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Paper for the House Committee meeting on 12 June 2020

**Report of the Bills Committee on Road Traffic Legislation
(Parking Spaces) (Amendment) Bill 2019**

Purpose

This paper reports on the deliberations of the Bills Committee on Road Traffic Legislation (Parking Spaces) (Amendment) Bill 2019 ("the Bill").

Background

2. At present, parking meters in use are electronic parking meters that accept payment by Octopus card only. They have been in use since 2003-2004 and will need to be replaced soon as they are approaching the end of their serviceable life. The Chief Executive announced in her 2017 Policy Address that the Government would install a new generation of on-street parking meters as one of the "Smart Mobility" initiatives. The new generation of on-street parking meters will accept payment of parking fees through multiple means, including remote payment through a mobile application, and will also be equipped with sensors to detect whether a metered parking space is occupied, and provide real-time information to assist motorists in finding vacant parking spaces. The Administration's proposal is to install the new parking meters by phases over a span of about two years for completion by mid-2022. The Bill has been introduced into the Legislative Council ("LegCo") to provide the legal basis for the operation of the new generation of parking meters with additional features.

The Bill

3. The Bill was published in the Gazette on 15 November 2019 and introduced into LegCo on 27 November 2019. The Bill seeks to amend the Road Traffic Ordinance (Cap. 374) and other specified traffic legislation to provide for the use of electronic means to pay for using parking spaces; to provide for the installation of sensors to detect the occupancy of parking spaces; and to provide for related matters.

4. The key provisions of the Bill are summarized in the ensuing paragraphs.

Introduction of new generation of parking meters

Commissioner for Transport ("C for T") to approve multiple electronic payment means

5. Under the current arrangement, means of payment for parking fees are approved by C for T by notice in the Gazette pursuant to section 12(1)(p) of Cap. 374 and regulation 12A of the Road Traffic (Parking) Regulations (Cap. 374C). The approved cards or devices for payment of parking fees, as stipulated in the Road Traffic (Parking) (Approved Cards) Notice (Cap. 374V) made under regulation 12A of Cap. 374C, include Octopus and a card or device that is enabled with Visa payWave, MasterCard Contactless or UnionPay QuickPass and supports offline transaction.

6. The Bill seeks to amend section 12(1)(p) of Cap. 374 and regulation 12A of Cap. 374C to empower C for T to approve by notice in the Gazette the use of a card, a device, or an electronic system for paying parking fees ("approved payment means"). According to paragraph 9 of the LegCo Brief, such approved payment means would include Stored Value Facilities, contactless credit cards, mobile payment via electronic wallets, and the Faster Payment System. Under the proposed new section 12(1A) of Cap. 374, a notice under the proposed section 12(1)(p) would not be subsidiary legislation. According to paragraph 10 of the LegCo Brief, given the rapid development of electronic payment means and to allow flexibility for the adoption of emerging payment means in future, the Administration considers it appropriate to publish the approved payment means through general notices in the Gazette instead of prescribing them by subsidiary legislation. If the proposed new section 12(1A) of Cap. 374 is passed, Cap. 374V would no longer be necessary. The Administration therefore proposes to repeal Cap. 374V through the Bill.

Space sensors to detect the occupancy of on-street metered parking spaces

7. Presently, C for T is empowered under section 12(1)(i) of Cap. 374 and regulation 11(1) of Cap. 374C to erect parking meters or pay and display machines for the purpose of charging motorists for the use of parking spaces. The Bill seeks to amend the existing definition of "parking meter" under Cap. 374 to include a space sensor installed in relation to a parking space. The Bill also proposes to add the definition of "space sensor" to section 2 of Cap. 374. Under the proposed definition, "space sensor" means a device installed by C for T in respect of a parking meter, or pay and display machine, for detecting whether a parking space, for which the meter or machine is erected, is occupied. The proposed definitions would equally apply to Cap. 374C. These amendments, if passed, would allow C for T to detect the occupancy of metered parking spaces through space sensors.

New offences

8. The Bill seeks to introduce the following new offences in connection with the approved payment means and new parking meters:

- (a) a person who, without lawful authority or reasonable excuse, uses or attempts to use, for the purpose of operating a parking meter or a pay and display machine, an approved payment means which has been interfered with, altered or damaged, would commit an offence and would be liable to a fine of \$500;
- (b) a person who, without lawful authority, operates or attempts to operate a parking meter or a pay and display machine other than by the use of an approved payment means, would commit an offence and would be liable to a fine of \$5,000 and to imprisonment for three months;
- (c) a person who:
 - (i) knowingly obtains unauthorized access to data or information contained in a parking meter, a pay and display machine, or an associated electronic system¹;

¹ "Associated electronic system" is defined under the Bill as an electronic system that is associated with a parking meter or a pay and display machine for ascertaining or indicating whether a parking space is occupied or whether a parking fee is paid, or for the management or operation of the parking meter or the pay and display machine.

- (ii) without lawful authority or reasonable excuse, erases, in whole or in part, alters or damages the data or information processed or stored in a parking meter, a pay and display machine, or an associated electronic system; or
- (iii) without lawful authority or reasonable excuse, tampers with the operation or any part of the operation of an associated electronic system,

would commit an offence and would be liable on conviction to a fine at level 2 (\$5,000) and to imprisonment for three months.

Other amendments

Repeal of obsolete or outdated provisions in related legislation

9. The Bill seeks to repeal outdated provisions relating to the use of cash (coins and bank notes) for payment of parking fees, and to also repeal obsolete definitions, such as "parking card", "automatic vending machine" and "coin operated parking meter" in Cap. 374, Cap. 374C, and the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237).

Limitation period for parking cards refund applications

10. Under regulation 12(7) of Cap. 374C, where a parking card is cancelled or returned and that C for T is satisfied that the parking card has not been altered, defaced or damaged, C for T should refund the remaining value on the card concerned or issue another card in replacement of such card.

11. The Bill seeks to add a new regulation 12AA to Cap. 374C to provide that C for T will cease accepting refund applications for parking cards with effect from 1 January 2022.

Commencement

12. The Bill (except clauses 3(4), 4(1) and (5), 5, 9, 13(3), 16(3) and 18), if passed, would come into operation on 1 May 2020.²

² As the proposed commencement date of 1 May 2020 has already lapsed, the Administration will propose an amendment to the Bill to change the date from 1 May 2020 to 1 August 2020. For details, please refer to paragraph 34 of this Report.

Clauses 3(4), 4(1) and (5), 5, 9, 13(3) and 18 concerning the repeal of outdated provisions relating to "parking card" would come into operation on 1 January 2022. Clause 16(3) relating to the repeal of traffic sign referring to the existing card operated parking meters would come into operation on 1 January 2023. According to paragraph 22 of the LegCo Brief, as the new parking meters would be installed by phases over a span of around two years ("transitional period") and meanwhile, during which the existing and new parking meters would be in operation concurrently, the Administration considers it necessary for the provisions relating to the existing parking meters and the relevant traffic signs to remain in force during the transitional period.

The Bills Committee

13. At the special meeting of the House Committee held on 8 May 2020, members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix I**. Under the chairmanship of Hon Frankie YICK Chi-ming, the Bills Committee held a meeting on 19 May 2020 to deliberate on the details of the Bill with the Administration.

Deliberations of the Bills Committee

14. The Bills Committee in general supports the Bill. During the course of scrutiny, the Bills Committee has focused on several areas, including the introduction of multiple electronic payment means, remote payment through a mobile application, cessation of refund arrangements for e-Park Cards and other issues. The deliberations of the Bills Committee are summarized in the following paragraphs.

Introduction of multiple electronic payment means for paying parking fees

15. The Bills Committee notes that the new generation of on-street parking meters will enable a number of new features to be introduced for the purpose of bringing convenience to motorists and enhancing operational efficiency. One of such benefits is the acceptance of multiple electronic payment means for paying parking fees, such as Stored Value Facilities, contactless credit cards and mobile payment via electronic wallets and the Faster Payment System. Some members of the Bills Committee opine that given the advancement in technology and the emergence of new payment means, the Administration should allow more flexibility in the legislation to cater for technological possibilities in

the future. They also call on the Administration to keep ahead of the time on the application of latest technology and be forward-thinking when considering the adoption of other applications for the new parking meter system.

16. The Administration has advised that it has kept in view the latest trend in the market and will maintain an open mind with regard to the application of new technology to meet motorists' expectations. On the issue of acceptance of payment, having regard to the rapid development of electronic payment means, clause 4 of the Bill seeks to empower C for T to approve payment means and publish such approved payment means and any changes thereafter through general notices in the Gazette. At the same time, the present arrangement of stipulating the approved payment means by way of subsidiary legislation will be repealed. This arrangement will allow greater flexibility for the Administration to adopt any emerging payment methods in the future as it sees appropriate, and in a more direct and simple way.

17. From the perspective of providing convenience to the public, some members of the Bills Committee have expressed that the acceptance of multiple electronic payment means can be extended to other public transport services to provide more choices for passengers when making payment. Other members, however, opine that the crux of the issue lies in the administrative fees charged by the service providers of different payment means, which will adversely affect the operating cost of public transport operators. As many operators are now surviving on thin margin amidst the present gloomy economic situation, the suggestion would need to be considered with caution.

Remote payment through a mobile application

18. Under section 8 of Cap. 374C, a motorist can park a vehicle in a parking place designated by C for T for a continuous period of not more than 24 hours. The Bills Committee notes that under the new parking meter system, when a motorist makes a remote payment through a mobile application, the maximum parking time will be limited to a total of two sessions of the "longest parking period" of the parking meter concerned. Such arrangement aims to prevent continuous purchase of additional parking time through remote payment, thereby affecting the turnover of on-street metered parking spaces. The Bills Committee, however, considers that the arrangement cannot deter the problem of prolonged parking if the motorist continues to purchase additional parking time at the parking meter in person.

19. Some members have expressed concern about the enforcement of section 8 of Cap. 374C because of the difficulty in identifying vehicles which have parked for more than 24 hours continuously in a parking space. Members have enquired if it is technically feasible for the new system to identify prolonged parking by individual motorists and to issue electronic penalty tickets instantly through the mobile application. The Administration has advised that the space sensors to be installed in the new parking meters could detect whether individual metered parking spaces are occupied or not so as to facilitate enforcement. However, without any function to collect any personal data of individual motorists or vehicle identification numbers, it is not possible to take instant enforcement actions through issuing penalty tickets via the mobile application.

20. In considering the wider application of the new parking meter system, the Administration has advised that it is mindful of the need to offer greater convenience to motorists on the one hand, and to observe personal data protection on the other. The Administration considers the features offered by the new parking meter system useful for enhancing the utilization and turnover of parking spaces. For instance, by varying the "longest parking period" of different parking meters, parking spaces can be optimally utilized having regard to the latest traffic conditions and the demand for and supply of parking spaces in different districts. Members of the public will also be able to identify the vacant on-street metered parking spaces via the mobile application, thus reducing the time spent on searching for such spaces on the roads. Taking note of the Bills Committee's suggestion, the Administration has advised that it will strive to maintain flexibility in setting the "longest parking period" of different parking meters by taking into account the occupancy and utilization rate information to be generated by the new parking meter system on a periodic basis.

21. On a member's suggestion of adding new features to the parking meter system such as equipping the meters with charging facilities for electric vehicles and allowing payment for the electricity charge through the mobile application, the Administration has advised that the electricity consumption of charging facilities is huge and exceeds the power limit of the parking meters as they will be powered by batteries within the meters rather than supported by the electrical grid. Furthermore, equipping the parking meters with charging facilities for electric vehicles may induce demand for the metered parking spaces, thereby affecting their turnover. The Administration would need to be cautious when considering the provision of charging facilities at road-side parking spaces.

22. A member also suggests the option of using one parking meter to manage four, instead of two, parking spaces. The Administration has responded that such an arrangement had been put on trial before, but the results of the trial were not satisfactory. Some motorists considered the arrangement confusing, resulting in payments made incorrectly at another parking meter or for another parking space.

Using space sensors to deter unlawful occupation of on-street metered parking spaces

23. The Bills Committee notes with concern that many on-street metered parking spaces have been unlawfully occupied. Noting that space sensors will be installed at each new parking meter to detect the occupancy status of a parking space, some members have asked if the space sensors are able to detect items, such as a chair or a traffic cone, placed at the parking spaces for the purpose of occupying the spaces unlawfully. They have also enquired how these space sensors can facilitate enforcement actions against these acts.

24. The Administration has indicated that the Transport Department ("TD") is conducting trials on the space sensors to ascertain the sensors' ability to detect miscellaneous items placed at on-street metered parking spaces. Currently, it is the responsibility of the management, operation and maintenance ("MOM") contractor engaged by TD for the existing parking meter system to inspect the on-street metered parking spaces of all districts once every four days. The Administration has added that the contractor will refer cases of unlawful occupation of on-street metered parking spaces to relevant government departments for follow-up actions. With the implementation of the new parking meter system, data relating to the occupancy and payment status of on-street metered parking spaces will be processed by the backend computer system to identify parking spaces which are occupied without payment. Such information can then be passed, on a real-time basis, to the Hong Kong Police Force ("HKPF") for their reference. Subject to manpower deployment and enforcement priorities, it may be possible for HKPF to use the information for taking targeted enforcement action. TD will also share with HKPF periodic reports generated by the parking meter system on the occupancy and payment status for them to identify black spots and take targeted enforcement actions accordingly. In addition, same as the MOM contractor for the existing parking meter system, the MOM contractor for the new parking meter system will inspect all on-street metered parking spaces once every four days so as to further ensure the proper use of these spaces.

Cessation of refund arrangements for parking cards

25. The legal adviser to the Bills Committee ("legal adviser") has pointed out that pursuant to regulation 12(7) of Cap. 374C, where a person cancels and returns a parking card, C for T shall refund the remaining value on the card concerned provided that the card is not altered, defaced or damaged in any manner. The proposed new regulation 12AA to Cap. 374C under clause 10 of the Bill, which provides that no refund may be made to a person under regulation 12(7) or (9) unless that person returns the parking card pursuant to regulation 12(6) by 31 December 2021, or surrenders the parking card and applies for the refund under regulation 12(8) by the same date, may have the effect of forfeiting a parking card holder's money stored in the parking card if he or she fails to return or surrender the card and apply for refund on or before 31 December 2021. In this respect, the legal adviser has asked about the legal basis for the proposed change in policy to impose a time limit on the existing refund arrangement.

26. In this connection, a member has requested the Administration to explain if there is any reason for adopting the date of 31 December 2021 as the deadline for refund arrangement.

27. The Administration has explained that parking cards branded as e-Park Cards have ceased to be accepted as payment means for using on-street parking meters since 2003-2004. From then on, the Administration has made available refund arrangements for holders of e-Park Cards. Having regard to the small number of refund requests in recent years and the fact that the electronic readers which determine the residual values of individual e-Park Cards are approaching the end of their serviceable life, the Administration considers it appropriate to announce the cessation of acceptance of refund applications for e-Park Cards with effect from 1 January 2022. Under the proposed arrangement, e-Park Card holders will have approximately 18 more months to apply for refund if they so wish. In tandem, TD will step up publicity efforts to inform the public of the cessation of refund arrangements. The Administration has stressed that it will put in place practicable and reasonable steps to implement the above measures. A member has made a few suggestions on ways to publicize the cessation of refund arrangements to motorists, such as distributing leaflets at the Licensing Offices of TD.

Other issues

28. The Bills Committee has noted the new offences in connection with the approved payment means and the new parking meters as set out in paragraph 8 above, and raised no objection.

29. As regards the Administration's decision of withholding the upward adjustment of the maximum fee for use of metered parking spaces from \$2 to \$4 or \$5 per 15 minutes, a member opines that the current level of fees is on the low side. The Administration has noted this view for future reference and reiterated that taking into account the views expressed by members at the Transport Panel meeting on 19 January 2018 and the recent economic situation in Hong Kong, it has decided to withhold the previously proposed fee adjustment.

30. The Bills Committee has noted that clause 3 of the Bill contains the definition of "pay and display machine". The Bills Committee has enquired about the application of pay and display machines in the light of the proposed introduction of a new generation of parking meters. The Administration has explained that no pay and display machines are currently in use in Hong Kong, and the relevant provisions are maintained and updated in the current legislative exercise for the purpose of leaving flexibility for adoption of pay and display machines in Hong Kong in future. The Administration has also taken note of a member's suggestion of issuing electronic parking tickets in future instead of printed parking tickets to promote wider application of smart initiatives.

31. The legal adviser has raised questions in relation to the definitions of the terms "parking space" and "parking spaces in a parking place" under the Bill. On the difference between the two under the Bill, the Administration has explained that it is common for a parking place to comprise a number of parking spaces. Unlike a parking meter, a pay and display machine is normally installed for use in connection with multiple parking spaces within the same parking place. Under such circumstances, the Administration considers it more appropriate to use "a parking space within a parking place" to accurately reflect the nature and the anticipated operation mode of pay and display machines.

32. Referring to the definition of "card" which appears in clause 4 of the Bill, the Chairman has enquired about its meaning under the Bill, in the light of the fact that the Bill proposes to allow payment of parking fees by various electronic means. The Administration has advised that the term "card" is a generic term, and its ordinary meaning applies to both the existing legislation and the Bill.

Proposed amendments

33. The Bills Committee notes that the Administration proposes to move an amendment ("proposed amendment") to the Bill.

34. The Administration has advised the Bills Committee that clause 1 of the Bill sets out the commencement dates relevant to the phased installation of the new generation of parking meters. With lapse of time, the Administration proposes to change the originally proposed commencement date under clause 1(2) of the Bill (i.e. 1 May 2020) to 1 August 2020. As regards the typographical error in the heading of Part III of Cap. 374C (in the English text) which does not form part of the Bill, while the Administration intended to rectify such in positive response to the legal adviser's earlier observation, the Administration provided a letter to the Bills Committee on 1 June 2020 vide LC Paper No. CB(4)656/19-20(01) explaining that the typographical error only appears on the e-Legislation website and that the Department of Justice will rectify the error shortly. As such, no amendment will be introduced by the Administration in relation to that.

35. The proposed amendment to be moved by the Administration is in **Appendix II**.

36. The Bills Committee has examined the Administration's proposed amendment to the Bill and raised no objection. The Bills Committee will not propose any amendments to the Bill.

Resumption of Second Reading debate

37. The Bills Committee has no objection to the resumption of the Second Reading debate on the Bill at a future Council meeting.

Advice sought

38. Members are invited to note the deliberations of the Bills Committee.

**Bills Committee on Road Traffic Legislation (Parking Spaces)
(Amendment) Bill 2019**

Membership list

Chairman	Hon Frankie YICK Chi-ming, SBS, JP
Members	Hon LUK Chung-hung, JP Hon Vincent CHENG Wing-shun, MH, JP Hon Tony TSE Wai-chuen, BBS (Total : 4 members)
Clerk	Ms Sophie LAU
Legal adviser	Miss Joyce CHAN

**Bills Committee on Road Traffic Legislation (Parking Spaces)
(Amendment) Bill 2019**

Committee Stage

Amendment to be moved by the Secretary for Transport and Housing

Clause

Amendment Proposed

1(2)

By deleting "1 May 2020" and substituting "1 August 2020".