

立法會
Legislative Council

LC Paper No. CB(1)1995/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/BC/6/07

Bills Committee on Road Traffic Legislation (Amendment) Bill 2008

**Minutes of seventh meeting held on
Tuesday, 20 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 LAU Kong-wah, JP
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 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 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

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I Confirmation of minutes and matters arising

- (LC Paper No. CB(1)1563/07-08 - Minutes of meeting held on 2 May 2008)

The minutes of the meeting held on 2 May 2008 were confirmed.

II Meeting with the Administration

- (LC Paper No. CB(1)1562/07-08(01) - Administration's response to issues raised at the meeting on 2 May 2008 (Second Batch)
- LC Paper No. CB(1)1562/07-08(02) - Administration's response to issues raised at the meeting on 9 May 2008
- LC Paper No. CB(3)372/07-08 - The Bill
- LC Paper No. CB(1)1097/07-08(01) - Marked-up copy of the Bill prepared by the Legal Service Division
- LC Paper No. CB(1)1272/07-08(03) - Letter from the Assistant Legal Adviser (ALA) dated 2 April 2008 to the Transport and Housing Bureau
- LC Paper No. CB(1)1272/07-08(04) - Administration's response to the points raised in ALA's letter dated 2 April 2008
- LC Paper No. CB(1)1320/07-08(01) - Paper from the Administration on proposed Committee Stage amendments)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

3. Members noted from the information paper provided by the Administration (LC Paper No. CB(1)1562/07-08(01)) that the pre-screening device would be calibrated to activate a positive signal if 20 or more micrograms of alcohol in 100 millilitres of breath was detected. The Administration explained that the reason for setting the calibration at this level was that it was close to the prescribed limit (22 micrograms) and formed a basis for the Police to establish reasonable suspicion that the person's alcohol concentration in his body was likely to exceed the prescribed limit, and the driver should then be required to conduct a Screening Breath Test (SBT). The Administration also pointed out that the proposed level of calibration for the pre-screening device would not be stipulated in the Bill as this would save the need to make necessary legislative amendment in future should there be subsequent changes.

4. To address members' concern that the breath specimen taken by the pre-screening device during RBT alone might be submitted as evidence to the court, the Administration would move Committee Stage Amendments (CSAs) to amend *clauses 3, 9(1) and (11)* of the Bill to make it clear that the purpose of the approved pre-screening device was to provide an indication as to whether or not the proportion

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of alcohol in a person's breath reached such a level that it was reasonable to suspect such proportion was likely to exceed the prescribed limit, and therefore should be required to conduct the SBT. These proposed CSAs, together with the fact that the pre-screening device would be calibrated below the prescribed limit and would not provide a numerical reading or statement as to the proportion of alcohol in the breath, would put it beyond doubt that the result of the pre-screening test could not be used as evidence to show that the proportion of alcohol in the breath specimen of a driver had exceeded the prescribed limit.

5. Since the pre-screening device would not produce numerical readings, members expressed concern about the importance of the precision and reliability of the calibration mechanism for the pre-screening device. The Administration assured members that the device would be calibrated by the manufacturer and the precision of calibration would be independently confirmed by the Government Chemist and/or an external organisation.

6. Noting that under the amended section 39F, the Commissioner of Police would be empowered to specify the type of the pre-screening device for RBT, Mr James TO enquired whether the Government Chemist, with the necessary technical expertise, was a more appropriate and independent party to approve the pre-screening device. The Administration said that the Commissioner would adopt certain type approval procedures in which advice from the Government Chemist and/or an external organisation would be taken into consideration prior to gazettal of the approved pre-screening device. The Administration also explained that the pre-screening device was to reduce delay and inconvenience to motorists during RBT operations and while the Government would not encourage the public to purchase such devices, they would be available in the market.

7. As to whether a person would commit an offence if he refused to proceed with SBT after the pre-screening device activated a positive signal for his breath specimen in an RBT, the Administration explained that under this circumstance the refusal to conduct SBT would form a basis for the Police to establish reasonable suspicion that the person's alcohol concentration in his body was likely to exceed the prescribed limit. Unless the person provided reasonable excuse, failure to conduct SBT was an offence.

8. Members noted the information paper provided by the Administration (LC Paper No. CB(1) 1562/07-08(02)) on the Magistracy Case – *HKSAR v Richard Ethan Latker* in which the defendant, as the registered owner of a vehicle, was charged with the offence of failing to provide the details of the driver at the time of an alleged offence under section 63 of Road Traffic Ordinance and the Magistrate held that section 63 was inconsistent with the Hong Kong Bill of Rights. The Administration pointed out that the decision of this case was the decision of a single magistrate and was not binding on other courts.

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9. The Bills Committee also noted that the Administration would look into the validity period of driving instructors' licences in the next review to be conducted in late 2008.

Follow-up actions

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10. The Administration was requested to take the following actions –

- (a) to provide information, including assessment and testing reports of the Government Chemist, to ensure the precision and reliability of the pre-screening device for the purpose of Random Breath Tests (RBTs);
- (b) to provide information on the type approval procedures to be adopted by the Commissioner of Police prior to gazettal of the approved pre-screening device for the purpose of RBTs;
- (c) to provide further information on the Magistracy case *HKSAR v Richard Ethan Latker* (KCS 33295/2007), including the Magistrate's ruling, the application for review of the Magistrate's decision and information on the cases, if any, cited in the application for review;
- (d) to include in the speech to be delivered by the Secretary for Transport and Housing at the resumption of the Second Reading debate on the Bill that together with the proposed arrangements for RBT as set out in Annex E to LC Paper No. CB(1) 1174/07-08 (02), the Administration would consult the Panel on Transport if it proposed to make any changes to the proposed calibration level for the pre-screening device for the purpose of requiring a driver to conduct a screening breath test as set out in LC Paper No. CB(1) 1562/07-08(01), and the rationale for calibrating the device to 20 micrograms of alcohol in 100 millilitres of breath for conducting RBT operations.

III Any other business

11. There being no other business, the meeting ended at 12:02 pm.

**Proceedings of the seventh meeting of the
Bills Committee on Road Traffic Legislation (Amendment) Bill 2008
on Tuesday, 20 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 - 000345	Chairman	- Confirmation of minutes of the meeting held on 2 May 2008 (LC Paper No. CB(1)1563/07-08)	
000346 - 000420	Chairman	- Opening remarks	
Agenda Item II – Meeting with the Administration			
<i>Meeting with the Administration</i>			
000421 - 000942	Chairman Administration	- Briefing by the Administration on its response to issues raised at the meeting on 2 May 2008 (LC Paper No. CB(1)1562/07-08(01))	
000943 – 003315	Chairman Administration Mr James TIEN Mr James TO	- Discussion on the calibration level for the pre-screening device for purpose of requiring a driver to conduct a screening breath test (SBT) - Discussion on the precision and reliability of the pre-screening device	Administration to take necessary follow-up action Administration to take necessary follow-up action
003316 – 003643	Chairman Administration Mr James TO	- Discussion on whether a person committed an offence if he refused to proceed with SBT after the pre-screening device activated a positive signal for his breath specimen in an RBT	
003644 – 010639	Chairman Administration Assistant Legal Adviser 1 Mr James TIEN Mr James TO	- Discussion on the purchase and use by the public of pre-screening device - Discussion on the types of pre-screening device and the type approval procedures	Administration to take necessary follow-up action
010640 – 011800	Chairman Administration Mr James TO	- Briefing by the Administration on its response to issues raised at the meeting on 9 May 2008 (LC Paper No. CB(1)1562/07-08(02))	Administration to take necessary follow-up action
011801 – 011916	Chairman Administration	- Meeting arrangements	