

立法會
Legislative Council

LC Paper No. CB(1)2081/99-00
(These minutes have been seen
by the Administration and
cleared with the Chairman)

Ref: CB1/SS/2/99/2

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

Meeting on
Thursday, 18 May 2000, at 4:30 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 James TO Kun-sun
Hon CHAN Kam-lam
Hon Andrew WONG Wang-fat, JP
Hon LAU Kong-wah
Hon Ambrose LAU Hon-chuen, JP
Hon Andrew CHENG kar-foo

Members absent : Ir Dr Hon Raymond HO Chung-tai, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon Ronald ARCULLI, JP
Dr Hon LEONG Che-hung, 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

Action

I Meeting with the Administration

(LC Paper No. CB(1)1476/99-00 - Revised Amendment Regulation provided by the Administration)

The Chairman recapitulated that at the last meeting of the Subcommittee, members generally agreed that the Road Traffic (Traffic Control) (Amendment) Regulation 2000 (the Amendment Regulation) should be revised so that it only regulated the use of hand-held mobile phone and other telecommunication equipment while the motor vehicle concerned was in motion. The Administration was also requested to clarify the following concerns raised by members:

- (a) whether the prohibited act of "holding between the driver's head and shoulder" should only apply to mobile phone but not its accessory; and
- (b) whether the Amendment Regulation would apply to driving instructors.

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

2. The Chairman further advised that concern had subsequently been raised by Mr James TO on the new regulation 42 (1)(g)(iii) of the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg.) relating to the use of mobile phone accessory, and hence, the present meeting was convened.

3. At the invitation of the Chairman, Mr James TO elaborated on the rationale for his concern about the proposed regulation 42 (1)(g)(iii). He stated that the provision as drafted would also prohibit the acts of a driver for adjusting the orientation of a microphone or ear-piece of a hands-free kit to improve the clarity of communication or picking up such accessory when it was dropped off. Given that such temporary and momentary acts were not a major concern of road safety and no great hazard would be posed, it was considered that on balance, their prohibition would not be necessary

4. In response, the Deputy Secretary for Transport (DS for T) stressed that it was not the intention of the Administration to catch the acts cited by Mr James TO. Regulation 42 (1)(g)(iii) was proposed in response to the concern raised by some members at the previous meeting as to whether the prohibited act of "holding 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. The new provision would serve to clarify the exact scope of regulation, and it was targeted at those drivers who, while the vehicle was in motion, held the microphone for a long period of time when conversing. As such act was no different from that of a driver who held a mobile phone whilst driving, the Administration considered that its prohibition would be necessary for the sake of ensuring road safety. She further advised that as the acts cited by Mr James TO were not intended to be caught by the new driving rule, clear directives would be issued by the Police to its front-line officers for the enforcement of the new legislation after its enactment. As a further safeguard, the Central Traffic Prosecutions Bureau would review each and every case to ensure that prosecutions under these situations would be excluded.

5. Moreover, DS for T drew members' attention to the fact that the triggering point of offences under regulation 42 (1)(g)(iii) was to "use, while holding in ... hand, any accessory" while the vehicle was in motion, and as such, the dual elements of "use" and "holding in hand" should be present before an offence was committed. In this respect, queries were raised by members on the legal meaning of the expression. In response, the Assistant Legal Adviser said that the provision as drafted was indeed subject to interpretation because arguably, the need for adjusting the orientation of a microphone or ear-piece would only arise if the driver was engaging in a telephone conversation. Her view was shared by Mr LAU Kong-wah. The Chairman also remarked that by the same token, the driver's act of picking up such accessory when it was dropped off during a telephone conversation would also be caught.

6. Given the ambiguities and uncertainties involved in the meaning of "use, while holding in ... hand", Mr James TO said that he was unconvinced of the Administration's reply and he had a different interpretation in respect of members' concern about the use of mobile phone accessory. He opined that instead of calling for the regulation of the use of mobile phone accessory as proposed by the Administration, the point raised by members at the last meeting was that the use of a ear-piece of the commonly-known type of hands-free kit "between the driver's head and shoulder" should not be prohibited. He pointed out that notwithstanding DS for T's explanation, the act of a driver who held any mobile phone accessory by hand while the vehicle was in motion would be prohibited in the enforcement of regulation 42 (1)(g)(iii). Many disputes in respect of enforcement by the Police might arise as a

result. Given the policy intent of the Administration as stated by DS for T, Mr TO suggested that regulation 42 (1)(g)(iii) should be removed.

7. On the Chairman's enquiry about the effect of removing regulation 42 (1)(g)(iii) from the revised proposal, DS for T replied that a driver who held the microphone for conversing while the vehicle was in motion could still be caught by regulation 42 (1)(g)(ii) as the term "telecommunication equipment" would cover any mobile phone accessory.

8. Mr Andrew WONG opined that the key element for regulation was the danger posed by the driver's act of holding a mobile phone or its accessory while the vehicle was in motion and members' concern would be addressed fundamentally if only the proper type of in-vehicle hands-free kit was allowed. Although the drafting of the proposed provision might cover those acts which were not intended to be caught, Mr WONG supported the Administration's policy intent of prohibiting acts which might endanger road safety. He therefore supported that the use of accessories should also be controlled. Mr CHAN Kam-lam and Mr LAU Kong-wah also agreed that the use of accessories should be controlled. Referring to the hand-held mouth-piece of a radio transmitter installed in a motor vehicle, Mr CHAN pointed out that the act of a driver using such telecommunication equipment accessory while the vehicle was in motion was also dangerous and should be prohibited. Mr LAU remarked that some drivers would indeed hold the microphone by hand while conversing and he stressed that it would be equally dangerous no matter what type of accessory or equipment the driver was holding as long as he was controlling the steering wheel with one hand only.

9. Acknowledging other members' views, Mr James TO considered that if regulation 42 (1)(g)(iii) was to be retained, observation evidence gathered over a relatively long period of time during enforcement actions would be required in order to ensure that the acts cited in paragraph 3 above would not be caught unintentionally. The Chairman also opined that measures should be taken to ensure that innocent drivers would not be prosecuted by over-zealous enforcement efforts.

10. In reply, the Chief Superintendent, Traffic (CS/T) advised that from the law enforcement point of view, regulation 42 (1)(g)(iii) was desirable because there would be no uncertainty as to whether an accessory to a mobile phone or other telecommunication equipment was covered under the new driving rule. He assured members that traffic enforcement actions would only be taken by police officers for ensuring road safety and improving traffic flow and the Police would issue clear directives to front-line officers in accordance with the legislative intent of the proposed regulation. Addressing Mr TO's concern, CS/T said that the directives would certainly require police officers to have a closer observation of the act of a suspected driver over a longer period of time before taking any action against the driver. In this way, a driver's temporary and momentary act of holding an accessory to a mobile phone or any other telecommunication equipment by hand while the vehicle was in motion would not be prosecuted. The explanation given by CS/T was accepted by Mr James TO and other members.

11. Concluding deliberation of the meeting, the Chairman stated that the Subcommittee supported the revised proposal put forward by the Administration. In this connection, DS for T invited members to note that the Amendment Regulation would be gazetted shortly for negative vetting by the Legislative Council.

II Any other business

12. There being no other business, the meeting ended at 5:00 pm.

Legislative Council Secretariat
29 September 2000