

立法會
Legislative Council

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**Minutes of the first meeting of the
Bills Committee on the Road Traffic (Amendment) Bill 2000
held on Thursday, 16 March 2000 at 8:30 am
in Conference Room A of the Legislative Council Building**

Members Present : Hon Mrs Miriam LAU Kin-yee, JP (Chairman)
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Margaret NG
Hon CHAN Wing-chan
Hon Howard YOUNG, JP
Hon LAU Kong-wah

Members Absent : Hon Albert HO Chun-yan
Hon CHAN Kwok-keung
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon Andrew CHENG Kar-foo
Dr Hon TANG Siu-tong, 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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I. Election of Chairman

Mrs Miriam LAU Kin-yee was elected Chairman of the Bills Committee. The nomination was proposed by Miss Margaret NG and seconded by Mr CHAN Wing-chan.

II. Meeting with the Administration

[LegCo Brief Ref : TRAN 1/12/37 Pt18]

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

Definition, interpretation and scope of dangerous driving

3. At the invitation of the Chairman, Deputy Secretary for Transport (DS(T)) briefed members on the proposals to improve the existing legislation in dealing with reckless driving as detailed in the LegCo Brief .

4. Miss Margaret NG expressed reservations about imposing heavier penalties against reckless and careless drivers whose driving behavior had resulted in serious traffic accidents involving fatalities. She pointed out that one of the common law principles was that a person ought not be held accountable for carelessness and that the level of penalty should be commensurate with the driving behavior of the driver who had committed the offence.

5. Miss NG said that successful prosecution on "reckless driving causing death" or "reckless driving" would depend on the production of sufficient evidence to

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substantiate that the offence was committed with blatant disregard for the safety of other road users. She pointed out that there were many cases where charges for reckless driving ended up in convictions for careless driving because the prosecution had failed to prove recklessness.

Adm

6. Miss NG questioned the need to replace "reckless driving" by "dangerous driving". She said that the definitions of "reckless driving", "dangerous driving" and "careless driving" should refer to different driving behaviors. She said that as the United Kingdom (UK) legislature replaced "reckless driving" with "dangerous driving" in 1991, she requested the Administration to provide information on the implementation of the relevant legislation in the UK, particularly details of cases involving conviction of the offence of dangerous driving.

7. DS(T) said that the proposed amendments to the Road Traffic Ordinance (RTO) were made in response to the public outcry against perceived inadequacies in the RTO which were brought to light as a result of a spate of serious traffic accidents involving fatalities. She pointed out that the test for dangerous driving would be based on benchmark driving behaviour expected of a "competent and careful driver" and not on the consequences of accidents arising from the driving behavior. She explained that, for example, a driver who overtook other cars by crossing double white lines on a sharp bend would be regarded as a dangerous driving behaviour even if such a driving behaviour did not result in serious injury to persons or damage to properties.

8. DS(T) pointed out that what constituted reckless driving was not defined in the RTO. Since the test of recklessness required proof of the driver's subjective mental state (mens rea) which in practice was not easy to achieve, the Administration had proposed to replace reckless driving by dangerous driving to instill more objectivity in establishing dangerous driving behaviour. 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". DS(T) stressed that the proposed definition of "dangerous driving" would overcome the difficulty in proving mens rea for recklessness by shifting the emphasis from the mental state of the driver to the actual driving behaviour.

9. Miss Margaret NG asked whether Government would consider introducing further amendments to the RTO if it subsequently found that it would be difficult to establish what should constitute driving behaviour which fell far below the standard expected of a "competent and careful driver".

10. DS(T) responded that in drawing up the proposal to replace "reckless driving" by "dangerous driving", the Administration had made reference to the practices adopted by other countries in tackling the problem. According to experience in the UK which had replaced reckless driving with dangerous driving for nine years, the UK authorities had not experienced much difficulties in producing evidence to satisfy the test for "dangerous driving" which was made more objective by benchmarking the behaviour against the driving standard expected of a "competent and careful driver".

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11. Deputy Principal Government Counsel (Acting) (DPGC(Ag)) added that there were case laws in the UK concerning drivers who were convicted of dangerous driving because of driving in excess of speed limit, driving a vehicle with defective parts, and driving under poor health conditions. He added that in the UK, there was a case where a diabetic driver involved in a traffic accident was convicted of dangerous driving because of his driving under very bad health condition due to the disease he suffered.

Adm

12. At the request of the Chairman, DS(T) undertook to provide relevant information on UK case laws relating to dangerous driving for discussion at the next meeting.

13. Mr LAU Kong-wah enquired about the circumstances under which a driver in the UK would be regarded as committing the offence of dangerous driving with blatant disregard for the safety of other road users.

14. In response, DPGC(Ag) said that according to the UK's Road Traffic Act 1991, a person could be regarded as driving dangerously if the way he drove fell far below what would be expected of a competent and careful driver, and if it would be obvious to a competent and careful driver that driving in that way would be dangerous. He added that it would be difficult to draw up an exhaustive list of benchmark behaviours of a competent and careful driver. He referred to the example cited by DS(T) earlier and said that a competent and careful driver would not overtake other cars by crossing double white lines on a bend. Miss Margaret NG responded that such a driving behaviour was a typical example of reckless driving under the existing legislation.

15. Mr LAU Kwong-wah and Dr Raymond HO were concerned about whether drivers suffering from diabetes, low blood pressure or heart disease would be charged with dangerous driving in case of traffic accidents, particularly those who had been advised by doctors that they should avoid driving as far as possible.

16. DS(T) said that whether a person would be considered as driving dangerously would have to be decided by the court, having regard to the circumstances giving rise to the accident concerned. DPGC(Ag) added that in convicting a defendant of dangerous driving, the court must have established that the accused was well aware of, or shown to have been within the accused's knowledge that driving under the particular circumstances was obviously dangerous from the perspective of a competent and careful driver. DPGC(Ag) said that if a person's driving behaviour fell far short of the standard expected of a competent and careful driver; and that that person had been advised not to drive after taking certain drugs, this would probably be taken into account in the court's consideration of whether the person have committed an offence of dangerous driving if he drove after taking such drugs. DPGC(Ag) further said that the case he mentioned earlier about the diabetic who was convicted of dangerous driving was a very special case and that the court should have established that he was well aware of the possible consequences if he drove.

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17. Miss Margaret NG pointed out that it was not easy to establish that a driver was well aware of the serious consequence which might arise as a result of his driving a vehicle. She said that the Administration should set out the types of driving behaviour which were considered as dangerous and then examine whether the proposal in the Bill would achieve the intended purpose.

18. The Chairman said that the Administration should clarify the reasons for replacing "reckless driving" with "dangerous driving". DS(T) responded that under the new definition, the test for "dangerous driving" would be made more objective by shifting the emphasis from the mental state of the driver to the actual driving behaviour, thus overcoming the difficulty in proving mens rea for recklessness experienced under "reckless driving" in the current RTO. DS(T) added that the test for dangerous driving would be benchmarked against the driving standard expected of a competent and careful driver.

19. The Chairman requested the Administration to provide clarification to address members' queries as to whether driving under the following conditions would be regarded as an offence under the definition of dangerous driving -

- (a) driving after taking drugs;
- (b) driving under poor health condition such as suffering from heart disease or diabetes; and
- (c) driving after working long hours overnight without rest or sleep.

20. Miss Margaret NG referred to the proposed section 36(7)(c) in clause 2 of the Bill which stated that "the circumstances of which the accused could be expected to be aware and any circumstances shown to have been within the knowledge of the accused" and asked whether a driver was himself aware of the circumstances was irrelevant in determining what a competent and careful driver would be expected to be aware of.

21. DPGC(Ag) responded that in determining what would be expected of, or obvious to, a competent and careful driver in a particular case, the court would, in addition to the provision quoted by Miss NG, have regard to all the circumstances of the case including the nature, condition and use of the road as well as the traffic condition at the material time. He added that the defendant's awareness of the possible risks would be one of the factors which the court would consider in determining whether a driver had driven dangerously in the eyes of a competent and careful driver.

22. The Chairman requested the Administration to provide relevant precedent cases in the UK to support the viewpoints expressed in paragraph 21 above.

23. Mr LAU Kong-wah enquired whether a driver would be charged with

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dangerous driving if he had forgotten to check whether the tyres of the vehicle were in good condition. DPGC(Ag) said that the court would have to consider all the circumstances of an individual case in determining whether the driving behaviour fell far below the standard expected of a competent and careful driver.

Alternative offences

24. The Chairman said that the LegCo Panel on Transport had discussed the Administration's proposals to improve the existing legislation in dealing with reckless and careless driving at the meetings held on 9 February and 26 October 1999. Panel members had expressed concern that certain lesser offences would be included as alternative offences to "dangerous driving causing death" and "dangerous driving".

25. Mr CHAN Wing-chan said that professional drivers had also voiced concerns about the alternative offences as proposed under section 36(10) of the Bill.

26. DS(T) replied that in response to the concerns expressed by Members and the professional drivers, the Administration would propose Committee Stage amendments to delete the following driving offences from the list of alternative offences set out in Annex C to the LegCo Brief -

- (a) driving in excess of speed limit;
- (b) taking part in racing and speed trials;
- (c) crossing double white lines;
- (d) failure to comply with traffic signals;
- (e) failure to accord precedence to pedestrians at zebra crossings; and
- (f) failure to comply with a school crossing patrol sign.

III. Date of next meeting

27. Members agreed that the Bills Committee would next meet on Monday, 3 April 2000 at 2:30 pm.

28. There being no other business, the meeting ended at 9:45 am.

Legislative Council Secretariat

30 March 2000