

立法會
Legislative Council

LC Paper No.
CB(1)1563/07-08

(These minutes have been
seen
by the Administration)

Ref : CB1/BC/6/07

Bills Committee on Road Traffic Legislation (Amendment) Bill 2008

**Minutes of fifth meeting held on
Friday, 2 May 2008, at 3:40 pm
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon James TO Kun-sun
Hon Andrew CHENG Kar-foo
Hon Abraham SHEK Lai-him, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KWONG Chi-kin
- Members absent** : Hon LAU Kong-wah, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon TAM Heung-man
- Public Officers attending** : **Agenda item II**

Ms Annette LEE
Deputy Secretary for Transport and Housing (Transport) 3

Miss Rosanna LAW
Principal Assistant Secretary for Transport and Housing
(Transport) 2

Ms Macella LEE
Assistant Secretary for Transport and Housing

(Transport) 2C

Ms Vicki LEE
Senior Government Counsel
Department of Justice

Ms Carmen CHU
Senior Government Counsel
Department of Justice

Miss Emma WONG
Government Counsel
Department of Justice

Miss LUI Ying
Assistant Commissioner/Administration and Licensing
Transport Department

Mr LEUNG Tak-fai
Chief Engineer/Road Safety & Standards
Transport Department

Mrs Margaret CHAN
Principal Executive Officer/VALID & Licensing
Transport Department

Mr Honson YUEN
Chief Transport Officer/Driving Services
Transport Department

Mr M.R. Demaid-GROVES
Chief Superintendent of Police (Traffic)

Ms CHU Ming-po
Senior Superintendent of Police (Adm) (Traffic)

Mr WONG Yiu-ming, Shylock
Superintendent (Law Revision & Projects) (Traffic)

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

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Ms Angel SHEK
Council Secretary (1)2

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I Confirmation of minutes and matters arising

(LC Paper No. CB(1)1369/07-08 - Minutes of meeting held on 7 April 2008)

The minutes of the meeting held on 7 April 2008 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1)1414/07-08(01) - Administration's response to issues raised at the meeting on 22 April 2008

LC Paper No. CB(1)1414/07-08(02) - Administration's response to the submissions received by the Bills Committee)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. Members noted the information papers provided by the Administration on overseas experience in the implementation of Random Breath Test (RBT) and legal challenges against RBT (LC Paper No. CB(1) 1426/07-08(02)). The Administration said that whilst there had been a number of challenges to the RBT legislation in the Courts of Australia, they were typically on the manner in which RBTs were conducted.
4. In order to ascertain that RBT was not an impermissible interference with the right to privacy protected by the Basic Law and the Hong Kong Bill of Rights, Mr James TO opined that instead of simply relying on the premise that RBT was considered reasonable, non-arbitrary and was proportionate for the protection of public safety, the Administration should conduct further research on case law in other areas which were analogous to RBTs so as to prepare themselves for possible legal challenge in future.
5. The Bills Committee had examined whether the specimen of breath collected by a pre-screening device under the RBT operation could be used as evidence for a charge of drink driving offence, and whether in such a case there could be an issue of self incrimination. The Administration assured members that the specimen of breath so collected by the pre-screening device would not be used as evidence on the proportion of alcohol concentration in the breath in court because the existing section 39D of the Road Traffic Ordinance (Cap. 374) (RTO) clearly provided the court to use the specimens taken under section 39C for evidence of the proportion of alcohol concentration in the breath and section 39C set out the requirements for collection of specimens of breath. Mr James TO however commented that there was nothing in the common law rules or statutory provision which prohibited the Administration from doing so. For the avoidance of doubt, the Administration should consider moving a Committee Stage amendment (CSA) to the Bill so as to stipulate that for the purpose of

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proving a person guilty of having alcohol concentration in his body above the legal limit when driving, the Administration could only use specimens of breath taken under section 39C of RTO.

6. The Bills Committee noted that in clause 9(1), a new subsection (1A) was added to section 39B of RTO. As proposed, if a driver had provided a specimen of breath to be tested by an approved pre-screening device, and the test did not indicate that he had any alcohol in his body, he would not be required to provide a specimen of breath for a screening breath test. The Bills Committee however considered that the proposal was too stringent and that a driver should only be required to conduct a screening breath test if he was found to have alcohol concentration in his body above the legal limit detected by the pre-screening device under the RBT operations. The Administration was therefore requested to consider moving a CSA to the Bill to this effect.

7. In response to Mr James TO's question on whether the Police would conduct RBTs inside car parks, the Administration said that RBTs would be conducted during roadblock operations or as part of other traffic enforcement checks.

8. Mr James TO enquired about the action to be taken by the Police if a driver who was stopped during roadblock operations immediately got out of his car and drank before the police officer. The Administration noted Mr TO's concern and responded that the Police did not come across such cases. However, each case would have to be considered on its own merits. If such cases occurred, there was obviously a need to first ascertain the level of alcohol in the driver's body and then examine whether it correlated to the intake of alcohol in front of the police officer. Expert opinion would be sought in this regard.

9. Members noted the Administration's paper on responses to the submissions received by the Bills Committee (LC Paper No. CB(1)1414/07-08(02)).

10. The Chairman expressed concern that section 72A of the RTO was inconsistent with the proposed reference of "a court or magistrate" suggested by the Administration in the Bill concerning other provisions of the RTO. Mr KWONG Chi-kin shared her view. The Administration was requested to consider moving a CSA to the Bill to standardize such references.

Clause-by-clause examination of the Bill

11. The Bills Committee proceeded to go through the Bill clause by clause.

Follow-up actions

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- Admin 12. The Administration was requested to take the following actions –
- (a) in order to allay a member's concern about the proposal to empower a police officer to conduct RBT without any reasonable suspicion was not an impermissible interference with the right to privacy protected by the Basic Law and the Hong Kong Bill of Rights, the Administration was requested to conduct further research on case law in other areas which were analogous to RBTs;
 - (b) the Administration was requested to consider moving a CSA to the Bill to the effect that a driver would only be required to conduct a screening breath test if he was found to have alcohol concentration in his body above the legal limit under the RBT operations;
 - (c) the Administration was requested to consider moving a CSA to the Bill to put it beyond doubt that for the purpose of proving a person guilty of having alcohol concentration in his body above the legal limit when driving, only specimens taken under section 39C would be used; and
 - (d) the Administration was requested to consider moving a CSA to the Bill to standardize references to "a court" and "a court or magistrate" to avoid confusion.

III Any other business

13. There being no other business, the meeting ended at 5:40 pm.

**Proceedings of the fifth meeting of the
Bills Committee on Road Traffic Legislation (Amendment) Bill 2008
on Friday, 2 May 2008, at 3:40 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Confirmation of minutes and matters arising			
000000 – 000155	Chairman	- Confirmation of minutes of the meeting held on 7 April 2008 (LC Paper No. CB(1)1369/07-08)	
000156 – 000216	Chairman	- Opening remarks	
Agenda Item II – Meeting with the Administration			
<i>Meeting with the Administration</i>			
000217 – 002713	Chairman Administration Mr James TO	- Briefing by the Administration on its response to issues raised at the meeting on 22 April 2008 (LC Paper No. CB(1)1414/07-08(01)) - Discussion on the proposal to empower a police officer to conduct random breath test (RBT) without any reasonable suspicion, and whether this would be in breach of the provisions on human rights under the Basic Law or compromise the protection against self incrimination of the person concerned	Administration to take necessary follow-up action
002714 – 003250	Chairman Administration Mr James TO	- Discussion on the circumstance under which a driver would be required to conduct a screening breath test after a specimen of breath was provided for pre-screening test in a RBT operation	Administration to take necessary follow-up action
003251 – 010117	Chairman Administration Mr James TO Mr KWONG Chi-kin	- Discussion on whether specimen of breath collected during RBT would be admitted as evidence in court	Administration to take necessary follow-up action
010118 – 010600	Chairman Administration Mr James TO	- Discussion on whether the Police would prosecute a driver if during a RBT operation, the driver got out of his car and drank before the Police	
010601 – 010640	Chairman Administration	- Administration's response to the submissions received by the Bills Committee	
010641 – 011150	Chairman Administration	- Discussion on whether the Police would conduct RBT at carparks	

Time marker	Speaker	Subject(s)	Action required
	Mr James TO		
011151 – 012258	Chairman Administration Mr KWONG Chi-kin	- Discussion on references to “a court” and “a court or magistrate”	Administration to take necessary follow-up action
012259 – 012330	Chairman	- Meeting arrangements	
<i>Clause-by-clause examination</i>			
012331 – 014145	Chairman Administration	- Briefing by the Administration on clauses 21 to 27	
014146 – 015106	Chairman Administration	- Briefing by the Administration on clauses 28 and CSA to this clause	
015107 – 020110	Chairman Administration Mr KWONG Chi-kin ALA1	- Briefing by the Administration on clauses 29 to 33	
020111 – 020243	Chairman	- Meeting arrangements	