicles, light buses and non-franchised buses, are required to, on licence application from the retirement deadlines or from its 15th anniversary date of first registration, as the case may be, comply with the emission standards applicable to them as if they were first registered on the date of the vehicle licence application. Failure to comply with the requirement may be a ground for the Commissioner for Transport to refuse to license the vehicles under section 25(1)(ic) of the Road Transport Ordinance (Cap.374).

As for the ex-gratia payment, the Government will seek funding approval from the Finance Committee as soon as possible after the enactment of the Regulation for implementing the ex-gratia payment scheme and receiving applications in the first quarter of 2014.

After careful deliberation, the Subcommittee as a whole supported the Regulation but proposed amending section 6 of the Regulation.

Section 6 of the Regulation is to provide exemption power to the Authority,

which is the Director of Environmental Protection (DEP), to exempt a controlled vehicle or a type of controlled vehicle from the application of the Regulation if exceptional circumstances exist that make it impractical or unreasonable for the controlled vehicle or type of controlled vehicles to comply with the Regulation. The exemption may be granted subject to any conditions DEP thinks fit. For exempting a controlled vehicle, DEP must give the registered owner of the concerned vehicle written notice of the exemption. For exempting a type of controlled vehicles, DEP must publish notice of exemption in the Gazette. The Regulation provides that such notice of exemption is not subsidiary legislation.

The Subcommittee considered that providing the notice of exemption granted by DEP for a type of controlled vehicles under the Regulation is not subsidiary legislation may deprive LegCo of its power to scrutinize the notice. The original intent of empowering DEP to grant exemption is to cater for unforeseeable cases, such as the supply of new vehicles has been disrupted under certain exceptional circumstances such that vehicle owners cannot replace their old vehicles with new ones as scheduled, leaving them with no choice but to discontinue their operation.

Having fully considered the views of the Subcommittee, we consider that the chance that exemption for a type of controlled vehicles is required is slim, and therefore propose amending the Regulation by repealing the provisions in the Regulation that are relevant to exemption granted by DEP in relation to a type of controlled vehicles, while saving the power for DEP to exempt individual controlled vehicles. The amendment is set out in the paper delivered to Members. Under the revised Regulation, DEP will consider applications for exemption individually taking into account the circumstances of each case, and give written notice of exemption to the registered owners of exempted vehicles administratively. The exemption period for each exemption granted will generally be four months and will not be more than one year. After considering Subcommittee's concerns that the public may wish to know the number of vehicles that have been exempted by DEP and the grounds for granting the exemptions, we would, without prejudice to the Personal Data (Privacy) Ordinance (Cap.486) upload information about such exemption to the EPD's website and report to the LegCo Panel on Environmental Affairs. The exemption will only be granted for exceptional circumstances after careful consideration. The Subcommittee supported the relevant amendment proposal.

President, the said amendment has been supported by the Subcommittee. I hope Members will support the above amendment, such that the regulation that controls

highly polluting diesel commercial vehicles can be implemented as soon as possible.
Thank you, President.

Environmental Protection Department
December 2013