

LegCo Panel on Transport
Subcommittee on matters relating to railways

Review of Mass Transit Railway By-laws

Purpose

This paper sets out the outcome of the review on adequacy of powers conferred by the Mass Transit Railway By-laws on staff of MTR Corporation Limited (MTRCL).

Background

2. Arising from the arson incident on 5 January 2004 where a passenger unlawfully ignited some inflammable materials on a MTR train travelling from Tsim Sha Tsui Station to Admiralty Station, an internal review has been conducted by MTRCL on the adequacy of powers conferred by the Mass Transit Railway By-laws to MTRCL staff. This includes whether there is a need to amend the Mass Transit Railway By-laws so as to empower the staff of the Corporation to stop and search persons suspected of carrying inflammable or dangerous goods.

Result of Review and Way Forward

3. Detailed results of MTRCL's review is in its report at *Annex*. Having considered the various issues, MTRCL is of the view that the present powers of its staff conferred by the Mass Transit Railway By-laws are adequate for the maintenance of law, order and security of the railway premises and that no additional powers of searching passengers' belongings are required.

4. As explained in the report at *Annex*, MTRCL staff have powers to ask suspected passengers for the relevant personal particulars and to produce identification documents. The staff may also request suspected passengers for consent to inspection of their belongings. If the passengers do not agree to an inspection or if the inspection discloses evidence of contravention of the MTR By-laws, MTRCL staff may seek the assistance of the Police as appropriate.

5. According to past experience, most passengers would agree to an inspection of their belongings upon request by MTRCL staff. It is, therefore, a question of whether the law should be amended to give inspection power to MTRCL staff to handle a small proportion of passengers who do not accept inspection of their belongings by MTRCL staff. The granting of such power would put MTRCL staff in a better position to ask for such inspection since members of the public would realize that MTRCL staff have such inspection power. On the other hand, this would have the following implications:

- (a) if a passenger refuses inspection by MTRCL staff, it would result in confrontation and increase the risk of physical harm to both staff and passengers;
- (b) an appropriate way to avoid such confrontation is for MTRCL staff to seek Police's assistance in inspecting the passengers' belongings. In such circumstances, the inspection power to be granted to MTRCL staff would become meaningless; and
- (c) granting such inspection power to MTRCL staff would also create general concern about undue intrusion into privacy as there is a case to argue that such inspection should be done by Police which is a trained disciplined service, in order to better protect privacy.

6. We have also asked the Kowloon-Canton Railway Corporation (KCRC) to conduct a similar review on its by-laws. KCRC generally holds the same views as MTRCL that the existing powers conferred by its by-laws are adequate and it has not proposed any specific amendments to its by-laws.

7. Both railway corporations will continue to seek prompt assistance from the Police or Fire Services Department for matters respectively relating to law and order and fire incidents. This close rapport has worked well and proved to be effective in ensuring the safety of our railway systems and the passengers.

8. Following the arson incident on 5 January 2004, both railway corporations have also implemented a series of improvement measures. Details are set out in a separate paper issued to this Subcommittee. Among these measures, the two railway corporations have stepped up the enforcement of their respective by-laws, in particular, on those provisions relating to prohibition of carriage of dangerous goods. Public education measures have also been stepped up by the railway companies to enhance public awareness on railway safety and prohibition against bringing dangerous goods into railway premises.

Environment, Transport and Works Bureau
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**Review on Adequacy of Powers conferred by
MTR By-laws on MTR Corporation Officials**

1. Introduction

- 1.1 Consequent upon the arson incident on 5th January 2004, an internal review was conducted by the MTR Corporation management on the proposed powers of search for MTRC officials to implement the Mass Transit Railway By-laws relevant to security of the railway. This paper reports on the finding of such review.
- 1.2 During the incident, a passenger while on board the leading car A167 of train 61 traveling from Tsim Sha Tsui Station to Admiralty Station ignited some inflammable material brought onto the train in bottles and canisters wrapped in towels inside a tarpaulin bag laid on a hand cart. This resulted in fire damage to the train car and 14 passengers being sent to hospital for treatment of trauma and/or smoke inhalation but none of them suffered any apparent injury. 13 of them were discharged within an hour or two while the remaining passenger was released in the afternoon.

2. Preliminary Review

One of the subsequent reviews of the incident which immediately ensued identified the legal mechanisms and powers in which MTRC could control such situations and the risk of similar incidents from occurring in future.

3. Contravention of Laws and By-laws

The review showed that the laws which prohibit the bringing onto and usage of inflammable or dangerous substances in the railway include the following :

<u>Legislation</u>	<u>Section</u>	<u>Offences</u>
(1) Crimes Ordinance	60(3)	Arson
(2) Offence Against The Person Ordinance	32	Placing wood and other substances on a railway with intent to endanger passengers, etc.
(3) Mass Transit Railway Ordinance	30	Willfully endangering safety an offence
(4) Mass Transit Railway By-law	3	Right to refuse admission
(5) Mass Transit Railway By-law	5	Damage to railway premises, plant and equipment
(6) Mass Transit Railway By-law	21	Failure to comply with notices and reasonable directions of official
(7) Mass Transit Railway By-law	27(a)	Bringing prohibited items of luggage, etc. with risk of damage
(8) Mass Transit Railway By-law	38	Fire arms prohibited
(9) Mass Transit Railway By-law	39	Dangerous goods prohibited

4. Current Powers of MTRC Officials

4.1 Powers of the MTRC officials to control and stop the above illegitimate behavior have also been reviewed. MTRC officials are conferred with powers under

by-law 42 of the Mass Transit Railway By-laws to deal with any person who is reasonably suspected of having committed a by-law offence. By-law 42(1)(a) empowers MTRC officials to ask suspects for certain personal particulars and to produce identification documents, failure of which shall amount to an offence.

“42. Removal of persons from railway premises

- (1) Any person who is reasonably suspected by an official of committing or attempting to commit any breach of these by-laws, while in or upon any part of the railway premises shall, when required to do so by such official -
 - (a) give to that official true and correct particulars of his name and address and of his telephone number, if any, and produce proof to that effect for inspection; and
 - (b) produce to that official proof of his identity for inspection.
- (1A) No person shall willfully –
 - (a) fail to comply with a requirement under paragraph (1); or
 - (b) in complying or attempting to comply with a requirement under paragraph (1)(a), give false particulars of his name, address or telephone number or particulars of his name, address or telephone number that are misleading in a material particular.”

4.2 Of particular relevance to the contraventions in question is the powers of “Removal of suspected persons from the railway premises” and “detention” of suspects for handover to the police available under By-law 42(2) :

“42(2) Every official shall have the power to remove (if necessary by the use of reasonable force) from the railway premises any person whom he reasonably suspects of having committed or attempting to commit any breach of these by-laws; without prejudice to any penalty or surcharge which may be imposed in accordance with these by-laws and in the case where such breach is an offence as

herein provided he shall have power to detain such person until he can be delivered into the custody of a police officer to be dealt with according to law.”

- 4.3 In addition, without prejudice to the powers of the Secretary for Justice in relation to the prosecution of criminal offences, MTRC may under section 56 of the Mass Transit Railway Ordinance prosecute any offence under the Ordinance in its own name.

5. Public Law and Order, and Security of the MTR System

- 5.1 Under section 55 of the Mass Transit Railway Ordinance, the railway premises in the MTR system are deemed to be a public place within the meaning of the Public Order Ordinance. The Railway Police is provided accommodation in the railway premises and has the general responsibility for maintaining public law and order, with whom the MTRC works closely. The police mainly takes charge of crime detection and enforcement of more serious MTR By-law offences. The police is vested with all necessary powers under the Police Force Ordinance, common law, and individual statutes to exercise its duties. The Secretary for Justice has constitutional powers to prosecute all crimes and offences.

- 5.2 The MTRC is responsible for security of the railway and also assists and supports the police generally in crime prevention in the railways premises. In particular, it takes charge of enforcement of MTR By-law offences of a less controversial nature such as fare evasion, smoking, trespass, etc., and attends to their prosecutions in bringing offenders to justice. The police supports MTR staff in the enforcement of by-laws in case of potential confrontation and resistance in By-law enforcement.

6. Current Practice and Procedures

- 6.1 Under current practice, an MTR official who has reasonable suspicion that a passenger contravenes a By-law will intercept the suspect and ask for information (including personal data, identification documents), and may further request an agreed visual inspection of their belongings or goods.

6.2 Where the passenger does not agree to a visual inspection, or the agreed visual inspection discloses evidence of contravention of the MTR By-laws, the MTR official in exercise of their by-law power of removal and detention will ask the passenger to leave the railway premises or to be detained for further handover to the police for investigation, search or arrest. Current MTR By-laws powers are considered adequate and appropriate.

7. Future Practice and Powers of Officials

7.1 Immediately after the arson incident, the MTRC management had conducted a preliminary review in which it is concluded that no change in the practice and procedure in paragraph 6 is required in so far as by-law enforcement is concerned. Staff shall nevertheless step up their alertness to and vetting of possible violating behaviour of passengers over the By-laws by bringing in dangerous goods or substances.

7.2 It follows that the existing powers conferred under section 42 of the Mass Transit Railway By-laws on MTRC officials are also adequate.

7.3 An analysis of the proposal to give MTR officials the powers of search reveals both benefits and problems. Problems which are clear in sight far outweigh the uncertain benefits.

Additional Powers of Search

Arguments for Additional Powers of Search

1. Possible minor improvement in efficiency in handling a suspected case of carrying dangerous goods (i.e. immediately open up to see the luggage instead of waiting for the police or asking the passenger to leave the railway premises).

Arguments Against Additional Powers of Search

1. According to past experience, most passengers will upon request agree to a voluntary visual inspection of belongings.

2. Power of search needs to be exercised only if a passenger is uncooperative. MTR's policy to call upon police assistance in case of potential confrontation and resistance in by-law enforcement will continue. Request of uncooperative passenger to leave the premises is also efficient and effective. Thus, additional powers of search will not bring much difference.
3. Risk of harm to staff, passengers and the railway system is perceived to increase if an uncooperative passenger is forced by railway staff to reveal his dangerous goods or weapons, in particular where a dispute and confrontation results.
4. Inconvenience to passengers will be caused by excessive search. There are 2.3 million passengers each day traveling in the railway and therefore impracticable to search all passengers as does the Airport. This will cause unnecessary inconvenience and delays to passengers. It is also difficult to establish a clear criteria for selective search of a closed bag.

5. Civil liberties is an issue in increasing powers of search. Citizens' right to privacy under the Hong Kong Bill of Rights Ordinance may be restricted. Hong Kong's image of high regard for human rights and freedom may also be tarnished.

8. Legislative Policy

- 8.1 Equivalent public places such as buses, ferries, cinemas, stadium do not call for search powers of the manager or owner to maintain law, order and security. To give MTRCL officials additional powers of search will lead to an inconsistent legislative policy approach.

9. Conclusion

- 9.1 MTRC is of the view that the present powers of its officials conferred by the MTR By-laws are adequate for the maintenance of law, order and security of the railway premises and that no additional powers of search is required.