

立法會

Legislative Council

LC Paper No. CB(1)3054/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/8/10

Bills Committee on Road Traffic (Amendment) Bill 2011

**Minutes of the second meeting held on
Tuesday, 5 July 2011, at 10:45 am
in Conference Room A of the Legislative Council Building**

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

Members absent : Hon LAU Kong-wah, JP
Hon CHEUNG Hok-ming, GBS, JP
Dr Hon LEUNG Ka-lau

Public Officers attending : **Agenda item II**

Mr Patrick CHAN, JP
Deputy Secretary for Transport and Housing
(Transport) 3

Miss Erica NG
Principal Assistant Secretary for Transport and
Housing (Transport) 2

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

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

Action

I Meeting with the Administration

- | | | |
|----------------------------------|-----|---|
| LC Paper No. CB(1)2605/10-11(01) | No. | - Administration's response to issues raised at the meeting on 21 June 2011 |
| LC Paper No. CB(1)2605/10-11(02) | No. | - List of follow-up actions arising from the meeting on 21 June 2011 |
| 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. CB(1)2512/10-11(02) | No. | - Marked-up copy of the Bill prepared by the Legal Service Division |

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

2. The Administration briefed members on its response to issues raised at the last meeting on 21 June 2011 (LC Paper No. CB(1)2605/10-11(01)). Noting the proposal in the Bill that parameters be set for a court or magistrate to consider, on convicting a person under two specified very serious offences, ordering driving disqualification for life (the Proposal), some members expressed concern that the Proposal might have the implication that the absence of such a provision in other traffic legislation might deprive the court of its general power to order life disqualification where necessary. To address the above concern, the Chairman proposed that the Administration should consider adding a provision specifying that inclusion of the above parameters for the two very serious traffic offences in the Bill would be without prejudice to the power of the court to order life disqualification in other traffic offences where circumstances warranted.

3. The Administration advised that the court had never handed down the life driving disqualification penalty in the past, and that the Proposal had been made in response to public calls for more stringent penalties, especially in terms of driving disqualification, for very serious traffic offences, so that

Action

dangerous drivers would be kept off the roads.

4. Referring to the preliminary drug tests, Ms LI Fung-ying enquired about the circumstances under which a driver would be taken to the police station for conduct of the Impairment Test (IT), and on whether guidelines would be made available to prevent abuse. Apart from confirming that guidelines would be prepared for police officers, the Administration also assured members that reasonable suspicion would need to be established before drivers could be requested to undergo the IT. In this regard, the Drug Influence Recognition Observation would be an important safeguard. Mr Andrew CHENG added that to address concerns about abuse of power, reliable Rapid Oral Fluid Test (ROFT) devices should be developed to enable the Police to conduct random drug tests as soon as the Bill took effect.

Admin 5. To facilitate further discussion on the Bill, the Administration was requested to take the following actions –

- (a) To provide a copy of the guidelines to be prepared for police officers on how reasonable suspicion of drug driving would be established before the driver concerned was taken to the police station for conduct of the IT;
- (b) To ascertain if there had been cases where the prosecution failed in its attempt to request the court to disqualify the offenders convicted of dangerous driving from driving for life and if so, the reasons concerned;
- (c) To provide a paper to address concern about the legal implications of the Proposal as elaborated in paragraph 2 and to consider including in the Bill a "without prejudice" provision to address the concern;
- (d) To provide information on the jurisdictions which conducted the ROFT to detect drivers who had taken drugs, and the jurisdictions which conducted only the IT and any problems encountered in the latter case;
- (e) To provide information on the availability of ROFT devices in the market; and
- (f) To amend section 36 of the Road Traffic Ordinance (RTO) (Cap. 374) to incorporate proposed new sections 39J and 39K, so as to enable a person acquitted of the offence under section

Action

36(1) to be found guilty of the offences to be introduced by the two new sections if the magistrate so considered, and to go through RTO to make similar amendments as necessary to ensure consistency.

ALA The Assistant Legal Adviser was also requested to give views on how to address members' concerns in paragraph 5(c) above.

6. Members noted that the next meeting would be held on 12 July 2011 at 8:30 am to receive views from the public.

II. Any other business

7. There being no other business, the meeting ended at 11:45 am.

Council Business Division 1
Legislative Council Secretariat
4 October 2011

**Proceedings of the second meeting of
the Bills Committee on Road Traffic (Amendment) Bill 2011
on Tuesday, 5 July 2011, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Meeting with the Administration			
000309 - 000611	Chairman	- Opening remarks	
000611 - 001519	Chairman Administration	- Briefing by the Administration on its response to issues raised at the meeting on 21 June 2011 (LC Paper No. CB(1)2605/10-11(01)) - Video presentation of the IT	
001520 - 002509	Chairman Ms LI Fung-ying Administration	- Discussion on the need for and likely implications of the Proposal - Discussion on the circumstances under which a driver would be taken to the police station for conduct of the IT, and on whether guidelines in this regard would be made available to prevent abuse	Administration to take follow-up action as requested in paragraph 5
002510 - 003055	Chairman Mr IP Wai-ming Administration	- Discussion on whether the Proposal would deprive the court of its general power to order life disqualification where necessary, and the Administration's explanation that the Department of Justice could always apply, in an appropriate case, for an enhanced sentence - Discussion on the rationale for the Bill to specifically remind the court to consider ordering life driving disqualification for the offence of dangerous driving causing death (DDCD) where appropriate, and on whether sentencing guidelines should instead be provided to the court to address the relevant	Administration to take follow-up action as requested in paragraph 5

Action

Time marker	Speaker	Subject(s)	Action required
		<p>concerns of professional drivers, who had the impression that they were invariably charged with dangerous driving offences whenever they were involved in traffic accidents</p>	
003056 - 003212	<p>Chairman Dr Philip WONG Administration</p>	<ul style="list-style-type: none"> - Administration's confirmation in response to Dr WONG that repeated conviction was already a factor which the court considered when handing down penalties 	
003213 - 003821	<p>Chairman Mr KAM Nai-wai Administration</p>	<ul style="list-style-type: none"> - Mr KAM's strong view that the Bill should stipulate the ordering of life driving disqualification for a subsequent conviction of the DDCD offence, and the Administration's explanation that the Bill had already proposed that parameters be set for a court to consider, on convicting a person under the DDCD offence, ordering driving disqualification for life - Discussion on why the minimum driving disqualification period stipulated in the Bill for the offence of driving with any concentration of a specified illicit drug was shorter than the offence of driving under the influence of a specified illicit drug, and the Administration's explanation that the major consideration in this regard was the risks associated with the respective proposed offences - Enquiry about how the five tests under the IT would be conducted 	
003822 - 004807	<p>Chairman Mr IP Wai-ming Administration</p>	<ul style="list-style-type: none"> - Discussion on the implications of the Proposal, and the Chairman's suggestion that the Administration should consider including in the Bill a "without prejudice" provision 	<p>Administration and ALA to take follow-up action as requested in paragraph 5</p>

Action

Time marker	Speaker	Subject(s)	Action required
		<p>to address concerns about these implications</p> <ul style="list-style-type: none"> - Discussion on whether the offence of driving under the influence of a specified illicit drug should be grouped with the offence of driving with any concentration of a specified illicit drug and be subject to similarly heavy penalties, in consideration that these two offences both involved specified illicit drugs - Administration's explanation that the offence of driving under the influence of a specified illicit drug had been grouped with the offence of driving under the influence of any other drug because, where traffic legislation was concerned, the major consideration was the driving behaviour, i.e. whether a driver was driving under the influence of a drug to such an extent as to be incapable of having proper control of the motor vehicle concerned 	
004808 - 004956	Chairman Mr KAM Nai-wai Administration	<ul style="list-style-type: none"> - Discussion on the circumstances under which a person driving under the influence of drugs would be charged with the DDCD offence, and the Administration's explanation that the charge would be decided with reference to the advice of the Department of Justice and the circumstances of individual cases, in particular the evidence available, and that the driver concerned could be charged with both the drug driving offence and the DDCD offence 	
004957 - 005638	Chairman Mr Andrew CHENG	<ul style="list-style-type: none"> - Mr CHENG's indication of support for the Proposal, and statement that 	

Action

Time marker	Speaker	Subject(s)	Action required
	Administration	<p>he might propose CSAs to the Bill if upon closer examination of the penalties proposed therein he found them not heavy enough to have sufficient deterrent effect</p> <ul style="list-style-type: none"> - Discussion on the progress in searching for a reliable ROFT device suitable for use in Hong Kong to enable the Police to conduct random drug tests, and the Administration's emphasis of the need to ensure the device's reliability - Discussion on the appropriateness of conducting ROFT to detect only five out of the six specified illicit drugs proposed for the purpose of the 'zero-tolerance offence' pending availability of a reliable ROFT device to detect Ketamine, and the Administration's emphasis on the need to ensure the ROFT device could detect ketamine, the most common drug of abuse in drug driving cases in Hong Kong - Discussion on overseas experience in conducting ROFT, and on whether there were countries which conducted only the IT 	Administration to take follow-up action as requested in paragraph 5
005639 - 010157	Chairman Dr Philip WONG Administration Assistant Legal Adviser 10 (ALA10)	<ul style="list-style-type: none"> - Administration's explanation in response to Dr WONG that the holder of a driving licence issued by an overseas country could be disqualified from driving in Hong Kong only, and not in the country which issued the licence - Referral to section 36(10) of RTO, according to which a person acquitted of the offence under section 36(1) of RTO might be found guilty of one or more 	Administration to take follow-up action as requested in paragraph 5

Action

Time marker	Speaker	Subject(s)	Action required
		offences under other sections of RTO, and request of the Administration to amend section 36(10) of RTO as ALA10 proposed to incorporate RTO's proposed new sections 39J and 39K	
010158 - 010238	Chairman Ms LI Fung-ying	- Discussion on whether the Bills Committee should commence clause-by-clause examination of the Bill at this meeting	

Council Business Division 1
Legislative Council Secretariat
4 October 2011