

立法會
Legislative Council

LC Paper No. CB(1)1472/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/BC/6/07

Bills Committee on Road Traffic Legislation (Amendment) Bill 2008

**Minutes of fourth meeting held on
Tuesday, 22 April 2008, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon James TO Kun-sun
Hon LAU Kong-wah, JP
Hon Andrew CHENG Kar-foo
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHEUNG Hok-ming, SBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KWONG Chi-kin
Hon TAM Heung-man

Member absent : Hon Abraham SHEK Lai-him, SBS, JP

Public Officers attending : **Agenda item II**

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 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 Raymond LEUNG
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)

Mr WONG Yiu-ming, Shylock
Superintendent (Law Revision & Projects) (Traffic)

**Attendance by
invitation**

: Agenda item II

Taxi & PLB Concern Group

Mr LAI Ming-hung
Chairman

Lok Ma Chau China-Hong Kong Freight Association

Mr Stanley CHAING
Chairman

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 Confirmation of minutes and matters arising

(LC Paper No. CB(1)1278/07-08 - Minutes of meeting held on
1 April 2008)

The minutes of the meeting held on 1 April 2008 were confirmed.

II Meeting with deputations/the Administration

(LC Paper No. CB(1)1320/07-08(02) - Letter from Hon Abraham SHEK
Lai-him on the Bill

LC Paper No. CB(1)1272/07-08(01) - List of follow-up actions arising
from the previous meetings
prepared by the Legislative
Council Secretariat

LC Paper No. CB(1)1272/07-08(02) - The Administration's response to
issues raised at the meeting on 7
April 2008

LC Paper No. CB(1)1299/07-08(02) - Submission from a Mr CHENG

LC Paper No. CB(1)1299/07-08(03) - Submission from 香港交通運輸業
職工聯合會

LC Paper No. CB(3)372/07-08 - The Bill

LC Paper No. CB(1)1097/07-08(01) - Marked-up copy of the Bill
prepared by the Legal Service
Division

LC Paper No. CB(1)1272/07-08(03) - Letter from the Assistant Legal
Adviser (ALA) dated 2 April 2008
to the Transport and Housing
Bureau

LC Paper No. CB(1)1272/07-08(04) - Administration's response to the
points raised in ALA's letter dated
2 April 2008

LC Paper No. CB(1)1320/07-08(01) - Paper from the Administration on
proposed Committee Stage
amendments)

Action

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

Meeting with deputations

Taxi & PLB Concern Group

(LC Paper No. CB(1)1299/07-08(02))

3. At the Chairman's invitation, Mr LAI Ming-hung, Chairman of the Taxi & PLB Concern Group, briefed members on the Concern Group's submission.

Lok Ma Chau China-Hong Kong Freight Association

4. Mr Stanley CHAING, Chairman of the Lok Ma Chau China-Hong Kong Freight Association, stated that the Association supported the proposal in the Bill to disqualify a drink driving offender from driving for not less than three months on first conviction. However, it had great reservation about the provision of power for the Police to require drivers to conduct screening breath tests (SBTs) at random and without the need for reasonable suspicion. This was because conduct of random breath tests (RBTs) was similar to conduct of body search. The random nature might mean that the power was too great and could give rise to abuse. To require a driver to provide a breath specimen without any need for reasonable suspicion was insulting which was unreasonable.

Exchange of views

5. In response to the two deputations' views, the Administration made the following responses –

- (a) On the Concern Group's concern expressed in its submission about wrongful charges of dangerous driving, professional drivers could be assured that the Police always exercised great care, and would seek legal advice if necessary, before making prosecutions. The Police would prosecute the driver concerned for committing the offence of careless driving or dangerous driving, depending on the circumstances and evidence of each case; and
- (b) To ensure proper exercise of the power to conduct RBTs, the Police had already drawn up some arrangements for exercising the power to prevent abuse and minimize inconvenience to the driver and other motorists.

6. Mr LAI Ming-hung of the Concern Group remained cautious about instituting prosecutions for committing the offence of causing death by dangerous driving. Mr Stanley CHAING of the Association reiterated his view that, since the Police could already conduct SBTs if there was reasonable suspicion, there was no need to further empower the Police to conduct RBTs.

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7. In response, the Administration emphasized that the Police would exercise the power to conduct RBTs carefully and in a fair and impartial manner. The legislative proposals were made in response to public calls for more stringent measures to deter drink driving and dangerous driving.

8. Mr James TO questioned whether the proposed power for the Police to require drivers to conduct SBTs at random and without the need for reasonable suspicion would breach the provisions on human rights in the Basic Law, or compromise the protection for concerned persons against self incrimination. In response, the Administration pointed out that there were overseas countries practising RBTs, and that the Department of Justice had reviewed the Bill to ensure that it would not breach the provisions on human rights. In fact, under section 60 of the Road Traffic Ordinance (RTO) (Cap. 374), the Police already possessed the power to stop vehicles without the need for reasonable suspicion. At Mr TO's request, the Administration agreed to provide a paper to address his concerns.

9. At Mr James TO's invitation to give advice, Assistant Legal Adviser 1 (ALA1) confirmed that there were precedents in both the United Kingdom and Hong Kong where certain measures were taken notwithstanding self incrimination considerations. In fact, there were established principles that limited qualification of certain rights, including the right against self-incrimination, was acceptable if it was reasonably directed by the authority towards a clear and proper public objective and represented no greater qualification than what was called for by the situation, i.e. the qualification had to be proportional. Example of such qualification of rights was the requirement of owner/driver of a vehicle to provide information of the driver in a traffic accident or offence. Mr James TO considered the request for provision of breath specimens was more intrusive than stopping a vehicle or request for personal data.

10. Mr KWONG Chi-kin invited the two deputations to comment on the need to lengthen the duration of disqualification from driving on a first conviction of drink driving from not less than three months to a longer period. The deputations reaffirmed their support for the disqualification period of not less than three months proposed under the Bill. Instead of lengthening the period, the deputations considered that the court should be given the discretion to, if it saw fit having considered all the relevant circumstances of a case, hand down a sentence of disqualification of any duration longer than three months.

11. The Bills Committee noted that Mr Abraham SHEK supported the Administration's proposal regarding the revision to the penalties for drink driving offences.

Clause-by-clause examination of the Bill

12. The Bills Committee then went through the Bill clause by clause. On *clause 9*, members expressed concern that the scope of power provided in the new section 39B(1)

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of RTO, under which "a person who is driving or attempting to drive, or is in charge of, a motor vehicle on a road" could be required to provide a breath specimen, was wider than that specified in the proposed arrangements in conducting RBTs as set out in Annex E to LC Paper No. CB(1)1174/07-08(02). The latter stated that RBTs would not normally be targeted against vehicles in motion, but would normally be conducted during roadblock operations or as part of other traffic enforcement checks. In response, the Administration explained that there was a need for such a general empowering section to obviate the need to introduce further legislative amendments in future. The Administration also assured members that, as undertaken at the meeting on 7 April 2008, the Police would review in three to six months' time the implementation of RBTs and report in due course to the Panel on Transport, and would consult the Panel if there were proposed changes in future to the proposed arrangements. Meanwhile, the arrangements for conducting RBTs had been made known to the public. Noting the above response and the need to facilitate enforcement, members agreed to retain the wording of the new section on the understanding that the Secretary for Transport and Housing would state in her speech during the resumption of the Second Reading debate on the Bill the Administration's above undertaking.

13. On *clause 15* concerning restriction on motor racing and speed trials, Mr KWONG Chi-kin enquired why the Administration had not taken the opportunity of this legislative amendment exercise to introduce heavier penalties to combat illegal motor racing, which in his view was rampant. In reply, the Administration pointed out that the existing penalties were already heavy. 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 might carry higher penalties. Moreover, the Police were also taking active enforcement actions to combat this offence. For example, in 2007 alone, some 9 000 drivers had been prosecuted during operations against illegal road racing and most of them had been convicted. At Mr KWONG's request, the Administration agreed to monitor the relevant statistics and consider introducing heavier penalties if found necessary, and to report the outcome in due course to the Panel on Transport.

14. On *clause 20* concerning the power of the court to order persons to attend driving improvement courses, the Chairman enquired about the reason for ordering a person disqualified for a fixed period of more than 12 months to attend and complete the driving improvement course within three months ending on the date on which that fixed period expired. She also expressed concern that the above restriction might cause the person difficulty in completing the course in time. In response, the Administration explained that the restriction had been proposed to ensure that the driver concerned would benefit most from the course. They assured members that arrangement would be made with driving improvement schools to ensure the offer of sufficient places to cater for the increase in demand arising from the Bill. They also pointed out that since the course would normally take up one full day or two half days, drivers should have no difficulty in completing the course in time despite the above restriction. Moreover, drivers could enrol for the course well in advance.

Action

Follow-up actions

- Admin 15. The Administration was requested to take the following actions –
- (a) to provide a paper with reference to the judgements of precedent cases of Hong Kong or overseas jurisdictions to explain why the provision of a power for the Police to require drivers to conduct SBTs at random and without the need for reasonable suspicion would not breach the provisions on human rights in the Basic Law or compromise the protection for concerned persons against self incrimination, especially as the concerned persons would be required to provide a breath specimen;
 - (b) to provide a copy of the judgment by the High Court Judge on the case (*Lau Shu Wing*, HCMA1124/1998) referred to in page 2 of Annex B to the Administration's response to issues raised at the meeting on 7 April 2008 (LC Paper No. CB(1)1272/07-08(02));
 - (c) the Secretary for Transport and Housing to state in her speech during the resumption of the Second Reading debate on the Bill the Administration's undertaking to report in due course on the implementation of RBTs to the Panel on Transport, and to consult the Panel if changes were to be made to the proposed arrangements in conducting RBTs as set out in Annex E to LC Paper No. CB(1)1174/07-08(02); and
 - (d) to monitor the statistics of illegal motor racing and consider introducing heavier penalties to combat this offence if found necessary, and to report the outcome in due course to the Panel on Transport.

III Any other business

16. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
8 May 2008

**Proceedings of the fourth meeting of the
Bills Committee on Road Traffic Legislation (Amendment) Bill 2008
on Tuesday, 22 April 2008, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Meeting with the Administration			
000000 – 000014	Chairman	- Confirmation of minutes of the meeting held on 1 April 2008 (LC Paper No. CB(1)1278/07-08)	
000015 – 000314	Chairman	- Opening remarks	
Agenda Item II – Meeting with deputations/the Administration			
<i>Meeting with deputations/the Administration</i>			
000315 – 000845	Taxi & PLB Concern Group (the Concern Group)	- Presentation of views	
000846 – 001022	Lok Ma Chau China-Hong Kong Freight Association (the Association)	- Presentation of views	
001023 – 002006	Chairman Administration The Concern Group The Association	- Exchange of views between the Administration and the two deputations - The Chairman's reference to the submissions from a Mr CHENG and 香港交通運輸業職工聯合會 (LC Papers Nos. CB(1)1299/07-08(02) and (03))	
002007 – 003007	Chairman Mr James TO Administration Assistant Legal Adviser (ALA1)	- Discussion on Mr James TO's concern that the provision of a power for the Police to require drivers to conduct screening breath tests at random and without the need for reasonable suspicion might breach the provisions on human rights set out under the Basic Law or compromise the protection for concerned persons against self incrimination	Administration to take necessary follow-up action
003008- 003357	Mr KWONG Chi-kin The Concern Group The Association	- Solicitation of the Concern Group and the Association's views on the need to lengthen the duration of disqualification from driving on a first conviction of drink driving from not less than three months to a longer period	
003358 – 004046	Chairman Administration	- Briefing by the Administration on its response to issues raised at the meeting on 7 April 2008	Administration to take necessary follow-up action

Time marker	Speaker	Subject(s)	Action required
		(LC Paper No. CB(1)1272/07-08(02)) - Members' views on the proposal under the Bill to disqualify a drink driving offender from driving for not less than three months on a first conviction, and to allow the court to exercise discretion to hand down a sentence of disqualification of any duration longer than three months as necessary	
004047 –004517	Chairman Administration	- Briefing by the Administration on its paper on the proposed Committee Stage amendments to the Bill (LC Paper No. CB(1)1320/07-08(01))	
Clause-by-clause examination			
004518 –005308	Chairman Administration	- Briefing by the Administration on the long title and clause 1 to clause 3	
005309 – 005855	Chairman Administration Mr KWONG Chi-kin	- Briefing by the Administration on clause 4 - Administration's explanation in response to Mr KWONG Chi-kin of the nature, composition, operation, functions and accountability of the Transport Tribunal	
005856 –011249	Chairman Administration Prof Patrick LAU	- Briefing by the Administration on clause 5 - Administration and the Chairman's explanation in response to Prof Patrick LAU of the meaning of "summary conviction" - Administration's explanation in response to the Chairman of the purpose of adding the new sub-sections (2A), (2B) and (2C) to section 36 of the Road Traffic Ordinance (RTO) (Cap. 374)	
011250 –013039	Chairman Administration ALA1 Mr KWONG Chi-kin	- Briefing by the Administration on clause 6 to clause 9 - Discussion on the scope of power provided in the new section 39B(1) of RTO (clause 9)	Administration to take necessary follow-up action
013040 –013847	Chairman Administration Mr KWONG Chi-kin	- Briefing by the Administration on clause 10 to clause 15	

Time marker	Speaker	Subject(s)	Action required
		- Discussion on the need to impose heavier penalties against illegal motor racing (clause 15)	Administration to take necessary follow-up action
013848 – 014056	Chairman Administration Mr KWONG Chi-kin	- Briefing by the Administration on clause 16 and clause 17 - Discussion on the difference in meaning between "及格" and "合格" (clause 17)	
014057 – 015754	Chairman Mr KWONG Chi-kin Administration	- Briefing by the Administration on clause 18 to clause 20 - Discussion on the reason for ordering a person disqualified for a fixed period of more than 12 months to attend and complete the driving improvement course within three months ending on the date on which that fixed period expired, and whether the restriction would cause the person difficulty in completing the course in time (clause 20)	
015755 - 020520	Chairman Mr KWONG Chi-kin	- Meeting arrangements	