

立法會
Legislative Council

LC Paper No. CB(2) 2577/99-00
(These minutes have been seen by
the Administration and cleared
with the Chairman)

Ref : CB2/BC/11/99

**Minutes of the fourth meeting of the
Bills Committee on the Road Traffic (Amendment) Bill 2000
held on Friday, 5 May 2000 at 1:00 pm
in Conference Room A of the Legislative Council Building**

Members Present : Hon Mrs Miriam LAU Kin-ye, JP (Chairman)
Hon CHAN Kwok-keung
Hon CHAN Kam-lam
Hon LAU Kong-wah
Hon Andrew CHENG Kar-foo
Dr Hon TANG Siu-tong, JP

Member Absent : Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Margaret NG
Hon Bernard CHAN
Hon CHAN Wing-chan
Hon Howard YOUNG, JP

Public Officers Attending : Miss Margaret FONG
Deputy Secretary for Transport

Mr Brian LO
Principal 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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The Chairman welcomed representatives of the Administration to the meeting.

I. Meeting with the Administration

2. The Chairman advised the meeting that a set of draft Committee Stage amendments (CSAs) proposed by the Administration and a marked-up copy of these CSAs to the Bill prepared by the Clerk were tabled for discussion at the meeting.

3. At the Chairman's invitation, Deputy Secretary for Transport (DS for T) drew members' attention to the following proposed amendments to the Bill -

- (a) to add the phrase "(including the physical condition of the accused)" after the word "circumstances" which appeared twice in both sections 36(7)(c) and 37(7)(c);
- (b) to delete the last six alternative offences stipulated in proposed new sections 36(10) and 37(a) of the Bill, i.e., offences under section 41 or 55 of the Road Traffic Ordinance (RTO) and regulations 11, 18, 31 or 38 of the Road Traffic (Traffic Control) Regulations; and
- (c) to replace "reckless" by "dangerous" in relevant sections of the RTO, Schedule to the Road Traffic (Driving-offence Points) Ordinance, the Airport Authority Bylaw, the Coroners Ordinance, the Coroners Rules and the Coroners (Forms) Rules.

4. Mr LAU Kong-wah held the view that the Police should consider the physical condition of the accused before instituting prosecution on dangerous driving. He

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suggested that such requirement should be stipulated under sections 36(4) and 35(5).

5. DS for T said that the court would consider sections 36(4), 36(5) and 36(7) in determining whether the accused had committed an offence in dangerous driving. She stressed that the driving behavior of the accused was most crucial and that his physical condition alone would not constitute dangerous driving. She pointed out that it would be difficult for a competent and careful driver to assess whether driving in a particular physical condition would constitute dangerous driving.

6. Chief Superintendent of Police, Traffic (CSPT) supplemented that the Police would consider the circumstances of each accident before initiating prosecution against the driver. He added that upon the enactment of the Bill, the Police would update its internal guidelines on laying charges for front-line officers to follow.

7. The Chairman enquired whether the Police would withdraw prosecution if the driver who was charged with the offence of dangerous driving subsequently produced medical evidence that he was driving under poor physical condition.

8. CSPT responded that the Police would certainly consider the report of the medical practitioner to determine whether prosecution should be withdrawn, or alternatively, whether a lesser offence should be charged. He pointed out that the defendant also had the right to appeal to the Central Traffic Prosecutions Bureau for a review of his case in the light of the report of the medical practitioner.

9. Mr Andrew CHENG enquired about the reason for not including "the physical condition of the accused" in section 36(5).

10. Senior Government Counsel (SGC) responded that section 36(5) dealt with dangerous driving arising from driving a vehicle in a state which was considered dangerous for driving. She clarified that so long as the driver had conducted the necessary check, he should not be held responsible for subsequent accidents arising from a poor state or defective part of the vehicle which he was not aware of.

11. To address members' concern that the Police should consider the physical condition of the accused in determining whether charges on dangerous driving should be instituted, Assistant Legal Adviser 5 (ALA5) suggested that a CSA should be proposed to substitute "the court or magistrate shall have regard" in section 36(7) by "regard shall be had" in line with what was adopted in the definition of "dangerous driving" in the Road Traffic Act 1991 of the United Kingdom.

12. The Chairman and Mr LAU Kong-wah expressed support for ALA5's suggestion. The Chairman pointed out that similar amendments should be made to sections 36(8), 37(7) and 37(8) accordingly.

Clause-by-clause examination

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Clause 2 - Sections substituted

36 Causing death by dangerous driving

13. Members accepted the Administration's proposal to add "(including the physical condition of the accused)" after "circumstances" in section 36(7)(c) where it twice appeared.

14. Members requested and the Administration agreed to substitute "the court or magistrate shall have regard" by "regard shall be had" in section 36(7) and "the court or magistrate may have regard" by "regard may be had" in section 36(8)l.

15. Members had no comments on sections 36(9) and 36(10).

37. Dangerous driving

16. Members accepted the Administration's proposal to add "(including the physical condition of the accused)" after "circumstances" in section 37(7)(c) where it twice appeared.

17. Members requested and the Administration agreed to substitute "the court or magistrate shall have regard" by "regard shall be had" in section 37(7) and "the court or magistrate may have regard" by "regard may be had" in section 37(8).

Other issues

18. In response to the Chairman, DS for T undertook to provide a set of updated CSAs to members as soon as practicable.

[*Post-meeting note* : The set of finalized CSAs was subsequently forwarded to members vide LC Paper No.CB(2)1979/99-00 on 13 May 2000]

19. Members agreed to report the deliberations of the Bills Committee to the House Committee on 19 May 2000. DS for T informed the meeting that the Administration aimed to resume Second Reading debate on the Bill at the Council meeting on 31 May 2000 and to implement the proposals in the Bill with effective from 1 July 2000.

II Any other business

20. There being no other business, the meeting ended at 2:00 pm.

Legislative Council Secretariat

14 September 2000