

立法會
Legislative Council

LC Paper No. CB(1)1005/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/8/10

Bills Committee on Road Traffic (Amendment) Bill 2011

**Minutes of the fifth meeting held on
Wednesday, 2 November 2011, at 8:30 am
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Dr Hon Philip WONG Yu-hong, GBS
Hon LAU Kong-wah, JP
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, SBS, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon KAM Nai-wai, MH
Hon CHAN Hak-kan
Dr Hon LEUNG Ka-lau
Hon WONG Sing-chi
Hon IP Wai-ming, MH
Hon Tanya CHAN

Public Officers attending : **Agenda item I**

Mr Patrick CHAN, JP
Deputy Secretary for Transport and Housing
(Transport)³

Miss Erica NG
Principal Assistant Secretary for Transport and
Housing (Transport)²

Ms Irene HO
Assistant Secretary for Transport and Housing
(Transport)2C

Ms Nilmini DISSANAYAKE
Deputy Principal Government Counsel
Department of Justice

Mr Peter SZE
Government Counsel
Department of Justice

Mr Stephen VERRALLS
Chief Superintendent (Traffic)
Hong Kong Police Force

Ms Angela NG
Senior Superintendent (Administration)
(Traffic Branch Headquarters)
Hong Kong Police Force

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

Dr Teresa LI
Principal Medical Officer (5)
Department of Health

Mr Lot CHAN
Senior Pharmacist (Pharmaceutical Service)5
Department of Health

Dr CHENG Wing-chi
Senior Chemist (Forensic Toxicology A Section)
Government Laboratory

Mr Harry CHAN
Chief Engineer/Road Safety & Standards
Transport Department

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Mr Michael NG
Chief Transport Officer/Driving Services
Transport Department

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

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Ms Macy NG
Senior Council Secretary (1)2

Ms Emily LIU
Legislative Assistant (1)2

Action

I Meeting with the Administration

- (LC Paper No. CB(1)224/11-12(01) - Administration's response to issues raised at the last meeting on 19 October 2011
- LC Paper No. LS1/11-12 - Paper provided by legal adviser to the Bills Committee)

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

2. The Administration briefed members on its paper setting out the Administration's response to the issues raised by members at the last meeting on 19 October 2011.

3. Members expressed the following major views and concerns about the Bill at the meeting –

- (a) there was a need to review section 39C(11A)(b)(ii) in clause 12, and sections 39O(3) and 39P in clause 14 as in actual operation, a police officer, who had not undergone medical training, might not be in a position to assess whether the incapacity of the suspect to give consent was due to medical reasons or not;

- (b) whether the prosecution would be prepared to give the suspect the benefit of the doubt and not institute prosecution in a case where the accused driver claimed that he had taken drug(s) bought over-the-counter or prescribed by a medical professional outside Hong Kong, and the Police were unable to verify the authenticity of the information provided by the driver;
- (c) the sensitivity of the Impairment Test (IT) was relatively low; and
- (d) the drug driving offences proposed under the Bill were applicable to drivers of motor vehicles only and not to cyclists, and there might be a need for reviewing the arrangement.

Application of new drug driving offences to cyclists

4. The Bills Committee noted that presently, under section 47 of the Road Traffic Ordinance (Cap. 374), a person who, when using or riding a bicycle on a road or in a public place, was unfit to ride or drive through drink or drugs committed an offence and was liable in the case of a first conviction to a fine of \$500, and in the case of a subsequent conviction, to a fine of \$1,000 and to imprisonment for 3 months. The Administration considered that the provision had a deterrent effect to a certain extent.

Admin

5. The Chairman and Ms LI Fung-ying, however, expressed concern that the penalty level under section 47 was too low when compared with the penalties for the new drug driving offences under the Bill, and it could hardly achieve sufficient deterrent effect. The Administration was requested to monitor the relevant prosecution cases and review the need for raising the penalty level for the offence under section 47. The Administration agreed to follow up and report to the Panel on Transport on the matter in due course. The Administration advised that it would also step up publicity and educational efforts to remind cyclists that they would commit an offence when they were unfit to ride or drive through drink or drugs.

Clause-by-clause examination of the Bill

(LC Paper No. CB(3)746/10-11	-	The Bill
File Ref: THB(T)CR4/14/3231/00	-	The Legislative Council Brief issued by the Transport and Housing Bureau
LC Paper No. CB(1)2512/10-11(02)	-	Marked-up copy of the Bill prepared by the Legal Service Division

Action

- LC Paper No. CB(1)253/11-12(01) - Committee Stage Amendments (CSAs) proposed by the Administration
- LC Paper No. CB(1)253/11-12(02) - Marked-up copy of the relevant provisions to be amended by the CSAs
- LC Paper Nos. CB(1)78/11-12(02) and CB(1)134/11-12(01) - Letter dated 11 October 2011 from legal adviser to the Bills Committee to the Administration and the Administration's reply letter dated 18 October 2011)

6. The Bills Committee completed scrutiny of clauses 12(5) to 14 of the Bill.

Follow-up actions required of the Administration

Admin 7. To facilitate further discussion on the Bill, the Administration was requested to take the following actions –

- (a) to provide information on the maximum penalties of existing offence of driving under the influence of drink or drugs, drink driving offences and dangerous driving offences;
- (b) to provide written response to members' concern regarding the prosecution policy as elaborated in paragraph 3(b) above; and
- (c) to review section 39C(11A)(b)(ii) in clause 12, and sections 39O(3) and 39P in clause 14 of the Bill to address members' concern in paragraph 3(a) above.

(Post-meeting note: The response to members' request for information provided by the Administration was issued vide LC Paper No. CB(1)354/11-12 dated 16 November 2011.)

Date of next meeting

8. The Bills Committee agreed that the next two meetings would be held on 10 November 2011 at 2:30 pm and 17 November 2011 at 2:30 pm respectively.

(Post-meeting note: The meeting originally scheduled for 10 November 2011 at 2:30 pm was subsequently cancelled.)

Action

II Any other business

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

Council Business Division 1
Legislative Council Secretariat
6 February 2012

**Proceedings of the fifth meeting of
the Bills Committee on Road Traffic (Amendment) Bill 2011
on Wednesday, 2 November 2011, at 8:30 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda Item I – Meeting with the Administration			
000900 - 001027	Chairman	- Opening remarks	
001028 - 002236	Chairman Administration	- Briefing by the Administration on its response to issues raised at the meeting on 19 October 2011 (LC Paper No. CB(1)224/11-12(01))	
002237 - 003213	Chairman Mr KAM Nai-wai Administration	<ul style="list-style-type: none"> - Mr KAM's enquiry on the maximum penalties of existing offences of driving under the influence of drink or drugs, drink driving offences and dangerous driving offences - Discussion on the circumstances under which a person driving under the influence of drink or drugs would be charged with the dangerous driving offences, and the Administration's explanation that the charge would be decided with reference to the circumstances of individual cases in particular the evidence available, and the advice of the Department of Justice 	Administration to provide information/response (paragraph 7 of minutes)
003214 - 003820	Chairman Administration	- Discussion on whether the prosecution would be prepared to give the suspect the benefit of the doubt in a case where the accused driver claimed that he had taken drug(s) bought over-the-counter or prescribed by a medical professional outside Hong Kong, and that the Police was unable to verify the authenticity of the information provided by the driver	Administration to provide information/response (paragraph 7 of minutes)

Action

Time marker	Speaker	Subject(s)	Action required
003821 - 004326	Chairman Mr KAM Nai-wai Administration	<ul style="list-style-type: none"> - Discussion on the circumstances under which a person driving under the influence of drugs would also be charged with possession or consumption of dangerous drugs under the Dangerous Drugs Ordinance (Cap. 134), and the Administration's explanation that whether both offences would be charged would depend on the availability of evidence to prove the actual act of consumption or possession of dangerous drugs 	
<i>Clause-by-clause examination of the Bill</i>			
004327 - 010457	Chairman Administration Mr KAM Nai-wai	<p><u>Clause 12</u></p> <ul style="list-style-type: none"> - Discussion on section 39C(11A)(b)(ii) regarding provision of specimens for analysis, including whether the police officer who had not undergone medical training was in a position to assess whether the incapacity of the suspect to give consent was due to medical reasons or not - The Administration's explanation that the medical practitioner would only take blood specimens from the suspect if he thought fit 	Administration to provide information/response (paragraph 7 of minutes)
010458 - 010644	Chairman Administration	<u>Clause 13</u>	
010645 - 010936	Chairman Administration	<u>Clause 14</u>	
010937- 011528	Chairman Administration	<p><u>Clause 14 (Section 39L)</u></p> <ul style="list-style-type: none"> - Discussion on clause 14, in particular whether there were internal guidelines for authorized police officers on the circumstances under which they could require the 	

Action

Time marker	Speaker	Subject(s)	Action required
		<p>provision of more than one specimen of oral fluid to carry out a Rapid Oral Fluid Test under section 39L(5)</p> <ul style="list-style-type: none"> - Administration's explanation that in some circumstances two specimens were required, one for testing drink driving and the other drug driving, and that there would be internal guidelines to avoid power abuse by the Police in taking specimens from drivers 	
011529 – 012228	Chairman Administration	<u>Clause 14 (Sections 39M and 39N)</u>	
012229 - 013416	Chairman Administration Assistant Legal Adviser 10 (ALA10) Dr Philip WONG	<p><u>Clause 14 (Section 39O)</u></p> <ul style="list-style-type: none"> - Discussion on section 39O(7) on the requirement of provision of specimen of urine - Dr WONG's enquiry on whether there would be any disciplinary actions against a police officer who had a record of a large number of cases of requiring drivers to provide blood or urine specimens and the test results of the relevant cases were drug negative - Administration's response that specimens of blood or urine would be obtained only after the drivers concerned had undergone the preliminary drug tests and each case with a drug negative result of the specimen would be reviewed carefully 	
013417 - 013514	Chairman Administration	<u>Clause 14 (Section 39P)</u>	

Action

Time marker	Speaker	Subject(s)	Action required
013515 - 014138	Chairman Administration	<p><u>Clause 14 (Section 39Q)</u></p> <ul style="list-style-type: none"> - Discussion on the circumstances under which a person driving under the influence of drink and specified illicit drugs would be charged both offences or either one and the Administration's response that the Police would first conduct the evidential breath test to ascertain if the alcohol level had exceeded the prescribed limit, and if it had, the suspect would be charged with drink driving offence, otherwise, preliminary drug test would be pursued 	
014139 - 014233	Chairman Dr Philip WONG Administration	<ul style="list-style-type: none"> - Administration's reply in response to Dr WONG that the blood test results would not show whether the alcohol was counterfeit or not 	
014234 - 015259	Chairman Administration	<p><u>Clause 14 (Sections 39R, 39S and 39T)</u></p> <ul style="list-style-type: none"> - Administration's confirmation in response to the Chairman that the notices mentioned in section 39S(1) and (2) would be made in the form of subsidiary legislation subject to the negative vetting procedure - Discussion on the purpose of requiring a person to surrender his or her licence for driving to the Commissioner of Police for 24 hours 	
015300 - 015801	Chairman Dr LEUNG Ka-lau Administration	<ul style="list-style-type: none"> - Dr LEUNG's concern on the low sensitivity of the Impairment Test (IT) and the Administration's advice that as a screen test, IT had a high positive predictive value 	
015802 - 020307	Chairman Administration Ms LI Fung-ying	<ul style="list-style-type: none"> - Administration's advice that it was an offence for a person who, when using or riding a bicycle on a road 	

Action

Time marker	Speaker	Subject(s)	Action required
		<p>or in a public place, was unfit to ride or drive through drink or drugs under section 47 of the Road Traffic Ordinance, and the Administration would step up publicity and educational efforts to remind cyclists of the law</p> <ul style="list-style-type: none">- Request for the Administration to compile statistical information on causes of cycling accidents and the Administration's reply that it had engaged consultants to analyze major contributory factors regarding accident prone sections and recommend specific and feasible improvement options, and the results would be reported to the Panel on Transport in due course	Administration to provide information/response (paragraph 5 of minutes)
020308 - 020418	Chairman	<ul style="list-style-type: none">- Dates of the next two meetings	