

立法會
Legislative Council

LC Paper No. CB(1)628/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/6/09

Bills Committee on Motor Vehicle Idling (Fixed Penalty) Bill

**Minutes of the ninth meeting held on
Monday, 25 October 2010, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Hon LEE Cheuk-yan
Hon Miriam LAU Kin-ye, GBS, JP
Hon LI Fung-ying, SBS, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Hon IP Wai-ming, MH
Dr Hon PAN Pey-chyou
Hon LEUNG Kwok-hung

Members absent : Hon CHAN Kam-lam, SBS, JP
Hon LEUNG Yiu-chung
Hon LEE Wing-tat
Hon Tanya CHAN

**Public officers
attending** : **Agenda item I**

Mr Carlson CHAN
Deputy Director of Environmental Protection (3)

Mr W C MOK
Assistant Director of Environmental Protection
(Air Policy)

Miss Susanna LAI
Senior Administrative Officer
(Air Policy Division)
Environmental Protection Department

Mr Paul O'BRIEN
Senior Assistant Law Draftsman
Department of Justice

Ms Angie LI
Government Counsel
Department of Justice

Mr S H VERRALLS
Chief Superintendent of Police
(Traffic Branch Headquarters)
Hong Kong Police Force

Mr Shylock WONG
Superintendent (Law Revision and Projects,
Traffic Branch Headquarters)
Hong Kong Police Force

Miss Alice AU YEUNG
Principal Transport Officer/Bus & Railway 2
Transport Department

Mrs Erika HUI
Deputy Commissioner for Labour
(Occupational Safety and Health)
Labour Department

Dr Raymond LEUNG
Occupational Health Consultant (1)
Labour Department

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (1)2

Staff in attendance : Ms Kitty CHENG
Assistant Legal Adviser 5

Ms Sarah YUEN
Senior Council Secretary (1)6

Mr Ken WOO
Council Secretary (1)2

I Meeting with the Administration

- | | |
|--|---|
| (LC Paper No. CB(3)598/09-10
File Ref: EP CR 9/150/27 | - The Bill
- Legislative Council Brief issued by the Environmental Protection Department |
| LC Paper No. CB(1)108/10-11(01) | No. - Administration's response to issues raised at the meeting on 11 October 2010 |
| LC Paper No. CB(1)2971/09-10 | - Summary of views expressed by deputations attending the meetings on 1 and 7 June 2010 prepared by the Secretariat and the Administration's response |
| LC Paper No. CB(1)2834/09-10(01) | No. - Assistant Legal Adviser 5's letter dated 12 August 2010 to the Administration and the Administration's reply letter dated September 2010 |
| LC Paper No. CB(1)2962/09-10(01) | No. - Administration's response to issues raised at the meeting on 21 September 2010 |
| LC Paper No. CB(1)2837/09-10(01) | No. - Administration's response to issues raised at the meeting on 21 July 2010 |

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LC CB(1)2541/09-10(01)	Paper	No. - Administration's response to issues raised at the meeting on 8 July 2010
LC CB(1)2240/09-10(04)	Paper	No. - Administration's response to the issues raised at the meeting on 7 June 2010
LC CB(1)2366/09-10(02)	Paper	No. - Administration's supplementary response to issues raised at the meeting on 7 June 2010
LC CB(1)2240/09-10(03)	Paper	No. - Administration's response to issues raised at the meeting on 1 June 2010
LC CB(1)2366/09-10(01)	Paper	No. - Administration's supplementary response to issues raised at the meeting on 1 June 2010
LC CB(1)2240/09-10(02)	Paper	No. - Administration's response to issues raised at the meeting on 27 May 2010)

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

2. The Administration took members through the paper on the Administration's response to the issues raised at the meeting on 11 October 2010 (LC Paper No. CB(1)108/10-11(01)). Some members reiterated the need to extend the exemption at public light bus (PLB) stands from the first two PLBs to the first three PLBs of each route.

3. In response, the Administration recapitulated the reasons quoted earlier for not further extending the exemption at PLB stands, and stressed the difficulty involved by highlighting the unique characteristics of PLB stands, namely, that many major PLB stands were situated in busy districts and in close proximity to pedestrians and people working or living nearby the roads. The environmental benefits of the Bill would significantly reduce if the exemption at PLB stands was further extended.

Clause-by-clause examination of the Bill

4. The Bills Committee examined clauses 1 to 8 of the Bill. Members expressed the following views and concerns –

- (a) By stating that the examples given in the Bill to demonstrate the operation of provision(s) were neither exhaustive nor

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conclusive, clause 2(2) might give rise to uncertainties and hence might be misleading to the public.

- (b) On clause 3, the Administration had claimed that the idling prohibition would in general apply to consular personnel and this seemed to contradict paragraph 4 of the Administration's letter dated 20 September 2010 (LC Paper No. CB(1)2834/09-10(01)), which stated that "consular officers shall enjoy personal inviolability except in the case of a grave crime and in execution of a judicial decision of final effect".
- (c) The seemingly unrestricted power of the Director of Environmental Protection under clause 6 to exempt a driver or class of drivers from the idling prohibition in any manner was undesirable, especially as the notice of exemption was not subsidiary legislation.

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5. Assistant Legal Adviser 5 (ALA5) was requested to consider the implications of clause 2(2) (paragraph 4(a) above) and to relate members' concerns to Legal Adviser of the Legislative Council so that he would follow up the issue with Law Draftsman, and the Panel on Administration of Justice and Legal Services would be requested to take up the issue where necessary. In this connection, the Administration was requested to provide precedents in the Laws of Hong Kong where examples were given to demonstrate the "operation" of a provision in a piece of legislation.

Follow-up actions required of the Administration

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6. The Administration was also requested to provide response to the following issues raised by members –

- (a) To advise the length of time expected between the passage and the date of the Bill coming into operation, as some time might be required for implementing public education and publicity on the Bill before its actual implementation, and the enforcement approach (e.g. whether there would be a grace period during which warnings instead of fixed penalty notices would be given);
- (b) To consider substituting "driving authority" in clause 9 with "driving licence" or "driving permit", and providing a

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- definition for "driving licence" or "driving permit" in clause 2;
- (c) To consider deleting "driving authority" in clause 2;
 - (d) To consider defining "complainant" in clause 2 to provide that a complainant would refer to any person or class of persons whom the Secretary for Justice might appoint to make a complaint under clause 16(3), and to explain the government personnel who might be so appointed;
 - (e) To confirm whether the proposed idling prohibition was applicable to consular personnel, notwithstanding the Administration's earlier letter (LC Paper No. CB(1)2834/09-10(01)) where it was stated that "consular officers shall enjoy personal inviolability except in the case of a grave crime and in execution of a judicial decision of final effect", and to confirm that the consular personnel in Hong Kong had the same understanding in this regard;
 - (f) To clearly explain the factors which the Director of Environmental Protection would consider in deciding whether or not to grant exemption under clause 6 to a driver or class of drivers, the mechanism for applying for such exemptions and how the enforcement agents could be made aware of which persons had been granted such exemption;
 - (g) To review and improve the expression "或以張貼於有關汽車上的方式給予" in clause 8(2); and
 - (h) To review the appropriateness of using "examples" as a general law drafting policy and in the Bill, and to explain the legal effect of clause 2(2).

Date of next meeting

7. Members agreed that the next meeting would be held on Thursday, 4 November 2010, at 4:30 pm.

(Post-meeting note: With the concurrence of the Chairman, the next meeting was subsequently rescheduled for Friday, 5 November 2010, at 8:30 am.)

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II Any other business

8. There being no other business, the meeting ended at 6:20 pm.

Council Business Division 1
Legislative Council Secretariat
1 December 2010

**Proceedings of the ninth meeting of
the Bills Committee on Motor Vehicle Idling (Fixed Penalty) Bill
on Monday, 25 October 2010, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Meeting with the Administration			
000034 – 000138	Chairman	- Opening remarks	
000139 – 001332	Chairman Administration	- Administration's briefing on LC Paper No CB(1)108/10-11(01)	
001333 – 002915	Chairman Ms LI Fung-ying Dr PAN Pey-chyou Ms Miriam LAU Mr WONG Kwok-hing	<ul style="list-style-type: none"> - Discussion on the development progress, affordability and desirability of the retrofit device mentioned in paragraph 1 of LC Paper No CB(1)108/10-11(01), and how it compared to the one presently being developed by the Hong Kong Productivity Council, which in Ms Miriam LAU's view should be developed early - Discussion on the timetable on the provision of shelters or shades at the 20 PLB stands highlighted in paragraph 6 of LC Paper No CB(1)108/10-11(01), the feasibility of which would be examined by the Transport Department (TD) - Discussion on the need to extend the exemption at PLB stands from the first two PLBs to the first three PLBs of each route, and on the need to examine relocating PLB stands where the operating environment was very poor - Discussion on the need to convert existing informal taxi and red minibus stands into formal ones as necessary - Dr PAN's expression of the view that the retrofit device which could enable the operation of air conditioning system by battery when the engine was switched off might not help reduce fuel consumption, or address the transport trade's concern that the engine would suffer greater wear and tear if frequently switched off and restarted. The device would also take up significant space in the vehicle, increase its deadweight, and incur cost too high for the trade to bear. 	

Time marker	Speaker	Subject(s)	Action required
002916 – 003647	Chairman Mr WONG Kwok-hing Administration	<ul style="list-style-type: none"> - Mr WONG's expression of appreciation for the Administration's agreement to grant school private light buses with fewer than 16 seats the same exemption as that applicable to non-franchised buses - Discussion on the feasibility of extending the exemption at PLB stands from the first two PLBs to the first three PLBs of each route at the 20 PLB stands highlighted in paragraph 6 of LC Paper No CB(1)108/10-11(01) - Discussion on the Labour Department's follow-up action with the transport trades on the applicability of its heat stroke prevention guidelines to their situations under the idling prohibition when the exemptions to be provided by the Bill had been finalized - Mr WONG's expression of regrets that the Occupational Safety and Health Ordinance (Cap. 509) did not cover the driving duties of professional drivers 	
Clause-by-clause examination of the Bill			
003648 – 004223	Chairman Mr WONG Kwok-hing Administration Ms Miriam LAU	<ul style="list-style-type: none"> - Discussion on clause 1 - Discussion on the length of time expected between the passage and the date of the Bill coming into operation, and on the enforcement approach (e.g. whether there would be a grace period during which warnings instead of fixed penalty notices would be given) 	Administration to provide information (paragraph 6 of minutes)
004224 – 004646	Chairman Administration Mr WONG Kwok-hing	<ul style="list-style-type: none"> - Discussion on clause 2(1) - Discussion on the definition of "internal combustion engine", and whether the engines of electric and hybrid vehicles, and the retrofit device which could enable the operation of air conditioning system by battery when the engine was switched off fell under this definition 	
004647 – 005511	Chairman Administration Ms Miriam LAU Assistant Legal Adviser 5 (ALA5)	<ul style="list-style-type: none"> - Discussion on the definition of "driver", in particular the appropriateness of using "操控" as the Chinese translation of "control" instead of "控制" as used in the Road Traffic Ordinance (RTO) (Cap. 374), and 	

Time marker	Speaker	Subject(s)	Action required
	Mr WONG Kwok-hing	whether there was a need for the definition to cover persons assisting in the control of the vehicle	
005512 – 005739	Chairman Administration ALA5 Ms Miriam LAU	- Discussion on the definition of "motor vehicle", in particular whether it was different from that in RTO and if so, the reasons	
005740 – 010230	Chairman Administration Ms Miriam LAU	- Discussion on the definition of "judgment amount", in particular the person or class of persons whom the term "complainant" therein referred to, and whether "complainant" should be defined in clause 2 (clause 16(3))	
010231 – 010438	Chairman Administration	- Discussion on the definition of "passenger", and whether and why it was different from that in RTO	
010439 – 010633	Chairman Administration	- Discussion on the definition of "Director", and whether "Authority" also meant the Director of Environmental Protection	
010634 – 011423	Chairman Administration Ms Miriam LAU	<ul style="list-style-type: none"> - Discussion on the definition of "driving authority", the use of which in clause 9 was in members' view misleading and hence confusing, and should be substituted with simpler terms, such as "driving licence" or "driving permit" which would be defined in clause 2 (section 2 of RTO) - Discussion on the need to define "complainant" in clause 2 to provide that a complainant referred to any person or class of persons whom the Secretary for Justice might appoint to make a complaint under clause 16(3), and to explain the government personnel who might be so appointed 	<p>Administration to provide information (paragraph 6 of minutes)</p> <p>Administration to provide information (paragraph 6 of minutes)</p>
011424 – 012440	Chairman Administration ALA5	- Discussion on clause 2(2), in particular the uncertainties that might arise from the provision that examples included in the Bill were neither exhaustive nor conclusive (paragraph 20 of LC Paper No. CB(1)512/09-10(04) on new drafting practices)	ALA5 and Administration to provide information (paragraphs 5 of minutes)
012441 – 013214	Chairman Administration Mr KAM Nai-wai	- Discussion on clause 3, in particular whether the Bill would apply to cross-boundary vehicles, whether the	

Time marker	Speaker	Subject(s)	Action required
	ALA5	<p>English version of this clause tallied with its Chinese version, and what offices were included in "the Offices set up by the Central People's Government in the Hong Kong Special Administrative Region"</p> <ul style="list-style-type: none"> - Discussion on whether the idling prohibition was applicable to consular personnel (paragraphs 4 and 5 of LC Paper No. CB(1)2834/09-10(01)) - Administration's clarification in response to Mr KAM that the Bill would also apply to drivers of unregistered motor vehicles on private roads 	Administration to provide information (paragraph 6 of minutes)
013215 – 013310	Chairman Administration	- Examination of clause 4	
013311 – 014930	Chairman Administration Mr LEE Cheuk-yan	<ul style="list-style-type: none"> - Discussion on clauses 5 and 6, in particular why any single driver instead of "a class of drivers" could be singled out for exemption - Discussion on the appropriateness of giving the Director of Environmental Protection seemingly unrestricted power to grant exemption to a driver or class of drivers and if so, the need to clearly explain the factors which the Director would consider in deciding whether or not to grant the above exemption, the mechanism for applying for such exemptions, and how the enforcement agents could be made aware of which persons had been granted such exemptions (LC Paper No. CB(1)2834/09-10(01)) 	Administration to provide information (paragraph 6 of minutes)
014931 – 015035	Chairman Administration	- Examination of clause 7	
015036 – 015650	Chairman Administration Mr KAM Nai-wai	<ul style="list-style-type: none"> - Discussion on clause 8, and the need to improve the expression "或以張貼於有關汽車上的方式給予" - Discussion on whether penalty notices should be given to the person concerned by post in addition to giving it to him personally or by affixing it to the motor vehicle (clauses 11 and 13(2)) 	Administration to provide information (paragraph 6 of minutes)

Time marker	Speaker	Subject(s)	Action required
015651 - 015732	Chairman	- Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
1 December 2010