

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 26 March 2021**

**Legal Service Division Report on
Air Pollution Control (Amendment) Bill 2021**

I. SUMMARY

- 1. The Bill** The Bill seeks to:

 - (a) amend the Air Pollution Control Ordinance (Cap. 311) to amend the air quality objectives in relation to sulphur dioxide and fine suspended particulates prescribed in Schedule 5 to Cap. 311; and
 - (b) provide for transitional matters.

- 2. Public consultation** The Administration has conducted a three-month public consultation between July and October 2019 on the proposal to tighten the air quality objectives in relation to sulphur dioxide and fine suspended particulates. While the public did not raise objection to or had no comment on tightening the air quality objectives in relation to sulphur dioxide and fine suspended particulates, one-fourth of the submissions opposed or had reservation on the adjustment of the number of allowable exceedances from 9 to 35 days per calendar year in respect of fine suspended particulates.

- 3. Consultation with LegCo Panel** The Panel on Environmental Affairs was consulted on 25 March and 16 December 2019 regarding the Administration's proposal to tighten the air quality objectives stipulated in Cap. 311 and the transitional arrangement. While acceding to the direction to tighten the air quality objectives, members raised questions and views on the scope of the proposal.

- 4. Conclusion** No difficulties relating to the legal and drafting aspects of the Bill have been identified. In light of the views expressed by members of the Panel on Environmental Affairs on the proposal to tighten the air quality objectives, Members may consider whether a Bills Committee should be formed to study the policy aspect of the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 24 March 2021. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: EP353/O1/8) issued by the Environment Bureau ("EB") and the Environmental Protection Department ("EPD") in March 2021 for further details.

Object of the Bill

2. The Bill seeks to:
 - (a) amend the Air Pollution Control Ordinance (Cap. 311) to amend the air quality objectives in relation to sulphur dioxide and fine suspended particulates prescribed in Schedule 5 to Cap. 311; and
 - (b) provide for transitional matters.

Background

3. Under section 7A(2) of Cap. 311, the Secretary for the Environment ("SE") may from time to time review the air quality objectives for an air control zone prescribed in Schedule 5 to Cap. 311 to ensure that they are the objectives that should be achieved and maintained in order to promote the conservation of air in the zone in the public interest and promote the best use of air in the zone in the public interest. Such a review must be carried out at least once every five years pursuant to section 7A(3) and (6) of Cap. 311.

4. According to paragraphs 3 and 5 of the LegCo Brief, the prevailing air quality objectives as prescribed in Schedule 5 to Cap. 311 took effect on 1 January 2014. EB and EPD embarked on a review of the air quality objectives in mid-2016 and completed the review in December 2018. The Bill seeks to implement the recommendations on tightening certain air quality objectives as a result of the above review under section 7A(2) of Cap. 311.

Provisions of the Bill

Proposed tightening of the air quality objectives under Cap. 311

5. Clause 3 of the Bill seeks to amend the air quality objectives in relation to sulphur dioxide and fine suspended particulates prescribed in Schedule 5 to Cap. 311 as follows:

- (a) the concentration limit of sulphur dioxide in air averaged over a day ("24-hour air quality objectives") prescribed under section 4(2) of Schedule 5 is proposed to be tightened from $125\mu\text{g}/\text{m}^3$ to $50\mu\text{g}/\text{m}^3$;

- (b) the concentration limit of fine suspended particulates in air averaged over a day prescribed under section 6(1) of Schedule 5 is proposed to be tightened from $75\mu\text{g}/\text{m}^3$ to $50\mu\text{g}/\text{m}^3$, and the maximum number of days on which the limit is exceeded is proposed to be adjusted from 9 to 35 days per calendar year;¹ and
- (c) the concentration limit of fine suspended particulates in air averaged over a calendar year prescribed under section 6(2) of Schedule 5 is proposed to be tightened from $35\mu\text{g}/\text{m}^3$ to $25\mu\text{g}/\text{m}^3$.

Transitional arrangement

6. According to section 13(1) of the Environmental Impact Assessment Ordinance (Cap. 499), the person holding an environmental permit or a person who assumes responsibility for a designated project with an environmental permit may apply for a variation of the conditions of the environmental permit. Upon such an application, the Director of Environmental Protection may, under section 13(4) of Cap. 499, require an environmental impact assessment report ("EIA Report") to be submitted in relation to the application or, under section 13(5) of Cap. 499, amend the environmental permit without calling for an EIA Report if certain conditions are satisfied. In both cases, the designated project concerned is required by Cap. 499 to comply with the technical memorandum published under Cap. 499, a criterion of which is to meet the air quality objectives prescribed under Cap. 311.

7. Clause 4 of the Bill seeks to provide for transitional arrangement for applications made under section 13(1) of Cap. 499 for a variation of the conditions of an environmental permit issued before the commencement date of the Bill (if passed) ("Commencement Date"). If the application is made within 36 months beginning on the Commencement Date, the pre-amended air quality objectives prescribed in Schedule 5 to Cap. 311 (as in force immediately before the Commencement Date) would continue to apply.

Commencement

8. The Bill, if passed, would come into operation on a day to be appointed by SE by notice published in the Gazette.

Public consultation

9. According to paragraphs 8 and 23 of the LegCo Brief, the Administration has conducted a three-month public consultation between July and

¹ According to footnote 4 of the LegCo Brief, historical data of EPD's air quality monitoring network demonstrate that the proposed 24-hour air quality objectives in relation to fine suspended particulates ($50\mu\text{g}/\text{m}^3$ with the maximum number of days on which the limit is exceeded set at 35 per calendar year) is more stringent than the prevailing air quality objectives ($75\mu\text{g}/\text{m}^3$ with the maximum number of days on which the limit is exceeded set at nine per calendar year).

October 2019 on the proposal to tighten the air quality objectives under Cap. 311. While the public did not raise objection to or had no comment on tightening the air quality objectives in relation to sulphur dioxide and fine suspended particulates, one-fourth of the submissions opposed or had reservation on the adjustment of the number of allowable exceedances from 9 to 35 days per calendar year in respect of fine suspended particulates. Members may refer to Annex E to the LegCo Brief for further details on the views received during the public consultation.

Consultation with LegCo Panel

10. As advised by the Clerk to the Panel on Environmental Affairs, the Administration consulted the Panel on 25 March and 16 December 2019 on the proposal to tighten the air quality objectives in relation to sulphur dioxide and fine suspended particulates, and the transitional arrangement for interfacing between the new air quality objectives and projects subject to environmental impact assessment. While acceding to the direction to tighten air quality objectives, members raised questions and views on the scope of the proposal. At the meeting on 25 March 2019, the Panel passed a motion requesting the Administration to withdraw the adjustment in the number of allowable exceedances for the 24-hour air quality objectives in relation to fine suspended particulates from the current 9 to 35 days per calendar year, and to tighten the air quality objectives in relation to respirable suspended particulates and ozone as well. The Panel further passed a motion at the meeting on 16 December 2019 expressing regret that the Administration did not respond to the above request. As regards the transitional arrangement, the Panel did not raise any adverse comment.

Conclusion

11. No difficulties relating to the legal and drafting aspects of the Bill have been identified. In light of the views expressed by members of the Panel on Environmental Affairs on the proposal to tighten the air quality objectives, Members may consider whether a Bills Committee should be formed to study the policy aspect of the Bill in detail.

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