

立法會
Legislative Council

LC Paper No. CB(1)1728/07-08

(These minutes have been seen
by the Administration)

Ref : CB1/BC/6/07

Bills Committee on Road Traffic Legislation (Amendment) Bill 2008

**Minutes of sixth meeting held on
Friday, 9 May 2008, at 10:45 am
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
Dr Hon Fernando CHEUNG Chiu-hung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KWONG Chi-kin
- Members absent** : Hon LAU Kong-wah, JP
Hon Abraham SHEK Lai-him, SBS, JP
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 Sarah Yuen
Senior Council Secretary (1)6

Ms Angel SHEK
Council Secretary (1)2

Action

- I Confirmation of minutes and matters arising**
(LC Paper No. CB(1)1472/07-08 - Minutes of meeting held on 22 April 2008)

The minutes of the meeting held on 22 April 2008 were confirmed.

- II Meeting with the Administration**
(LC Paper No. CB(1)1474/07-08(01) - Administration's response to issues raised at the meeting on 2 May 2008)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).
3. Members noted the information papers provided by the Administration (LC Paper No. CB(1)1474/07-08(02)) setting out two court cases in other areas which were analogous to random breath test (RBT) to show that certain interference with the right of privacy was permissible.
4. Taking into account members' views, the Administration agreed to amend Section 72A of the Road Traffic Ordinance (Cap. 374) (RTO) so as to achieve consistency by removing the definition of "court" and adding "or magistrate" after each reference to "court" wherever it appeared.
5. When discussing the privilege against self incrimination, the Assistant Legal Adviser 1 (ALA1) referred to the case *Brown v Stott* [2001] SLT59 in England, in which the power of the police to require information to be given as to the identity of the driver alleged to be guilty of speeding was regarded as permissible and proportionate interference. Upon members' request, the judgment of this case would be circulated to the Bills Committee for reference after the meeting. ALA1 pointed out that section 63 of RTO gave similar provision on obligation to provide certain information where the driver of a vehicle was suspected of having committed an offence under RTO.

Follow-up actions

- Admin 6. Mr James TO raised concern about the Magistrate's judgment that the requirement under section 63 of RTO of a vehicle owner to give the identity of the driver alleged to be guilty of failing to comply with traffic signals had infringed the human rights provisions regarding the protection against self-incrimination under the Basic Law, and whether there would be any implications on the proposal to empower a police officer to conduct RBT without any reasonable suspicion. The Administration was requested to provide information about the magistracy case.

Action

7. The Chairman requested the Administration to consider lengthening the validity period of a driving instructor's licence during the review conducted by the Transport Department on the need to issue Private Driving Instructors' (PDI) licences (PDI) and on the grouping of PDI licences.

8. The Chairman concluded that the Bills Committee had completed clause-by-clause examination of the Bill. Members also agreed that unless otherwise advised by the Legal Adviser, there was no need to go through the English version of the Bill clause by clause.

III Any other business

9. There being no other business, the meeting ended at 11:50 am.

Council Business Division 1
Legislative Council Secretariat
3 June 2008

**Proceedings of the sixth meeting of the
Bills Committee on Road Traffic Legislation (Amendment) Bill 2008
on Friday, 9 May 2008, at 10:45 am
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 – 000545	Chairman	- Confirmation of minutes of the meeting held on 22 April 2008 (LC Paper No. CB(1)1472/07-08)	
000546 – 000624	Chairman	- Opening remarks	
Agenda Item II – Meeting with the Administration			
<i>Meeting with the Administration</i>			
000625 – 000758	Chairman Administration	- Briefing by the Administration on its response to issues raised at the meeting on 2 May 2008 (LC Paper No. CB(1)1474/07-08(01))	
000759 – 001714	Chairman Administration Assistant Legal Adviser 1 (ALA1) Mr James TO	<p>- Addressing Mr James TO's concern over a recent court case in which the requirement under section 63 of RTO for information from the owner of a vehicle to be given as to the identity of the driver alleged to be guilty of failing to comply with traffic signals was judged by the magistrate as having infringed the provisions on human rights regarding protection against self-incrimination under the Basic Law, members discussed whether the court's ruling of this case would have any implications on the proposal to empower a police officer to conduct random breath test (RBT) without any reasonable suspicion</p> <p>- ALA1's reference to a case law in England to show that the legal requirement of information from the owner of a vehicle to be given as to the identity of the driver of a vehicle was permissible interference with the privilege against self incrimination under certain circumstances</p>	Administration to gather more information about the case.
Clause-by-clause examination			
001715 – 002000	Chairman Administration	- Briefing by the Administration on clause 34	

Time marker	Speaker	Subject(s)	Action Required
002001 – 002230	Chairman Administration	- Briefing by the Administration on clauses 35 to 36	
002231 – 002754	Chairman Administration	<ul style="list-style-type: none"> - Briefing by the Administration on clause 37 and the proposed Committee Stage Amendments to this clause, which mainly involved re-numbering of some regulations - Administration's explanation in response to the Chairman of the need to lay down separate descriptions for different types of vehicles regarding the cancellation of full driving licences issued to holders of probationary driving licences in clause 37 	
002755 – 002914	Chairman Administration	- Briefing by the Administration on clauses 38 to 39	
002915 – 003220	Chairman Administration	<ul style="list-style-type: none"> - Briefing by the Administration on clause 40 - Administration noted the Chairman's suggestion to study the possibility of lengthening the duration of a driving instructor's license from 12 months to a longer period so as to reduce the frequency in issuing such licences and enhance administrative efficiency 	
003221 – 003304	Chairman Administration	- Briefing by the Administration on clauses 41 to 45	
003305 – 003620	Chairman Administration	<ul style="list-style-type: none"> - Briefing by the Administration on clauses 46 to 47 - Administration's information in response to the Chairman on the number of applications in the past for a review of the refusal of the Commissioner for Transport to issue, reissue or renew a driving licence or driving instructor's licence; or the cancellation by the Commissioner of a driving licence or driving instructor's licence and the number of successful applications - Administration's explanation in response to the Chairman of the proposal for the above review be 	

Time marker	Speaker	Subject(s)	Action Required
		conducted by the Transport Tribunal and the difference between the existing and proposed practice and procedure on such review	
003621 – 003918	Chairman Administration	- Briefing by the Administration on clauses 48 to 50	
003919 – 004055	Chairman Administration	<ul style="list-style-type: none"> - Briefing by the Administration on clause 51 - Administration's explanation in response to the Chairman of how the plate to be fixed on motor vehicles driven by holders of probationary driving licences could be produced/obtained and the colour specification for this plate 	
004056 – 004250	Chairman Administration	- Briefing by the Administration on clauses 52 to 58	
004251 – 005658	Chairman Administration ALA1 Mr James TIEN Mr Andrew CHENG	<ul style="list-style-type: none"> - Briefing by the Administration on clauses 59 to 60 - Administration's explanation in response to the Chairman of the purpose of clause 59(8AA)(11) - Administration's explanation in response to Mr James TIEN of the contents of driving improvement course (DIC) and whether DIC could effectively deter drivers from repeating driving offences - ALA1's clarification in response to Mr James TIEN of the purpose of clause 59 - Administration's explanation in response to Mr Andrew CHENG of the provision under the existing legislation for the court to exercise discretion to order a person who committed an offence that incurred 5 or more driving-offence points such as careless driving, to attend and complete a DIC - Administration's information in response to Mr Andrew CHENG on the number of cases that the court has exercised the above discretion in the past 	

Time marker	Speaker	Subject(s)	Action Required
005659 – 005920	Chairman Administration	- Briefing by the Administration on clauses 61 to 70	
005921 – 010210	Chairman Administration	- Meeting arrangements	

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Legislative Council Secretariat
3 June 2008