

立法會
Legislative Council

Extract

LC Paper No. CB(1)444/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/PL/TP/1

Panel on Transport

**Minutes of meeting held on
Friday, 23 July 2010, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon CHEUNG Hok-ming, GBS, JP (Chairman)
Hon Andrew CHENG Kar-foo (Deputy Chairman)
Hon LAU Kong-wah, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LI Fung-ying, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon KAM Nai-wai, MH
Hon WONG Sing-chi
Hon IP Wai-ming, MH

Members absent : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon LEUNG Kwok-hung
Hon Albert CHAN Wai-yip

**Public officers
attending** : **Agenda item II**

Ms Eva CHENG, JP
Secretary for Transport and Housing

Mr Alan K M CHU
Deputy Secretary for Transport & Housing
(Transport)

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

Ms Irene HO
Assistant Secretary (Transport)
Transport and Housing Bureau

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

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

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

Mr TSANG King-man
Assistant Commissioner / Technical Services
Transport Department

Dr Tina MOK
Principal Medical & Health Officer (1)
Department of Health

Dr F C KWOK
Assistant Government Chemist
(Forensic Science Div)(Ag)
Government Laboratory

Dr W C CHENG
Senior Chemist (Forensic Toxicology A Section)
Government Laboratory

Dr LAU Fei-lung
Director
Hong Kong Poison Information Centre
Hospital Authority

Agenda item III

Ms Maisie CHENG
Deputy Secretary for Transport & Housing

Mrs Apollonia LIU
Principal Assistant Secretary for Transport &
Housing

Mr WONG Hang-chi
Deputy Director of Highways

Mr YEUNG Kwok-kuen
Regional Highway Engineer / New Territories
Highways Department

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

Staff in attendance : Ms Sarah YUEN
Senior Council Secretary (1)6

Miss Pauline NG
Clerical Assistant (1)1

<u>Action</u>	*	*	*	*	*
II Initial proposals to combat drug driving					
(LC Paper CB(1)2587/09-10(01)			No. —	Administration's paper on initial proposals to combat drug driving	
LC Paper CB(1)2587/09-10(02)			No. —	Legislative Council question on "Driving a motor vehicle under the influence of medicines or drugs" raised at the Council meeting on 24 February 2010 and the Administration's reply	
LC Paper CB(1)2587/09-10(03)			No. —	Legislative Council question on "Drug driving" raised at the Council meeting on 2 June 2010 and the Administration's reply	
LC Paper CB(1)2580/09-10(01)			No.	Powerpoint presentation materials provided by the Administration)	

1. With the aid of power-point, the Secretary for Transport and Housing (STH) and the Principal Assistant Secretary for Transport and Housing (Transport) 2 (PAS(T)2) briefed members on the Administration's initial proposals to combat drug driving (the initial proposals). Members in general expressed support for the initial proposals in recognition of the serious risks posed by drug driving.

Discussion

The proposal to conduct the preliminary impairment test at police stations

2. Mr WONG Kwok-hing pointed out that some of the initial proposals required further examination in the light of the views of the trade and the public. In particular, he questioned the proposal to conduct the preliminary impairment test at a police station instead of at the scene, as the effects of drug(s) on the driver concerned might have worn off when he reached the police station. Moreover, if there were goods or passengers on board, the above proposal would cause even greater inconvenience and nuisance. Some of the drivers were also concerned

that they might be denied fair treatment with no third parties present at the police station.

3. STH responded that reference had been made to overseas experience when working out the initial proposals. In recognition of Hong Kong's busy traffic and hence greater disruption, it was considered that the impairment test could produce more accurate results if conducted indoor (such as at a police station). Regarding the above concern about unfair treatment, it should be noted that the preliminary impairment test would be conducted with video-recording facilities by trained police officers according to approved procedures. Such arrangement should be able to safeguard drivers' interests. As to how vehicles carrying passengers would be handled if the drivers concerned had to undergo the preliminary impairment test at the police station, these passengers would be handled in the same way as those affected by road blocks. Moreover, although passengers might be inconvenienced, the test was in fact designed to ensure their safety. The Chief Superintendent of Police (Traffic), Hong Kong Police Force (CSP T) added that the Police would help ensure the security of the goods, if any, on the vehicles. While the drivers concerned might have to arrange for other drivers to drive away their vehicles, the Police would allow the vehicles to stay in the police station until the arrangement could be made.

4. Mr WONG Kwok-hing was not assured, and pointed out that the passengers concerned might need to hurry to work or even to the airport. STH responded that a driver would be required to undergo the preliminary impairment test only when the Police had reasonable cause to believe that the driver was suspected to be influenced or impaired by drugs. Given the circumstances, she believed the passengers affected would appreciate the need to conduct the test on the driver to ensure their safety.

5. Mr LAU Kong-wah also questioned the objectivity of the proposed preliminary impairment test, pointing out that a person who had not taken drugs might still fail the tests because the movements required to be performed could be difficult even for normal people. He expressed concern as to whether the accuracy of the test or of the assessment made might easily be subject to disputes. He also queried whether the police officers would be able to make accurate judgment in conducting the Pupil Measure Test. He further pointed out that the accuracy of the impairment tests conducted in the United Kingdom (UK) was low being at only 66%. He considered that conduct of the random breath test (RBT) to detect drink driving at the scene to ensure objectivity and fairness was the reason for RBTs' success. He was of the view that to minimize

disputes, there was a need to use equipment for preliminary screening as in Australia, where a rapid oral fluid testing device was adopted to conduct preliminary tests at roadside.

6. STH assured members that apart from providing sufficient training to police officers and developing proper testing standards to ensure objectivity and fairness, the Administration would clearly explain to the public the operational details of the preliminary impairment test before its introduction. STH and CSP T explained that with 10 years' experience in regulating drug driving, UK had already developed scientific guidelines for conducting its field impairment tests with test standards set for each of the five components and to take into account physical conditions of individual drivers which might affect their performance. In fact, in calculating the 66% accuracy rate of the UK tests, the negative cases had also been taken into account. If criteria similar to those of Australia were used to assess the accuracy, the success rate of the UK tests would be 94%, comparable to that of the Australian tests at 95%. As to the proposal on using equipment, STH explained that the Australian experience could not be directly applied to Hong Kong because the equipment used there could not detect ketamine, the most common drug of abuse in drug driving cases in Hong Kong. Although the Administration had been closely liaising with suppliers on the required equipment and some suppliers had indicated interest in supplying it, no reliable rapid oral fluid test device on ketamine could be found in the market for enforcement purposes. As such, pending the availability of the required equipment, there was a need to use the impairment test as a preliminary test in the initial stage.

7. The Deputy Chairman considered that the preliminary impairment test should be conducted on the roadside, and that a lane could be cordoned off to provide the space required. Mr WONG Sing-chi also opined that the Administration should try to conduct the preliminary impairment test on the spot rather than at police stations to avoid disputes that the driver's failure in the impairment test conducted at a police station was caused by other factors and not due to having taken drugs. STH explained that whether the preliminary tests could be conducted on the roadside would depend on the availability of a rapid oral fluid testing device because without which, only impairment tests could be conducted, and such tests could not possibly be conducted on the roadside given the road environment in Hong Kong. She reiterated that the Administration had been closely liaising with suppliers on the required testing device and some suppliers had indicated interest in supplying it. She added that the proposal to conduct the impairment test at roadside required careful

consideration also because of its privacy implications and the difficulty it might cause to video-recording.

8. STH pointed out that although the current legislation stipulated that a person committed an offence if he drove under the influence of drugs to such an extent as to be incapable of having proper control of the vehicle, the current legislation did not require a driver to provide body fluid specimens for analysis. Hence, the police had to seek the consent of the driver concerned before taking his body fluid specimen. This had caused certain difficulties in collection of evidence. It was therefore proposed to introduce preliminary tests to help frontline police officers determine whether a driver was driving under the influence of drugs (including dangerous drugs), so as to assess whether the driver should be required to provide blood or other body fluid specimen for further analysis. Whether conducted at the scene or not, the impairment test could serve as an objective method to help the Police establish reasonable suspicion in drug driving cases, so that building on this reasonable suspicion, police officers could require the suspected driver to give specimens of oral fluid or blood or other body fluid specimens for laboratory analysis to ascertain whether he had taken any drugs.

9. Mr Jeffrey LAM expressed concern about the accuracy of the proposed preliminary impairment test in detecting drug driving because in his view the effect of drugs on driving ability might take time to show, and that drivers tested might use physical problems to account for failure in the test. He therefore also supported the use of equipment to take specimens of oral fluid or blood or other body fluid specimens for laboratory analysis.

10. STH responded that before the Police could require a driver to take the preliminary impairment test, they had to have reasonable cause to believe that the driver was suspected to be influenced or impaired by drug. There was therefore no need for concern about the effect not being shown. The Director, Hong Kong Poison Information Centre, Hospital Authority (D/HKPIC) added that how long the effect would last would hinge on how the drug concerned was taken. If inhaled or injected, the effect would show in just one to two minutes. If taken orally, the time would be half an hour. As such, most drug drivers could be detected if required to take the impairment test. STH further assured members that when a rapid oral fluid testing device suitable for local use was developed, the Administration would consider using it for preliminary screening. Meanwhile, the Administration would carefully work out the procedures

for conducting the preliminary impairment test with reference to established overseas practices, so as to ensure its accuracy.

11. Highlighting the success of the Australian experience, the Deputy Chairman opined that notwithstanding equipment and resource constraints, preliminary tests should be conducted using currently available equipment, and improvements could be introduced later as new technologies evolved. STH pointed out that the best scenario was that an equipment which could detect traces of a number of drugs, particularly ketamine, could be identified early for use.

Other views and concerns about the proposed drug driving tests

12. Noting that refusal to undergo drug driving tests would be an offence, Mr WONG Sing-chi questioned the rationale behind point (6) of Annex G to the Administration's paper for this item, namely, that when the driver concerned was sober, consent would need to be sought from him to have the blood tested. CSP T responded that at present, when a person was unconscious, the Police did not have the power to take body fluids from him. This was a loophole because if the person remained unconscious sufficiently long, the traces of alcohol or drug in his body might have disappeared. The Administration was therefore proposing to plug this loophole by empowering the Police to take blood from such a person, and by specifying that consent would need to be sought from him only when he was sober.

13. Mr IP Wai-ming enquired whether factors other than drug or alcohol could be at play if a driver could not drive properly. STH responded that an eliminative approach would be adopted in identifying the factor affecting a driver's driving ability, under which the alcohol screening test would be administered first. If cleared of that, the impairment test would be conducted during which the driver would be asked if he was suffering from any physical conditions that would affect his test performance. If the driver performed poorly in the impairment test, the taking of body fluid would then follow to provide more details for identification of the cause.

14. Noting that refusal to take the relevant drug driving tests would be an offence, Mr IP Wai-ming sought details of the penalties. PAS(T)2 responded that the offence would be subject to the same penalty for the offence of driving a motor vehicle under the influence of drink.

The need to differentiate between genuine and inadvertent drug driving

15. Mr WONG Kwok-hing pointed out that some illicit drugs such as triazolam/midazolam/zopiclone, nimetazepam and certain cough medicines might be used for medical purposes. There was therefore a need to ensure that clear explanations on their likely adverse influence on a person's driving ability would be given, and that they could not be easily purchased over the counter to prevent drivers from being inadvertently caught drug driving. STH responded that according to the codes of practice issued by the Medical Council and Dental Council, drugs prescribed had to be labelled clearly explaining the dosage and things to note including the major side effects. The Hospital Authority was also making efforts to standardize drug labelling in Government and private clinics. Trained pharmacists had also been made aware of the need to explain the side effects to purchasers of prescription drugs, in particular their likely impacts on driving ability. During consultation on the initial proposals, these professional associations would be consulted on drug labelling, and on how to publicize and enforce their codes of practice, so as to ensure patients' safety as well as the safety of others.

16. While agreeing that stringent measures against drug driving were justified, Ms LI Fung-ying stressed the need to differentiate between drivers who really abused drugs and those who took drugs for medical purposes. She pointed out that in reality the doctor or the nurse seldom spared time to explain the side effects of drugs (e.g. causing drowsiness) to patients. Moreover, a driver might just take over-the-counter drugs the ingredients and side effects of which were unclear to him. She expressed concern about the implications on a driver's third party risks insurance if he inadvertently committed the drug driving offence under the above circumstances.

17. STH reiterated that according to the existing section 39 of RTO, it was already an offence for a person to drive a motor vehicle under the influence of drugs to such an extent as to be incapable of having proper control of the motor vehicle. The initial proposals only sought to enhance the objectivity of this provision and facilitate evidence collection to improve road safety. Moreover, existing drug labelling requirements and codes of practice for doctors and dentists had already provided that the side effects of drugs should be clearly explained to patients and, to tie in with the initial proposals, improvements in drug labelling in terms of consistency and clarity could be considered in consultation with the associations. Publicity and education efforts would also be geared up. The Principal Medical & Health Officer (1), Department of Health

(PM&HO) added that for over-the-counter drugs, the current drug labelling requirements demanded the provision of clear information on the side effects as well as warnings against driving or operation of machines where necessary for drugs that could cause drowsiness, which were mainly for treating colds.

18. Mr IP Wai-ming, however, pointed out that the font size of drug label warnings was always very small. He was also keen to ensure that the non-drowsiness claims of drugs were really reliable, and opined that the drug manufacturers concerned should be cautioned against making such claims lightly. STH responded that improvements to the drug labelling requirements, including whether the font size of warnings should be specified, would be pursued during the above consultation exercise. PM&HO added that the present provisions had already required the warnings to be presented in a clear and legible manner. She further explained that drugs with non-drowsiness claims might still cause drowsiness because reactions to drugs varied among individuals.

19. Noting the above response, Mr IP Wai-ming expressed concern that drivers might still be inadvertently caught drug driving notwithstanding improvements to the drug labelling requirements. Addressing his concern, STH explained that since a wide range of drugs were available in the market and reaction to drugs varied among individuals, it was difficult to ascertain the effect of every type of drug on driving behaviour. The proposed defence had therefore been put forward to help protect drivers from being inadvertently caught drug driving. Moreover, a small dosage of mild medicines for treating colds or pain would unlikely cause drivers to perform poorly in the preliminary test.

20. Mr LAU Kong-wah enquired how the labelling requirements would apply to Chinese prescription medicines. D/HKPIC responded that most Chinese medicines were mild and would not cause drowsiness unless overdosed, or prepared to treat insomnia. As such, the risks posed by Chinese medicines were expected to be low in general. Mr LAU called for more efforts to ascertain the risks in recognition that Chinese medicines were popular, and that drivers who had unknowingly committed the drug driving offence would be prosecuted before they could invoke the proposed defence.

Suggestion of trying out the initial proposals at sites near to border control points and legislative timetable

21. Mr WONG Kwok-hing and Mr WONG Sing-chi opined that the initial proposals should be put on trial at blackspots such as in the vicinity

of border control points before their formal implementation. STH responded that legislation to empower the Police to require drivers to undergo the various tests concerned were yet to be made available. Under the circumstances, the Administration had reservations about conducting field trials of the tests. STH added that the Police had already been targeting their actions at cross-boundary vehicles through road blocks and various enforcement campaigns. There was however difficulty in conducting a trial of the initial proposals on these vehicles pending the availability of the relevant empowering provisions. CSP T confirmed that road blocks were often set up in New Territories North targeting not only at drink driving but also drug driving.

22. The Deputy Chairman considered it necessary to introduce measures to combat drug driving expeditiously considering the strong public concern about drug driving. To expedite the legislative process concerned, he proposed that the necessary empowering provisions should be incorporated in the Road Traffic (Amendment) Bill 2010 (the Amendment Bill 2010) presently under scrutiny. He considered that the medical field and the transport trade would not object to his proposal. In his view, the major concern regarding the current proposals was the preliminary impairment test, and on how reasonable suspicion should be established.

23. STH responded that apart from specifying the drugs to be subject to zero tolerance control, there was also a need to put in place provisions to empower the Police to conduct drug tests. The latter move would be complicated considering the tests' implications not only on human rights but also on privacy, as evidenced by the hot debate on the RBT before its introduction. Moreover, although overseas experience was available, it could not be directly borrowed but regard had to be given to local conditions. Notwithstanding, the Administration had started to draft the necessary enforcement guidelines, so that when the legislative proposals on drug driving were finalized, the enforcement procedures would also be ready to address concern about abuse. The Administration aimed at completing the consultation on the initial proposals during the summer months.

24. In response to the Deputy Chairman on the legislative timetable, STH said that the Administration planned to consult medical associations, pharmacist associations, the transport trades and motorists associations etc. on the initial proposals. Notwithstanding the number and complexity of issues involved such as disclaimers and drug labelling, the

Administration aimed to introduce the necessary legislative amendments within the next legislative session.

25. The Deputy Chairman expressed dissatisfaction with the above legislative timetable and urged the Administration to bring about the necessary legislative amendments as early as practicable, preferably in the context of the Amendment Bill 2010 and if not, to introduce the drug driving bill the latest in October 2010, so that the law could take effect before Christmas. STH reiterated that the conduct of the various drug driving tests required sound legal basis, and assured members that the Administration would try to complete the relevant consultation exercise during the summer months.

26. Noting that it might take a year for the relevant anti-drug driving provisions to take effect, Mr WONG Kwok-hing enquired about measures that would be taken in the interim to combat the drug driving problem considering its seriousness, particularly at the blackspots concerned which in his view were mostly in the vicinity of border control points. STH responded that there might not be any drug driving black spots as such as the 37 drug driving incidents that had happened so far mostly occurred in different areas. In the meantime, the Administration would tackle the drug driving problem as vigorously as permitted under existing laws. She added that the Police had already stepped up enforcement efforts through setting up road blocks with satisfactory results in bringing about changes in driving behaviour, particularly where drink driving was concerned.

* * * * *

Council Business Division 1
Legislative Council Secretariat
23 November 2010