

立法會
Legislative Council

LC Paper No. CB(1)1755/04-05
(These minutes have been seen
by the Administration)

Ref: CB1/SS/6/04

**Subcommittee to Study Four Items of Subsidiary Legislation
under the Road Traffic Ordinance**

**Meeting on
Monday, 30 May 2005, at 3:00 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon CHAN Yuen-han, JP
Hon Howard YOUNG, SBS, JP
Hon LAU Kong-wah, JP
Hon Andrew CHENG Kar-foo
Hon Jeffrey LAM Kin-fung, SBS, JP
- Members absent** : Hon LEE Cheuk-yan
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon LEE Wing-tat
- Public Officers
Attending** : Ms Annie CHOI
Deputy Secretary for the Environment, Transport and Works
- Ms Elizabeth TAI
Principal Assistant Secretary for the Environment,
Transport and Works
- Miss Amy CHOW
Acting Assistant Commissioner for Transport
(Administration and Licensing)
- Mr T F LEUNG
Chief Engineer/Road Safety and Standards
Transport Department

Mr H W TSENG
Senior Engineer/Vehicle Regulations and Standards
Transport Department

Miss Selina LAU
Government Counsel
Department of Justice

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

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Ms Anita SIT
Senior Council Secretary (1)9

Action

I Meeting with the Administration
(LC Paper No. CB(1)1656/04-05(01) - Information paper provided by the Administration)

The Subcommittee deliberated (index of proceedings attached at **Annex A**).

2. The Administration was requested to take follow-up actions as follows-

- (a) to clarify whether the Commissioner for Transport would refuse to grant an application for exemption under the new regulation 53A of the Road Traffic (Traffic Control) Regulations (Traffic Control Regulations) on the ground that partial road closure or lane closure for the purpose of a public procession held on a road did not satisfy the exemption requirement under the new regulation 53A(4)(b) as the road so designated might not be regarded as being used exclusively for the purpose of the parade; and
- (b) to consider amending the new regulation 53A(6)(b) of the Traffic Control Regulations and the new regulation 53(3A)(b) of the Road Traffic (Registration and Licensing of Vehicles) Regulations by confining the additional conditions that might be imposed by the Commissioner for Transport under these provisions to those related to road safety and/or road use, and by deleting the reference to the Commissioner of Police and any other authority.

Action

3. The Subcommittee completed the clause-by-clause examination of the four Amendment Regulations made under the Road Traffic Ordinance (Cap. 374) and gazetted on 6 May 2005.

II Any other business

Date of next meeting

4. Members agreed that the next meeting should be held on 8 June 2005 at 4:00 pm.

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

Council Business Division 1
Legislative Council Secretariat
9 June 2005

**Proceedings of the meeting of
the Subcommittee to Study Four Items of Subsidiary Legislation
under the Road Traffic Ordinance
Monday, 30 May 2005, at 3:00 pm
in Conference Room B of the Legislative Council Building**

| Time marker | Speaker | Subject(s) | Action required |
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| <i>Agenda Item I – Meeting with the Administration</i> | | | |
| 000000 – 000428 | Chairman ALA3 | Opening remarks | |
| 000429 – 000621 | Administration | Administration’s briefing on its response on the issues raised at the last meeting (LC Paper No. CB(1)1656/04-05(01)) | |
| 000622 – 001057 | Chairman ALA3 | <p>Clause-by-clause examination of the four Amendment Regulations (English version)</p> <p><u>Road Traffic (Safety Equipment) (Amendment) Regulation 2005</u></p> <p>Administration’s confirmation that the trades had been consulted on the revisions to the specifications and standards for protective helmets and seat belts</p> <p>The Subcommittee noted that a notice to be published by the Commissioner for Transport (C for T) under proposed paragraph 2 of Schedule 1 to the Road Traffic (Safety Equipment) Regulations was not subsidiary legislation.</p> | |
| 001058 – 010407 | Chairman Mr Howard YOUNG Admin ALA3 Mr Jeffrey LAM Mr Andrew CHENG Miss CHAN Yuen-han Mr LAU Kong-wah | <p><u>Road Traffic (Traffic Control) (Amendment) Regulation 2005</u></p> <p>Administration’s advice that the regulations made under the Road Traffic Ordinance (RTO) (Cap. 374) also applied to private roads unless otherwise specified in the relevant regulations</p> <p>Members noted the definitions of “private road” and “road” in section 2 and the provision on “Application of regulations to private roads” under section 118 of the RTO</p> <p><i>New regulation 53A(4) of the Road Traffic (Traffic Control) Regulations (Traffic Control Regulations)</i></p> | The Administration to take follow-up actions as set out in paragraph 2(a) above |

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| | | <p>On the conditions for the grant of an exemption under new regulation 53A(4) of the Traffic Control Regulations, members' concern that C for T might refuse to grant an exemption on the ground that partial road closure or lane closure for the purpose of a public procession did not satisfy the exemption requirement under the new regulation 53A(4)(b) as the roads so designated might not be regarded as being used exclusively for the purpose of the parade</p> <p>Administration's advice that it was the Administration's intention to adopt a broad interpretation of the term "roads" in subsection (4)(a) and subsection (4)(b) of new regulation 53A in that the term could also mean certain section(s) or lane(s) of roads which constituted the route of the procession concerned. However, in considering whether an exemption should be granted, C for T would need to consider, inter alia, whether the extent of road or lane closure for the purpose of the procession was adequate to ensure the safety of the passengers standing on the float as well as the safety of other road users.</p> <p>Administration's undertaking to clarify in writing the legislative intent in regard to the application of new regulation 53A to public processions where only part of the roads along the route of the processions would be closed for the exclusive use of the processions</p> | |
| 010408 – 012105 | <p>Chairman Mr Andrew CHENG Admin Miss CHAN Yuen-han ALA3</p> | <p><i>New regulation 53A(6)(b) of the Traffic Control Regulations</i></p> <p>Administration's advice that C for T was required by principles of administrative law to act reasonably, and conditions that he might impose under new regulation 53A(6)(b) would be confined to those related to road safety and/or traffic control</p> <p>Members' view that whilst it would only be reasonable for C for T to impose conditions that were related to road safety and/or traffic control under the Traffic Control Regulations, under the current drafting of new regulation 53A(6)(b), the scope and nature of conditions that C for T</p> | <p>Administration to take follow-up actions as set out in paragraph 2(b) above</p> |

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| | | <p>might impose were not defined and this might give rise to disputes in future. The fact that C for T might be subject to legal challenge if he imposed unreasonable conditions should not be an excuse for not refining the drafting of new regulation 53A(6)(b) to ensure clarity of the provision.</p> <p>Members' views that –</p> <p>(a) the conditions to be imposed under new regulation 53A(6)(b) should be confined to those related to road safety and/or traffic control</p> <p>(b) there should be no need to specify in the provision that C for T would consult the Commissioner of Police as such consultation was essentially an administrative arrangement between the Transport Department and the Police and thus should not be specified as a necessary condition for C for T's exercise of power to impose conditions under the provision</p> <p>Administration's agreement to consider amending new regulation 53A(6)(b) taking into account members' views</p> | |
| 012106 – 012248 | Chairman ALA3 | <i>Amended regulation 59 of the Traffic Control Regulations</i> | |
| 012249 – 013229 | Chairman Admin Mr Jeffery LAM Mr Andrew CHENG Miss CHAN Yuen-han | <p><u>Road Traffic (Registration and Licensing of Vehicles) (Amendment) (No. 2) Regulation 2005</u></p> <p>Administration's advice on the circumstances where the owner of a vehicle which had been licensed might be required to obtain a movement permit</p> <p>Members' view that similar to the situation of new regulation 53A(6)(b) of the Traffic Control Regulations, it was necessary to confine the conditions that might be imposed under proposed regulation 53(3A)(b) to road safety and/or road use matters</p> | Administration to take follow-up action as set out in paragraph 2(b) above |
| 013230 – 013921 | Chairman ALA3 Admin Miss CHAN Yuen-han | ALA3 drew members' attention that it was specified in amended regulation 60 of the Registration and Licensing of Vehicles Regulations that contravention of any | |

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| | | <p>condition imposed under proposed regulation 53(3A) of the same Regulations was an offence and was liable to a fine. A different approach was adopted in relation to contravention of the conditions of an exemption granted under new regulation 53A of the Traffic Control Regulations, in that it was not specified that contravention of any condition of the exemption was an offence.</p> <p>Administration's explanation that –</p> <p>(a) the primary objective of enforcement actions in relation to the exemption was to ensure safety of the passengers who were standing on the float and hence, in the case that there was a breach of any of the exemption conditions, the enforcement authority on the spot would order the passengers standing on the float to be seated. The exemption might be revoked if the order was not complied with.</p> <p>(b) a driver of a vehicle who without reasonable excuse contravened the requirement under amended regulation 53(2) of the Traffic Control Regulations committed an offence as specified under regulation 61. A vehicle was exempted from the requirement under regulation 53(2) only if the conditions subject to which the exemption granted under new regulation 53A had been fulfilled. It would be clearly set out in the exemption document that the exemption would become invalid during the continuance of the breach if any of the exemption conditions was breached. In this case, if a driver permitted a passenger to stand on the float, he was in breach of regulation 53(2) and committed an offence as provided under regulation 61.</p> | |
| 013922 – 014738 | Chairman | <p>Clause-by-clause examination of the four Amendment Regulations (Chinese version)</p> <p>The Subcommittee noted that the Chairman would move a resolution at the Council meeting on 1 June 2005 to extend the scrutiny period</p> | |

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| <i>Agenda Item II – Any other business</i> | | | |
| 014739 – 015042 | Chairman Miss CHAN Yuen-han Clerk | The Chairman's declaration of close of meeting | |

Council Business Division 1
Legislative Council Secretariat
9 June 2005