

立法會

Legislative Council

LC Paper No. CB(1)2203/00-01

(These minutes have been seen
by the Administration and
cleared with the Chairman)

Ref : CB1/PL/TP/1

Legislative Council Panel on Transport

Minutes of meeting held on Friday, 25 May 2001, at 10:45 am in Conference Room A of the Legislative Council Building

Members present : Hon Mrs Miriam LAU Kin-ye, JP (Chairman)
Hon Abraham SHEK Lai-him, JP (Deputy Chairman)
Hon David CHU Yu-lin
Hon Andrew WONG Wang-fat, JP
Hon LAU Chin-shek, JP
Hon LAU Kong-wah
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Albert CHAN Wai-yip
Hon WONG Sing-chi

Members absent : Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon CHAN Kwok-keung
Hon LAU Ping-cheung

**Public officers
attending** : **Agenda Item IV**

Transport Bureau

Miss Margaret FONG
Deputy Secretary for Transport

Mr Brian LO
Principal Assistant Secretary for Transport (2)

Transport Department

Mr Brian GROGAN
Assistant Commissioner for Transport/Planning

Hong Kong Police Force

Mr William TANG
Chief Superintendent of Police, Traffic

Agenda Item V

Transport Bureau

Mr Roy TANG
Principal Assistant Secretary for Transport (3)

MTR Corporation Limited

Ms Teresa CHEUNG
Legal Manager General

Mrs Miranda LEUNG
Corporate Relations Manager

Clerk in attendance : Mr Andy LAU
Chief Assistant Secretary (1)2

Staff in attendance : Mr LEE Yu-sang
Senior Assistant Legal Adviser

Ms Alice AU
Senior Assistant Secretary (1)5

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I Confirmation of minutes and matters arising

- (LC Paper No. CB(2)1580/00-01 - Minutes of joint meeting held with the Environmental Affairs Panel on 15 December 2000;
- LC Paper No. CB(1)1260/00-01 - Minutes of meeting held on 23 February 2001; and
- LC Paper No. CB(1)1261/00-01 - Minutes of meeting held on 16 March 2001)

The above minutes of meeting were confirmed.

II Information papers issued since last meeting

- (LC Paper No. CB(1)1247/00-01 - The Administration's response to a submission on ITS Development in Hong Kong;
- LC Paper No. CB(1)1272/00-01 - Creation of one Chief Engineer/Pedestrian Scheme Post in Transport Department;
- LC Paper No. CB(1)1305/00-01 - Limitation on the number of public light buses; and
- LC Paper No. CB(1)1324/00-01 - Replacement of Transport Department's Vehicles and Drivers Licensing Integrated Data (VALID) Computer System)

2. Members noted the above information papers issued since last meeting.

III Items for discussion at the next meeting scheduled for 22 June 2001

- (LC Paper No. CB(1)1262/00-01(01) - List of outstanding items for discussion; and
- LC Paper No. CB(1)1262/00-01(02) - List of follow-up actions)

3. Members agreed that the following items would be discussed at the next meeting scheduled for 22 June 2001:

- (a) Feasibility study on introducing trolley bus system in Hong Kong; and
- (b) Measures to enhance the efficiency of bus service.

(Post-meeting note: The agenda for the meeting had subsequently been revised to include the items on "2001 MTR fare proposal" and "Kowloon-Canton Railway Corporation review of passenger fare for 2001". Item (b) above was deferred to the Panel meeting held on 13 July 2001.)

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4. At the request of Mr LAU Chin-shek, members agreed that the Administration should be requested to provide an information paper on the implementation of the Central Kowloon Route.

(Post-meeting note: An information paper provided by the Administration on the captioned subject was circulated to members vide LC Paper No. CB(1)1688/00-01(03).)

5. Members noted that at the House Committee meeting on 18 May 2001, the matter on "Preparation of information briefs/background papers for committee meetings" was discussed. In this connection, members in general agreed that while such background information would be useful for the Panel's work, not every agenda item warranted the preparation of a background paper by the committee clerk concerned. Moreover, the additional workload would be absorbed by existing staff resources. As such, members agreed that information briefs or background papers for items to be discussed by the Panel would be prepared on a selective basis upon the request of the Chairman and Panel members.

IV Use of vehicle headlamps and hazard warning lights

(LC Paper No. CB(1)1262/00-01(03) - Information paper provided by the Administration)

6. The Assistant Commissioner for Transport/Planning (AC for T/P) introduced the Administration's paper on the subject (LC Paper No. CB(1)1262/00-01(03)).

Use of vehicle headlamps

7. Members noted that in order to allow drivers to have a better view at night-time, and more importantly, to make their vehicles more easily seen by other road users, the Administration proposed that drivers should be required to turn on the main headlamps, and not only the small front lamps as allowed under the existing regulation 47(1)(a) of the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg.) (the Regulations), during the hours of darkness or in poor visibility.

8. Mr CHENG Kar-foo in general welcomed the Administration's proposal. He however pointed out that in order to further improve road safety, the Administration should consider the experience of overseas countries such as Canada in requiring vehicles to have their headlamps switched on automatically upon ignition. Echoing Mr CHENG's views, Mr Albert CHAN requested the Administration to provide an analysis of the safety benefits, if any, of requiring headlamps of vehicles to be automatically switched on upon ignition.

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9. In response, AC for T/P stated that the Administration was aware that some places, such as Sweden and some provinces of Canada, required vehicle headlamps to be switched on at all times. However, taking into account the different conditions in Hong Kong, the Administration considered that it was not necessary to adopt this same practice. In this respect, the requirement for Hong Kong was in line with countries like the United States, the United Kingdom and Australia.

10. While accepting that Hong Kong's situation might be different, Mr CHENG opined that the Administration should keep this matter in view as the mandatory requirement he proposed would help reduce the safety risks caused by drivers who forgot to switch on their headlamps at night. He suggested that as a first step, the Administration could consider introducing legislative amendments requiring newly-imported vehicles to have such a feature. Mr Andrew WONG concurred with Mr CHENG's views as the phased approach would allow for a gradual transition.

11. In reply, AC for T/P said that from all the information gathered about overseas practices, the benefits of daytime use of headlamps in Hong Kong would be very dubious. However, taking into account the members' views and suggestions, the Administration would keep the matter under review. To supplement, the Chief Superintendent of Police, Traffic (CS of P) advised that the Road Safety Council would also review the situation taking into account relevant overseas experience.

12. As regards enforcement, CS of P advised that the relevant regulations would be enforced according to the lighting conditions of street lamps which were switched on and off automatically depending on ambient lighting. Relevant guidelines would be issued to front line officers. Mr TAM Yiu-chung however cautioned that possible disputes might arise in case of failure of the street lamps. In this connection, he considered that publicity should be stepped up to inform motorists accordingly. Noting the member's views, CS of P emphasized that the objective of the proposal was to enhance road safety. In case of street lamp failure, suitable discretion would be exercised by the police officers.

13. Some members were concerned about the situation where motorists failed to turn on the main headlamps after they drove through a tunnel. AC for T/P explained that this should not be a problem as under the proposal, motorists would be required to use their headlamps in tunnels, just as on other roads. Within tunnels and generally when approaching on-coming traffic, the headlamps should be on dipped beam. He further assured members that before the amended regulation was put into operation, the Administration would engage in a wide scale publicity campaign to draw the attention of the motorists to the new requirements.

14. In reply to Dr TANG Siu-tong's enquiry, AC for T/P advised that the small front lamps might be required to serve other purposes in other countries, for example, as parking lamps. As the vehicle models were not unique to Hong Kong, it was unlikely that the manufacturers would do away with the small front lamps.

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Moreover, these lamps could be used as a emergency measure or in daytime condition when the main headlamps were not fully warranted.

15. Both the Chairman and Mr LAU Chin-shek enquired about the situation with motorcycles. In response, CS of P advised that currently, motorcycles were not required to switch on their headlamps in day light. However, AC for T/P added that the matter was being looked into by the Administration. In order to make the motorcycles more conspicuous, the Administration considered that there might be a case for requiring the motorcyclists to turn on their headlamps at all times.

Use of hazard warning lights

16. Members noted that according to a recent review by the Road Safety Council, the proper use of hazard warning lights could warn following drivers of the need to slow down or stop to cope with the prevailing traffic conditions. Their use should therefore not be limited to situations where the vehicle was stationary as required by regulation 47(3) of the Regulations. In order to improve the existing legislation, the Administration suggested that the provision requiring the vehicle to be in a stationary position as a condition of turning on the hazard warning lights should be deleted.

17. Mr Andrew WONG opined that the correct approach should be to specify the circumstances under which the mandatory use of hazard warning lights was required. In reply, AC for T/P agreed to consider whether the Regulations should be amended in that respect to make it mandatory to switch on the hazard warning light under specific circumstances.

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18. While expressing support for the present proposal, Mr Albert CHAN referred to the restricted scope in which the existing regulation 47(3) was drafted. He was worried that some benefits of the original drafting might have been overlooked. In this connection, he requested the Administration to review and revert to the Panel the legislative intent of the provision when it was enacted in the first place.

19. Concluding the discussion, the Chairman invited the Administration to note that members in general supported the present proposals for the use of main headlamps and hazard warning lamps. However, members considered that more should be done by the Administration to enhance the road safety benefits to be achieved by regulation on the proper use of these lights.

V Proposed Mass Transit Railway (Amendment) Bylaw 2001

(LC Paper No. CB(1)809/00-01 - Information paper provided by the Administration)

20. At the invitation of the Chairman, the Legal Manager General of MTR Corporation Limited (LMG/MTRCL) briefly introduced the background and

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objectives of the proposed Mass Transit Railway (Amendment) Bylaw 2001 (the Amendment Bylaw) as set out in LC Paper No. CB(1)809/00-01. Members noted that the proposed amendments would be enacted by way of a motion moved by the Secretary for Transport for approval by the Legislative Council.

21. LMG/MTRCL stated that the proposed Amendment Bylaw served to:

- (a) expand the definition of "tickets" to cover Octopus watches and provide flexibility for future development of new ticket forms;
- (b) regulate access to railway premises for the purpose of attaching, installing, operating, maintaining or removing any apparatus or equipment;
- (c) improve the system for evidencing payment of fares; and
- (d) regulate certain conduct which might cause nuisance or danger to persons on the railway premises.

General concerns about excessive powers granted to the Corporation

22. Members in general were concerned about the excessive powers granted to the Corporation under the proposed Amendment Bylaw. Mr LAU Chin-shek pointed out that as the Police had a dedicated Mass Transit Railway (MTR) District to provide support to the Corporation as and when necessary, he did not see a need for the Corporation to be granted with such wide powers, such as the inspection of Hong Kong Identity Cards (HKID). Given that the new requirements and prohibitions were to be enforced by staff of the Corporation who had not undergone any formal training in enforcing such powers, Mr LAU considered that the passengers were being subject to unnecessarily harsh and unfair treatment, and it might give rise to conflicts between the passengers and staff of the Corporation. Expressing similar views, Mr CHENG Kar-foo remarked that members were not convinced that there were indeed inadequacies in the existing Bylaw which required additional powers for the Corporation.

23. In order to ensure that the Corporation's powers under the Bylaw were properly balanced against the interests of the passengers, Mr LAU Chin-shek opined that the Administration should conduct an overall review on the scope of powers vested to the Corporation, taking into account relevant overseas experience. He was not convinced that MTRCL, being a private corporation, should be allowed to expand its powers simply for the sake of expediency whenever there was a problem with its management or operation. While agreeing that MTRCL should have certain powers to ensure the safe and efficient operation of the MTR, Mr Abraham SHEK also said that a review was necessary to determine whether the Corporation's powers were excessive for the said purposes.

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24. Both Mr Tommy CHEUNG and Mr Albert CHAN referred to the lack of justifications in the Administration's paper. Mr CHEUNG expressed grave reservation about the Amendment Bylaw. Mr CHAN said that additional information was required to illustrate the existing difficulties faced by the Corporation and to convince members that the extent of powers being sought was commensurate with the seriousness of the situation. In this connection, he requested that examples or cases be provided to illustrate the specific problems envisaged by the Corporation. He was concerned that the new requirements proposed under the Amendment Bylaw were too stringent and enquired about the additional criminal sanctions imposed by the new provisions. Given the wide public interests at stake, Mr CHAN found it very difficult to accept that the passengers should be subject to criminal prosecutions simply to facilitate MTRCL's management.

25. In response, the Principal Assistant Secretary for Transport (3) (PAS for T(3)) drew members' attention to the fact that the proposed powers were not unique to the Corporation. Other public transport operators, such as the Kowloon-Canton Railway Corporation, franchised bus companies and tunnel operators, were also granted with similar powers under their respective bylaws. In considering the Corporation's proposal, the Administration was satisfied that the proposed amendments were required for the purpose of ensuring the efficient operation of the MTR system as well as the safety of passengers, and that they were in line with similar provisions under the existing legislation regulating other public transport providers.

26. PAS for T(3) further said that notwithstanding the support given by the Police, staff of the Corporation would have to enforce the Bylaws on their own in most of the times. The proposed amendments would help address the difficulties faced by the staff during their day-to-day operation. He added that apart from the penalties for breaches of new bylaws 4A, 28J and 28K, no new criminal sanctions were imposed by the Amendment Bylaw. To supplement, the Corporate Relations Manager of MTRCL assured members that the spirit of the Bylaw was to ensure the safe and efficient operation of the MTR system, and the intention was not to prosecute the passengers. However, enforcement action would have to be taken in cases of fare evasion as the interest of other passengers who had paid the proper fare would be affected.

Evidencing of fares and tickets

27. PAS for T(3) advised that the amended bylaw 15 was aimed at addressing the enforcement difficulty regarding the abuse by adult passengers who when being challenged for the wrongful use of concessionary tickets, produced an unused adult ticket as evidence of proper use. Similar provisions also existed for the operation of the East Rail and Light Rail.

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28. Mr CHENG Kar-foo referred to possible mechanical failure of the Octopus card and the card readers and was worried that innocent passengers might be caught and punished inadvertently. Senior Assistant Legal Adviser (SALA) invited members to note that digital records were kept by the Corporation. In a prosecution, the defendant would not have access to the digital records to prepare his defence.

29. In response, LMG/MTRCL elaborated on the standard procedures adopted by the Corporation in dealing with fare evasion cases. She stressed that before a decision was made to bring a case to court, the Corporation would ensure that sufficient evidence was available, including relevant reports on the coded data stored in the ticket and working order of the ticketing machines, etc. LMG/MTRCL further advised that under the existing legislation, the burden of proof in prosecution cases was on the Corporation. As one important step was to verify the identity of the suspected offending passenger, it was also proposed that bylaw 42(1) be amended to facilitate the staff's work in this area.

30. Mr CHENG however remained unconvinced that the outlined procedures could address the concerns he raised. In this respect, he considered that additional information was required to illustrate the shortcomings of relevant provisions under the existing Bylaw. He also referred to the complicated drafting of the proposed amendments and considered that improvement might be required.

31. Mr LAU Chin-shek remarked that as the Corporation sought to increase its powers to tackle the problem of fare evasion and as a result, created much inconvenience for the passengers, more should be done correspondingly to regulate the Creative Star Limited (Creative Star) in terms of ensuring the proper functioning of the Octopus cards and the card readers. In response, PAS for T(3) advised that Creative Star, as a limited company established under the Companies Ordinance (Cap. 32), was subject to the provisions of the Ordinance. Additional requirements for the company were also stipulated under the Banking Ordinance (Cap. 155).

Regulation of passenger conduct

32. LMG/MTRCL explained that the new bylaw 28J was proposed to reflect the up-to-date requirements of the Corporation to facilitate control of conduct of passengers inside stations. In particular, she referred to cases involving a passenger who flashed a laser pointing device to the eyes of other passengers or the driver. Apart from creating nuisance, such action might also endanger the safe operation of train service if the vision of the driver was affected. As such conduct could not be effectively regulated by existing legislation, there was indeed a real need to prohibit the use of such devices in the railway premises in a manner which might cause danger to others or to the safe operation of the railway.

33. Given that the existing bylaw 25 would be expanded to include a prohibition against causing nuisance to staff of the Corporation carrying out their duties, both Mr

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LAU Chin-shek and Mr CHENG Kar-foo considered that the amended provision would be sufficient to deal with the highlighted problem and queried the need for the new bylaw 28J which also sought to prohibit the use of skateboard, scooter, etc. They considered that more powers were granted to the Corporation than absolutely warranted. Sharing similar concerns, Mr Tommy CHEUNG took the view that many unsuspecting passengers might be caught by the wide drafting of the new provision.

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34. In response, LMG/MTRCL explained that while the amended bylaw 25 would regulate passenger conduct which created nuisance or annoyance to other passengers and staff of the Corporation, the new bylaw 28J was intended to target those conduct which would cause a direct threat on safety.

Requiring production of HKID

35. Mr CHENG Kar-foo pointed out that under the existing bylaw 42(1), staff of the Corporation were already empowered to require a passenger to give his particulars including his name, address and telephone number, as well as to produce proof of his identity for inspection. He thus queried the need for extending the provision to specify the HKID as proof of identity as it might result in abuse by staff of the Corporation because they could then decline to accept other proof of identity such as a valid driving license. Mr Albert CHAN opined that as the Police should be requested to render assistance under the circumstances, he did not see a need for such a specific reference. Mr Abraham SHEK also expressed concerns about possible abuse and he was strongly opposed to the new bylaw 42(1)(b) for empowering staff of the Corporation to demand production of HKID for inspection. He considered that such power should remain with the Police.

36. SALA invited members to note that the effect of the proposed amendment to bylaw 42(1)(b) was that staff of the Corporation could require a passenger to produce his HKID card as proof of identity. Non-compliance with the requirement would attract a maximum fine of \$5,000 and six-month imprisonment.

37. PAS for T(3) responded that the power to demand HKID as proof of identity was also granted to other public transport operators for enforcing their bylaws. Rather than specifying any particular type of identity document, the objective of the proposed amendment was to clarify the types of documents accepted as proof of identity, including HKID, valid passport and other proof of identity. To that effect, the current practice of accepting a valid driving license as proof of identity would continue. He further said that in order to avoid the possibility of disputes, the Corporation would ensure that proper training was provided to its staff in this respect.

38. LMG/MTRCL supplemented that since taking over the relevant duties from the Police, the Corporation found that there were certain difficulties in enforcing the

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existing provisions on fares and tickets. When confronted by staff of the Corporation, many passengers who were suspected of fare evasion refused to cooperate and produce their HKIDs for inspection. This had created problems in verification of identity and police assistance was required. However, as there were many such cases, the Corporation considered it necessary to amend the existing bylaw 42(1) to set out expressly the right of staff of the Corporation to require production of this type of identity document.

Way forward

39. Mr CHENG Kar-foo considered that the Administration and the Corporation should address the concerns raised at the meeting and provide the information requested by members before proceeding further with the legislative procedures. The Chairman also remarked that while members did not have any objection for the Corporation's right to ensure the safe and efficient operation of the railway system, they were generally concerned about the likelihood of innocent passengers being caught by the extensive powers proposed. Taking into account the grave concerns expressed by members about the need and justifications for empowering the Corporation to perform certain regulatory functions within the railway premises and the imposition of criminal sanctions, she requested the Administration and the Corporation to review the relevant provisions of the Amendment Bylaw and to revert to the Panel before proceeding further with the legislative proposal.

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VI Any other business

40. There being no other business, the meeting ended at 1:00 pm.

Legislative Council Secretariat

18 October 2001