

立法會
Legislative Council

LC Paper No. CB(1)944/10-11
(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 eleventh meeting held on
Friday, 12 November 2010, at 3:00 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 CHAN Kam-lam, SBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon LI Fung-ying, SBS, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
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
Dr Hon PAN Pey-chyou

Members absent : Hon LEUNG Yiu-chung
Hon IP Wai-ming, MH
Hon LEUNG Kwok-hung
Hon Tanya CHAN

Public officers attending : **Agenda item I**
Mr Carlson CHAN
Deputy Director of Environmental Protection (3)

Action

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
Senior Government Counsel
Department of Justice

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

Mr W S TANG
Senior Inspector of Police
(Law Revision and Projects)
(Traffic Branch Headquarters)
Hong Kong Police Force

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

Action

I Meeting with the Administration

(LC Paper No. CB(1)396/10-11 (01) - Administration's response to issues raised at the meeting on 5 November 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 5 November 2010 (LC Paper No. CB(1)396/10-11(01)). Regarding the Administration's proposed amendments to clause 6(1), Ms LI Fung-ying and Ms Miriam LAU opined that the exemption under clause 6 might be granted provided that the condition specified in clause 6(1)(a) was satisfied, i.e. the Director of Environmental Protection was satisfied that exceptional circumstances existed that made it impractical or unreasonable for compliance with the proposed ban by the driver concerned. They suggested deletion of the proposed new clause 6(1)(b) as they considered there was no need to further specify that the exemption might be granted if no undue environmental nuisances would be caused.

Definition of "driver"

3. Members noted that under clause 2(1), "driver" was defined to mean, in relation to a motor vehicle, any person who was in charge of, or assisting in the control of, the vehicle. Members asked what persons were referred to by the expression "assisting in the control of" and the reason for including the word "*assisting*".

4. The Administration explained that the definition of "driver" in the Bill was essentially the same as that in the Road Traffic Ordinance (Cap. 374) which had been in force for 30 years. The Administration further explained that it was necessary to include the word "*assisting*" so that the definition would cover staff, hired by transport operators (e.g. public light bus operators), who had the keys of the vehicles concerned and was authorized to board the vehicles parked at the stands to switch on the engines.

5. Some members further asked whether the definition as currently drafted would render a passenger on board an idling vehicle while the driver was away to be prosecuted. The Administration advised that, unless an enforcement agent saw with his own eyes that it was the

Action

passenger who had switched on the engine while the driver was away, the passenger on board an idling vehicle would not be prosecuted. When an enforcement agent found a stationary vehicle to continue idling for longer than the permitted grace period but that the driver was not on board, the enforcement agent would wait for the return of the driver for issuing a penalty notice to the driver.

Clause-by-clause examination of the Bill

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| (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)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) |

6. The Bills Committee completed scrutiny of clauses 11(4) to 24 of the Bill.

Follow-up actions required of the Administration

- Admin. 7. The Administration was requested to take the following actions to address concerns raised by members at the meeting –
- (a) Regarding the Administration's proposed amendments to clause 6(1), to review the need for clause 6(1)(b);
 - (b) To make reference to section 16A(1) of the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237) and revise the expression "personal attention" in clauses 14(2) and 15(1) to read "personal notice", and to revise "知悉" in the same clauses to read "本身知悉";
 - (c) To make reference to section 20(1) of Cap. 237 and improve the drafting of clause 19(3) to clarify the meaning of "at that time" and "at any later time";
 - (d) To improve the drafting of clauses 20 and 21 to clarify that

Action

the "costs ordered in the proceedings" in clause 20(2) were in fact the costs referred to in clause 21;

- (e) To consider revising "a person"/"the person" under the Bill (e.g. clause 21(2)) to read "the defendant", where appropriate, for consistency; and
- (f) To provide by the next meeting the Committee Stage amendments to effect the additional exemptions proposed by the Administration for members' consideration.

Date of next meeting

8. Members agreed that the next meeting would be held on Thursday, 25 November 2010, at 2:30 pm.

9. Members agreed on the meeting schedule tabled at the meeting.

(Post-meeting note: the meeting schedule was issued to members vide LC Paper No. CB(1)431/10-11.)

II Any other business

10. There being no other business, the meeting ended at 5:00 pm.

Council Business Division 1
Legislative Council Secretariat
31 December 2010

**Proceedings of the eleventh meeting of
the Bills Committee on Motor Vehicle Idling (Fixed Penalty) Bill
on Friday, 12 November 2010, at 3:00 pm
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Meeting with the Administration			
<i>Administration's briefing on LC Paper No CB(1)396/10-11(01)</i>			
000145 – 000220	Chairman	- Opening remarks	
000221 – 001655	Chairman Administration Ms LI Fung-ying Mr WONG Kwok-hing	<ul style="list-style-type: none"> - Administration's briefing on paragraphs 1 and 2 of LC Paper No CB(1)396/10-11(01) - The Chairman's advice that the Administration had already prepared some Committee Stage amendments to the Bill - Discussion on the need for the proposed new clause 6(1)(b) to specify that in granting exemption under clause 6, the Director of Environmental Protection should be satisfied that the exemption would not cause undue environmental nuisance as this condition might give rise to disputes considering the unclear meaning of "undue" - Discussion on the need to issue official labels for posting on the windscreens of vehicles exempted under clause 6, so as to facilitate enforcement and enhance transparency 	
001656 – 001757	Chairman Administration	- Administration's briefing on paragraph 3 of LC Paper No CB(1)396/10-11(01)	
001758 – 001855	Chairman Administration	- Administration's briefing on paragraph 4 of LC Paper No CB(1)396/10-11(01)	
001856 – 003023	Chairman Administration Mr CHAN Kam-lam Mr Andrew LEUNG	<ul style="list-style-type: none"> - Administration's briefing on paragraphs 5 and 6 of LC Paper No CB(1)396/10-11(01) - Discussion on the definition of "driver", and on the need to ensure that sufficient publicity and public education efforts would be made to explain that the definition included the person "assisting in the control of" a vehicle - Discussion on the practicability of waiting for the return of the driver for issuing a 	

Time marker	Speaker	Subject(s)	Action required
		penalty notice to him if the enforcement agent did not find the driver inside the vehicle, and on how the Police handled vehicles left idling on the road for a long time without the driver	
003024 – 003211	Chairman Administration	- Administration's briefing on paragraphs 7 and 8 of LC Paper No CB(1)396/10-11(01)	
003212 – 003302	Chairman Administration	- Administration's briefing on paragraph 9 of LC Paper No CB(1)396/10-11(01)	
Clause-by-clause examination of the Bill			
003303 – 003549	Chairman Administration	- Examination of clauses 11(4), 11(5) and 12	
003550 – 004429	Chairman Administration Ms Miriam LAU Mr WONG Kwok-hing	<ul style="list-style-type: none"> - Administration's briefing on clause 13 - Administration's explanation in response to Ms LAU on the circumstances under which the magistrate would order payment of additional penalty and/or costs - Administration's explanation in response to Mr WONG on how payment of the above could be ensured, particularly in the case where the driver could not be located because of incorrect address (clause 25) 	
004430 – 005344	Chairman Administration Ms Miriam LAU Assistant Legal Adviser 5 (ALA5)	- Discussion on clause 14, in particular the appropriateness of the expression "personal attention" in clauses 14(2) and 15(1), and on whether there was a need to revise its Chinese version "知悉" to read "本身知悉"	Administration to provide information (paragraph 7 of minutes)
005345 – 010049	Chairman Administration Ms Miriam LAU	- Discussion on the inconsistency in the number of days given for payment of the fixed penalty, which was ten days in clause 15(3)(a), but 14 days in clause 13(2)(a)	
010050 – 010545	Chairman Administration	- Examination of clauses 16 to 18	
010546 – 011719	Chairman Administration ALA5 Ms Miriam LAU	- Administration's briefing on clause 19, in particular its response to ALA5's question(s) regarding the clause (paragraph 11 of LC Paper No. CB(1)278/10-11(03))	

Time marker	Speaker	Subject(s)	Action required
		<ul style="list-style-type: none"> - Discussion on the meaning of the phrases "at that time" and "at any later time" in clause 19(3) 	Administration to provide information (paragraph 7 of minutes)
011720 – 012018	Chairman Administration Ms LI Fung-ying	<ul style="list-style-type: none"> - Discussion on clauses 20 and 21 - Administration's confirmation in response to Ms LI that clause 20(1)(b) was modeled on relevant provision under Cap. 237 	
012019 – 014045	Chairman Administration Ms Miriam LAU	<ul style="list-style-type: none"> - Discussion on clause 21, particularly its inter-relationship with clause 20(2), the need for clause 20, and the difference between the additional penalty paid under clause 13 and that under clause 20 - Administration's agreement to review the drafting of clauses 20 and 21 - Administration's confirmation in response to the Chairman that the complainant in clause 21(1) referred to the Secretary for Justice, and that the payment of costs was made to the driver - Discussion on the need to consistently use the word "defendant" instead of sometimes using "the person" (as in the case of clause 18(4)) or "a person" (as in the case of clause 21(2)), lest this person might be mistaken as the complainant because "person" was also used to describe the person appointed to make a complaint (as in the case of clause 16(3)) 	<p>Administration to provide information (paragraph 7 of minutes)</p> <p>Administration to provide information (paragraph 7 of minutes)</p> <p>Administration to provide information (paragraph 7 of minutes)</p>
014046 – 014255	Chairman Administration ALA5	<ul style="list-style-type: none"> - Administration's briefing on clause 22, in particular its response to ALA5's question(s) regarding the clause (paragraphs 12 to 14 of LC Paper No. CB(1)278/10-11(03)) 	
014256 – 014437	Chairman Administration	<ul style="list-style-type: none"> - Discussion on clause 23, and the Administration's confirmation in response to the Chairman that the amount of the costs in clause 23(1)(c) might be amended in the form of subsidiary legislation subject to the positive vetting procedure 	
014438 – 015115	Chairman Administration	<ul style="list-style-type: none"> - Administration's briefing on clause 24, in particular its response to ALA5's 	

Time marker	Speaker	Subject(s)	Action required
	Ms LI Fung-ying	<p>question(s) regarding the clause (paragraphs 15 and 16 of LC Paper No. CB(1)278/10-11(03))</p> <ul style="list-style-type: none"> - Discussion on the appropriateness of using the expression " 看來 " in the Chinese version of clause 24(1), and the Administration's explanation that the expression was commonly used in provisions regarding evidence 	
015116 – 015620	Chairman Ms Miriam LAU Administration	<ul style="list-style-type: none"> - Discussion on clause 6 (LC Paper No CB(1)396/10-11(01)), and Ms LAU's view that the exemption there under might be granted where justified on exceptional grounds 	Administration to provide information (paragraph 7 of minutes)
015621 – 015907	Chairman Ms Miriam LAU Ms LI Fung-ying	<ul style="list-style-type: none"> - Date of next meeting - Discussion on the meeting schedule tabled at the meeting - Ms LI Fung-ying's view on the need to ensure that all Committee Stage amendments to effect the additional exemptions proposed by the Administration would be ready for consideration at the next meeting of the Bills Committee 	Administration to provide information (paragraph 7 of minutes)