

立法會
Legislative Council

LC Paper No. CB(1)1369/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/BC/6/07

Bills Committee on Road Traffic Legislation (Amendment) Bill 2008

**Minutes of third meeting held on
Monday, 7 April 2008, at 8:30 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon LAU Kong-wah, JP
Hon Andrew CHENG Kar-foo
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon KWONG Chi-kin
- Members absent** : Hon James TIEN Pei-chun, GBS, JP
Hon James TO Kun-sun
Hon Abraham SHEK Lai-him, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon TAM Heung-man
- Public Officers attending** : Ms Annette LEE
Deputy Secretary for Transport and Housing (Transport) 3
- Miss Rosanna LAW
Principal Assistant Secretary for Transport and Housing
(Transport) 2
- Ms Macella LEE
Assistant Secretary for Transport and Housing
(Transport) 2C

Ms Vicki LEE
Senior Government Counsel
Department of Justice

Ms Carmen CHU
Senior Government Counsel
Department of Justice

Miss Emma WONG
Government Counsel
Department of Justice

Miss LUI Ying
Assistant Commissioner/Administration and Licensing
Transport Department

Mr LEUNG Tak-fai
Chief Engineer/Road Safety & Standards
Transport Department

Mrs Margaret CHAN
Principal Executive Officer/VALID & Licensing
Transport Department

Mr Honson YUEN
Chief Transport Officer/Driving Services
Transport Department

Mr M.R. Demaid-GROVES
Chief Superintendent of Police (Traffic)

Ms CHU Ming-po
Senior Superintendent of Police (Adm) (Traffic)

Ms Nancy NGAN
Superintendent (Law Revision & Projects) (Traffic)

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

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Ms Sarah YUEN

Senior Council Secretary (1)6

Ms Angel SHEK
Council Secretary (1)2

Action

I Meeting with the Administration

- (LC Paper No. CB(1)1174/07-08(01) - List of follow-up actions arising from the meeting on 1 April 2008 prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1174/07-08(02) - The Administration's response to issues raised at the meeting on 1 April 2008
- LC Paper No. CB(3)372/07-08 - The Bill
File Ref: THB(T)CR 1/14/3231/00 - The Legislative Council Brief issued by the Transport and Housing Bureau
- LC Paper No. CB(1)1097/07-08(01) - Marked-up copy of the Bill prepared by the Legal Service Division)

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. Mr Andrew CHENG restated his earlier view that the proposed additional penalties for drink driving were not heavy enough to reflect the serious nature of the offence, and that a drink driving offender should be disqualified from driving for not less than six months/one year (instead of three months as suggested in the Bill) on a first conviction and for not less than two years for a second or subsequent conviction. In response, the Administration pointed out that if the Bill was passed to empower the Police to conduct random breath tests (RBTs), a driver having consumed alcohol above the prescribed limit could be caught and disqualified from driving for not less than three months upon first conviction even though he had not been involved in any traffic accident or had not committed any traffic offence. Moreover, if the case warranted, the Police could also prosecute the driver concerned for committing the offence of dangerous driving or even causing death by dangerous driving which carried higher penalties.

3. Mr Andrew CHENG was not convinced. In order to send a strong message to motorists that drink driving was not in any way tolerated in Hong Kong, he repeatedly urged the Administration to give due regard to his views above, and consider moving a Committee Stage Amendment (CSA) to the Bill to lengthen the duration of disqualification from not less than three months to not less than six months/one year on a first conviction of drink driving.

Action

4. Mr Andrew CHENG also urged the Administration to reconsider members' earlier proposal to impose different levels of penalties for different blood alcohol concentration (BAC) levels beyond the prescribed limit. In this regard, the Chairman enquired why Hong Kong could not follow the examples of Australia and Arizona, where graded levels of penalties were imposed. In response, the Administration explained that court guidelines were already available for imposing different levels of penalties for different BAC levels above the prescribed limit. The Administration also pointed out that providing different levels of penalties for different BAC levels would require careful consideration of the appropriate BAC levels and their corresponding penalties, which included imprisonment terms and fine levels in addition to disqualification periods. As such, more time would be required for deliberation and consultation with parties concerned. The Administration suggested that the proposed basket of measures should first be implemented and that the Administration would keep the situation under review, with a view of introducing tougher measures as necessary..

5. Noting the availability of the above court guidelines, the Chairman agreed that there might not be a need to specifically provide in the Bill different levels of penalties for different BAC levels above the prescribed limit. Mr Andrew CHENG, however, maintained that the Administration should take the opportunity of this legislative amendment exercise to provide for a graded level of penalties.

6. The Chairman referred to the proposed arrangements for conducting RBTs set out in Annex E to the Administration's paper for this meeting (LC Paper No. CB(1)1174/07-08(02)). Whilst the proposed arrangements might help ease public concern about the possible abuse of Police power, she was worried that soon after the initial period of operation, the Administration might alter the proposed arrangements, say by empowering police officers other than traffic police to conduct RBTs. To allay members' concern, the Administration agreed to report in due course on implementation of RBTs, and consult the Panel on Transport before introducing any changes to the arrangements.

7. Mr KWONG Chi-kin highlighted the concern of professional drivers that the Police might abuse the power to conduct RBTs, and certain drivers might be targeted as a result. In response, the Administration pointed out that drivers could file complaints through the present police complaints mechanism if they were aggrieved by the improper conduct of RBTs. In this regard, the Chairman opined that the above concern could be addressed if, as a permanent measure, the Police would keep a full record of all RBTs conducted including details such as the driving licence numbers, the vehicle registration numbers, the times and locations of the tests conducted, etc. In response, the Administration assured members that the Police already had plans to keep a full record of all RBTs conducted.

Follow-up actions

Admin 8. As a result of the discussion above, the Administration was requested to take the following actions –

Action

- (a) to consider Mr Andrew CHENG's request for introducing a CSA to the Bill to lengthen the duration of disqualification from not less than three months to not less than six months/one year on a first conviction of drink driving;
- (b) to provide information on court guidelines for imposing different levels of penalties for different BAC levels above the prescribed limit; and
- (c) to report in due course on implementation of RBTs which the Bill would empower the Police to conduct, and consult the Panel on Transport before introducing any changes to the proposed arrangements for conducting the tests.

The way forward

9. After going through all policy issues arising from the Bill, members discussed whether the Bills Committee should proceed to clause-by-clause examination of the Bill at this meeting. Noting that a meeting would be held on 19 April 2008 to receive views from deputations, members decided that clause-by-clause examination of the Bill should proceed after receiving public views at the 19 April meeting, i.e., at the meeting that followed on 22 April 2008. As a result, the meeting of the Bills Committee originally scheduled for 14 April 2008 at 8:30 am would be cancelled.

Clerk

III Any other business

10. There being no other business, the meeting ended at 9:20 am.

Council Business Division 1
Legislative Council Secretariat
25 April 2008

**Proceedings of the third meeting of the
Bills Committee on Road Traffic Legislation (Amendment) Bill 2008
on Monday, 7 April 2008, at 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
<i>Agenda Item I – Meeting with the Administration</i>			
000000 - 000440	Chairman	- Opening remarks	
000441 - 001932	Administration	- Briefing by the Administration on its response to issues raised at the meeting on 1 April 2008 (LC Paper No. CB(1)1174/07-08(02))	
001933 -002638	Mr Andrew CHENG Administration	- Discussion on: i) the need to introduce penalties for drink driving which were heavier than those proposed in the Bill ii) the proposal to impose different levels of penalties for different blood alcohol concentration (BAC) levels above the prescribed limit iii) the need to propose additional penalties for use of hand-held mobile phone while driving	Administration to take necessary follow-up action
002639 - 003348	Chairman Mr Andrew CHENG Administration	- Discussion on why Hong Kong could not impose different levels of penalties for different BAC levels above the prescribed limit as in Australia and Arizona (USA)	Administration to take necessary follow-up action
003349 - 003912	Chairman Administration	- Discussion on the need for the Administration to consult the Panel on Transport before introducing any changes to the proposed arrangements for conducting random breath tests (RBTs) (Annex E to LC Paper No. CB(1)1174/07-08(02))	Administration to take necessary follow-up action
003913 - 004515	Chairman Mr KWONG Chi-kin Administration	- Discussion on how to address professional drivers' concerns about being targeted for conducting RBTs	
004516 - 004700	Chairman Clerk	- Meeting arrangements	