

立法會
Legislative Council

LC Paper No. CB(1)1009/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/BC/6/09

Bills Committee on Motor Vehicle Idling (Fixed Penalty) Bill

**Minutes of the twelfth meeting held on
Thursday, 2 December 2010, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon LEUNG Yiu-chung
Hon Miriam LAU Kin-ye, GBS, JP
Hon LI Fung-ying, SBS, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon KAM Nai-wai, MH
Dr Hon PAN Pey-chyou
Hon LEUNG Kwok-hung
Hon Tanya CHAN

Members absent : Hon LEE Cheuk-yan
Hon LEE Wing-tat
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Hon IP Wai-ming, MH

Public officers attending : **Agenda item II**
Mr Carlson CHAN
Deputy Director of Environmental Protection (3)

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Mr W C MOK
Assistant Director of Environmental Protection
(Air Policy)

Miss Susanna LAI
Senior Administrative Officer
(Air Policy Division)
Environmental Protection Department

Mr Paul O'BRIEN
Senior Assistant Law Draftsman
Department of Justice

Ms Angie LI
Senior Government Counsel
Department of Justice

Mr S H VERRALLS
Chief Superintendent of Police
(Traffic Branch Headquarters)
Hong Kong Police Force

Mr Shylock WONG
Superintendent (Law Revision and Projects,
Traffic Branch Headquarters)
Hong Kong Police Force

Clerk in attendance : Ms Joanne MAK
Chief Council Secretary (1)2

Staff in attendance : Ms Kitty CHENG
Assistant Legal Adviser 5

Ms Sarah YUEN
Senior Council Secretary (1)6

I Confirmation of minutes of meeting
(LC Paper No. CB(1)496/10-11 - Minutes of meeting on 11 October
2010

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LC Paper No. CB(1)628/10-11 - Minutes of meeting on 25 October 2010)

The minutes of the meetings held on 11 October and 25 October 2010 respectively were confirmed.

II Meeting with the Administration

(LC Paper No. - Administration's response to issues raised at the meeting on 12 November 2010
CB(1)495/10-11(01)

LC Paper No. - Submission from Travel Industry Council of Hong Kong
CB(1)630/10-11(01)

LC Paper No. - Submission from Mr Anders Ejendal
CB(1)630/10-11(02)

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

3. The Administration took members through the paper on the Administration's response to the issues raised at the meeting on 12 November 2010 (LC Paper No. CB(1)495/10-11(01)).

Clause-by-clause examination of the Bill

4. The Bills Committee completed scrutiny of clause 25 to Schedule 2 to the Bill.
(LC Paper No. - Marked-up version of proposed
CB(1)495/10-11(02) Committee Stage amendments provided by the Administration

LC Paper No. CB(3)598/09-10 - The Bill
File Ref: EP CR 9/150/27 - Legislative Council Brief issued by the Environmental Protection Department

LC Paper No. - Assistant Legal Adviser 5's letter dated 27 October 2010 to the Administration
CB(1)278/10-11(02)

LC Paper No. - Administration's response dated November 2010 to Assistant Legal Adviser 5's letter dated 27 October 2010
CB(1)278/10-11(03)

5. The Bills Committee noted that by the definition of "road" in the Bill, the proposed idling prohibition would apply to all motor vehicles on private roads as

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Admin well as on other roads, including any car parks. The Bills Committee requested the Administration to clearly explain to the public the areas covered by the Bill (in particular car parks wherein posters and notices should be posted to remind drivers of the idling prohibition) after enactment of the Bill. The Administration agreed to follow up.

Admin 6. The Bills Committee considered that Schedule 1 to the Bill, which set out the circumstances in which the idling prohibition did not apply, was most important and any amendments to Schedule 1, after enactment of the Bill, should be subject to scrutiny by the Legislative Council (LegCo) under the positive vetting procedure. The Administration agreed to consider the request and revert at the next meeting.

7. Some members urged the Administration to grant further exemptions from the idling prohibition as follows:

- (a) To all drivers on days when the "Thunderstorm Warning" was issued;
- (b) To all drivers during the hot months of a year; and
- (c) To all drivers during days of heavy rain (though not up to the triggering point for the issue of a rainstorm warning signal).

8. The Administration responded that a wide range of exemptions had already been proposed in the Bill, such as a three-in-sixty-minute grace period as well as an extensive list of exemptions, to cater for the specific operational requirements of different transport trades. At recent meetings, the Administration had further proposed to grant exemption to all taxi stands, and to all drivers on days when the "Very Hot Weather Warning" or the "Amber, Red or Black Rainstorm Signal" were issued. The Administration explained that there was also difficulty in defining circumstances that would be regarded as heavy rain, whereas the current proposal of granting exemption when an Amber, Red or Black Rainstorm warning signal was in force would facilitate enforcement and avoid disputes. The Administration also reminded members to note that the number of days with rain amounted to some two-thirds of a year based on past records. As regards the suggestion of granting exemption to all drivers when the "Thunderstorm Warning" was issued, the Administration explained that this was not proposed as there might not be rain when there was a thunderstorm.

9. The Administration also explained that the proposed exemption during hot months, say, from July to October, was not preferred because some of the

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days during these months were not very hot and granting a blanket exemption was not justifiable. On the other hand, if this exemption was adopted in place of the proposed "Very Hot Weather Warning" exemption, the blanket exemption could not be applied on any hot day even with the "Very Hot Weather Warning" issued if such a day fell outside the exempted months. The Administration considered that the targeted approach currently proposed by the Administration in drawing up exemption arrangements would better help deliver the objectives of the Bill and cater to the specific needs of the transport trades.

10. Some members including Hon CHAN Kam-lam and Hon Miriam LAU opined that many of the exemptions were for professional drivers only. They pointed out that drivers of general private cars might be aggrieved if there was insufficient flexibility in implementing the idling prohibition, and that the exemption of a three-in-sixty-minute grace period, though applicable to all drivers, might be too short to cater for their practical needs in real-life situations (e.g. the medical needs of a pregnant woman in the car).

Follow-up actions required of the Administration

- Admin 11. The Administration was requested to take the following actions to address concerns raised by members at the meeting –
- (a) To consider amending clause 32 to provide that Schedule 1 to the Bill would be amended under the positive vetting procedure. If the negative vetting procedure was to be adopted, the Administration was required to ensure that (i) the commencement date for any amendment should take place after the expiry of its vetting period, (ii) the relevant Panel(s) be thoroughly consulted on any proposed amendments to Schedule 1, and (iii) the Bill should clearly provide that LegCo would have the power to repeal or amend the relevant subsidiary legislation where necessary;
 - (b) To consider amending the proposed new section 1(2) of Schedule 1 to put it beyond doubt that exemption would apply in the following situations: vehicles queuing up for entry into a car park, a container terminal, a landfill or a petrol filling station. Consideration might be given to amending section 1(2) along the lines that "traffic conditions that may include" instead of quoting examples. The examples given in section 1(2) should, instead, be included in the relevant publicity materials;
 - (c) To consider amending section 2(1) of Schedule 1 to provide that

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section 5 would not apply to a driver of a taxi that was stationary in a queue of taxis into a taxi stand or within the designated area of a taxi stand;

- (d) To consider amending section 2(4)(a) of Schedule 1 by deleting the phrase ",other than a franchised bus";
- (e) To consider members' request for the Secretary for the Environment to include in his speech at the resumption of the Second Reading debate on the Bill an explanation of the vehicles intended to be covered under proposed section 7 of Schedule 1 to the Bill, including trucks installed with the tail-board. Information on the vehicles to be covered under proposed section 7 of Schedule 1 should also be included in the relevant publicity materials;
- (f) To consider some members' suggestions of granting further exemption as follows:
 - (i) To all drivers on days when the "Thunderstorm Warning" was issued; and
 - (ii) To all drivers during hot months;
- (g) To address some members' concerns that private car drivers had expressed the view that the proposed exemption arrangements had failed to take into account their practical needs in real-life situations, e.g. picking up children on rainy days and the waiting time exceeded three minutes; and
- (h) To provide details of the arrangements planned for dissemination of real-time information to drivers on the issue of the "Very Hot Weather Warning" or "Amber, Red or Black Rainstorm Signal".

Date of next meeting

12. Members agreed to cancel the meeting originally scheduled for 22 December 2010 and to hold the next meeting on Thursday, 13 January 2011, at 8:30 am.

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II Any other business

13. There being no other business, the meeting ended at 10:35 am.

Council Business Division 1
Legislative Council Secretariat
12 January 2011

**Proceedings of the twelfth meeting of
the Bills Committee on Motor Vehicle Idling (Fixed Penalty) Bill
on Thursday, 2 December 2010, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Confirmation of minutes of meeting			
000416 – 000607	Chairman	<ul style="list-style-type: none"> - Confirmation of minutes of meetings - Opening remarks 	
Agenda item II – Meeting with the Administration			
<i>Administration's briefing on LC Paper No CB(1)495/10-11(01)</i>			
000608 – 001010	Chairman Administration	<ul style="list-style-type: none"> - Administration's briefing on LC Paper No CB(1)495/10-11(01), and confirmation that its supplementary response to issues relating to clause 19 raised at the meeting on 12 November 2010 would be provided later pending advice from the Department of Justice 	
<i>Clause-by-clause examination of the Bill (LC Paper No CB(1)495 /10-11(02))</i>			
001011 – 001224	Chairman Assistant Legal Advisor 5 (ALA5) Administration	<ul style="list-style-type: none"> - Administration's briefing on clause 25 - Administration's confirmation in response to the Chairman that it might not be advisable to revise the expression "a person" in this clause to read "the defendant" because a complaint might not necessarily be made 	
001225 – 001608	Chairman Administration ALA5	<ul style="list-style-type: none"> - Administration's briefing on clause 26 - Discussion on the Administration's response to ALA5's question(s) regarding the clause (paragraphs 17 and 18 of LC Paper No. CB(1)278/10-11(03)) 	
001609 – 003504	Chairman Administration ALA5 Mr KAM Nai-wai Ms Miriam LAU Dr PAN Pey-chyou	<ul style="list-style-type: none"> - Administration's briefing on clause 27, in particular its response to ALA5's question(s) regarding the clause (paragraph 19 of LC Paper No. CB(1)278/10-11(03)) - Discussion on the meaning of "authorized officers", the desirability of also including police officers as authorized officers (clause 2 and Schedule 2), and on why only traffic wardens and senior traffic wardens were highlighted in clause 27(2) - Administration's clarification in response to Ms LAU that "private roads" included car parks (section 2 of the Road Traffic 	Administration to provide information

Time marker	Speaker	Subject(s)	Action required
		Ordinance (Cap. 374)) and car lifts, and that authorized officers would only take enforcement action on private roads, including car parks, in response to complaints	(paragraph 5 of minutes)
003505 – 003654	Chairman Administration	- Examination of clauses 28 to 30	
003655 003800	Chairman Administration	- Administration's briefing on clause 31, and its confirmation in response to the Chairman that the regulations concerned were subsidiary legislation subject to the negative vetting procedure	
003801 – 005048	Chairman Administration ALA5 Mr KAM Nai-wai Ms Miriam LAU Ms LI Fung-ying Dr PAN Pey-chyou	<ul style="list-style-type: none"> - Administration's briefing on clause 32, and its confirmation in response to the Chairman that amendment to the Schedules would be made in the form of subsidiary legislation subject to the negative vetting procedure - Discussion on the principle(s) which determined whether a legislative proposal should be made in the form of subsidiary legislation subject to the negative or to the positive vetting procedure, and on the need for Schedule 1 to the Bill to be amended in the form of subsidiary legislation subject to the positive vetting procedure. Members were of the view that if the negative vetting procedure was to be adopted, there should be restrictions on when the amendments could take effect, and assurance that there would be thorough consultation on these amendments, and that the Bill should clearly provide that LegCo would have the power to repeal or amend the relevant subsidiary legislation where necessary (clauses 7 and 31(b)) 	Administration to provide information (paragraph 11 of minutes)
005049 – 005329	Chairman Administration	- Examination of the new clause 33	
005330– 010609	Chairman Administration Ms Miriam LAU Dr PAN Pey-chyou	<ul style="list-style-type: none"> - Administration's briefing on section 1 of Schedule 1 to the Bill - Discussion on the new section 1(2) of Schedule 1 to the Bill, in particular the need to put it beyond doubt that exemption would apply in the following situations: vehicles queuing up for entry into a car 	Administration to provide information (paragraph 11 of minutes)

Time marker	Speaker	Subject(s)	Action required
		park, a container terminal and a landfill, and on the desirability of using examples in the section	
010610 – 012100	Chairman Administration Ms LI Fung-ying Ms Miriam LAU	<ul style="list-style-type: none"> - Administration's briefing on section 2 of Schedule 1 to the Bill - Discussion on section 2(1) of Schedule 1 to the Bill, in particular the need to stipulate that the idling prohibition would also not apply to a driver of a taxi that was stationary in a queue of taxis into a taxi stand or within the designated area of a taxi stand - Discussion on sections 2(4)(a) and 2(5) of Schedule 1 to the Bill, and on the need to amend the former by deleting the phrase "other than a franchised bus", so as to avoid any misunderstanding that franchised buses were excluded from the exemption available to any driver of a bus that had any passenger on board 	<p>Administration to provide information (paragraph 11 of minutes)</p> <p>Administration to provide information (paragraph 11 of minutes)</p>
012101 – 012226	Chairman Administration	- Examination of section 3 of Schedule 1 to the Bill	
012227– 012726	Chairman Administration	<ul style="list-style-type: none"> - Administration's briefing on section 4 of Schedule 1 to the Bill - Administration's explanation in response to the Chairman on why "operational activity" was defined in section 4 only but not sections 3(1)(a) and 6, where the term also appeared 	
012727 – 012820	Chairman Administration	- Examination of sections 5 and 6 of Schedule 1 to the Bill	
012821 – 013325	Chairman Administration Ms Miriam LAU Mr WONG Kwok-hing	<ul style="list-style-type: none"> - Administration's briefing on section 7 of Schedule 1 to the Bill - Administration's confirmation in response to Ms LAU that the examples originally listed under section 7 would be provided in the publicity materials on the idling prohibition - Administration's confirmation in response to Ms LAU that all vehicles necessarily idling for certain purposes would be exempted from the idling prohibition, including trucks installed with the 	<p>Administration to provide information (paragraph 11 of minutes)</p> <p>Administration to provide information (paragraph 11 of minutes)</p>

Time marker	Speaker	Subject(s)	Action required
		<p>tail-board, and discussion on the need to clarify that</p> <ul style="list-style-type: none"> - Discussion on the need for and manner in clarifying that exemption would apply to vehicles queuing up for entry into a petrol filling station 	<p>Administration to provide information (paragraph 11 of minutes)</p>
013326– 013712	<p>Chairman Administration Ms Miriam LAU</p>	<ul style="list-style-type: none"> - Administration's briefing on section 8 of Schedule 1 to the Bill, in particular the reason for introducing the relevant Committee Stage amendments - Administration's confirmation in response to Ms LAU that exemption would apply when a vehicle was being tested in a garage, be it covered or open 	
013713 – 020111	<p>Chairman Administration Ms LI Fung-ying Ms Miriam LAU Mr CHAN Kam-lam</p>	<ul style="list-style-type: none"> - Administration's briefing on the new section 9 of Schedule 1 to the Bill - Ms LI's, Ms LAU's and Mr CHAN's view that all drivers should be exempted from the idling prohibition during hot months - Ms LI's, Mr CHAN's and Ms LAU's view that all drivers should be exempted from the idling prohibition during days of heavy rain - Ms LAU's view that all drivers should be exempted from the idling prohibition on days when the "Thunderstorm Warning" was issued - Ms LAU's view that the Transport Information System should be used to provide real-time information to drivers on the issue of the "Very Hot Weather Warning" or "Amber, Red or Black Rainstorm Signal", upon which exemption from the idling prohibition would be triggered - The Chairman's referral to the two submissions tabled at the meeting (LC Papers Nos. CB(1)630/10-11(01) and (02)) 	<p>Administration to provide information (paragraph 11 of minutes)</p> <p>Administration to provide information (paragraph 11 of minutes)</p> <p>Administration to provide information (paragraph 11 of minutes)</p>

Time marker	Speaker	Subject(s)	Action required
020112– 020130	Chairman Administration	- Examination of Schedule 2 to the Bill	
020131 – 020542	Chairman Ms Miriam LAU Mr CHAN Kam-lam	- Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
12 January 2011