

立法會
Legislative Council

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**Paper for the House Committee meeting
on 12 March 1999**

**Report of the Bills Committee on
Road Traffic (Amendment) Bill 1998**

Purpose

This paper reports on the deliberations of the Bills Committee on Road Traffic (Amendment) Bill 1998 (the Bill).

The Bill

2. The Bill amends the Road Traffic Ordinance (Cap. 374) (the Ordinance) so as to:

- (a) tighten the statutory limit for alcohol concentration and streamline the procedures in enforcing the controls on drink driving;
- (b) place private school light buses under the Passenger Service Licence Scheme; and
- (c) rectify the existing payment arrangements to operators of parking meters and the New Kowloon Bay Vehicle Examination Centre.

The proposals in (a) and (b) will come into effect on 1 May 1999, and that in (c) will be effective when the Bill is enacted.

The Bills Committee

3. Members agreed at the House Committee meeting on 4 December 1998 to form a Bills Committee to study the Bill. The Bills Committee, under the chairmanship of Hon Mrs Miriam LAU Kin-ye, has held four meetings with the Administration. The membership list of the Bills Committee is at **Appendix I**.

4. The Bills Committee has received submissions from the Private Hire Car For Young Children Association Limited, the Young Children School Mini-Buses Operators Association(Ltd.), and a Mr Ir Edgar C P KWAN. The Bills Committee has also taken note of correspondences between the Administration and the Law Society of Hong Kong on the Bill.

Deliberations of the Bills Committee

5. During the detailed study of the Bill, the Bills Committee has taken into account all the views received. The main deliberations of the Bills Committee are set out in the following paragraphs.

(a) Drink Driving

6. A new set of drink driving legislation was introduced in 1995 to prescribe a legal limit of alcohol concentration in a driver's blood, urine and breath, and to impose a legal obligation on drivers to provide samples of blood, urine or breath for testing under specified circumstances. The Bill seeks to tighten the prescribed alcohol concentration limits by lowering the legal limits of alcohol concentration in a driver's blood, urine and breath, and to streamline the drink driving testing procedures.

Prescribed limits

7. The current and the proposed alcohol concentration limits are set out below:

	Current prescribed limits of permitted alcohol content	Proposed prescribed limits of permitted alcohol content
In blood	80 mg/100ml	50 mg/100ml
In breath	35 ug/100ml	22 ug/100ml
In urine	107 mg/100ml	67 mg/100ml

8. While members of the Bills Committee do not dispute the importance of road safety, they have asked the Administration for the justifications, the international practices and trend, and overseas researches to facilitate consideration of the proposal.

9. As far as justifications are concerned, the Administration has explained that drink driving remains one of the main contributory factors to road accidents. Three out of every 10 drivers killed in traffic accidents in 1997 had consumed alcohol; of the 39 drivers killed in accidents involving drink driving between 1996 and October 1998, seven were found to have consumed alcohol with the Blood Alcohol Concentration (BAC) level of between 50 mg and 80 mg. Drunken drivers also pose serious threats to pedestrians and passengers: between 15 December 1995 and 30 June 1998, six non-drinking drivers, 19 passengers and 13 pedestrians were killed in accidents involving drink driving. The results of screening tests for drivers involved in traffic accidents conducted by the Police during the same period showed that more than half of the 3 499 drivers who have consumed alcohol were above the legal limit of 80mg/100ml of blood limit. The Police, therefore, consider that further tightening of the prescribed limits will reinforce the message for drinking and driving to be separated and promote greater awareness of road safety.

10. The Administration has added that although some Members of the former Legislative Council had suggested adopting 50 mg as the permissible limit when the drink driving legislation was introduced in 1995, the general view was that this might be too drastic as a start. A subsequent review conducted by the Administration with reference to overseas researches reveals that with a lower BAC limit, drivers would be more inclined to keep a mental account of the number of drinks consumed and thereby stay within the limit. The Administration has stressed that the proposal is not intended to ban casual or social alcohol consumption, and that those who want to drink can still make use of public transport services.

11. While the Administration advises that a tightening of the limit from 80 mg to 50 mg could have caught an additional 15% of drivers found to have exceeded the existing limit of 80 mg during screening tests after accidents, it has acknowledged that the problem of drink driving is not deteriorating. Night-time accidents resulting in fatalities and serious injuries has reduced by 7% over a two year period since introduction of the drink driving legislation in 1995, and the percentage of alcohol-related accidents out of the total number of all-day accidents is relatively small, i.e., only 3.7% in 1997. The Administration has, nevertheless, emphasized the importance of preventive rather than remedial measures.

International practices and researches

12. The BAC limit adopted by most countries overseas, according to the Administration, is either 50 mg or 80 mg while Sweden adopts a limit of 20 mg. The penalties on drink driving range from disqualification for holding or applying for a licence for a period between one month and 10 years and/or imprisonment ranging between three months and five years. The Administration has advised that the world-wide trend is towards tightening such limits as one way of separating drinking from driving.

13. In support of its proposal, the Administration has quoted the views of the medical profession and information from overseas researches. The Hong Kong Medical Association expressed strong support in 1995 for setting the legal limit at 50 mg, since a 50 mg concentration level would already begin to affect a driver's ability to identify risk, while 80 mg would likely impair significantly the driver's ability to drive. To reinforce this point, a Consultant Forensic Pathologist from the Department of Health was invited by the Administration to a meeting of the Bills Committee to demonstrate the effect of alcohol on drivers. The Administration also adds that the 50 mg standard is supported by the World Medical Association and the European Commission.

14. On overseas researches, the Administration has advised that researches conducted by overseas institutes vindicate the view that a tightening of BAC limit from 80 mg to 50 mg would lead to a reduction of fatalities and casualties. According to these researches, a tightening of BAC limit from 80 mg to 50 mg in France, Belgium and Germany has resulted in a reduction of alcohol related accidents of between 4% to 50%.

15. Members of the Bills Committee have divided views on the proposal. Those who are in support agree with the Administration that a tightening of the BAC limit would help to moderate the drinking behaviour of drivers and enhance road safety. As the effect of drink driving is not only on drivers but also on other road users, its deterrence would be beneficial to the community as a whole, and a further tightening of the limit to zero might even be considered if necessary. The fact that the problem of drink driving is not deteriorating only serves to demonstrate the usefulness of existing legislation but this does not negate the need for further restrictions. Furthermore, the change would also accord with the international trend.

16. Other members, however, do not support the above views. As opposed to a BAC limit of zero, the change from 80 mg to 50 mg is only marginally beneficial. These members also point out that drink driving is not the same as drunken driving and the impact of alcohol on people varies depending on a wide range of factors. In the absence of statistics to show that the drink driving problem is deteriorating, and the lack of concrete evidence of a high correlation between alcohol intake and accident rates, there are inadequate justifications for the change since 80 mg is also adopted in many overseas countries and an individual's lifestyle should not be unduly jeopardized in a free society. A member also questions the costs to be incurred by drivers who would thus not be able to drive and have to pay others for driving the vehicle home.

17. Some members have suggested that the problem might be with insufficient penalties on drink driving offences, and that there may be a need for reviewing the penalty levels to restore their deterrent effect. In this connection, the Administration advises that the maximum fines for drink driving on summary conviction and conviction on indictment respectively range from \$10,000 to \$25,000 and imprisonment for six months to three years. Such levels of penalties are deemed sufficient and the Administration does not see the need for change. As regards the suggestion by some members for imposing different levels of penalties for different

BAC levels beyond the legal limit, the Administration does not agree with the approach since this may give the wrong impression that such levels have varying degrees of acceptability.

18. In the light of the divergent views of members, the Chairman has invited members to take a vote on the proposed prescribed limits. At the time when voting was taken, three members of the Bills Committee were in support of the proposal to tighten the limits and six members objected. In this connection, members note that two proposals in the Bill are related to the tightening of the prescribed limits, i.e. clause 2 which amends the definition of “prescribed limit” and which at the same time also defines a “breath test centre” the definition of which members are in support, and clause 5 on the choice of specimens of breath. As the two components in clause 2 will be voted on separately during the Committee Stage of the Bill, members note that it will not be necessary for the Bills Committee to move a Committee Stage amendment (CSA) on the clause in relation to the Committee’s objection to the proposed change in prescribed limits.

Publicity

19. Members of Bills Committee have reminded the Administration of the importance of publicity programmes. To assist drivers in assessing the BAC level in their blood, members see a need for the Administration to follow overseas practices and provide guidance to the public on the type and amount of beer and wine that could be consumed.

20. The Administration has advised that as a broad guideline, a driver under the proposed 50 mg BAC limit can consume one and a half can of beer (5% alcoholic content in a 350 - 370 ml can) or two small glasses of wine (15% of alcoholic content in a 100 ml glass) in the first hour. The Administration has, however, stressed that such guidelines cannot be specific as there is significant variability in both the alcoholic contents of different types of drinks and the way people of different physique will be affected. It has undertaken to further consider the matter before deciding on the best publicity arrangement.

Drink driving testing procedures

21. In addition to tightening the prescribed limits, the Bills also proposes to enhance the efficiency of the enforcement measures as follows:

- (a) apart from medical practitioners, nurses will be allowed to take blood specimens from drink driving suspects;
- (b) the requirement for, and refusal of, providing blood specimens can be made at police stations and breath test centres in addition to hospitals; and

- (c) breath specimens can be taken at traffic police offices and mobile vehicles which are designated as “breath test centres” by the Commissioner of Police (CP) in addition to police stations and hospitals.

22. With regard to (a), members note that registered nurses and enrolled nurses have been proposed to take blood specimen in addition to medical practitioners, and have been assured by the Administration that both categories of nurses are competent to do so. Members agree that (b) is a reasonable arrangement which would enhance efficiency.

23. On (c), the Administration has affirmed that the number of drivers refusing to take screening tests constitutes only a very small fraction, and the Police would exercise discretion to determine whether requests to delay breath tests are reasonable. Members of the Bills Committee agree that a notice made by CP designating a place or vehicle to be a breath test centre is not subsidiary legislation. However, for the avoidance of doubt, members consider it necessary to add an express provision to state that such a notice is not subsidiary legislation. This suggestion is made on the basis that the same has been done in respect of the Road Traffic (Construction and Maintenance of Vehicle) (Amendment) Regulation 1999 (L. N. 14 of 1999). Furthermore, the addition would distinguish the nature of notices made under another section (section 39F(1)) in the same (Road Traffic) Ordinance where notices in the Gazette made by CP have been treated and published as subsidiary legislation.

24. The Administration agrees with members’ view and will move a CSA to the Bill to add the express provision for clarity purpose.

(b) Extending the Passenger Service Licence Scheme (the Scheme) to School Private Light Buses

25. At present, all public and private buses are under the control of the Scheme, which empowers the Commissioner for Transport (C for T) to introduce new terms and conditions to enhance safety of public and private bus operations. However, private light buses providing school transport services are not covered by the Scheme, and C for T can only impose licensing conditions on individual motor vehicles on the basis of section 21(10) of the Road Traffic (Registration and Licensing) Regulations. The Administration does not deem such controlling mechanism to be efficient as licensing conditions are attached to individual vehicles, and the conditions can only be changed when the owners apply for renewal upon expiry of the licences. Accordingly, the Administration has proposed to extend the Scheme to school private light buses in order to establish a more uniform controlling mechanism and bring it in line with other bus services regulated under the Scheme. This will provide C for T the flexibility in introducing changes to the licensing conditions for promoting the safe operation of school private light buses.

26. While the proposed extension may be desirable administratively, members of the Bills Committee doubt its need since an established mechanism already exists to facilitate the introduction of mandatory safety measures such as the provision of escort service and the installation of audible warning device on doors. Moreover, noting that the annual licence fee for school private light buses of over \$2,749 is significantly higher than that for public buses (\$25 for the driver and \$50 for each seat for a passenger), but that the former is only allowed to provide a restricted category of service, members have questioned the fairness of such arrangements and if the motive behind the proposal is for fiscal or other purposes.

27. The Administration has clarified that the objective of the proposal is solely to bring about expediency and uniformity in implementing new or revised licensing conditions. However, to address the concern of members and the trade on the financial liability of owners, the Administration has undertaken to review the structure of the relevant annual licence fees and, in the meantime, waive the fees and charges related to the Scheme for school private light buses in the initial operation period of the Scheme pending the outcome of the review.

(c) Rectification of the Payment Arrangement for Management Agreements

28. It has been an established practice for Government to engage in management agreements with private operators to manage certain Government facilities. Under such agreements, private operators are responsible for the operation and management of the facilities, including the collection of fees from users of the facilities, and Government pays the operators an agreed sum of remuneration. Two such agreements include one for parking meters and one for the New Kowloon Bay Vehicle Examination Centre. The operators retain the portion of fees equivalent to their remuneration or reimbursement under the management agreement, and the balance is remitted to Government.

29. Such arrangement is, however, at variance with section 3(1) of the Public Finance Ordinance (Cap. 2) which states that, unless otherwise provided in Cap. 2 or any other enactment, statutory fees collected by the private operators, being moneys raised or received for the purposes of Government, form part of the general revenue and no portion of the general revenue should be retained by these operators. To rectify the anomaly, the Bill seeks to amend the Ordinance by adding a new provision that, where the terms of a parking meter or vehicle examination centre management agreement has been approved by the Financial Secretary, such portions of moneys raised or received for the purposes of the Government under the agreement, which the operator is entitled to retain by way of remuneration or reimbursement, shall not form part of the general revenue.

30. Members of the Bills Committee agree with the proposal for rectification, which in members' view should be done as expeditiously as possible. At the same time, members have raised concerns that there may be other management agreements in similar situation as the two agreements identified, such as those for management of tunnels and for the collection of air passenger departure tax, and have asked the Administration for a complete list of such management agreements and the proposed actions for rectification.

31. The Administration has provided a list of five management agreements under the purview of the Transport Bureau. These include the two agreements already identified, and another three agreements for the management of tunnels on which the Administration intends to introduce an omnibus bill later in the year. Members have taken note of the situation and have reminded the Administration of the need to rectify anomalies in all existing agreements as soon as possible.

Committee Stage Amendment

32. The CSA to be moved by the Administration as highlighted in paragraph 24, with which the Bills Committee agrees, is in **Appendix II**.

Recommendation

33. The majority of members of the Bills Committee do not support the proposal in the Bill for tightening the statutory limit for alcohol concentration, but the Bills Committee notes that it is unnecessary to move a CSA in this respect for the reason set out in paragraph 18. Subject also to the amendment to be moved by the Administration, the Bills Committee supports other parts of the Bill. While the Bills Committee has completed scrutiny of the Bill and recommends resumption of Second Reading debate of the Bill on 31 March 1999, the Administration has advised that it has yet to decide on the date for resumption of Second Reading debate and will advise further in this respect.

Advice Sought

34. Members are invited to note the deliberations of the Bills Committee and support the recommendation in paragraph 33 above.

立法會
《1998 年道路交通（修訂）條例草案》委員會
Legislative Council
Bills Committee on
Road Traffic (Amendment) Bill 1998

委員名單
Membership List

劉健儀議員(主席)	Hon Mrs Miriam LAU Kin-ye, JP (Chairman)
何俊仁議員	Hon Albert HO Chun-yan
何鍾泰議員	Dr Hon Raymond HO Chung-tai, JP
李啟明議員	Hon LEE Kai-ming, JP
夏佳理議員	Hon Ronald ARCULLI, JP
涂謹申議員	Hon James TO Kun-sun
陳智思議員	Hon Bernard CHAN
陳鑑林議員	Hon CHAN Kam-lam
梁智鴻議員	Dr Hon LEONG Che-hung, JP
楊孝華議員	Hon Howard YOUNG, JP
劉江華議員	Hon LAU Kong-wah
劉漢銓議員	Hon Ambrose LAU Hon-chuen, JP
譚耀宗議員	Hon TAM Yiu-chung, JP
鄧兆棠議員	Dr Hon TANG Siu-tong, JP

合共： 14 位議員
Total: 14 Members

日期： 1998 年 12 月 31 日
Date: 31 December 1998

DRAFT

ROAD TRAFFIC (AMENDMENT) BILL 1998

COMMITTEE STAGE

Amendments to be moved by the Secretary for Transport

Clause

Amendment Proposed

- 4(i) By adding after the proposed section 39C(20) -
"(20A) For the avoidance of doubt, a notice under subsection (20) is not subsidiary legislation."