

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

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**Subcommittee on Air Pollution Control (Air Pollutant Emission)
(Controlled Vehicles) Regulation**

**Minutes of meeting held on
Thursday, 28 November 2013, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon Cyd HO Sau-lan (Chairman)
Hon LEE Cheuk-yan
Hon Frankie YICK Chi-ming
Hon WU Chi-wai, MH
Hon YIU Si-wing
Dr Hon Kenneth CHAN Ka-lok
Hon Kenneth LEUNG
Hon Dennis KWOK
Hon POON Siu-ping, BBS, MH
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

Members absent : Hon CHAN Hak-kan, JP
Hon TANG Ka-piu
Hon Tony TSE Wai-chuen

Public Officers attending : Agenda item II

Mr Andrew LAI, JP
Deputy Director of Environmental Protection (3)
Environmental Protection Department

Mr MOK Wai-chuen, JP
Assistant Director (Air Policy)
Environmental Protection Department

Dr MAK Shing-tat
Senior Environmental Protection Officer
(Mobile Source)
Environmental Protection Department

Mr Alan CHONG
Senior Government Counsel
Department of Justice

Miss Queenie WU
Government Counsel
Department of Justice

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)5

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Mr Daniel SIN
Senior Council Secretary (1)7

Ms Michelle NIEN
Legislative Assistant (1)5

Action

I Meeting with the Administration

Examination of provisions of the Regulation

(L.N. 160 of 2013 —Air Pollution Control (Air Pollutant Emission) (Controlled Vehicles) Regulation)

Other relevant papers

(LC Paper No. CB(1)379/13-14(01) —List of follow-up actions arising from discussion at the meeting on 14 November 2013

LC Paper No. CB(1)379/13-14(02) —Administration's response to the issues raised by members at the meeting on 14 November 2013

File Ref: EP150/A7/1	—Legislative Council Brief
LC Paper No. LS8/13-14	—Legal Service Division Report
LC Paper No. CB(1)297/13-14(01)	—Letter dated 29 October 2013 from Legal Service Division to the Administration
LC Paper No. CB(1)297/13-14(02)	—Reply letter dated 31 October 2013 from the Administration to Legal Service Division
LC Paper No. CB(1)297/13-14(03)	—Paper on Air Pollution Control (Air Pollutant Emission) (Controlled Vehicles) Regulation prepared by the Legislative Council Secretariat (Background brief)

The Subcommittee deliberated (Index of proceedings attached at the **Appendix**).

2. The Chairman said that the Subcommittee had completed the scrutiny of the Air Pollution Control (Air Pollutant Emission) (Controlled Vehicles) Regulation (the Regulation).

3. The Subcommittee requested the Administration to provide the following information –

- (a) a response on whether section 6(5) of the Regulation should be repealed or amended so that any notice made by the Authority under section 6(4) of the Regulation would have legislative effect and would be subject to negative vetting by the Legislative Council; and
- (b) the wording of the revised section 6(5), where applicable.

4. The Chairman said that a further meeting would be convened on 5 December 2013 to examine any proposed amendment from the Administration to section 6 of the Regulation.

II Any other business

5. There being no other business, the meeting ended at 6:00 pm.

**Proceedings of meeting of the
Subcommittee on Air Pollution Control (Air Pollutant Emission)
(Controlled Vehicles) Regulation
on Thursday, 28 November 2013, at 4:30 pm
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Meeting with the Administration			
000102 – 000210	Chairman	Opening remarks	
000211 – 000402	Chairman Administration	General overview of the Air Pollution Control (Air Pollutant Emission) (Controlled Vehicles) Regulation ("the Regulation")	
000403 – 000620	Chairman Administration ALA3	<p><u>Title/Preamble</u></p> <p>The Chairman queried whether the Legislative Council could amend the Regulation only after the Secretary for the Environment (SEN) had consulted the Advisory Council on the Environment.</p> <p>The Administration explained that the preamble in the Regulation simply stated that SEN's authority in making the Regulation came from section 43 of the Air Pollution Control Ordinance (Cap. 311).</p> <p>Assistant Legal Adviser 3 advised that the wording of section 43 of Cap. 311 did not appear to mandate SEN to consult the Advisory Council on the Environment before making regulations.</p>	
000621 – 004540	Chairman Mr Frankie YICK Mr POON Siu-ping Mr LO Wai-kwok Administration	<p><u>Part 1 – Preliminary</u></p> <p><u>Section 1 – Commencement</u></p> <p><u>Section 2 – Interpretation</u></p> <p>The Chairman enquired whether a definition should be included for "air pollutant".</p> <p>The Administration explained that a definition could be found in the Air Pollution Control Ordinance, Cap. 311.</p> <p><u>Part 2 – Emission Requirements for Controlled Vehicles</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>Section 3 – Controlled Vehicles</u></p> <p>The Chairman asked if the Administration would introduce amendments to deal with existing and new Euro IV and Euro V diesel commercial vehicles first registered before 1 February 2014 to clarify whether these classes of vehicle would have unlimited service life.</p> <p>The Administration explained that the Regulation aimed at retiring the worst polluting vehicles by a specified time. Euro IV and Euro V diesel commercial vehicles were relatively new and had reasonable emission performance. There was no urgency for their mandatory retirement under the Regulation. The Regulation did not, however, preclude existing and new Euro IV and Euro V diesel commercial vehicles first registered before 1 February 2014 from being regulated by new measures or legislation to be introduced in the future that might mandate their replacement or retirement.</p> <p><u>Section 4 – Requirements to conform to emission standards</u></p> <p>The Chairman asked whether the dates after which a controlled vehicle must conform to the new emission standards in order to obtain a vehicle licence, should be changed to 31 December of the year immediately preceding the retirement dates now specified in section 4(2) of the Regulation.</p> <p>The Administration explained that the section as drafted accurately reflected the legislative intent. The Administration would, however, emphasize in the publicity message that, for example, pre-Euro diesel commercial vehicles must conform to the prevailing emission standards after 31 December 2015 in order to be issued a vehicle licence, and so forth. Moreover, the Administration would highlight that after such dates, ex-gratia payment applications for retiring the respective vehicles would not be accepted.</p> <p>In response to the enquiry from the Chairman, the Administration clarified that section 4(2)(e)</p>	

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		<p>of the Regulation referred to the actual date at which the vehicle completed the 15th year from the date of first registration.</p> <p>Mr POON Siu-ping enquired whether the vehicles' mileage could be used as a benchmark for retirement rather than a fixed service life or retirement deadline.</p> <p>The Administration explained that new technologies would likely be available in the next 15 years, with even less polluting vehicles becoming available. The opportunities should be taken to adopt the latest environmentally-friendly technologies.</p> <p>Dr LO Wai-kwok enquired whether new hybrid vehicles would still be subject to a 15-year service life limit.</p> <p>The Administration explained that new hybrid vehicles installed with a Euro IV or newer diesel engine would still have emissions, and would be subject to the 15-year service life limit under the Regulation if they were first registered on or after 1 February 2014.</p> <p>Mr Frankie YICK said that the vegetable transport sector supported the proposed arrangement where the vehicle licence of a commercial vehicle could be renewed after the 15-year service life if it could meet the prevailing emission standards by installing a new engine or suitable device to reduce emissions.</p> <p><u>Part 3</u></p> <p><u>Section 5 – Emission standards</u></p> <p>Mr Frankie YICK asked if section 5(2) was included mainly to deal with parallel imported vehicles.</p> <p>The Administration explained that the provision was to ensure controlled vehicles would not be subject to type approval requirements that were intended for newly registered vehicles to ensure their quality control and quality assurance.</p>	

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		<p>Mr WU Chi-wai asked if any subsequent changes to the vehicle design standards under the Air Pollution Control (Vehicle Design Standards) (Emission) Regulation, Cap. 311J would immediately affect the controlled vehicles notwithstanding the fact that the vehicles were still operating within the 15-year service life limit.</p> <p>The Administration explained that the controlled vehicles could continue to operate until the end of their 15-year service life limit, and, thereafter, they would need to meet the prevailing standards each time the vehicle apply for vehicle licence.</p> <p>Dr LO Wai-kwok asked how the Regulation would deal with imported second-hand diesel commercial vehicles that had been in use for a few years before they were first registered in Hong Kong.</p> <p>The Administration explained that all newly registered vehicles would have to meet the prevailing emission standards under Cap. 311J, be they new or second-handed.</p> <p>Dr LO Wai-kwok commented that the wording of the Regulation seemed ambiguous on whether there was a mechanism by which a diesel commercial vehicle newly registered after the Regulation came into effect could continue to operate without having to be retired if it satisfied prevailing emission standards at the end of the 15-year service life.</p> <p>The Administration advised that it would explain the meaning of the Regulation more clearly to the relevant sectors and stakeholders after the Regulation came into effect.</p> <p>ALA 3 said that the Regulation did not in terms require that controlled vehicles had to be scrapped by a certain date. The Regulation was drafted in such a way that a controlled vehicle had to meet certain emission standards after a certain date in order to be issued a vehicle licence.</p>	

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004541 – 004844	Chairman Dr Kenneth CHAN Administration	<p>Dr Kenneth CHAN enquired whether the definition of "vehicle design standards" appeared in other legislation and why the definition was not placed under section 2 of the Regulation.</p> <p>The Administration explained that, for this Regulation, the term "vehicle design standards" only appeared and was referred to in section 5. The definition was put in section 5 to facilitate reference by readers of the Regulation. Any definition of such term that might appear in other legislation would generally not be applicable to the Regulation unless specified in the Interpretation and General Clauses Ordinance, Cap. 1.</p>	
004845 – 005747	Chairman Mr WU Chi-wai Mr Frankie YICK Administration	<p>Mr WU Chi-wai sought clarification whether the vehicle would be allowed to operate for 15 more years if it could meet the prevailing emission standards on renewal of licence.</p> <p>The Administration and ALA3 explained that if a diesel commercial vehicle was first registered on or after 1 February 2014, it could be allowed to operate for the purpose of the Regulation for 15 years, even if new emission standards were in force in the meantime. However, the vehicle would have to meet the prevailing emission standards after the expiry of the 15-year period every time a licence renewal was being sought.</p>	
005748 – 010125	Chairman Administration	<p><u>Section 6 - Exemption by Authority</u></p> <p>The Chairman asked whether the Regulation applied to the Government's vehicle fleet.</p> <p>The Administration said that Government vehicles were not covered under the Regulation as Government's vehicles were not registered under the Road Traffic Ordinance, Cap. 374.</p> <p>The Administration also explained that about 1 754 out of the 6 303 vehicles in the Government fleet were diesel vehicles. Out of these diesel vehicles, there were only about 147 Euro II and 455 Euro III vehicles and they would be retired by 1 January 2018 and 1 January 2020, respectively. The Electrical</p>	

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		<p>and Mechanical Services Department would be responsible for regular repair and maintenance of such vehicles. The Government had no pre-Euro vehicles and would procure new vehicles that met the relevant statutory requirements.</p>	
010126 – 010302	Chairman Administration	<p>The Chairman enquired what the "exception circumstances" were that warranted exemption to be granted under Section 6(1) of the Regulation.</p> <p>The Administration explained that a possible instance might be an unforeseen disruption of supply of vehicles that made it impractical for vehicle owners to procure replacement vehicles that met the requirements of the Regulation.</p> <p>The Chairman expressed concern about giving the Authority unfettered discretion in granting exemptions under the Regulation.</p> <p>The Administration said that in granting exemptions in respect of a controlled vehicle (or a type of controlled vehicle), the Authority would have to make a judgment on whether compliance of the Regulation was impractical or unreasonable as stipulated in the Regulation.</p>	
010303 – 010820	Chairman Dr Kenneth CHAN Administration	<p>Dr Kenneth CHAN asked if there was an appeal mechanism against the Authority's refusal to grant an exemption under the Regulation.</p> <p>The Administration advised that appeals could be lodged with an Appeal Board established under Part VI of the Air Pollution Control Ordinance, Cap. 311.</p> <p>Dr Kenneth CHAN asked if vehicles belonging to the Hong Kong Garrison of the Chinese People's Liberation Army (the "Hong Kong Garrison") were not covered under Regulation.</p> <p>The Administration confirmed that Dr CHAN's understanding was correct.</p> <p>The Chairman asked the Administration to notify the Hong Kong Garrison when the Regulation came into effect and to request the Hong Kong Garrison to observe the</p>	

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		requirements of the Regulation.	
010821 – 011121	Chairman Administration	<p>The Chairman noted that section 6(1) allowed the Authority to grant exemption from compliance with the Regulation in respect of a controlled vehicle or a type of controlled vehicle. However, section 6(3) only provided for the Authority to notify a registered owner of the Authority's decision. The Chairman asked how all owners of vehicles of the same type would be notified of the Authority's decision if the exemption applied to a type of vehicle.</p> <p>The Administration explained that if a whole type of vehicle was granted exemption by the Authority, the owners would be notified by a notice published in the Gazette under section 6(4).</p> <p>The Chairman disagreed that a notice made under section 6(4) of the Regulation was not subsidiary legislation as provided by section 6(5).</p> <p>The Administration explained that in the event of unforeseen and extraordinary circumstances where vehicle owners could not reasonably or practically comply with the Regulation, owners of a whole type of vehicle would immediately face the consequences of the Regulation until the exemption was in force. Vehicle owners might face undue hardship if the publication of the exemption notice resulted in a lengthy process of legislative scrutiny. The arrangement might create inconvenience to the public as well.</p> <p>The Administration added that similar provisions were made in the Motor Vehicle Idling (Fixed Penalty) Ordinance, Cap. 611.</p> <p>The Chairman argued that a legislative process was warranted to effect an exemption to a whole type of vehicles if the arrangement would have considerable ramifications. She said that if a notice issued under section 6(4) were to become subsidiary legislation, it would be subject to negative vetting by the Legislative Council. The exemption by the Authority could still take effect immediately when it was published.</p>	

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		<p>The Chairman said that she would initiate an amendment to section 6(5) if the Administration did not change it.</p>	
011122 – 011330	<p>Chairman Dr Kenneth CHAN Administration</p>	<p>Dr Kenneth CHAN asked whether the exemption granted under section 6 was of a one-off nature or for a period of time, say, one year. Dr CHAN also asked if exemption could be granted to staging a parade of antique vehicles where the vehicles used could not meet the emission standards of the time.</p> <p>The Administration explained that the Authority could impose conditions under section 6(2) of the Regulation in granting any exemption under section 6(1).</p> <p>The conditions would be matters that could be brought to the Appeal Board for adjudication.</p>	
011331 – 011804	<p>Chairman Mr LEE Cheuk-yan Administration ALA3</p>	<p>Mr LEE Cheuk-yan asked if similar provisions appeared in statutes other than environment-related legislation, and whether the circumstances in such legislation were consistent with those of the current proposal.</p> <p>ALA3 said that the drafting style of section 6 was similar to section 6(5) and (6) of the Motor Vehicle Idling (Fixed Penalty) Ordinance, Cap. 611. There were statutory provisions in some legislation that stated clearly that certain codes of practice, guidelines and other instruments were not subsidiary legislation.</p> <p>The Chairman commented that the Administration were able to describe plausible circumstances that illustrated why a notice of exemption made under Cap. 611 might not be subsidiary legislation. However, no convincing arguments were provided in respect of the current Regulation.</p> <p>Citing a past example of the disruption of the entire vehicle production line by a tsunami, Mr Frankie YICK considered that the power for the Authority to grant exemption from compliance with the Regulation was reasonable.</p> <p>Mr Frankie YICK, on the other hand, supported the Chairman's views that under a negative</p>	

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		<p>vetting procedure, the Authority could still give immediate effect to an exemption notice.</p> <p>The Administration responded that it would consider members' views whether there was scope to amend section 6(5) of the Regulation.</p>	
011805 – 012617	Chairman Mr YIU Si-wing Administration	<p>Mr YIU Si-wing pointed out that the word "特殊" in the Chinese version of section 6(1) of the Regulation might convey an impression that exemption would be granted to people with privileged status or authority.</p> <p>The Administration undertook to provide the following information:</p> <p>(a) a response on whether section 6(5) of the Regulation should be repealed or amended so that any notice made by the Authority under section 6(4) of the Regulation would have legislative effect and would be subject to negative vetting by the Legislative Council; and</p> <p>(b) the wording of the revised section 6(5), where applicable.</p> <p>The Chairman noted that members generally felt that section 6 should be suitably amended to make it clear that a notice of exemption made under section 6(4) should be subject to scrutiny by the Legislative Council.</p>	The Administration to take action as per paragraph 3 of the minutes
012618 – 012830	Chairman Administration	<p><u>Part 4</u></p> <p><u>Section 7 – Saving</u></p> <p><u>Schedule</u></p> <p><u>Explanatory Note</u></p> <p>The Chairman said that the Subcommittee had completed scrutiny of the provisions of the Regulation.</p> <p>The meeting was adjourned at 6:00 pm.</p>	