

**President's ruling on Committee stage amendments
proposed by Hon Andrew CHENG to
the Road Traffic (Amendment) (No. 2) Bill 2011**

Hon Andrew CHENG has given notice to move Committee stage amendments ("CSAs") to the Road Traffic (Amendment) (No. 2) Bill 2011 ("the Bill"), if the motion for the Second Reading debate of the Bill is agreed to at the meeting of the Legislative Council ("LegCo") of 28 March 2012. In considering whether the CSAs are in order under the Rules of Procedure, I invited the Administration to comment on the CSAs and Mr CHENG to respond to the Administration's comments.

Object of the Bill

2. According to the Explanatory Memorandum of the Bill, the main object of the Bill seeks to amend the Road Traffic Ordinance (Cap. 374) ("RTO") and its subsidiary legislation, namely, the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg. A), the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B) and the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg. D), to introduce measures to improve the safety of operation of Public Light Buses ("PLBs"). The measures are:

- (a) imposing a cap on the maximum speed at which a PLB may travel;
- (b) requiring every PLB to be fitted with a speed limiter;
- (c) requiring every PLB which is of a description to be specified by the Secretary for Transport and Housing to be fitted with an electronic data recording device ("EDRD");
- (d) making the attendance and completion of a pre-service course for drivers of public service vehicles a condition for the issue of a full driving licence to drive a PLB; and

- (e) requiring every PLB driver to display a driver identity plate in the PLB when it is in passenger service.

3. Non-compliance with the above new requirements is an offence under the Bill. The Bill also makes certain related and miscellaneous amendments to RTO and its subsidiary legislation.

Hon Andrew CHENG's CSAs

4. Counsel to the Legislature advises that Hon Andrew CHENG's CSAs seek to amend –

- (a) Clause 12 of the Bill, which adds, among others, the proposed regulation 24C(2) of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg. A), to the effect that PLBs specified in Part 1 to Schedule 18 to Cap. 374 sub. leg. A must be fitted with an approved EDRD before making an application for registration, and PLBs specified in Parts 2 and 3 of the same Schedule must be fitted with approved EDRDs before 1 July 2014 and 1 July 2017 respectively; and
- (b) Clause 15 of the Bill, which adds, among others, the proposed Schedule 18 to Cap. 374 sub. leg. A, an empty schedule without any provision of substance, to the effect that the following three classes of descriptions of PLBs are specified respectively in the proposed Part 1, Part, 2 and Part 3 of the Schedule:
 - (i) Part 1 - PLBs of which the applications for registration are made on or after 1 July 2013;
 - (ii) Part 2 - PLBs of certain models of PLBs made by two specified manufacturers of which the applications for registration being made before 1 July 2013; and
 - (iii) Part 3 - all registered public light buses other than those specified in Parts 1 and 2.

The effect of Hon Andrew CHENG's CSAs is to mandate all new and

existing PLBs, which are of the respective descriptions specified in Part 1 to Part 3 of Schedule 18 to Cap. 374 sub. leg. A, to be fitted with an approved EDRD by three phases, beginning respectively from 1 July 2013, 1 July 2014 and 1 July 2017.

The Administration's comments

5. The Administration is of the view that the implementation of Hon Andrew CHENG's CSAs will have a charging effect within the meaning of Rule 57(6)¹ of the Rules of Procedure. The Administration explains that the Bill proposes, among other things, that new PLBs are to be fitted with an approved EDRD as a basic equipment. An EDRD is an approved EDRD if it conforms to the requirements set out in Schedule 19 of the Bill, has been examined to the satisfaction of the Commissioner for Transport ("C for T"), and bears an approval mark recognized or assigned by C for T. A fitted EDRD must be sealed by C for T or a person authorized by C for T in writing. To allow EDRD suppliers to have sufficient lead time to complete the design, testing and production of EDRDs for new PLBs, it is the Administration's intention that newly registered PLBs will be required to be fitted with an approved EDRD within 12 months after enactment of the Bill. The Administration estimates, based on past statistics, that there will be about 100 to 200 new PLBs applying for registration annually. In this connection, the Transport Department ("TD") has already obtained additional resources to create one additional Motor Vehicle Examiner II post and one additional Vehicle Tester post for the additional work associated with the new PLB safety measures, including mandatory installation of EDRDs on new PLBs.

6. The Administration submits that if Hon Andrew CHENG's CSAs are to be implemented, EDRDs would have to be fitted to all existing PLBs in accordance with a specified time table, and there are 4 350 PLBs which are of 17 different models manufactured in different years over the past two decades. The Administration further submits that as PLBs of different models and manufacture dates have different specifications regarding sensors and signal transmission, such as voltage, pulse, signal

¹ Rule 57(6) of the Rules of Procedure provides that an amendment, the object or effect of which may, in the opinion of the President or Chairman, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong shall be proposed only by the Chief Executive; or a designated public officer; or a Member, if the Chief Executive consents in writing to the proposal.

generation method and means, etc., the actual installation solutions and anti-tampering measures would need to be considered individually for each and every combination of PLB and EDRD specifications. Significant time and effort would be required to verify and test the different installation solutions and anti-tampering measures before the feasibility and cost of installing the entire PLB fleet could be ascertained.

7. The Administration considers that to implement Mr CHENG's CSAs, additional posts need to be created to cope with the additional duties arising from the new statutory timetable for fitting EDRDs to all existing PLBs which are beyond TD's current duties and functions, as well as those arising from the Administration's original proposal. These additional duties include processing applications from EDRD suppliers to approve their products for installation onto different PLB models, after the suppliers have done the developmental work and tested their products on the existing PLBs. The Administration explains that the number of type-approval applications is uncertain at this stage, but according to past experience gained from the mandatory installation of speed limiter on PLBs, the number of applications may be more than 10. There is also a need to carry out anti-tampering monitoring and enforcement actions, provide technical support, and to resolve technical problems arising from installation of EDRD on existing PLBs.

8. The Administration estimates that the total costs of implementing the CSAs will amount to \$1.257 million annually for three additional officers comprising one Motor Vehicle Examiner I (annual staff cost: \$0.684 million)², one Vehicle Tester (annual staff cost: \$0.215 million)³ and one Transport Officer II (annual staff cost: \$0.358 million)⁴.

Hon Andrew CHENG's response

9. Hon Andrew CHENG does not agree that his CSAs would have a charging effect. Mr CHENG points out that the Administration has

² The additional officer is for handling the type-approval applications, anti-tampering monitoring and enforcement work as well as to provide technical support mentioned in paragraph 7(a) above and to supervise the first-time and subsequent inspections and sealing works mentioned in paragraph 7(b) and (c) above.

³ The additional officer is for carrying out the additional work to be carried out during the normal annual examinations.

⁴ The additional officer is needed to help implement and monitor the retrofitting proposals, to maintain liaison with the PLB trades and to manage their sentiment and reactions.

earlier explained to the Bills Committee⁵ formed to scrutinize the Bill that the Administration's intention is that all PLBs will be fitted with approved EDRDs eventually. Mr CHENG considers that this is clearly different from the Administration's current argument that its proposal is to require new PLBs to be fitted with EDRDs and also in contradiction to the legislative intent of the Bill which is to require every PLB to be fitted with an EDRD.

10. Mr CHENG submits that as it is the legislative intent for all PLBs to eventually be fitted with approved EDRDs, it is this proposal in the Bill which has a charging effect and not his CSAs.

My opinion

11. A clear principle has been established in past rulings that a CSA will have a charging effect within the meaning of Rule 57(6) of the Rules of Procedure only if it imposes a new and distinct function on the Administration, i.e. a statutory function which is not provided in the existing law, and the President is satisfied that the performance of the new and distinct function will require the spending of an amount of public money that is not nominal or negligible.

12. Counsel to the Legislature advises me that under Clause 12 of the Bill, the proposed regulation 24C(1) and (2) of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg. A) stipulates that:

- (a) this regulation applies to a PLB which is of a description specified in Schedule 18; and
- (b) every PLB to which this regulation applies must be fitted with an approved EDRD that has been installed by an authorized EDRD installer.

And by virtue of Clause 1(2) of the Bill, the proposed regulation 24C of Cap. 374. sub. leg. A comes into operation on the day on which the enacted Ordinance is published in the Gazette.

13. Counsel to the Legislature advises me that no description of PLB is

⁵ Bills Committee on Road Traffic (Amendment) (No. 2) Bill 2011.

specified in the proposed Schedule 18 to Cap. 374 sub. leg. A under Clause 15 of the Bill. It is a blank schedule, yet to be given some content by legislation, through enactment of a bill or regulation made under section 9(1) of Cap. 374. The legal effect of the proposed regulation 24C(1) and (2) with a Schedule 18 which is empty is that no PLB of any description would be required to have an approved EDRD fitted on it. If the Bill is passed without an amendment to have the proposed Schedule 18 filled with PLB descriptions, C for T would not have a duty to perform the statutory functions relating to the proposed regulation 24C(1) and (2).

14. Counsel to the Legislature advises that Hon Andrew CHENG's CSAs would have the effect of mandating the installation of EDRDs on various types of PLBs before the specified dates with the consequence of requiring C for T to perform the functions of monitoring the construction, installation and operation of approved EDRDs as provided in the proposed 24C of and Schedule 19 to Cap. 374 sub. leg. A. The practical effect would be to bring forward the time for the implementation of the proposed scheme of mandating the installation of EDRDs on PLBs, and therefore the associated public expenditure. Counsel also notes that the functions relating to the proposed regulation 24C of Cap. 374 sub. leg. A are not covered by existing provisions in RTO or its subsidiary legislation.

15. I also note from the LegCo Brief on the Bill that the Administration expects that the new requirement may be applied to newly registered PLBs within 12 months after enactment of the Bill so as to allow EDRD suppliers to have sufficient lead time to complete the design, testing and production of EDRD for new PLBs, and that depending on the outcome and cost-effectiveness of installing the device on newly registered PLBs, further consideration may, in due course, be given to fitting an EDRD to existing PLBs, subject to technical feasibility and availability of suitable models for installation⁶. The Administration clearly does not have a timetable or solid plan for mandating all existing PLBs to install EDRDs in future. It estimates that the total costs of implementing Hon Andrew CHENG's CSAs will amount to \$1.257 million annually as explained in paragraph 8 above.

16. In light of Counsel's advice in paragraph 12 to 14 above, and the amount of \$1.257 million additional public expenditure that has to be incurred annually, I would accept the Administration's contention that Hon Andrew CHENG's CSA would have a charging effect.

⁶ Paragraph 6 of the LegCo Brief on Road Traffic (Amendment) (No. 2) Bill 2011.

My ruling

17. I rule that the CSAs proposed by Hon Andrew CHENG have a charging effect within the meaning of Rule 57(6) of the Rules of Procedure and require the consent in writing of the Chief Executive for them to be moved.

(Jasper TSANG Yok-sing)
President
Legislative Council

26 March 2012