

立法會
Legislative Council

LC Paper No. CB(1)2040/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/SS/7/11

**Subcommittee on Road Traffic (Impairment Test) Notice and
Road Traffic (Amendment) Ordinance 2011 (Commencement) Notice 2012**

**Minutes of the first meeting held on
Thursday, 19 January 2012, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Miriam LAU Kin-yee, GBS, JP (Chairman)
Hon Andrew CHENG Kar-foo
Hon CHAN Hak-kan
Hon Tanya CHAN

Members absent : Dr Hon Philip WONG Yu-hong, GBS
Hon CHEUNG Hok-ming, GBS, JP
Hon WONG Sing-chi

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

Mr KWONG Ka-yin
Assistant Secretary for Transport and Housing
(Transport) 2C

Mr Peter SZE
Government Counsel
Department of Justice

Mr LEUNG Tak-fai
Assistant Commissioner/Technical Services
Transport Department

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

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

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Mr Franco KWONG
Council Secretary (1)2

Ms Emily LIU
Legislative Assistant (1)2

Action

I Election of Chairman

Ms Miriam LAU was elected Chairman of the Subcommittee.

II Meeting with the Administration

(L.N. 1 of 2012

- Road Traffic (Impairment Test)
Notice

L.N. 2 of 2012

- Road Traffic (Amendment)
Ordinance 2011

File Ref.: (4) in LM 4/11 in CP/T - 230/84	(Commencement) Notice 2012 The Legislative Council Brief issued by the Hong Kong Police Force
LC Paper No. LS22/11-12	- Legal Service Division Report on subsidiary legislation gazetted on 6 January 2012
LC Paper No. CB(1)892/11-12	- Background brief prepared by the Legislative Council Secretariat)

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

3. With the aid of video presentation, the Administration briefed the Subcommittee on the conduct of the Impairment Test (IT). Regarding the circumstances under which a driver would be taken to a police station for conduct of IT, the Administration advised that a police officer might require a driver to undergo IT in the following circumstances -

- (a) the police officer suspected that the driver was driving under influence of a drug;
- (b) the driver was involved in a traffic accident; or
- (c) the driver had committed a moving traffic offence.

4. In response to members' concerns about the safeguards to be taken to prevent abuse of power by the Police, the Administration advised that the following safeguards would be adopted –

- (a) under normal circumstances, police officers would only conduct IT when they had a reasonable cause to suspect that a driver was influenced by drugs, based on the result of Drug Influence Recognition Observation (DIRO) or Rapid Oral Fluid Test (ROFT) (if available);
- (b) the preliminary tests including IT would only be deployed to screen out the drivers who were suspected of driving under the influence of a drug and hence should be required to undergo the next step of testing, i.e. provision of blood and/or urine specimens for detailed drug testing. A charge would only be laid if the presence of drugs was confirmed by the detailed

laboratory analysis that follows;

- (c) only police officers who were properly trained to conduct the preliminary drug tests and authorized by the Commissioner of Police would be tasked to conduct the preliminary drug tests. According to the Administration, the training provided to the officers was of a very high standard and delivered by experts from the United Kingdom (UK). The training syllabus followed closely that in the UK with adaptations to comply with local laws and operational requirements. The officers had to pass a test at the end of the training before they would be authorized perform IT;
- (d) if, after conducting DIRO or ROFT (if available), the police officer had established reasonable suspicion that the driver was under the influence of a drug, the driver would be brought back to a police station where he would be required to perform an IT by another officer who was usually more senior in rank than the former officer who conducted DIRO or ROFT (if available);
- (e) IT would be conducted in an IT suite in a police station and the whole process would be video recorded;
- (f) detailed procedures and special instructions would be drawn up and provided in the internal police procedures; and
- (g) in order to facilitate authorized police officers to form an objective opinion, IT would be conducted by using standardized procedural forms in a systematic manner. The procedural forms and the video recording of the whole IT process would form part of the evidence if the case was brought to the court. Both a copy of the video recording and the procedural forms would be made available to the accused to prepare for his defence.

5. In response to members' enquiry on whether ITs could be conducted at the roadside, the Administration made the following points -

- (a) while IT was usually conducted at the roadside in UK, IT was conducted in police stations in Australia;
- (b) consideration should be given to its privacy implications and the difficulty it might cause to video-recording;

Action

- (c) IT could produce more accurate results if conducted indoor. According to the Administration, the IT, particularly the Eye Examination which consisted of pupillary examination, would be more accurate if it was conducted in an indoor light-controlled environment; and
- (d) Whether ROFT could be conducted at the roadside would be determined when such device was available. A supplier had provided a prototype for testing and the Administration would continue to liaise with other suppliers to search for a suitable devices.

Admin 6. The Administration was requested to provide, the following information –

- (a) the publicity plan to publicize the new measures to combat drug driving under the new legislation, including the details of the broadcast of Announcements in the Public Interest on TV and radio; and
- (b) the publicity plan to publicize the information on IT.

7. The Subcommittee completed examination of the Road Traffic (Impairment Test) Notice and the Road Traffic (Amendment) Ordinance 2011 (Commencement) Notice 2012 (the two Notices).

Legislative timetable

8. The Subcommittee agreed to extend the scrutiny period of the two Notices to 29 February 2012. The Subcommittee Chairman would move a motion at the Council meeting on 1 February 2012 to extend the scrutiny period.

9. The Subcommittee noted that the Subcommittee would report to the House Committee on 17 February 2012 and the deadline for giving notice of amendments to the two Notices was 22 February 2012.

Date of next meeting

10. The Subcommittee agreed that no further meeting was required to be held.

Action

III Any other business

11. There being no other business, the meeting ended at 11:40 am.

Council Business Division 1
Legislative Council Secretariat
29 May 2012

**Proceedings of the first meeting of
Subcommittee on Road Traffic (Impairment Test) Notice and
Road Traffic (Amendment) Ordinance 2011 (Commencement) Notice 2012
on Thursday, 19 January 2012, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Election of Chairman			
000156 – 000500	Ms Miriam LAU Miss Tanya CHAN Mr CHAN Hak-kan	<p><u>Election of Chairman</u></p> <p>Ms Miriam LAU was elected Chairman of the Subcommittee.</p> <p><u>Discussion on the Legislative timetable</u></p> <p>The Subcommittee agreed to extend the scrutiny period to 29 February 2012.</p>	
Agenda Item II – Meeting with the Administration			
000501 – 001242	Chairman Administration	With the aid of video presentation, the Administration briefed the Subcommittee on the conduct of the Impairment Test (IT).	
001243 – 002220	Chairman Administration	<p>Chairman's enquiry on the circumstances under which a driver would be stopped and taken to the police station for conduct of IT.</p> <p>The Administration's response –</p> <p>(a) a police officer might require a driver to undergo IT in the following circumstances –</p> <ul style="list-style-type: none"> (i) the police officer suspected that the driver was driving under influence of a drug; (ii) the driver was involved in a traffic accident; or (iii) the driver had committed a moving traffic offence. <p>(b) the police officer would observe the driver's response in answering questions, his behaviour, etc. to form a view as to</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>whether the driver was under the influence of a drug, and whether an IT would be required; and</p> <p>(c) only police officers who were properly trained would be tasked to enforce drug driving duties.</p>	
002221 – 003232	Chairman Mr CHAN Hak-kan Administration	<p>Mr CHAN Hak-kan and Chairman's concerns –</p> <p>(a) if only a few police stations would set up the designated rooms for conduct of IT, the drivers concerned might need to go a long way to those police stations. Such delay in conduct of IT might affect the accuracy of test result; and</p> <p>(b) whether drivers suspected of drug driving but injured in traffic accidents would still be required to undertake IT before medical treatment.</p> <p>The Administration's response –</p> <p>(a) the Police planned to upgrade the existing identification parade rooms for conducting IT. Under its initial plan, a designated room for IT would be set up in 10 police stations (2 in each of the 5 police regions); and</p> <p>(b) IT would only be carried out on drivers who did not need immediate medical attention. In case the person suspected of drug driving was unconscious or was under the influence of a drug to an extent that he was incapable of performing an IT and of giving a valid consent to the taking of blood specimens, the Police were empowered to request a medical practitioner to take blood specimens from such a person while he was unconscious/incapacitated. The purpose was to preserve evidence because drugs would metabolize quickly in the body. When the person was</p>	

Time marker	Speaker	Subject(s)	Action required
		sober, the Police would seek consent from him to have the blood tested, which if refused would be an offence.	
003233 –	Chairman Administration	<p>Chairman's enquiry on the rationale for not conducting IT at the roadside.</p> <p>The Administration's response –</p> <p>(a) consideration should be given to its privacy implications and the difficulty it might cause to video-recording;</p> <p>(b) IT could produce more accurate results if conducted indoor; and</p> <p>(c) whether rapid oral fluid testing (ROFT) could be conducted at roadside would be determined when such device was available.</p> <p>Chairman's further enquiry on the public education and publicity on the implementation of IT.</p> <p>Discussion on the comprehensive publicity strategy to inform the public about the implementation of IT.</p> <p>At the Subcommittee's request, the Administration agreed to provide supplementary information on the relevant Announcements of Public Interest and leaflet.</p>	The Administration to provide information (para. 6 of the minutes)
004321 – 004538	Chairman Administration	Discussion on the progress made in searching for suitable ROFT devices.	
004539 – 004800	Chairman Mr CHAN Hak-kan	Discussion on the need to invite the public to give views on the Road Traffic (Impairment Test) Notice and the Road Traffic (Amendment) Ordinance 2011 (Commencement) Notice 2012 (the two Notices).	

Time marker	Speaker	Subject(s)	Action required
004801 – 005550	Chairman Administration ALA1	<p>The Subcommittee conducted examination of the two Notices.</p> <p>The Subcommittee noted that the Road Traffic (Impairment Test) Notice (L.N. 1) did not contain details of the practices and standards adopted for the five tests specified in the notice. The Subcommittee enquired whether such details should be provided in L.N.1 to enable verification of whether the tests had been properly conducted where necessary.</p> <p>The Administration explained that the five tests specified in L.N.1 were common components of IT adopted in overseas jurisdictions although their practices might vary. To make the law sufficiently clear, the nature or purpose of the five tests were already specified in L.N.1 so that the public would know what these tests were about. Furthermore, prior to the commencement of the new legislation, there would be a series of publicity activities on matters of public concern including how and where IT would be conducted.</p>	