



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (3904 1774)

17 January 2020

Ms Shirley KWAN
Prin AS for Transp & Housing(Transp)2
Transport and Housing Bureau
Transport Branch, Division 3
Traffic Management Section
21/F, East Wing
Central Government Offices
2 Tim Mei Avenue, Tamar, Hong Kong

Dear Ms KWAN,

Road Traffic Legislation (Parking Spaces) (Amendment) Bill 2019

We are scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. To facilitate Members' consideration of the Bill, we would be grateful to have your responses on the issues as stated in the **Appendix**.

We would be grateful if you could let us have your reply in both English and Chinese as soon as practicable, preferably by 17 February 2020.

Yours sincerely,

(Joyce CHAN)
Assistant Legal Adviser

c.c. Department of Justice
(Attn: Mr Alan CHONG, Sr Govt Counsel (By Fax: 3918 4613))
Legal Adviser
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Definitions of "parking meter" and "pay and display machine"

1. It is noted that under clause 3(1) "parking meter" is proposed to be defined as "an apparatus constructed and designed to receive and indicate, or to indicate, payment for the use of a parking space; and includes a space sensor installed, whether or not on the apparatus, in relation to the parking space". Under clause 3(2), "pay and display machine" is proposed to be defined as "a machine or apparatus constructed and designed to issue a display ticket in relation to parking spaces in a parking place; and includes a space sensor installed, whether or not on the machine or apparatus, in relation to the parking spaces". Please clarify the difference (if any) between an apparatus and a machine in the context of describing a "parking meter" and a "pay and display machine" under the Bill.

Meanings of "parking space" and "parking spaces in a parking place"

2. It is noted that in clause 3, there are references to "parking space" and "parking spaces in a parking place". We further note that "parking space" and "parking place" are both defined terms under the Road Traffic Ordinance (Cap. 374) – "parking space" means "a space in a parking place indicated by lines or other marks for the accommodation of one vehicle" (emphasis added), while "parking place" means "a place designated by the Commissioner under this Ordinance as a parking place". Please clarify whether there is any difference in meaning between a "parking space" and "parking spaces in a parking place" in the context of the Bill.

3. In this regard, it is noted that the proposed amendment under clause 8(1) in relation to regulation 11 of the Road Traffic (Parking) Regulations (Cap. 374C) concerns the power of the Commissioner for Transport ("Commissioner") to erect a parking meter, or a pay and display machine, on Government land or at the parking place. It is specified that such power would be exercisable "for a parking space within a parking place". Is there any particular reason(s) for using the phrase "a parking space within a parking place" in clause 8(1) ?

Repeal of "parking cards"

4. It is noted that one of the objectives of the Bill is to remove certain obsolete references in Cap. 374 and related legislation, such as

"parking cards". It is noted for example, that under clause 3(4) it is proposed that the definition of "parking card" under section 2 of Cap. 374 be repealed. Under clause 13(1), it is proposed that "parking cards" be repealed from the heading of regulation 12D of Cap. 374C and substituted by "payment means". If the Bill is passed, the proposed amendment to the heading of regulation 12D of Cap. 374C would come into operation on 1 May 2020 pursuant to clause 1(2) of the Bill. However, we note that regulation 12D(1)(a) and (c), which refers to "parking cards", would continue to be in force until clause 13(3) comes into operation on 1 January 2022 (by virtue of clause 1(3)) to repeal the whole of regulation 12D(1). Please clarify whether the proposed amendment to the heading of regulation 12D under clause 13(1) is intended to take effect prior to the repeal of the whole of regulation 12D(1), and if so, the reason(s) for the arrangement.

Repeal of "card operated parking meter"

5. It is noted that under clause 16(3), it is proposed that Figure No. 18 in Schedule 1 to Cap. 374C, which refers to 2-hour card operated parking meters, be repealed. However, by virtue of clause 1(4) such repeal would only take effect on 1 January 2023 if the Bill is passed. At the same time, it is noted that under the Bill, it is proposed that references to "card operated parking meter" would be removed from relevant legislation. For instance, under clause 7(1)(b), it is proposed that the definition of "card operated parking meter" under regulation 2 of Cap. 374C be repealed. Also, under clause 16(4), it is proposed that Figure No. 18A be added to Schedule 1 to Cap. 374C to provide for 2-hour parking meters operated by approved payment means. Such amendments would take effect from 1 May 2020 if the Bill is passed. Please clarify whether it is intended that the proposed repeal of the definition of "card operated parking meter" under regulation 2 of Cap. 374C and the proposed amendment to add a new Figure No. 18A to Schedule 1 to Cap. 374C would take effect prior to the proposed repeal of Figure No. 18 in Schedule 1 to Cap. 374C, and if so, the reason(s) for the arrangement.

Limitation on parking card refund arrangement

6. The proposed new regulation 12AA of Cap. 374C under clause 10 of the Bill appears to have the effect of forfeiting a parking card holder's money stored as value encoded on the parking card if the parking card holder fails to return or surrender the parking card and apply for refund on or before 31 December 2021. Under regulation 12(7) of

Cap. 374C, the Commissioner must refund an amount equal to the value encoded on the parking card when it is cancelled or returned and the Commissioner is satisfied that it has not been altered, defaced or damaged in any manner. It thus seems arguable that parking card holders may have a legitimate expectation that the existing policy would continue to apply. Please clarify the legal basis for the proposed change in policy to impose a time limit on the existing parking card refund arrangement. In particular, please clarify whether rational grounds have been communicated to parking card holders in respect of the proposal to impose a time limit on the refund arrangement under regulation 12(7), and whether opportunity has been given to parking card holders to comment on the proposed curtailment of the refund arrangement.

7. Please further consider whether the forfeiture of a parking card holder's money stored as value encoded on the parking card would give rise to possible civil liability of the Government (e.g. claims based on unjust enrichment).

Typographical error

8. It is noted that there is a typographical error in the heading of Part III of Cap. 374C ("Dispay Machines"). Please consider whether amendment would be introduced to rectify it, even though it is noted that the heading does not have legislative effect.