

立法會
Legislative Council

LC Paper No. CB(1)2923/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/8/10

Bills Committee on Road Traffic (Amendment) Bill 2011

**Minutes of the first meeting held on
Tuesday, 21 June 2011, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
Dr Hon Philip WONG Yu-hong, GBS
Hon LAU Kong-wah, JP
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, SBS, JP
Hon KAM Nai-wai, MH
Hon CHAN Hak-kan
Dr Hon LEUNG Ka-lau
Hon WONG Sing-chi
Hon IP Wai-ming, MH
Hon Tanya CHAN

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

**Public Officers
attending** : **Agenda item II**

Mr YAU Shing-mu, JP
Under Secretary for Transport and Housing

Miss Erica NG
Deputy Secretary for Transport and Housing
(Transport) 3 (Acting)

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

Ms Nilmini DISSANAYAKE
Deputy Principal Government Counsel
Department of Justice

Miss Karmen KWOK
Government Counsel
Department of Justice

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

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

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

Dr Teresa LI
Principal Medical Officer (5)
Department of Health

Mr Lot CHAN
Senior Pharmacist (Pharmaceutical Service) 5
Department of Health

Dr CHENG Wing-chi
Senior Chemist
(Forensic Toxicology A Section)
Government Laboratory

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

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

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Ms Sarah YUEN
Senior Council Secretary (1)2

Ms Emily LIU
Legislative Assistant (1)2

Action

I Election of Chairman

Ms Miriam LAU was elected Chairman of the Bills Committee.

2. The Bills Committee agreed that there was no need to elect a Deputy Chairman.

3. The Chairman invited members to consider the late application for membership from Mr LAU Kong-wah. Members agreed to accept the application.

II Meeting with the Administration

(LC Paper No. CB(3)746/10-11 - The Bill

File Ref: THB(T)CR4/14/3231/00 - The Legislative Council Brief issued by the Transport and Housing Bureau

LC Paper No. LS 67/10-11 - Legal Service Division Report on the Bill

LC Paper No. CB(1)2512/10-11(01) - Background brief on Road Traffic (Amendment) Bill 2011 prepared by the Legislative Council Secretariat

LC Paper No. CB(1)2512/10-11(02) - Marked-up copy of the Bill prepared by the Legal Service Division)

4. The Bills Committee deliberated (index of proceedings attached at

Annex).

5. The Administration briefed members on the Road Traffic (Amendment) Bill 2011 (the Bill).

Legislative timetable

6. Members noted that if it was intended to resume the Second Reading debate on the Bill at the Council meeting on 13 July 2011, the Bills Committee would need to report its work to the House Committee on 24 June 2011, and the deadline for giving notice to move Committee Stage amendments (if any) would be 4 July 2011. Members also noted that the Administration would need to take about two to three months' time to make logistical arrangements (e.g. providing required training to police officers, implementing necessary alteration works at police stations, procuring video recorders for conduct of the Impairment Test (IT), and acquiring additional equipment for the Government Laboratory, etc.) in preparation for implementation of the Bill. Therefore, even if the Bill could be enacted before the end of the current session, it would not come into operation immediately afterwards. While members in general agreed that there was a need for early enactment of the Bill to combat drug driving, members considered that the Bill should be carefully scrutinized and the target was to resume the Second Reading debate in October/November 2011 in order to allow more time for the scrutiny work. In the meantime, the Administration was requested to expedite its logistical arrangements in order that the Bill could come into operation as soon as possible after its enactment.

Discussion on the Bill

7. Members expressed the following major views and concerns about the Bill at the meeting –

- (a) there was a need to ensure that all drug tests would be properly conducted, and that a defence should be provided, where appropriate, to ensure that drivers would not be inadvertently caught drug driving, especially as repeat drug driving offenders might be disqualified from driving for life;
- (b) the proposal that at the request of a police officer, a medical practitioner might take blood from a suspected drink or drug driver if the medical practitioner thought fit, even if a suspected drink or drug driver was incapable of giving consent, might be controversial;

Action

- (c) sections 36 and 39J, which introduced the factors that the court might consider when making a life disqualification order, might have legal implications that required careful consideration; and
- (d) it might be inappropriate for a police officer to identify drivers suspected of driving under the influence of a drug for conduct of preliminary drug tests solely based on the police officer's subjective observation.

8. Members also reviewed the progress in searching for a Rapid Oral Fluid Test (ROFT) device suitable for use in Hong Kong. Members stressed the need to have reliable ROFT devices to enable the Police to conduct random drug tests as soon as the Bill took effect.

Admin 9. To facilitate further discussion on the Bill, the Administration was requested to take the following actions –

- (a) To provide a comparison table of the penalties (including fine levels, imprisonment periods, Driving-offence Points to be incurred, any need to attend mandatory driving improvement course and disqualification periods) for the proposed "zero-tolerance offence" and "general drug driving offence", the offence to drive under the influence of drugs under the existing section 39 of the Road Traffic Ordinance (RTO) (Cap. 374), as well as those for drink driving offences;
- (b) To address a member's concern about providing "both a minimum and a maximum penalty" in sections 36 and 39J in the Bill, by providing further information such as any precedents of similar drafting practices and the rationale behind this drafting approach; and
- (c) To arrange for a video presentation of the conduct of IT at the next meeting.

III Any other business

Meeting dates

10. The Bills Committee agreed that the next meeting would be held on

Action

5 July 2011 at 10:45 am to continue discussion on the Bill with the Administration. The Bills Committee also agreed that a meeting would be held on 12 July 2011 at 8:30 am to receive public views.

Invitation of public views

- Clerk
11. Members agreed to invite the public to give views on the Bill, and to post a notice on invitation of public views on the Legislative Council website.
 12. There being no other business, the meeting ended at 6:10 pm.

Council Business Division 1
Legislative Council Secretariat
23 August 2011

**Proceedings of the first meeting of
the Bills Committee on Road Traffic (Amendment) Bill 2011
on Tuesday, 21 June 2011, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Election of Chairman			
000201 - 000339	Dr Philip WONG Ms LI Fung-ying Mr IP Wai-ming Ms Miriam LAU	- Election of Chairman - Handling of Mr LAU Kong-wah's late membership application	
Agenda Item II – Meeting with the Administration			
000340 - 001837	Chairman Administration	- Briefing by the Administration on the Bill	
001838 - 001920	Chairman Administration	- Administration's clarification in response to the Chairman that apart from the offence of refusing to undergo Drug Influence Recognition Observation (DIRO), a person who was convicted of any other drug driving offences under the Bill would incur 10 Driving-offence Points	
001921 - 002927	Chairman Administration Clerk Mr KAM Nai-wai Mr WONG Sing-chi	- Discussion on the legislative timetable and the progress in searching for a reliable ROFT device suitable for use in Hong Kong	
002928 - 003736	Chairman Ms LI Fung-ying Administration	- Discussion on how to differentiate between driving after taking any 'specified illicit drug' and driving under the influence of common over-the-counter drugs, in particular cough syrup and Chinese prescription medicines, the side effects of which might be unclear to the driver concerned, and on the availability of defence for the driver in the latter case - Discussion on the circumstances under which a driver would be	

Action

Time marker	Speaker	Subject(s)	Action required
		<p>required to provide blood or other body fluid specimens for drug analysis</p> <ul style="list-style-type: none"> - Administration's confirmation in response to Ms LI that the meaning of "被停牌" and "被取消駕駛資格" both equated to "disqualified from driving" in English 	
003737 - 004317	Chairman Mr KAM Nai-wai Administration	<ul style="list-style-type: none"> - Discussion on how drivers could differentiate between police officers trained to conduct preliminary drug tests and those who were not - Administration's advice in response to Mr KAM that initially the Police would train up some 100 police officers to conduct DIRO, 20 officers to conduct IT and 20 instructors, and that in due course all frontline traffic police officers would be trained to conduct DIRO - Administration's explanation in response to Mr KAM of the procedures followed in taking blood specimens for drug analysis - Administration's confirmation in response to the Chairman that it would be an offence for a driver to refuse to provide the required specimens for laboratory analysis - Administration's explanation of the penalties for the proposed "zero-tolerance offence" and "general drug driving offence", as well as those for drink driving offences 	Administration to take follow-up action as requested in paragraph 9
004318 - 005104	Chairman Dr LEUNG Ka-lau Administration	<ul style="list-style-type: none"> - Administration's elaboration in response to Dr LEUNG of the details of DIRO and IT, and of the need to conduct these tests before 	

Action

Time marker	Speaker	Subject(s)	Action required
		<p>taking blood specimens from a driver for drug analysis, namely, that to substantiate the "general drug driving offence", there was a need to prove that the driver's ability to drive properly had been impaired because of the taking of drugs</p> <ul style="list-style-type: none"> - Discussion on the accuracy of the preliminary drug tests 	
005105 - 005825	Chairman Mr IP Wai-ming Administration	<ul style="list-style-type: none"> - Discussion on the rationale for providing in the Bill that the court might make an order disqualifying a repeat drug driving offender from holding or obtaining a driving licence for life - Discussion on the differences between the proposed "general drug driving offence" and the offence of driving under the influence of drugs under the existing section 39 of RTO (Appendix to LC Paper No. LS67/10-11) 	Administration to take follow-up action as requested in paragraph 9
005826 - 010641	Chairman Mr Andrew CHENG Administration	<ul style="list-style-type: none"> - Mr CHENG's view that the Administration should make as much preparation work for implementation of the Bill as practicable pending completion of its scrutiny by the Bills Committee - Discussion on the need to expedite the progress in searching for reliable ROFT devices to enable the Police to conduct random drug tests as soon as the Bill took effect - Discussion on the appropriateness of the proposal that a medical practitioner might, at the request of a police officer, if the medical practitioner thought fit, take blood from a suspected drink or drug 	

Action

Time marker	Speaker	Subject(s)	Action required
		<p>driver even if he or she was incapable of giving consent.</p> <ul style="list-style-type: none"> - Administration's emphasis of the need to plug the loophole that at present, when a driver was unconscious, the Police did not have the power to take body fluids from him, so that if the driver remained unconscious sufficiently long, the traces of alcohol or drug in his body might have disappeared. Moreover, the driver might fake unconsciousness 	
010642 - 011311	Chairman Miss Tanya CHAN Administration	<ul style="list-style-type: none"> - Discussion on the justification and implications of including a provision in the Bill to prescribe both the maximum and the minimum disqualification periods for a drug driving offence 	
011312-011725	Chairman Dr LEUNG Ka-lau Administration	<ul style="list-style-type: none"> - Discussion on the need and feasibility of specifying for different drugs the respective drug concentration in a driver's blood or urine which would usually result in him being unable to drive properly, and the Administration's explanation that expert advice should be sought case by case instead because there were many kinds of drugs, and reactions to drugs varied among individuals 	
011726 - 012100	Chairman Dr Philip WONG Administration	<ul style="list-style-type: none"> - Discussion on whether there was a genuine need to take blood specimens for drug analysis, or that other tests could be conducted instead, and the Administration's explanation that DIRO and IT would already be conducted to ascertain the need to conduct blood tests, and the results of the IT and the blood test would normally form the major evidence in drug driving 	

Action

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		cases in leading overseas jurisdictions.	
012101 - 012558	Chairman Mr IP Wai-ming Administration	<ul style="list-style-type: none"> - Discussion on the need to conduct public hearings on the Bill in recognition of professional drivers' concern about being inadvertently caught drug driving, and to show the Bills Committee how IT would be conducted - Administration's clarification in response to the Chairman that, as a result of proposing a "zero-tolerance offence" and a "general drug driving offence" for drugs other than the specified illicit drugs under the Bill, the penalties for the latter offence had been aligned with tier 1, instead of tier 3 drink driving offence as was presently the case in driving under the influence of drugs under the existing section 39 of RTO 	Administration to take follow-up action as requested in paragraph 9
012559 - 013142	Chairman Ms LI Fung-ying Administration	<ul style="list-style-type: none"> - Discussion on the availability of defence for driving under the influence of common over-the-counter drugs, the side effects of which were unclear to the driver concerned, and the Administration's explanation that existing drug labelling requirements and codes of practice for doctors and dentists had already provided that the side effects of drugs should be clearly explained to patients 	
013143 - 013848	Chairman Dr Philip WONG Administration	<ul style="list-style-type: none"> - Discussion on what would cause a police officer to suspect that a driver was driving under the influence of a drug and hence require him to undergo preliminary drug tests 	

Action

Time marker	Speaker	Subject(s)	Action required
		<ul style="list-style-type: none"> - Dr WONG's view on the need to specifically consult professional drivers on the Bill in recognition that their livelihood might be thus affected - The Chairman's view that the Bills Committee should invite public views on the Bill 	
013849 - 014010	Chairman Miss Tanya CHAN Administration	<ul style="list-style-type: none"> - Administration's confirmation in response to Miss CHAN that the training manual and guidelines for police officers conducting preliminary drug tests would cover the arrangement that, if the police officer, after DIRO, was of the opinion that a driver was not under the influence of drug, or no specified illicit drug was detected after a ROFT, the driver would be released 	
014011- 014123	Chairman	<ul style="list-style-type: none"> - Discussion on the meeting dates - Discussion on how to invite public views 	