

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2002/99-00  
(These minutes have been seen  
by the Administration)

Ref: CB1/SS/2/99/2

**Subcommittee on Road Traffic**  
**(Traffic Control) (Amendment) Regulation 2000**

**Meeting on**  
**Friday, 7 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)  
Prof Hon NG Ching-fai  
Hon Ronald ARCULLI, JP  
Hon James TO Kun-sun  
Hon CHAN Kam-lam  
Dr Hon LEONG Che-hung, JP  
Hon LAU Kong-wah  
Hon Andrew CHENG kar-foo

**Members absent** : Ir Dr Hon Raymond HO Chung-tai, JP  
Hon Mrs Selina CHOW LIANG Shuk-ye, JP  
Hon Andrew WONG Wang-fat, JP  
Hon Ambrose LAU Hon-chuen, JP

**Public officers attending** : **Transport Bureau**  
  
Miss Margaret FONG  
Deputy Secretary for Transport  
  
Mr Brian LO  
Principal Assistant Secretary for Transport

**Transport Department**

Mr Thomas THUMB  
Assistant Commissioner for Transport/  
Transport Planning

**Hong Kong Police Force**

Mr William TANG  
Chief Superintendent, Traffic

**Department of Justice**

Ms Vicki LEE  
Government Counsel

**Clerk in attendance** : Mr Andy LAU  
Chief Assistant Secretary (1)2

**Staff in attendance** : Miss Connie FUNG  
Assistant Legal Adviser 3

Ms Alice AU  
Senior Assistant Secretary (1)5

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**I Election of Chairman**

Prof NG Ching-fai, the member who had the highest precedence among members present at the meeting, presided over the election of Chairman. Mrs Miriam LAU was nominated by Mr CHENG Kar-foo and the nomination was seconded by Mr CHAN Kam-lam and Mr James TO. Mrs LAU accepted the nomination. There being no other nomination, Mrs LAU was elected Chairman of the Subcommittee and took over the chair.

**II Meeting with the Administration**

(LC Paper No. CB(1)1311/99-00(01) - Information paper provided by the Administration)

Background information papers:

- (a) the Legislative Council Brief issued by the Transport Bureau (Ref: TRAN 3/9/30 Pt.2) on 2 February 2000; and
- (b) the Legal Services Division Reports issued under LC Paper No. LS80/99-00 dated 9 February 2000 and LC Paper No. LS109/99-00 dated 15 March 2000.

2. The Chairman drew members' attention to the supplementary note prepared by the Administration (LC Paper No. CB(1)1311/99-00(01)) in response to members' queries raised previously on the Road Traffic (Traffic Control) (Amendment) Regulation 2000 (the Amendment Regulation). At the invitation of the Chairman,

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the Deputy Secretary for Transport (DS for T) highlighted the salient points of the note which set out the scope of application of the Amendment Regulation. In particular, she advised that the approach of not defining the term "driving" in the proposed regulation was consistent with the current practice because the term was also not defined in the existing Road Traffic Ordinance (Cap. 374) and its regulations. Under the common law principles, the term would then be construed according to its ordinary meaning.

3. While expressing general support for the objective of the Amendment Regulation which was to enhance road safety by controlling the use of hand-held mobile phones while driving, members had expressed grave concern about the grey areas in applying the driving rule under certain circumstances. Views expressed by members and their discussions with the Administration were summarized in the following paragraphs.

Definition of "driving"

4. Mr James TO sought clarification from the Administration as to whether the Amendment Regulation would apply to the following situations:

- (a) where a driver used a mobile phone while holding it by hand, having pulled his motor vehicle on a kerbside lane waiting to pick up or set down passengers or goods, etc.;
- (b) where a driver used a mobile phone while holding it by hand, having stopped the motor vehicle in a serious traffic jam; and
- (c) where a driver used a mobile phone while holding it by hand, having stopped the motor vehicle on a road waiting to go inside a car park.

5. In reply, DS for T said that in (a) above, as the vehicle was brought to a stationary position at the roadside neither causing any disruption to the flow of traffic nor breaching any road traffic restrictions, the Administration had no intention to regulate the use of hand-held mobile phones under the situation. With regard to (b), the Administration was of the view that "stop-and-go" in a traffic jam formed part of the normal traffic pattern in the driving environment of Hong Kong, and hence, the use of mobile phones in such situation should not be allowed. However, it was unlikely that the Police would enforce the Amendment Regulation in case of a serious traffic jam where traffic was brought to a complete standstill. As to whether a clear definition of "serious traffic jam" could be provided, she said that it would be very difficult to define the term. She, however, said that the Police would exercise appropriate discretion in the course of enforcement. Further, statutory defence of reasonable excuse was available to the driver concerned under Regulation 61 of the Road Traffic (Traffic Control) Regulations. As to (c) above, DS for T said that the situation would vary depending on the place the vehicle was stopped. In general, if the vehicle was stopping on a road waiting to go inside a car park, the driver was still in the driving mode and the vehicle would have to drive on once the vehicle in front

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moved.

6. Mr Ronald ARCULLI, however, pointed out that under the common law principles, references could also be made to precedent cases for the construction of a particular term. Without a proper definition of "driving" in the Amendment Regulation, it would be impossible to determine the scope of its application because the elements which constituted the act of "driving" could vary according to different precedent cases. If the act of "behind the wheel" in relation to drink driving offences was to be taken as "driving", the driver's act in paragraph 4 (a) would not be permitted, contrary to the Administration's explanation. Hence, it would be very difficult to reconcile the different meanings of the same term "driving" in relation to different road traffic offences.

7. Noting the Administration's reply, Mr James TO opined that there was a need to strike a proper balance between road safety considerations and enforcement predictability and certainty. He asked the Administration to brief members on the relevant overseas legislation particularly the model adopted by Singapore where the use of hand-held mobile phones was prohibited while the vehicle was in motion.

8. In response, DS for T advised that the Administration had examined the practice of all five overseas countries which imposed similar restriction and the proposed regulation was modelled on relevant legislation in Australia and Malaysia. In Australia, a driver should not use a hand-held mobile phone while the vehicle "is moving or is stationary but not parked", and in Malaysia, it would be an offence if a driver "whilst driving a motor vehicle on the road, shall use or attempt to use a hand-held phone". As regards the Singaporean legislation referred to by the member, DS for T explained that the Administration's main concern was that it could not regulate the acts of a driver whilst the vehicle was stationary, such as when the vehicle was stopping before a red light. If the driver was in the course of making an outgoing call when the light turned green, he would have several options, viz. (a) to abort the call attempt and drive on; (b) to continue pressing the remaining buttons while driving on; or (c) to continue pressing the remaining buttons while staying in the same position. As the driver's next course of action would be unpredictable and not known to other road users, a dangerous situation might arise. In view of the safety risks involved, the Administration considered that the use of mobile phones in such situations should be regulated.

9. However, Mr James TO said that he was not entirely convinced by DS for T's reply because the safety risks involved might not be as great as those envisaged by the Administration. There would be no safety risk at all if course (a) was taken. If the driver took course (b), he would be breaking the law and his action would be penalised. If the driver chose to take course (c), his action would only cause a slight delay to other traffic because the whole process of pressing the remaining buttons would be completed in a few seconds and he would have to drive on anyway when prompted by the following vehicles or police officers. As such, contrary to the Administration's thinking, the situation would not be so dangerous after all and such incidents might not happen frequently. Mr TO considered that as the use of hands-free kit for mobile

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phones was not prohibited by the Singaporean legislation, the driver could continue his conversation while driving after the call was connected. Hence, this model could serve the purpose of ensuring road safety in most situations.

10. Pointing out that under the proposed regulation, the use of hands-free kit was also allowed, DS for T stressed that the new driving rule would catch the act of a driver using a mobile phone while holding it by hand. As cited in a recent article published by the Consumer Council (CC's report), researches conducted in overseas countries found that the act of pressing buttons on the mobile phone for outgoing calls would cause distraction to the driver. Thus, for the purpose of ensuring road safety, such act of a driver while driving should also be caught. As for the act of a driver pressing a button to receive or disconnect a call, it would be no different from other common acts of drivers for adjusting in-vehicle equipment such as the air-conditioning or radio cassette.

11. DS for T further advised that while the Administration had no intention to encourage the use of mobile phones while driving, it also recognised that a total ban on the use of mobile phones while driving would not be possible as there might be occasions that using mobile phones when driving might be justified. To strike a balance, the Administration considered that the Amendment Regulation should prohibit the use of a mobile phone while holding it by hand. The drivers should instead use a proper type of in-vehicle hands-free kit which included a stationary base unit for holding the mobile phone, as well as a microphone and a loudspeaker, both installed in fixed positions. As stated in CC's report, the level of distraction caused by making outgoing calls while holding the mobile phone by hand, no matter using speed dialling or keying in the whole number plus the SEND button, would be much greater than doing so on a mobile phone held by the base unit. However, from the Administration's point of view, road safety would best be enhanced if drivers did not use mobile phones at all while driving.

12. The Chairman commented that the Administration's viewpoints were contradictory because the driver could always stop the vehicle before pressing the buttons for making a call and it would not be an unsafe act. She pointed out that as demonstrated by DS for T's analysis in paragraph 9, the only problem created would be a slight delay in traffic flow and it had nothing to do with road safety. The proposed Amendment Regulation sought to prohibit the use of a mobile phone while holding it by hand, instead of the act of pressing buttons. Even if the mobile phone was placed in the base unit, the act of pressing buttons would still cause distraction. If the vehicle was in motion, making an outgoing call on a mobile phone held by the base unit might be even more dangerous than holding it by hand because the driver had to reach out for pressing the buttons.

13. Mr CHAN Kam-lam shared the Chairman's view. He opined that given the policy intention as stated, the Administration should seek to impose a total ban on the use of mobile phones and other telecommunication equipment while driving. The act of pressing buttons would cause distraction to the driver no matter where the mobile phone was placed. When driving in high speed, even a short lapse of attention would

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cause a great safety risk. If the driver's act of pressing buttons on a mobile phone held by a base unit was not prohibited, the purpose of enhancing road safety might be defeated. As regards the definition of "driving", Mr CHAN remarked that although the term was not defined in the UK Road Traffic Act, the Administration should consider doing otherwise for the proposed regulation in view of the uncertainties created. As the Singaporean legislation was clearer in terms of enforcement, it would be a step towards the right direction.

14. In reply, DS for T said that a few points had to be considered in imposing a total ban on the use of mobile phones while driving. Firstly, according to CC's report, the level of distraction caused by the use of the fully-integrated type of in-vehicle hands-free kit or the voice-activated dialling function on mobile phones would be absolutely minimal because calls could be connected and disconnected by pressing one button only and the driver could still maintain effective control over the steering wheel. Secondly, in view of rapid pace of technological advancement, it would not be appropriate to impose a total ban now which might forestall any future development. Thirdly, it would not be fair to those drivers who might have a genuine and frequent need for making phone calls while driving and were willing to spend the money to install a proper type of equipment in their vehicles for doing so safely. If members were in favour of defining the term "driving" in the Amendment Regulation, the Administration would be prepared to consider members' suggestion by making reference to other countries' legislation.

15. Dr LEONG Che-hung opined that the use of a proper type of hands-free kit for mobile phones as advocated by the Government would have to be achieved through education rather than legislation. He emphasised that the Amendment Regulation when passed eventually should be enforceable by the Police.

16. Disputing the Administration's explanation, Mr CHAN Kam-lam pointed out that as only a few models of mobile phone with voice-activated dialling function were available on the market, most drivers would not be making outgoing calls in the manner as described by the Administration. Thus, a loophole existed in the proposed regulation. He opined that if the intention of the Administration was to encourage the use of voice-activated accessory, the regulation should provide for such specifically so that it would be clear to both the drivers and law enforcement officers.

17. The Chairman enquired about the rationale for the Administration's claim that pressing the buttons on a mobile phone held by a base unit for outgoing calls would still be safe. In reply, DS for T clarified that according to CC's report, it would be safer when compared with pressing the buttons while holding the mobile phone by hand. The Administration had all along taken the view that using mobile phones while driving would be potentially dangerous. If a hand-held mobile phone was to be used, the driver should always park the vehicle first. However, in case of emergency or genuine need, a proper type of hands-free kit should be used, preferably with voice-activated dialling function. It would also be advisable for drivers to assign speed dialling keys for commonly-used telephone numbers.

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18. Responding to members' query about the different levels of distraction caused by the use of mobile phones while driving, DS for T said that according to CC's report, the attention of the driver would be taken off the road for 1.5 seconds while adjusting the air-conditioning, whereas the time taken for pressing the buttons for outgoing calls on a mobile phone held by hand and held by the base unit would be 10.6 and 9.5 seconds respectively. She went on to explain that as the driver's attention would be distracted for a significantly longer period of time when making outgoing calls as compared to the act of adjusting the air-conditioning, the Administration was of the view that the use of mobile phones held by hand while driving should be prohibited. As regards the difference between making a call on a mobile phone held by hand and held by the base unit, although 1.5 seconds might not seem long, it would make a huge difference under the busy traffic conditions in Hong Kong. In this regard, members were generally sceptical about the findings of the CC's report. At the request of the Chairman, DS for T agreed to provide a copy of the said report to members for further consideration.

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*(Post-meeting note: The requested information was subsequently issued to members vide LC Paper No. CB(1)1385/99-00 on 13 April 2000.)*

19. Responding to the Chairman's enquiry about the enforcement of the new driving rule as drafted and the Singaporean legislation, the Chief Superintendent, Traffic (CS/T) advised that the Police had always adopted a flexible approach during traffic enforcement actions by taking into account the acts of an offender and the effect of such acts on other road users or himself. In terms of facilitating the detection of offences and enforcement, narrowing down the scope of application of the proposed regulation would no doubt clarify the position; its effect might however be diminished correspondingly because only the acts of a driver using the mobile phone when the vehicle was in motion would be caught. There might be other situations where regulation would be desirable but effectively excluded. A right balance had to be struck so that the legislation would be clear as well as effective.

20. Mr CHENG Kar-foo remarked that the crux of the problem was the way drivers pressed the buttons for making outgoing calls. Disputing the validity of the evaluation cited in CC's report, Mr CHENG was of the view that it would be equally dangerous no matter where the mobile phone was placed because the driver would be controlling the steering wheel with one hand while pressing the buttons. He added that as individual drivers would have developed their own driving habit, pressing the buttons on a mobile phone held by a base unit might not always be safer than doing so on a hand-held phone. In his personal experience, he would prefer holding the mobile phone on one hand while controlling the steering wheel with the other and press the buttons intermittently between glances on the traffic situation ahead. Echoing Mr CHAN Kam-lam's views, Mr CHENG opined that the half-hearted measures proposed by the Administration would not serve its intended purpose at all. The Chairman summarised that members were in total support of the Administration's initiatives on ensuring road safety, but as highlighted by members during the discussion, the present proposal had many grey areas and in effect allowed the driver to do certain acts while driving which were also dangerous, such as pressing buttons

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on a mobile phone held by a base unit when the vehicle was in motion.

21. Addressing members' concerns in the matter, DS for T suggested that the formula of "while the vehicle is in motion" as used in the Singaporean legislation be adopted to the effect that while the vehicle was in motion, the use of mobile phones would be prohibited except for the use of hands-free kit for conversing only. If the vehicle was stationary, no restriction would be imposed.

22. At the invitation of the Chairman, members present indicated their positions on the new formula proposed by the Administration. Members were in support of the regulation of the use of hand-held mobile phone and other telecommunication equipment only while the motor vehicle concerned was in motion.

Use of mobile phone accessory

23. Raising another grey area in the Amendment Regulation, Dr LEONG Che-hung enquired whether the prohibited act of "holding (a mobile phone) between the driver's head and shoulder" would also apply to the commonly-known type of hands-free kit which comprised a ear-piece and a built-in microphone. DS for T replied that as opposed to the proper type of hands-free mobile phone kit referred to by the Administration, this simple device was not designed for in-vehicle use. As the drivers could use the device for conversing while driving, there was no intention to prohibit its use and no specific provision was made in the Amendment Regulation to allow or disallow particular types of in-vehicle hands-free kit.

24. Members considered that the proposed regulation had failed to reflect the Administration's intention. Mr Ronald ARCULLI opined that the relevant provision should be re-drafted because with the existing wording, a driver who used "any other equipment (of a mobile phone) ... between his head and shoulder" would be penalised. At the request of the Chairman, the Government Counsel advised that the provision as drafted might cause concern as to whether it covered a ear-piece. To avoid doubt, the drafting could be amended accordingly to clarify the exact scope of regulation.

Application of the driving rule to driving instructors

25. As a related matter, Mr CHENG Kar-foo pointed out that although "driving" was not defined in Cap. 374, a definition of the term "drive" was found in the Road Traffic (Driving-Offence Points) Ordinance (Cap. 375) which meant "in relation to a motor vehicle, to be in charge of or assist in controlling a motor vehicle". He queried whether under this definition, driving instructors would be similarly caught by the Amendment Regulation.

26. In reply, GC advised that although the said definition of the term "drive" in Cap. 375 had not been considered in the context of the present proposal, the term "driving" in the proposed Amendment Regulation would be, as explained earlier on, construed according to its ordinary meaning under common law principles. Related case law might also be helpful in its interpretation. According to the reference



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Admin. available on hand, there was at least a precedent case in which under certain circumstances, a driver and his accompanying driving instructor would be taken as controlling the same vehicle at the same time. At the request of Mr CHENG, the Administration undertook to ascertain the legal position in respect of driving instructors.

Admin. 27. Concluding deliberation on the Amendment Regulation, the Chairman invited the Administration to take note of members' support for the new formula of "while the vehicle is in motion". Reiterating the queries raised by members, the Chairman also requested the Administration to clarify whether the same regulation would be imposed on driving instructors and whether the use of an accessory of a mobile phone would be allowed. Agreeing to the Chairman's request, DS for T also undertook to provide the revised drafting to members once available.

*(Post-meeting note: The Administration's reply and the revised draft of the Amendment Regulation were subsequently circulated to members vide LC Paper No. CB(1)1476/99-00 on 28 April 2000.)*

28. At the suggestion of Mr ARCULLI, members agreed that the amended draft provisions would be circulated to members for consideration. Subject to members' endorsement, the Subcommittee would report the revised Amendment Regulation to the House Committee.

**III Any other business**

29. There being no other business, the meeting ended at 3:35 pm.

Legislative Council Secretariat

16 August 2000