

立法會
Legislative Council

LC Paper No. CB(2) 2575/99-00
(These minutes have been seen by
the Administration and cleared
with the Chairman)

Ref : CB2/BC/11/99

**Minutes of the second meeting of the
Bills Committee on the Road Traffic (Amendment) Bill 2000
held on Monday, 3 April 2000 at 2:30 pm
in Conference Room A of the Legislative Council Building**

Members Present : Hon Mrs Miriam LAU Kin-ye, JP (Chairman)
Hon Albert HO Chun-yan
Hon Margaret NG
Hon CHAN Kwok-keung
Hon Bernard CHAN
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Hon Howard YOUNG, JP
Hon LAU Kong-wah
Hon Andrew CHENG Kar-foo
Dr Hon TANG Siu-tong, JP

Member Absent : Ir Dr Hon Raymond HO Chung-tai, JP

Public Officers Attending : Miss Margaret FONG
Deputy Secretary for Transport

Mr Brian LO
Principal Assistant Secretary for Transport

Mr Alan LUI
Assistant Commissioner for Transport (Management and
Licensing)

Mr William TANG
Chief Superintendent of Police, Traffic

Mr Thomas LAW
Deputy Principal Government Counsel (Acting)

Ms Carmen CHU
Senior Government Counsel

Clerk in Attendance : Mr LAW Wing-lok
Chief Assistant Secretary (2) 5

Staff in Attendance : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Mr Stanley MA
Senior Assistant Secretary (2)6

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I. Confirmation of minutes of meeting on 16 March 2000

(LC Paper No. CB(2) 1539/99-00 issued vide LC Paper No. CB(2) 1543/99-00 on 31 March 2000)

The minutes were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(2) 1540/99-00(01))

2. The Chairman welcomed representatives of the Administration to the meeting.

3. At the invitation of the Chairman, Deputy Secretary for Transport (DS for T) briefed members on the paper on "Application of the test of dangerous driving" which detailed the Administration's response to members' queries raised at the last meeting.

4. Miss Margaret NG said that according to the adjudication in the case of *R v Lawrence [1982] AC510* in the United Kingdom (UK) which she tabled at the meeting, there were two elements that must be satisfied in the test of recklessness. Firstly, the defendant was driving the vehicle in such a manner which created an obvious and serious risk of causing physical injury to some other person who might happen to be using the road or of doing substantial damage to property. Secondly, in driving in that manner, the defendant did so without having given any thought to the possibility of there being any such risk or, having recognised that there was some risk involved, had nevertheless gone on to take it. If the jury were satisfied that an obvious and serious risk was created by the manner of the defendant's driving, the jury were entitled to infer that the defendant was in one or other of the states of mind required to

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constitute the offence.

5. Miss NG further said that in the light of the above interpretation, she was not convinced by the Administration's argument that the present definition of reckless driving made it difficult to establish the test of recklessness. She maintained the view that "dangerous driving" was one kind of "careless driving", whereas "reckless driving" was a different kind of serious driving behaviour. She also considered that the level of penalty should be commensurate with the driving behaviour of the driver who had committed the offence.

6. DS for T explained that the proof of the driver's subjective mental state was in practice difficult to establish. The Administration's proposal of replacing "reckless driving" by "dangerous driving" would instill more objectivity in establishing dangerous driving behaviour by requiring the courts to have regard to all relevant circumstances involved to determine what would constitute the standards expected of a competent and careful driver. Under the proposals in the Bill, the test for dangerous driving would be made more objective by benchmarking the behaviour against the driving standard expected of a competent and careful driver, and not on the consequences of accidents arising from the driving behaviour.

7. The Chairman enquired whether the relevant authority in the UK had considered retaining "reckless driving" when the main road traffic offences were reformed in 1991 to crack down on bad driving.

8. DS for T explained that the UK authority recognized that it had not always proved possible to secure convictions for the offences of "reckless driving" and "causing death by reckless driving" because of the need for the jury to be satisfied as to the driver's state of mind at the time the act of bad driving took place. New driving offences of "dangerous driving" and "causing death by dangerous driving" were therefore introduced as replacement.

9. Mr CHAN Wing-chan asked the Administration to elaborate on the standards of driving which would fall far below the standard of a competent and careful driver.

10. DS for T responded that the determination of what amounted to driving dangerously in the UK was by means of a test which concentrated upon the nature of the driving rather than the defendant's state of mind. The intention of the amendment in 1991 was that the standard of driving should be judged in absolute terms, taking no account of factors such as inexperience, age or disability. She considered that a competent and careful driver would not drive in a dangerous manner such as driving at excessive speed or on the wrong side of the road continuously for some distance. She added that according to the relevant authorities in the UK, no major difficulties were encountered in enforcing the provision and prosecuting offenders for dangerous driving over the past nine years.

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11. Chief Superintendent of Police, Traffic (CSPT) explained that the Police had strict internal guidelines on laying charges for serious driving offences for front-line officers to follow. The Police would also refer to UK case laws before recommending charges for dangerous driving.

12. Mr LAU Kong-wah asked the Administration to clarify whether driving after taking drugs or under poor health condition such as suffering from heart disease or diabetes would be regarded as offences under the new definition of "dangerous driving". He also requested the Administration to provide details about precedent cases in the UK for members' information.

13. DS for T said that a person who had taken drugs, was tired or suffered from a disease and drove would not in itself constitute dangerous driving. She stressed that there were two tests for dangerous driving. First, the actual driving behaviour was dangerous, such as driving in excessive speed, or on the wrong side of the road. Second, the court would have regard to the circumstances of the case including the nature, condition and use of the road, the traffic condition and the state of the vehicle. The court would also have regard to all relevant circumstances shown to have been within the knowledge of the defendant that it was obvious to a competent and careful driver that driving in such a state was dangerous. Given the reaction to drugs and disease varied from person to person, it would be difficult to argue that it was obvious to a competent and careful driver that driving in that particular state was dangerous. However, she undertook to provide more precedent cases in the UK on dangerous driving offences.

14. Mr Albert HO was of the view that certain driving offences should not be included in the list of alternative offences as shown in Annex C to the LegCo Brief. He also enquired about the power of the adjudicating magistrate to make amendment of complaint, information or summons as provided under section 27 of the Magistrates Ordinance.

15. The Chairman said that the Panel on Transport had discussed the proposal to introduce alternative offences to "dangerous driving causing death" and "dangerous driving" in addition to "careless driving". She pointed out that in response to the Panel's concerns, the Administration would propose Committee Stage amendments to delete the following six lesser offences from the proposed new sections 36 and 37 of the Bill -

- (a) driving in excess of speed limit (section 41 of RTO);
- (b) taking part in racing and speed trials (section 55 of RTO);
- (c) crossing double white lines (regulation 11 of Road Traffic (Traffic Control) Regulation);

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- (d) failure to comply with traffic signals (regulation 18 of Road Traffic (Traffic Control) Regulation);
- (e) failure to accord precedence to pedestrians at zebra crossings (regulation 31 of Road Traffic (Traffic Control) Regulation); and
- (f) failure to comply with a school crossing patrol sign (regulation 38 Road Traffic (Traffic Control) Regulation).

16. Miss Margaret NG pointed out that section 27 of the Magistrates Ordinance provided for amendment of the complaint, information or summons where it appeared to the adjudicating magistrate that there was a defect in the substance or form of any complaint, information or summons, or a variance between the complaint, information or summons and the evidence adduced in support of it. In response, ALA5 undertook to provide members with a copy of section 27 of the ordinance [LC Paper No. CB(2)1780/99-00(02) issued on 25 April 2000].

17. Mr Andrew CHENG was worried that some offences which should have been charged with careless driving might eventually fall within the scope of dangerous driving after the enactment of the Bill. He held the view that to enhance motorists' understanding of the driving behaviours which would constitute dangerous driving, the Government should set out dangerous driving behaviours in a pamphlet or the Road Users' Code. Mr LAU Kong-wah echoed Mr CHENG's views.

18. DS for T responded that it would not be practicable to draw up an exhaustive list of dangerous driving behaviours. She reiterated that while the offence of dangerous driving was absolute in the sense that it was unnecessary to show that the defendant's mind was conscious of the consequences, the court must have regard to any circumstances shown to have been within the defendant's own knowledge. She pointed out that the Road Users' Code, which did not carry any legal effect, contained a wide range of rules, advice and information for all types of road users including drivers, cyclists, passengers and pedestrians. She further said that some members of the Panel on Transport had expressed the view that the driving standards specified in the Road Users' Code were too stringent to be used as the basis for determining whether a motorist was driving beyond the expected standards of a competent and careful driver.

19. Mr Andrew CHENG suggested that a separate code or detailed guidelines on dangerous driving behaviours should be drawn up for reference by motorists. He agreed that using the driving standards specified in the Road Users' Code to determine whether a motorist was driving beyond the expected standards of a competent and careful driver was not appropriate.

20. The Chairman asked the Administration to prepare a new set of guidelines on dangerous driving behaviours to address members' concern. She added that the new

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set of guidelines could also be used for public education and publicity purposes.

21. In response, DS for T said that the Administration would seriously consider publishing a list of driving behaviours which would be regarded as dangerous driving under the Bill.

22. Mr CHAN Wing-chan considered that the penalties for dangerous driving proposed in the Bill were too heavy, particularly the periods of disqualification on convictions of "causing death by dangerous driving" and "dangerous driving".

23. DS for T said that in order to strengthen the deterrent effect, there was the need to increase the penalties under the RTO. She pointed out that the existing penalties ranged from \$4,000 for careless driving and \$25,000 for reckless driving causing death had not been revised since 1982. The Government considered that it was now the right time to update the level of pecuniary fines and therefore proposed to bring them in line with the six levels provided under Schedule 8 of the Criminal Procedure Ordinance, which were currently within the range of \$5,000 to \$50,000. She pointed out that the revised level of penalties was still lower than those imposed by some overseas countries including the United Kingdom, Canada and Australia for similar driving offences.

24. Miss Margaret NG requested the Administration to provide information on the number of appeals made by the prosecution against the sentences on careless driving in the past. She considered that such information would help members to have a clear picture of whether the existing level of penalty was appropriate. Deputy Principal Government Counsel (Acting) undertook to follow up the matter.

Drafting of the Bill

25. Miss Margaret NG asked whether sections 36 and 37 could be combined into one section. DS for T agreed to consider.

Date of next meeting

26. Members agreed to hold the next meeting on 27 April 2000 at 8:30 am.

III Any other business

27. There being no other business, the meeting ended at 4:30 pm.

Legislative Council Secretariat

14 September 2000