

立法會
Legislative Council

LC Paper No. CB(2) 2576/99-00
(These minutes have been seen by
the Administration and cleared
with the Chairman)

Ref : CB2/BC/11/99

**Minutes of the third meeting of the
Bills Committee on the Road Traffic (Amendment) Bill 2000
held on Thursday, 27 April 2000 at 8:30 am
in Conference Room B of the Legislative Council Building**

Members Present : Hon Mrs Miriam LAU Kin-yee, JP (Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Margaret NG
Hon CHAN Kwok-keung
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Hon LAU Kong-wah
Hon Andrew CHENG Kar-foo

Member Absent : Hon Bernard CHAN
Hon Howard YOUNG, JP
Dr Hon TANG Siu-tong, JP

Public Officers Attending : Miss Margaret FONG
Deputy Secretary for Transport

Mr Brian LO
Principal Secretary for Transport

Mrs Mary MA
Assistant Commissioner for Transport / Management and
Licensing (Acting)

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 : Miss Connie FUNG
Assistant Legal Adviser 3

Mr Stanley MA
Senior Assistant Secretary (2)6

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I. Meeting with the Administration
(*LC Paper Nos. CB(2) 1780/99-00(01) & (02)*)

The Chairman welcomed representatives of the Administration to the meeting.

2. At the Chairman's invitation, Deputy Secretary for Transport (DS for T) briefed members on the salient points of the Administration's paper [LC Paper No. CB(2) 1780/99-00(01)].

3. Responding to the Chairman, DS for T said that the Administration considered it more appropriate to deal with "causing death by dangerous driving" and "dangerous driving" separately under two sections in the Bill.

4. Referring to the cases of *R v Vickers* and *R v Hastings* (paragraphs 2(c) and 2(d) of the Administration's paper), Mr CHAN Wing-chan enquired whether the Police would lay the charge of "causing death by dangerous driving" against drivers involved in serious accidents arising from the following -

- (a) driving a motor vehicle under the influence of alcohol; and
- (b) failure to comply with traffic signals.

5. In response, DS for T said that the actual driving behaviour of the defendant would determine whether the driving was dangerous, having regard to any circumstances shown to have been within the defendant's knowledge that driving in that particular state or manner was obviously dangerous in the eyes of a competent and careful driver. She explained that in the case of *R v Vickers*, the convicted had spent over six hours drinking lager in public houses before he was seen driving his car erratically, without lights and crossing the central white line. After driving on the wrong side of the road for some distance, he finally knocked down and killed a

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pedestrian on a pavement. As regards the case of *R v Hastings*, the convicted, while being chased by the police for several miles through a densely populated area, drove at a speed of 90 mph on a road with a speed limit of 30 mph. He drove on the wrong side of the road at times, ignored traffic signals, and finally collided with another vehicle before it came to rest on a pavement. She stressed that the convicted drivers in both cases were obviously driving in a dangerous manner.

6. Mr CHAN Wing-chan pointed out that there would be situations where a driver could not stop the vehicle in time to comply with the traffic signals, particularly at the moment when the traffic lights turned from yellow to red. He asked whether the driver would be prosecuted for dangerous driving under such situations.

7. DS for T responded that the Police would consider all the circumstances of each accident and the motorist's driving behaviour before it decided to lay a charge against the motorist. She pointed out that the six kinds of driving behaviour listed in paragraph 3 of the Administration's paper were examples of possible dangerous driving behaviours. The court would have to consider all relevant circumstances, such as the time of day, weather conditions, amount of vehicular and pedestrian traffic, etc., to determine whether the accused in a particular accident should be convicted.

8. Miss Margaret NG referred to paragraph 5 of the Administration's paper and said that only a small number of traffic accidents where the offenders were prosecuted for reckless driving were subsequently convicted of careless driving as an alternative verdict. Since the Administration had made no appeal or review on these sentences, she was not convinced that the replacement of "reckless driving" by "dangerous driving" was justified. 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 reiterated the common law principle that a person ought not be held accountable for carelessness and that the level of penalty should be commensurate with the driving behaviour of the driver who had committed the offence.

9. DS for T responded that "careless driving" and "dangerous driving" referred to different driving behaviours. Under the current legislation, the high degree of mens rea required to prove recklessness combined with the inability of the courts to take into account deaths caused by careless driving had led in many cases to charges and conviction of the lesser offence of "careless driving" with much lighter penalties. As a result, there had been considerable public criticism that the sentences were not commensurate with the seriousness of the consequences of the driving behaviour. She added that to address the problem, the Administration had proposed to replace "reckless driving" with "dangerous driving" to instill more objectivity in establishing dangerous driving behaviour.

10. Mr LAU Kong-wah agreed that the driving behaviours listed in paragraph 3 of the Administration's paper were typical examples of dangerous driving behaviours, but pointed out that there were a lot of grey areas in the interpretation of dangerous

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driving. He referred to the cases of *R v Roberts and George [1997]* and *R v Ash [1998]* as cited in the Administration's paper for the meeting on 3 April 2000 [LC Paper No.CB(2)1540/99-00(01)] and asked whether driving after taking drugs, under poor health conditions or without checking that the tyres were in good conditions would be regarded as an offence under the new definition of "dangerous driving".

11. DS for T responded that the simple fact that a person who had taken drugs, or suffered from a disease and drove would not in itself constitute dangerous driving. She stressed that there would be 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 should have regard to all relevant circumstances of the case including the nature, condition and use of the road, the traffic condition and the state of the vehicle.

12. The Chairman added that the court should 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 that different persons would react differently to the same drug, it would be difficult to establish that it was obvious to a competent and careful driver that driving after taking drugs was dangerous.

13. Mr HO Chun-yan expressed support for introducing dangerous driving to replace reckless driving, but pointed out that drivers must be well advised of the driving behaviours which would constitute dangerous driving. He suggested that the Road Users' Code should incorporate a set of typical dangerous driving behaviour for all road users to note.

14. DS for T responded that upon enactment of the Bill, the Administration would prepare posters and a pamphlet for promoting public awareness of the typical driving behaviours which would be regarded as dangerous driving. The Road Users' Code would also be amended to incorporate these behaviours as soon as practicable.

15. Mr HO Chun-yan enquired about legislative control on driving by persons suffering from certain disease or disability such as epilepsy and muscular incoordination.

16. Assistant Commissioner for Transport/Management and Licensing (Acting) said that as provided under regulation 9 of the Road Traffic (Driving Licences) Regulations, the Commissioner for Transport could refuse to issue or renew a driving licence to persons suffering from any disease or physical disability specified in the First Schedule to the Regulation which included epilepsy and muscular incoordination.

17. In response to the Chairman's request, DS for T had undertaken to prepare a draft version of the pamphlet on dangerous driving for discussion by the Panel on Transport in May 2000.

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18. Messrs Raymond HO, HO Chun-yan and LAU Kong-wah expressed concern about the interpretation of "the circumstances of which the accused could be expected to be aware and any circumstance shown to have been within the knowledge of the accused" in the proposed new sections 36(7) and 37(7) in the Bill. They enquired about whether driving under certain health and physical condition such as suffering from heart disease or diabetes, or after working long hours overnight without rest or sleep, would constitute a dangerous driving behaviour.

19. DS for T reiterated that a driver would be regarded as driving dangerously if the way he drove was obviously dangerous in the eyes of a competent and careful driver, regardless of his health and physical condition. However, a driver should refrain from driving if he had been advised by a medical practitioner that he suffered from symptoms that would make him unable to control his vehicle.

20. Chief Superintendent of Police, Traffic (CSPT) said that in determining whether the accused had driven dangerously in the eyes of a competent and careful driver, the court or magistrate should have regard to all the circumstances of the case including the defendant's awareness of the possible risks arising from his driving.

21. Responding to Mr LAU Kong-wah, DS for T said that "following too close to the vehicle in front" or "driving too slow" would not in itself constitute dangerous driving in normal circumstances.

22. Mr LAU Kong-wah suggested that the Administration should consult the professional drivers on the types of dangerous driving behaviours to be included in the pamphlet on dangerous driving. DS for T noted Mr LAU's suggestion.

Clause-by-clause examination

Clause 1 - Short title and commencement

23. Members raised no comment on the clause.

Clause 2 - Sections substituted

36. Causing death by dangerous driving

24. Assistant Legal Adviser 3 asked whether transitional provisions would be made in relation to the proposed new sections 36(2)(b) and 37(2)(b) to regard a conviction for "reckless driving causing death" or "reckless driving" as the case may be under the present regime within the last 5 years as a previous conviction which would trigger the respective section in similarity to the transitional provisions in the present sections 36(2) and 37(2) of the Road Traffic Ordinance.

25. DS for T responded that the Administration would propose Committee Stage amendments to include transitional provisions in the Bill in order to remove any

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possible risk of challenge that any offence of "reckless driving" or "reckless driving causing death" committed before the commencement date of the Bill on 1 July 2000, or any criminal proceedings for such offences instituted before the commencement date, would not continue to be charged, punished or instituted.

26. Mr Andrew CHENG was of the view that the penalty for dangerous driving causing death should include disqualification for a certain period. He queried the need for the provision in the proposed new sections 36(2) and 37(2) that the court or magistrate for special reasons could order that the convicted driver not be disqualified.

27. DS for T explained that it was the legal policy to provide discretionary power for the court to impose a lesser sentence under special circumstances. She pointed out that the level of fines proposed for first and subsequent convictions of dangerous driving and dangerous driving causing death were already higher than the existing penalties for reckless driving and reckless driving causing death. Under the current regime, there was no disqualification penalty for the first conviction of reckless driving and reckless driving causing death.

II Date of next meeting

28. Members agreed to hold the next meeting on Friday, 5 May 2000 at 1:00 pm to continue discussion with the Administration.

29. The meeting ended at 10:35 am.

Legislative Council Secretariat

19 September 2000