

立法會
Legislative Council

LC Paper No. CB(1)1173/13-14
(These minutes have been seen
by the Administration)

Ref : CB1/SS/3/13

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

**Minutes of meeting held on
Thursday, 5 December 2013, at 9:00 am
in Conference Room 3 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
Hon Tony TSE Wai-chuen

Members absent : Hon CHAN Hak-kan, JP
Hon TANG Ka-piu

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

Action

I Meeting with the Administration

- (LC Paper No. CB(1)434/13-14(01) — List of follow-up actions arising from discussion at the meeting on 28 November 2013
- LC Paper No. CB(1)465/13-14(01) — Administration's response to the issues raised by members at the meeting on 28 November 2013
- L.N. 160 of 2013 — Air Pollution Control (Air Pollutant Emission) (Controlled Vehicles) Regulation)

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), including the proposed amendments as presented by the Administration. The Administration would move a motion to amend the Regulation at the meeting of the Legislative Council of 18 December 2013. The Chairman said that she would give a verbal report to the House Committee on 6 December 2013, and that any members who wished to move amendments to the Regulation should serve the required notice by 11 December 2013.

II Any other business

3. There being no other business, the meeting ended at 10:05 am.

Council Business Division 1
Legislative Council Secretariat
26 March 2014

**Proceedings of meeting of the
Subcommittee on Air Pollution Control (Air Pollutant Emission)
(Controlled Vehicles) Regulation
on Thursday, 5 December 2013, at 9:00 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Meeting with the Administration			
000347 – 000434	Chairman	Opening remarks	
000435 – 000900	Chairman Administration	Overview of the proposed amendments to section 6 of the Air Pollution Control (Air Pollutant Emission) (Controlled Vehicles) Regulation (the Regulation)	
000901 – 001616	Chairman Mr Tony TSE Administration	<p>Mr Tony TSE queried the reason for setting one year as the maximum period of exemption and whether extension was permissible after the expiry of the exemption period.</p> <p>The Administration explained that the vehicle licences were normally renewed for a period of either four months or one year. Vehicle owners could submit fresh application upon expiry of exemption period; the Authority would consider each application on its own merits.</p> <p>The Administration agreed to inform the Panel on Environmental Affairs periodically of exemptions granted by the Authority under the Regulation.</p>	
001617 – 002055	Chairman Mr YIU Si-wing Administration	<p>Mr YIU Si-wing commented that there should be open channels through which the Administration could notify the public on details of any exemptions granted.</p> <p>The Administration agreed to consider issuing press releases publicizing instances of exemptions given under the Regulation and to post the relevant information on the website of the Environmental Protection Department.</p>	
002056 – 003222	Chairman Mr WU Chi-wai Administration ALA3	<p>Mr WU Chi-wai asked whether the revised section 6 of the Regulation would cater only for certain specific vehicle types.</p> <p>If exemption was to be granted under exceptional circumstances, Mr WU asked whether the one-year exemption period might be sufficient for the problems associated with the circumstances to be resolved.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration explained that the revised section 6 was designed to leave flexibility for the Authority to exempt certain controlled vehicles from compliance with the Regulation under circumstances which could not be foreseen at present. The Administration would examine the situation after the expiry of the one year period and determine whether a further exemption would be justified.</p> <p>ALA3 supplemented that under section 6 of the Regulation, each time a vehicle owner submitted an application for exemption, he would be expected to explain why exceptional circumstances continued to make it impractical or unreasonable for his vehicle to comply with the Regulation. The Authority would have to consider each application afresh.</p>	
003223 – 003914	Chairman Dr LO Wai-kwok Administration	<p>Dr LO Wai-kwok commented that the decision of the Authority to exempt a controlled vehicle from compliance with the Regulation under section 6 should be distinguished from cases where the vehicle licence of a controlled vehicle was renewed because it could satisfy the prevailing emission standards after the expiry of its stipulated service life limit.</p> <p>The Administration confirmed Dr LO's understanding.</p> <p>Noting that a vehicle owner could make a fresh application after expiry of an exemption, Dr LO Wai-kwok asked if there was a maximum aggregate period of exemption that could be granted by the Authority. The Administration replied in the negative.</p> <p>Dr LO commented that there were certain construction vehicles that had to be specifically ordered and there might not yet be a model that could meet the prevailing emission standards. Dr LO said that such vehicles might qualify for the Authority's exemption, and the exemption period should not be limited to one year.</p> <p>The Administration confirmed that special purpose vehicles defined under the Road Traffic Ordinance (Cap. 374) were not required to meet the emission standards and would not be subject to the requirements of the Regulation.</p>	

Time marker	Speaker	Subject(s)	Action required
003915 – 005455	Chairman Mr Kenneth LEUNG Administration ALA3	<p>Mr Kenneth LEUNG noted the Administration had proposed to remove that section 6(4) and (5) from the Regulation.</p> <p>The Chairman explained that a concern expressed by members at the previous meeting was that the discretion that the Authority could exercise under the Regulation to grant exemption was without bounds.</p> <p>The Chairman added that in the original version, the notice published by the Authority in the Gazette under section 6(4) of the Regulation was specified in section 6(5) that it was not subsidiary legislation. The Chairman said that section 6(5) would be tantamount to depriving the Legislative Council ("LegCo") of its power to scrutinize subsidiary legislation.</p> <p>Mr Kenneth LEUNG said that some notices published in the Government Gazette simply served a notification purpose. A notice that appeared in the Gazette did not necessarily have legislative effect. Mr LEUNG asked if the Authority could publish notices announcing what exemptions had been granted, relevant summary and the reasons for granting such exemptions for general information of the public.</p> <p>ALA3 said that the Government Gazette consisted of government notices and legal notices. Messages published as a government notice would not generally be considered to have legislative effect.</p> <p>ALA3 further explained that based on decided cases, if a notice had general application to the public or a class of public (as opposed to individuals), then the notice was more likely be held to be subsidiary legislation having legislative effect.</p> <p>If the Authority published a notice announcing an exemption having been granted in respect of a specific vehicle, then the notice had a specific application. Furthermore, any decision to grant such an exemption (including any conditions) would be subject to appeal under Part VI of the Air Pollution Control Ordinance (Cap. 311). In such circumstances, the notice would likely be regarded as an administrative instrument rather than a piece of subsidiary legislation.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Chairman said that in the original section 6(1) of Regulation, the Authority could exempt a type of controlled vehicles by means of a notice that was specified as not being subsidiary legislation. She did not consider the approach acceptable as such provision would in effect amount to the Administration's circumventing LegCo's scrutiny of legislation and inhibiting Members' exercise of their duty to monitor the Government.</p> <p>The Chairman commented that the Administration's proposed revision to section 6 still left the Authority with unfettered discretion to grant exemption for individual vehicles. The Chairman acknowledged that the proposed revision had removed the Authority's power to exempt a type of vehicle from complying with the Regulation and required the Authority to examine the situation again every time a further exemption was requested; and the proposed revision would not give rise to the question of any exemption notice for a type of vehicle by-passing the Legislative Council's scrutiny.</p> <p>The Chairman also commented that the Government Gazette had limited readership. It would be more effective for the Administration to publicize cases of exemption through its websites and quarterly reports to the relevant Panel of LegCo.</p> <p>The Administration agreed to submit regular progress reports on exemptions given under the Regulation for Members' reference and would make available the information on the website of the Environmental Protection Department.</p> <p>Mr Kenneth LEUNG asked if the Administration would issue "practice notes" or guidelines to inform vehicle owners under what circumstances and through what procedures they could apply for exemptions.</p> <p>The Administration advised that practice notes and codes of practice were usually issued for procedures that were frequently followed. As the circumstances under which exemption might be granted under the Regulation were still not certain, the Administration might review the need for such documents when the Authority had gained more experience in handling exemption cases.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Chairman still did not consider the proposed revision ideal, but given the tight legislative timetable, she would accept the Administration's revision.</p>	
005456 – 005813	Chairman Mr Frankie YICK Administration	<p>Mr Frankie YICK agreed that the Regulation should reserve some power for the Authority to grant exemption. There might be occasions where exemption might need to be granted to many vehicles of the same type simultaneously. The removal of the Authority's power to exempt a type of vehicles from complying with the Regulation would create additional workload for the Administration as it would have to issue notice to the affected vehicles individually.</p> <p>Mr Frankie YICK enquired whether vehicle collectors could make use of the exemption provisions to operate antique diesel vehicles on the road on special occasions.</p> <p>The Administration explained that the issue was raised during consultation with the transport sector. It was suggested that vehicles could be fitted with an engine that satisfied the emission requirements for newly registered vehicles but with an antiqued body. The sector had found the suggestion acceptable.</p>	
005814 – 010307	Chairman Dr LO Wai-kwok Administration	<p>Dr LO Wai-kwok agreed that it was appropriate to leave the Authority certain exemption power to cater for unforeseen circumstances.</p> <p>Dr LO Wai-kwok commented that new types of commercial vehicles were becoming more and more sophisticated, and were difficult for smaller vehicle repair workshops to carry out maintenance. He asked the Administration to look into the matter.</p> <p>The Administration responded that vehicle manufacturers had been requested to make available maintenance information to third party vehicle repair workshops. The Administration was also exploring with the Vocational Training Council and vehicle manufacturers to organize skill upgrading courses for vehicle repair/maintenance personnel.</p>	
010308 – 010358	Chairman	<p>The Chairman said that the Subcommittee had concluded its work on scrutinizing the Regulation.</p>	

Time marker	Speaker	Subject(s)	Action required
		The Chairman added that she would give a verbal report to the House Committee on 6 December 2013. Members who wished to raise any amendments to the Regulation should serve notice to do so by 11 December 2013. The meeting ended at 10:05 am.	

Council Business Division 1
Legislative Council Secretariat
26 March 2014