

立法會
Legislative Council

LC Paper No. CB(1)558/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/9/09

Bills Committee on Road Traffic (Amendment) Bill 2010

Minutes of the fifth meeting
held on Thursday, 4 November 2010, at 4:30 pm
in Conference Room B of the Legislative Council Building

Members present : Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
Hon Andrew CHENG Kar-foo
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHAN Kin-por, JP
Hon WONG Sing-chi
Hon IP Wai-ming, MH

Member absent : Hon CHEUNG Hok-ming, GBS, JP

Public officers attending : Agenda Item II

Mr Alan CHU
Deputy Secretary for Transport and Housing
(Transport)3

Ms Irene HO
Assistant Secretary for Transport and Housing
(Transport)2C

Mr Eamonn MORAN
Law Draftsman
Department of Justice

Miss Elaine NG
Government Counsel
Department of Justice

Mr Steve VERRALLS
Chief Superintendent (Traffic)
Hong Kong Police Force

Ms Angela NG
Senior Superintendent (Administration) (Traffic)
Hong Kong Police Force

Mr WONG Yiu-ming
Superintendent (Law Revision and Projects)
(Traffic)
Hong Kong Police Force

Mrs Margaret CHAN
Principal Executive Officer/VALID and Licensing
Transport Department

Mr Harry CHAN
Chief Engineer/Road Safety and Standards
Transport Department

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Miss Winnie LO
Assistant Legal Advisor 7

Mr Joey LO
Council Secretary (1)3

Action

- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)243/10-11 -- Minutes of meeting held on
5 October 2010)

The minutes of the meeting held on 5 October 2010 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1)2390/09-10(07) -- List of follow-up actions arising from the discussion at the meeting on 21 June 2010

LC Paper No. CB(1)294/10-11(01) -- List of follow-up actions arising from the discussion at the meeting on 5 October 2010

LC Paper No. CB(1)294/10-11(02) -- Administration's response to issues raised at the meeting on 5 October 2010

Clause-by-clause examination of the Bill

LC Paper No. CB(3)648/09-10 -- The Bill

LC Paper No. CB(1)2081/09-10(01) -- Marked-up copy of the Bill prepared by the Legal Service Division

File Ref: THB(T)CR 3/14/3231/00 -- Legislative Council Brief on Road Traffic (Amendment) Bill 2010 issued by the Transport and Housing Bureau)

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Scrutiny of the Bill

3. The Bills Committee completed the scrutiny of the Chinese version of the Road Traffic (Amendment) Bill 2010 (the Bill). The Chairman requested the Legal Service Division of the Secretariat to examine the legal and drafting aspects of the English version of the Bill and to report irregularity, if any, to the Bills Committee.

- Admin 4. The Administration was requested to:
- (a) advise on the definition of "grievous bodily harm", with reference to court cases under the common law;
 - (b) provide information on the Government's prosecution policy on dangerous driving offences;
 - (c) consider whether the offence of dangerous driving causing grievous bodily harm (DDCGBH) could be limited to circumstances of drink driving and drug driving only;
 - (d) consider imposing a different imprisonment term under summary conviction for DDCGBH to tie in with the three-tier penalty system so as to reflect the difference in seriousness of the dangerous driving causing death (DDCD), DDCGBH and dangerous driving (DD) offences; and
 - (e) provide all proposed Committee Stage Amendments (CSAs) to the Bill for members' consideration.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper Nos. CB(1)399/10-11(02) and (03) on 10 November 2010.)

III. Any other business

5. Members agreed that the next meeting would be held on 11 November 2010 at 2:30 pm in Conference Room A of the Legislative Council Building.
6. There being no other business, the meeting ended at 5:50 pm.

Council Business Division 1
Legislative Council Secretariat
24 November 2010

**Proceedings of the fifth meeting of
Bills Committee on Road Traffic (Amendment) Bill 2010
on Thursday, 4 November 2010, at 4:30 pm
in Conference Room B of the Legislative Council Building**

| Time marker | Speaker | Subject(s) | Action required |
|--------------------|--|---|-----------------|
| 000000 – 000235 | Chairman | (a) Opening remarks by the Chairman (b) Confirmation of minutes of meeting held on 5 October 2010 (LC Paper No. CB(1)243/10-11) | |
| 000236 – 000618 | Chairman Administration | Briefing by the Administration LC Paper No. CB(1)294/10-11(02) on concerns raised by members on 5 October 2010. | |
| 000619 – 000838 | Chairman Mr CHAN Kin-por Administration Mr Ip Wai-ming | In response to Mr CHAN Kin-por's enquiry, the Administration advised that drivers taking drugs for medical reasons would unlikely be affected by the adoption of the zero tolerance approach. The Chairman and Mr Ip Wai-ming said that the transport trade fully supported the zero tolerance approach regardless of the level of concentration of the illicit drugs in the blood. | |
| 000839 – 001543 | Chairman Mr Andrew CHENG Administration | Mr Andrew CHENG urged the Administration to submit the legislative proposals on combating drug driving to LegCo in the first half of the current legislative session. The Administration emphasized that the drafting process would inevitably take some time as the concerns gathered from public consultation had to be addressed, in particular, the conduct of impairment test. The Administration aimed to submit the legislative proposals in the second half of the current legislative session. | |
| 001544 – 002014 | Chairman Administration | In response to the Chairman's enquiry, the Administration advised that the Police intended to train a team of trainers who would provide in-house training for frontline traffic police officers to conduct the preliminary tests. The Police were consulting overseas experts for advice and training in this respect. At the Chairman's request, the Administration would provide an estimate of the number or percentage of frontline police officers trained and ready to conduct preliminary tests for drug driving offences, and a timetable for completing the training of all frontline officers in this respect by the time the Administration introduced the Amendment Bill into LegCo in the second half of the current legislative session. | |

| Time marker | Speaker | Subject(s) | Action required |
|-----------------|--|---|---|
| 002015 – 003517 | Chairman Mr IP Wai-ming Administration | <p>Mr IP Wai-ming expressed concern about whether a consistent and fair prosecution policy on dangerous driving offences would be adopted by the Administration, especially with the introduction of the offence of DDCGBH. He enquired about the definition for the offence of DDCGBH.</p> <p>The Administration advised that it did not intend to provide a definition for DDCGBH in the Bill. Under the common law, "grievous bodily harm" meant "really serious bodily harm". It did not necessarily mean permanent or life-threatening injury, but included non-physical or psychiatric injury. There were numerous precedent cases involving "causing grievous bodily harm" which the court could make reference to.</p> <p>The Chairman reflected the deputation's concern that the introduction of the offence of DDCGBH under the Bill could have serious impact on professional drivers who did not drink or take drugs in their day-to-day work. Prior to its introduction, it was not uncommon for the Police to lay a charge of dangerous driving initially, and then substitute the charge with a lesser offence of careless driving. Professional drivers were worried that the prosecution would be less prone to accept a careless driving plea in future, as there was no such an offence as "careless driving causing grievous bodily harm". She enquired whether the offence of DDCGBH could be limited to circumstances of drink driving and drug driving only.</p> <p>The Administration advised that the existing proposal was made in response to calls received from public consultations for providing for a heavier penalty for a driver who caused grievous bodily harm by driving a motor vehicle dangerously in order to achieve a stronger deterrent effect. The penalty terms proposed for the offence of DDCGBH were to be set between dangerous driving and DDGD. There would still be a void in penalty terms if the new offence was limited to circumstances of drink driving and drug driving only. Since DDCGBH was a very serious offence, the Police would seek legal advice from the Department of Justice before laying the charge.</p> | Admin to follow up as stated in paragraph 4(a), (b) and (c) of the minutes. |
| 003518 – 004009 | Chairman Administration | <p>Clause-by-clause examination of the Bill (Chinese version)</p> <p><u>Clause 1 – Short title</u></p> <p>Members raised no query.</p> | |

| Time marker | Speaker | Subject(s) | Action required |
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| 004010 – 004020 | Chairman Administration | <p><u>Clause 2 – Interpretation</u></p> <p>Members raised no query.</p> | |
| 004021 – 004150 | Chairman Administration | <p><u>Clause 3 – Application of Ordinance to trams</u></p> <p>Members raised no query.</p> | |
| 004151 – 004200 | Chairman Administration | <p><u>Clause 4 – Application of Ordinance to village vehicles</u></p> <p>The Administration advised that it would propose a CSA to tidy up the numbering of the sub-sections.</p> <p>Members raised no query.</p> | |
| 004201 – 004209 | Chairman Administration | <p><u>Clause 5 – Regulation of public service vehicles</u></p> <p>Members raised no query.</p> | |
| 004210 – 004525 | Chairman Administration | <p><u>Clause 6 – Causing death by dangerous driving</u></p> <p>The Administration advised that it would propose a CSA to section 36(2E) to the effect that "a person commits an offence in circumstances of aggravation if at the time of committing the dangerous driving offence, any amount of a drug specified in Schedule 1A is present in the person's blood or urine."</p> <p>Members raised no query.</p> | |
| 004526 – 010250 | Chairman Administration Mr WONG Sing-chi Mr CHAN Kin-por Mr IP Wai-ming | <p><u>Clause 7 – Section 36A added – Causing grievous bodily harm by dangerous driving</u></p> <p>The Bills Committee pointed out that on summary conviction, the penalty for a driver convicted of DDCGBH was the same as that for a driver convicted of DDCD (i.e. a fine at level 4 and imprisonment for 2 years). Members suggested that the Administration should consider imposing different levels of penalties for DDCD and DDCGBH on summary conviction to tie in with the three-tier penalty system, so as to reflect the difference in seriousness of the offences.</p> <p>In response to the Chairman's enquiry, the Administration advised that the likelihood of a summary conviction of a charge of DDCGBH or DDCD was small.</p> <p>The Administration advised that it would propose a CSA to section 36A(7) to the effect that "a person commits an offence in circumstances of aggravation if at the time of</p> | Admin to follow up as stated in paragraph 4(d) of the minutes. |

| Time marker | Speaker | Subject(s) | Action required |
|--------------------|---|---|-----------------|
| | | committing the dangerous driving offence, any amount of a drug specified in Schedule 1A is present in the person's blood or urine." | |
| 010251 – 010348 | Chairman Administration | <p><u>Clause 8 – Dangerous driving</u></p> <p>The Administration advised that it would propose a CSA to section 37(2E) to the effect that "a person commits an offence in circumstances of aggravation if at the time of committing the dangerous driving offence, any amount of a drug specified in Schedule 1A is present in the person's blood or urine."</p> <p>Members raised no query.</p> | |
| 010349 – 010450 | Chairman Administration Mr WONG Sing-chi Mr IP Wai-ming | <p><u>Clause 9 – Driving a motor vehicle under the influence of drink or drugs</u></p> <p>The Administration advised that it would propose a CSA to improve the Chinese rendition of section 39(1).</p> <p>Members raised no query.</p> | |
| 010451 – 010535 | Chairman Administration Mr WONG Sing-chi Mr Jeffrey LAM | <p><u>Clause 10 – Driving, attempting to drive or being in charge of a motor vehicle with alcohol concentration above prescribed limit</u></p> <p>The Chairman enquired how the Administration would facilitate the public's understanding of the three-tier penalty system according to the blood alcohol concentration level, including its significance in terms of disqualification period. She opined that the slogan "If you drink, don't drive" had proven ineffective in combating drink driving. A new approach was called for.</p> <p>The Administration advised that it would step up publicity and education by the Police and in collaboration with the Road Safety Council to tie in with the new measures to further deter drink driving offences.</p> | |
| 010536 – 010543 | Chairman Administration | <p><u>Clause 11 – Screening breath tests</u></p> <p>Members raised no query.</p> | |
| 010544 – 011157 | Chairman Administration | <p><u>Clause 12 – Provision of specimens for analysis</u></p> <p>Members raised no query.</p> | |

| Time marker | Speaker | Subject(s) | Action required |
|--------------------|----------------------------|---|------------------------|
| 011158 – 011407 | Chairman Administration | <u>Clause 13 – Choice of specimens of breath</u> Members raised no query. | |
| 011408 – 011440 | Chairman Administration | <u>Clause 14 – Section 39H added – Amendment of tier 1, tier 2 or tier 3</u> The Administration advised that it would propose a CSA to add section 39I empowering the Secretary for Transport and Housing to amend the list of illicit drugs in Schedule 1A by way of subsidiary legislation through the negative vetting procedure. Members raised no query. | |
| 011441 – 011450 | Chairman Administration | <u>Clause 15 – Driving in excess of speed limit</u> Members raised no query. | |
| 011451 – 011500 | Chairman Administration | <u>Clause 16 – Restriction on motor racing and speed trials</u> Members raised no query. | |
| 011501 – 011508 | Chairman Administration | <u>Clause 17 – Notice of intention to prosecute for certain offences</u> Members raised no query. | |
| 011509 – 011609 | Chairman Administration | <u>Clause 18 – Section 69A added – start of disqualification period</u> The Administration advised that it would propose technical CSAs to define clearly the term "released from custody" in respect of the start of disqualification period. Members raised no query. | |
| 011610 – 011617 | Chairman Administration | <u>Clause 19 – Power of court or magistrate to order persons to attend driving improvement courses</u> Members raised no query. | |
| 011618 – 011640 | Chairman Administration | <u>Clause 20 – Application of Ordinance to private roads</u> Members raised no query. | |
| 011641 – 011648 | Chairman Administration | <u>Clause 21 – Defence</u> Members raised no query. | |

| Time marker | Speaker | Subject(s) | Action required |
|--------------------|----------------------------|---|------------------------|
| 011649 – 011740 | Chairman Administration | <u>Clause 22 – Offences specified for the purposes of section 72A</u> Members raised no query. | |
| 011741 – 011854 | Chairman Administration | <u>Clause 23 – Road Traffic (Driving-offence Points) Ordinance</u> Members raised no query. | |
| 011855 – 012001 | Chairman Mr IP Wai-ming | Meeting arrangement | |

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24 November 2010