

立法會
Legislative Council

LC Paper No. LS22/19-20

**Legal Service Division Report on
Road Traffic Legislation (Parking Spaces) (Amendment) Bill 2019**

I. SUMMARY

1. **The Bill** 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.
2. **Public Consultation** The Transport Department in collaboration with the Electrical and Mechanical Services Department have launched a new parking meter trial scheme in 2015 to 2018 to conduct field trials for the use of electronic payment means, such as contactless credit cards, for paying parking fees. The user questionnaire surveys revealed that a majority of respondents did not see any areas in need of improvement. Some respondents took the view that instructions on how to use the parking meters should be improved, and that the processing time for credit card transactions via card readers should be shortened.
3. **Consultation with LegCo Panel** As advised by the Clerk to the Panel on Transport, the Administration consulted the Panel on 19 January 2018. Members in general expressed support for the Administration's plan to install a new generation of parking meters, but held strong views against the proposed upward adjustment of the maximum fee for the use of metered parking spaces. According to paragraph 26 of the Legislative Council Brief, having taken into account Panel members' views and the recent economic situation in Hong Kong, the Administration has decided to withhold the proposed fee adjustment.
4. **Conclusion** The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to introduce a new generation of parking meters, Members may consider forming a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 27 November 2019. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: THB(T)CR 30/5591/75) issued by the Transport and Housing Bureau ("THB") on 13 November 2019 for further details.

Object of the Bill

2. 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.

Background

3. At present, parking meters in use are electronic parking meters that accept payment by Octopus card. 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 will install a new generation of on-street parking meters from 2019-2020 onwards as one of the "Smart Mobility" initiatives.¹ The new generation of on-street parking meters will accept payment of parking fees through multiple means, including remote payment through mobile applications, and will also be equipped with sensors to detect whether a 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, beginning from the first half of 2020. The Bill is introduced into LegCo to provide the legal basis for the operation of the new generation of parking meters.

Provisions of the Bill

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

Introduction of new on-street parking meters

Commissioner for Transport to approve new electronic payment means

5. Under the current arrangement, means of payment for parking fees are approved by the Commissioner for Transport ("Commissioner") by notice in the Gazette pursuant to section 12(1)(p) of Cap. 374 and regulation 12A of the Road

¹ See paragraph 82 of the 2017 Policy Address.

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 enabled with Visa payWave, MasterCard Contactless or UnionPay QuickPass.

6. The Bill seeks to amend section 12(1)(p) of Cap. 374 and regulation 12A of Cap. 374C to empower the Commissioner to approve by notice in the Gazette the use of a card, or 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 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 in the Bill.

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

7. Presently, the Commissioner 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 on-street 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 a definition of "space sensor" to section 2 of Cap. 374. Under the proposed definition, "space sensor" means a device installed by the Commissioner 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 the Commissioner to detect the occupancy of 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, 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 system²;
 - (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 the Commissioner is satisfied that the parking card has not been altered, defaced or damaged, he should refund the remaining value on the card 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 the Commissioner will cease to refund the remaining value on parking cards to

² "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.

cardholders beginning from 1 January 2022. According to paragraph 19 of the LegCo Brief, the Transport Department ("TD") has only received a small number of refund requests in recent years. The Administration therefore proposes to cease accepting refund applications for parking cards, which have ceased to be in use since 2004.

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. 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. The amendment in clause 16(3) relating to 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 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.

Public Consultation

13. According to the LegCo Brief³ and a paper issued by THB in December 2017 for the Panel on Transport (LC Paper No. CB(4)392/17-18(01)), TD in collaboration with the Electrical and Mechanical Services Department have launched a new parking meter trial scheme in 2015 to 2018 to conduct field trials for the use of electronic payment means, such as contactless credit cards, for paying parking fees. The user questionnaire surveys revealed that a majority of the respondents did not see any areas in need of improvement. Some respondents took the view that instructions on how to use the parking meters should be improved, and that the processing time for credit card transactions via card readers should be shortened.

Consultation with LegCo Panel

14. As advised by the Clerk to the Panel on Transport, the Administration consulted the Panel on 19 January 2018. Members in general expressed support for the Administration's plan to install a new generation of parking meters, but held strong views against the proposed upward adjustment of the maximum fee for use of metered parking spaces from \$2 to \$4 or \$5 per 15 minutes. According to paragraph 26 of the LegCo Brief, having taken into account Panel members' views and the recent economic situation in Hong Kong, the Administration has decided to withhold the proposed fee adjustment.

³ See footnote 6 of the LegCo Brief.

Conclusion

15. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to introduce a new generation of parking meters, Members may consider forming a Bills Committee to study the Bill in detail.

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