

**立法會**  
**Legislative Council**

LC Paper No. CB(1)867/10-11  
(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 tenth meeting held on  
Friday, 5 November 2010, at 8:30 am  
in Conference Room A of the Legislative Council Building**

**Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)  
Hon CHAN Kam-lam, SBS, JP  
Hon LEUNG Yiu-chung  
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 KAM Nai-wai, MH  
Hon IP Wai-ming, MH  
Dr Hon PAN Pey-chyou  
Hon Tanya CHAN

**Members absent** : Hon LEE Cheuk-yan  
Hon LEE Wing-tat  
CHEUNG Hok-ming, GBS, JP  
Hon Cyd HO Sau-lan  
Hon CHAN Hak-kan  
Hon LEUNG Kwok-hung

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**Public officers attending : Agenda item II**

Mr Carlson CHAN  
Deputy Director of Environmental Protection (3)

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

Mr Ray LEUNG  
Environmental Protection Officer  
(Mobile Source) 23

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

Ms Angie LI  
Senior Government Counsel  
Department of Justice

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

Ms Angela NG  
Senior Superintendent of Police  
(Administration, Traffic Branch Headquarters)  
Hong Kong Police Force

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

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

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**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

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**I Confirmation of minutes of meeting**

(LC Paper No. CB(1)289/10-11 - Minutes of meeting held on  
21 September 2010)

The minutes of the meeting held on 21 September 2010 were confirmed.

**II Meeting with the Administration**

(LC Paper No. - Administration's response  
CB(1)278/10-11(01) to issues raised at the  
meeting on  
25 October 2010

LC Papers Nos. - Assistant Legal Adviser 5's  
CB(1)272/10-11(01) and (02) letter dated 26 October  
2010 to the Administration  
and the Administration's  
reply letter dated  
28 October 2010

LC Paper No. - Information paper on the  
CB(1)339/10-11(01) appropriateness of using  
"examples" as a general  
drafting policy and in the  
Bill, and the legal effect of  
clause 2(2) provided by  
Assistant Legal Adviser 5)

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

3. The Administration took members through the paper on the Administration's response to the issues raised at the meeting on

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25 October 2010 (LC Paper No. CB(1)278/10-11(01)). Some members expressed the following views and concerns –

- (a) Despite the Administration's response in LC Paper No. CB(1)278/10-11(01), it was still unclear whether the idling prohibition would be applicable to consular personnel, since paragraph 4 of the Administration's letter dated 20 September 2010 (LC Paper No. CB(1)2834/09-10(01)) 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 that failure to comply with the idling prohibition could hardly be considered a grave crime, while the penalty notice issued as a result was not a judicial decision of final effect; and
- (b) It was still necessary to spell out the criteria according to which the Director of Environmental Protection (the Director) would under clause 6 exempt a driver or class of drivers from the idling prohibition so as to ensure that the exemption would be granted on exceptional or reasonable grounds only and/or without causing undue environmental nuisances. There was also a need to provide that such exemption might, as in the case of Toronto, be granted not only to driver(s) but also vehicle(s) in special situations, such that the idling prohibition would not apply to vehicles transporting a person where a medical doctor certified in writing that for medical reason the person in the vehicle required that temperature or humidity be maintained within a certain range.

4. While agreeing to consider the suggestion in paragraph 3(b) above, the Administration reaffirmed that the idling prohibition would in general be applicable to consular personnel except in cases where additional privileges and immunities had been provided under the bilateral consular agreements concluded by the Central People's Government with other foreign States and applied to the Hong Kong Special Administrative Region. In such cases, whether the consular personnel of the country concerned might enjoy immunity from the idling prohibition would be confirmed with the Protocol Division of the Office of the Chief Secretary for Administration on a case-by-case basis.

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Clause-by-clause examination of the Bill

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|--|---|
| (LC Paper No. CB(3)598/09-10<br>File Ref: EP CR 9/150/27 | - The Bill<br>- Legislative Council Brief issued by the Environmental Protection Department   |
| LC Paper No. CB(1)278/10-11(02)                          | - Assistant Legal Adviser 5's letter dated 27 October 2010 to the Administration  |
| LC Paper No. CB(1)278/10-11(03)                          | - Administration's response dated November 2010 to Assistant Legal Adviser 5's letter dated 27 October 2010                                 |
| LC Paper No. CB(1)2834/09-10(01)                         | - Assistant Legal Adviser 5's letter dated 12 August 2010 to the Administration and the Administration's reply letter dated September 2010) |

5. The Bills Committee completed scrutiny of clauses 9 to 11(3) of the Bill.

Follow-up actions required of the Administration

- Admin 6. The Administration was requested to take the following actions to address concerns raised by members at the meeting –
- (a) To consider amending clause 6(1) along the line as suggested by members, i.e., to add "*the director may grant the exemption on exceptional or reasonable grounds only, and/or without causing undue environmental nuisances*", and to provide that the exemption under this clause might be granted to driver(s) and vehicle(s) in special situations, such that the idling prohibition would not apply to vehicles transporting a person where a medical doctor certified in writing that for medical reason the person in the vehicle required that temperature or humidity be maintained within a certain range;

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- (b) To advise whether the Secretary for the Environment would include in his speech at the resumption of the Second Reading debate on the Bill that the enforcement agents would exercise discretion in their enforcement work and they would take enforcement actions in a reasonable manner;
- (c) To delete clause 2(2) and the examples listed under section 7 of Schedule 1 to the Bill to address the Bill Committee's concern about using "examples" in the Bill while stating in the Bill that such examples given to demonstrate the operation of provision(s) were neither exhaustive nor conclusive;
- (d) To consider a member's suggestion of revising the definition of "driver" by replacing "assisting in the control of" with "in the control of", and to clarify whether it was the policy intent of the Bill that a person on board looking after an idling vehicle while the driver was away would be prosecuted;
- (e) To consider revising "通知書" in clause 8(1) as "罰款通知書", and revising "通知書" in clause 11(2) as "繳款通知書"; and
- (f) To consider revising the Chinese version of clause 11(3)(b) to read "當局不得在拒絕日期之後的 6 個月後".

Date of next meeting

7. Members agreed that the next meeting would be held on Friday, 12 November 2010, at 3:00 pm (or immediately after the House Committee meeting scheduled for the same day, whichever was the later).

Clerk The Clerk was requested to propose a meeting schedule for members' consideration at the next meeting.

**III Any other business**

8. There being no other business, the meeting ended at 10:35 am.

**Proceedings of the tenth meeting of  
the Bills Committee on Motor Vehicle Idling (Fixed Penalty) Bill  
on Friday, 5 November 2010, at 8:30 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda item I – Confirmation of minutes of meeting</b>			
000352 – 000421	Chairman	<ul style="list-style-type: none"> <li>- Confirmation of minutes of meetings</li> <li>- Opening remarks</li> </ul>	
<b>Agenda item II – Meeting with the Administration</b>			
<i>Administration's briefing on LC Paper No CB(1)278/10-11(01)</i>			
000422 – 001039	Chairman Administration Ms Miriam LAU	<ul style="list-style-type: none"> <li>- Discussion on the appropriateness of allowing a grace period as long as three months as proposed by the Administration, during which warnings instead of penalty notices would be given to offenders (Paragraph 1 of LC Paper No. CB(1) 278/10-11(01))</li> <li>- Ms LAU's proposal that labels urging drivers to switch off the engine while idling be prepared for dissemination to drivers to help publicize the idling prohibition</li> </ul>	
001040 – 001117	Chairman Administration	- Administration's briefing on paragraph 2 of LC Paper No. CB(1) 278/10-11(01)	
001118 – 001356	Chairman Administration	- Administration's briefing on paragraphs 3 and 4 of LC Paper No. CB(1) 278/10-11(01)	
001357 – 002836	Chairman Administration Ms Miriam LAU Mr Andrew LEUNG	- Discussion on the circumstances under which consular personnel would enjoy "immunity" as a matter of protocol from the idling prohibition (Paragraph 5 of LC Paper No. CB(1) 278/10-11(01))	
002837 – 005052	Chairman Administration Ms LI Fung-ying Assistant Legal Adviser 5 (ALA5)	<ul style="list-style-type: none"> <li>- Administration's briefing on paragraphs 6 and 7 of LC Paper No. CB(1) 278/10-11(01)</li> <li>- Discussion on whether the exemption</li> </ul>	

Time marker	Speaker	Subject(s)	Action required
	Ms Miriam LAU Mr CHAN Kam-lam	<p>which the Director might grant under clause 6 would be long-term or time-limited</p> <ul style="list-style-type: none"> <li>- Discussion on the need to clearly explain the factors/criteria which the Director would consider in deciding whether or not to grant the above exemption, so as to ensure that the exemption would be granted on exceptional or reasonable grounds only, and/or without causing undue environmental nuisances</li> <li>- Discussion on the need to provide that the above exemption might be granted to not only driver(s) but also vehicle(s) in special situations as in the case of Toronto, such that the idling prohibition would not apply to vehicles transporting a person where a medical doctor certified in writing that for medical reason the person in the vehicle required that temperature or humidity be maintained within a certain range (LC Paper No CB(1)1967/09-10(01))</li> <li>- Mr CHAN Kam-lam's view on the need to ensure that the Secretary for the Environment would include in his speech at the resumption of the Second Reading debate on the Bill that the enforcement agents would exercise discretion in their enforcement work and they would take enforcement actions in a reasonable manner</li> </ul>	<p>Administration to provide information (paragraph 6 of minutes)</p> <p>Administration to provide information (paragraph 6 of minutes)</p> <p>Administration to provide information (paragraph 6 of minutes)</p>
005053 – 010937	Chairman Administration ALA5 Mr Andrew LEUNG	<ul style="list-style-type: none"> <li>- Administration's briefing on paragraphs 8 and 9 of LC Paper No. CB(1) 278/10-11(01), and on LC Paper No. CB(1)272/10-11(02)</li> <li>- ALA5's briefing on LC Paper No. CB(1)272/10-11(01)</li> <li>- Chairman's recapitulation of the details of LC Paper No. CB(1)339/10-11(01),</li> </ul>	



Time marker	Speaker	Subject(s)	Action required
		<p>and of her discussion with the Department of Justice and with the Legal Adviser of the Legislative Council on the use of examples in law drafting</p> <ul style="list-style-type: none"> <li>- Discussion on the appropriateness of using examples in law drafting, particularly in the Bill where the examples might become outdated as a result of technological developments, and that the Administration had already planned to undertake a publicity programme on the Bill to prepare the community for its introduction before its actual implementation</li> </ul>	<p>Administration to provide information (paragraph 6 of minutes)</p>
<b><i>Clause-by-clause examination of the Bill</i></b>			
010938 – 011254	Chairman Administration ALA5	<ul style="list-style-type: none"> <li>- Administration's briefing on clause 9</li> <li>- Discussion on clause 7, and the Administration's confirmation in response to ALA5 that any amendment to the amount of the fixed penalty specified in clause 7(1) would be made in the form of subsidiary legislation subject to the positive vetting procedure</li> </ul>	
011255 - 011345	Chairman Administration ALA5	<ul style="list-style-type: none"> <li>- Discussion on clause 8, and the Administration's confirmation in response to ALA5 that the penalty notice would be prescribed by subsidiary legislation subject to the negative vetting procedure (paragraph 9 of LC Paper No. CB(1)278/10-11(03))</li> </ul>	
011346 – 014727	Chairman Administration Mr LEUNG Yiu-chung ALA5 Dr PAN Pey-chyou Ms LI Fung-ying Ms Miriam LAU	<ul style="list-style-type: none"> <li>- Discussion on clause 9(1), in particular whether the person contravening clause 5 would be required to supply his or her personal details and produce his or her proof of identity and driving authority immediately</li> </ul>	

Time marker	Speaker	Subject(s)	Action required
		<ul style="list-style-type: none"> <li>- Administration's explanation in response to Dr PAN Pey-chyou that there was a need to require the driver concerned to supply his or her date of birth to determine whether his/her case should be heard at the juvenile court if the driver wished to dispute liability for a contravention of the idling prohibition (clause 9(1)(a))</li> <li>- Discussion on the definition of "driver", in particular the persons whom the Administration had in mind when including in the definition persons "assisting in the control of the vehicle", and on the suggestion of revising the definition by replacing "assisting in the control of" with "in the control of", and to clarify whether it was the policy intent of the Bill that a person on board looking after an idling vehicle while the driver was away would be prosecuted</li> <li>- Administration's confirmation in response to Dr PAN Pey-chyou that the idling prohibition would not apply to a driver who could not prevent the vehicle from idling because of a mechanical difficulty over which he had no control, or was carrying out any necessary maintenance or repair works on the vehicle (sections 1(b) and 8(b) of Schedule 1 to the Bill)</li> </ul>	<p>Administration to provide information (paragraph 6 of minutes)</p>
014728 – 014853	Chairman Administration Ms Miriam LAU	- Examination of clauses 9(2) and 10	
014854 – 015736	Chairman Administration Ms LI Fung-ying Ms Miriam LAU	- Discussion on clauses 11(1) and 11(2), in particular the need to clearly differentiate between "penalty notice" and "demand notice", and between their Chinese versions "罰款通知書"	Administration to provide information (paragraph 6 of minutes)

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
		and "繳款通知書 "(clauses 8(1) and 11(2))	
015737 – 020517	Chairman Administration Ms Miriam LAU Mr LEUNG Yiu-chung	- Discussion on clause 11(3), in particular the Chinese version of clause 11(3)(b)	Administration to provide information (paragraph 6 of minutes)
020518- 020712	Chairman Ms Miriam LAU Mr LEUNG Yiu-chung Mr IP Wai-ming Ms LI Fung-ying	- Date of next meeting - Discussion on the need to work out a meeting schedule	Clerk to take action (paragraph 7 of minutes)