

立法會
Legislative Council

LC Paper No. CB(1) 920/98-99

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**Subcommittee on
Road Traffic (Construction and Maintenance of Vehicles)
(Amendment) Regulation 1999**

**Minutes of meeting
held on Tuesday, 2 February 1999, at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Mrs Miriam LAU Kin-yee, JP (Chairman)
Dr Hon Raymond HO Chung-tai, JP
Hon Christine LOH
Hon LAU Kong-wah
Hon Andrew CHENG Kar-foo

Members absent : Hon Ronald ARCULLI, JP

Public officers attending : Mr Roy TANG
Principal Assistant Secretary for Transport

Mr Howard CHAN
Principal Assistant Secretary for Planning, Environment and
Lands

Mr Alan LUI
Assistant Commissioner for Transport

Mr Y W CHIU
Senior Engineer, Transport Department

Miss Leonora IP
Government Counsel, Department of Justice

Mr W C MOK
Principal Environmental Protection Officer
Environmental Protection Department

Clerk in attendance : Mrs Vivian KAM, Chief Assistant Secretary (1)5

Staff in attendance : Mr KAU Kin-wah, Assistant Legal Adviser 6
Mr Andy LAU, Senior Assistant Secretary (1)6

I Election of Chairman

Members agreed that Mrs Miriam LAU should preside over the election of Chairman. Mrs Miriam LAU invited nominations for the Chairman. Mrs Miriam LAU was nominated by Dr Raymond HO Chung-tai and seconded by Miss Christine LOH. Mrs LAU accepted the nomination.

2. There being no other nomination, Mrs Miriam LAU was declared Chairman of the Subcommittee.

II Meeting with the Administration

- Legislative Council Brief issued by the Transport Bureau on 13 January 1999 under Ref: TRAN 1/12/132(98)
- Legal Service Division Report issued under LC Paper No. LS 100/98-99 dated 19 January 1999

3. At the invitation of the Chairman, the Principal Assistant Secretary for Transport (PAS/T) explained that at present, the Fourth Schedule of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (the Regulations) specified Hartridge MK3 Smokemeter as the apparatus for measuring smoke. As the Hartridge MK3 Smokemeter and its spare parts were no longer in production, it was necessary to replace it with other new models of equivalent or better measurement capability currently available in the market. In this regard, the Principal Assistant Secretary for Planning, Environment and Lands advised that arrangements had been made to equip the Police with more effective portable smokemeters to help them to take action on street against vehicles emitting excessive smoke. However, the Department of Justice had advised that Regulation 31 of the Regulations did not allow the use of smokemeters other than those listed in the Fourth Schedule. To enable the enforcement departments to perform their duties in a more objective and

efficient manner, there was a need to amend the relevant Schedule.

4. PAS/T further advised that the opportunity was also taken to streamline the processes in specifying models of smoke measuring apparatus. He said that with the advancement of technology, new models of smokemeters of better performance and reliability would continue to be produced from time to time. In order that new models could be used without having to amend the Regulations each and every time with the new models, the Administration had proposed to amend the Regulations to enable the Commissioner for Transport to specify models of smoke measuring apparatus by a notice in the Gazette, and such a notice would not be subsidiary legislation.

5. Mr LAU Kong-wah and Dr Raymond HO were concerned about the selection criteria for smoke measuring apparatus, and whether they were of international standards. In reply, the Principal Environmental Protection Officer (PEPO) advised that the new models to be adopted were of international standards (including European Economic Community and International Standards Organization standards). Further, in selecting models to be included in the approved list, the Administration would take into account overseas experiences with reference to a wide range of factors including the performance, accuracy and reliability of such apparatuses for enforcement purposes. In reply to the Chairman, PEPO confirmed that the new models would also tie in with the use of other equipment such as the use of dynamometers in conducting mock tests on smoke emission.

6. In response to members, PAS/T explained that the Government was not proposing any change to the permitted level of smoke and visible vapour emission. Any such changes would be made in the form of subsidiary legislation and would be subject to negative vetting by the Legislative Council. Following on from this advice, Mr CHENG Kar-foo asked if there was a need to tighten the level of smoke and visible vapour emission to improve the environment. PEPO advised in reply that the existing level was in line with international standards, and the need for tightening such a level did not arise.

7. Mr LAU Kong-wah enquired about the benefits which the new models would bring about, particularly to front-line officers responsible for enforcement. PEPO advised that at present, the Police when conducting a smoke emission test had to take photos of the smoke emitted by standing right next to the exhaust pipe of a motor vehicle. The use of the new models would replace such an outdated mode of operation and eliminate existing inadequacies in that the Police would be able to make use of a sampling probe for insertion into exhaust pipes in order to obtain records of the level of smoke emitted. A print-out would also be available, if required. Enforcement of the Regulation would, therefore, become more efficient and effective. In reply to Mr LAU on prosecution statistics, PAS/T advised that cases of prosecution undertaken by the Police were 2 489 in 1996, 1 085 in 1997, and 1 643 in 1998.

Scrutiny Mechanism

8. As the Amendment Regulation specified that notices on the model of smokemeters published in the Gazette by the Commissioner of Transport would not be subsidiary legislation, the Chairman expressed concern about the implications of such a proposal. In response to the Chairman, the Assistant Legal Adviser advised that as the said notice would not be subsidiary legislation, Members of the Council would not be able to scrutinize such notices in future in accordance with section 34 of the Interpretation and General Clauses Ordinance (Cap. 1). He invited members to consider the change which would deprive Members of the Council of an opportunity to scrutinize legislative proposals by the Administration under section 34 of Cap. 1.

9. In response to the Chairman on the justifications for changing the existing scrutiny mechanism by the Legislative Council, PAS/T advised that subsidiary legislation requiring scrutiny by the Council was voluminous and it was estimated that amendments to the Regulations might have to be made about once a year. By introducing the proposed amendment, the Administration hoped to be able to cut down on the workload thus generated on Members and on the civil service by reducing the number of subsidiary legislation as far as possible and where justified. Further, the proposed change was confined only to the smoke measuring apparatus in column 1 of the Fourth Schedule of the Regulations. No change was proposed to the permitted smoke or visible vapour level specified in columns 2 and 3. If changes to columns 2 and 3 were deemed necessary in future, these would continue to be introduced in the form of subsidiary legislation in accordance with the requirement in Section 34 of the Interpretation and General Clauses Ordinance (Cap. 1), and would be subject to negative vetting by the Council.

10. Mr CHENG Kar-foo stressed that as a matter of principle, the role of the Legislative Council in scrutinizing legislation and monitoring the performance of the Government should not be compromised. However, given that the amendment under consideration involved only a change in the model of smokemeter used for testing smoke emission, the proposed change was aimed at improving efficiency and was technical in nature; neither was the proposal controversial nor did it involve a matter of policy. With the Administration's assurance that any change to the level of smoke and visible vapour emission would continue to be made in the form of subsidiary legislation, he found the proposed amendment acceptable.

11. Whilst appreciating that each proposal would have to be examined on its own merits, and that amendments involving say changes in the use of equipment with the advancement in technology might be justified in general, Miss Christine LOH considered there to be a need to draw the attention of other Members of the Council to the occurrence of changes made in the scope of legislative proposals which were subject to scrutiny of the Council under

section 34 of Cap. 1.

12. Noting that similar proposals, as in the case of the Fisheries Protection (Amendment) Ordinance 1998 and the Film Censorship (Amendment) Bill 1998, had been made by the Administration, members suggested that a cautious approach should be called for in examining such proposals, and that the right of Members of the Council in scrutinizing legislative proposals should not be compromised particularly when matters of policy or controversial issues were involved.

13. In concluding discussion, the Chairman said that the Subcommittee had completed deliberation on the Amendment Regulation. She would make a report to the House Committee, recommending that the Amendment Regulation be supported and that the attention of other Members of the Council be drawn to the concerns set out in paragraphs 10 to 12.

(Post meeting note : The report of the Subcommittee was presented to the House Committee on 5 February 1999.)

III Any other business

14. There being no other business, the meeting ended at 9:15 am.

Legislative Council Secretariat

10 March 1999