

立法會
Legislative Council

LC Paper No. LS75/04-05

**Paper for the House Committee Meeting
on 3 June 2005**

**Legal Service Division Report on
Proposed resolutions under section 4(3) of the
Road Traffic (Driving-offence Points) Ordinance (Cap. 375)
and
section 12 of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240)**

Introduction

The Secretary for the Environment, Transport and Works (“the Secretary”) has given notice to move two motions at the Legislative Council meeting of 15 June 2005, namely a motion under section 4(3) of the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) (“the Driving-offence Points Ordinance”) and a motion under 12 of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) (“the Fixed Penalty Ordinance”). The two motions seek to introduce measures to improve road safety.

Proposed resolution under section 4(3) of the Driving-offence Points Ordinance

2. This proposed resolution seeks the Legislative Council’s approval to amend item 12 of the Schedule to the Driving-offence Points Ordinance to increase the driving-offence points for the offence of failure to comply with traffic signals under regulation 18 of the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G) (“the Traffic Control Regulations”) from 3 to 5.

3. Regulation 18 of the Traffic Control Regulations provides that unless otherwise provided in the Road Traffic Ordinance (Cap. 374), no driver of a vehicle on a road shall fail to comply with the indication given by a red or amber light or intermittent red lights when shown by light signals in accordance with regulation 16 or 17. Under regulation 61 of the Traffic Control Regulations, a person who without reasonable excuse contravenes regulation 18 commits an offence and is liable on first conviction to a fine of \$5,000 and imprisonment for three months and on second or subsequent conviction to a fine of \$10,000 and imprisonment for six months.

4. The offence under regulation 18 of the Traffic Control Regulations is a scheduled offence under the Driving-offence Points Ordinance. It is also an offence punishable by a fixed penalty under the Fixed Penalty Ordinance. Under section 4 of the Driving-offence Points Ordinance, where a person is convicted of a scheduled offence, or becomes liable to pay a fixed penalty in respect of a scheduled offence, he shall incur the appropriate number of points in respect of that scheduled offence as set out in the Schedule to that Ordinance. At present, an offender incurs 3 driving-offence points in respect of the offence under regulation 18 of the Traffic Control Regulations.

5. The proposed resolution seeks to increase the driving-offence points for the offence under regulation 18 of the Traffic Control Regulations from 3 to 5. According to the Secretary's draft speech, the proposed increase will create a stronger deterrent effect upon potential offenders and provide a safer road environment for all road users.

Proposed resolution under section 12 of the Fixed Penalty Ordinance

6. The main purpose of this proposed resolution is to seek the Legislative Council's approval to amend the Schedule to the Fixed Penalty Ordinance to increase the fixed penalty for the offence of failing to comply with traffic signals from \$450 to \$600, and to make three existing traffic offences punishable by fixed penalty.

7. The Schedule to the Fixed Penalty Ordinance sets out various offences under the Road Traffic Ordinance (Cap. 374) and its subsidiary legislation which are punishable by a fixed penalty. One of these offences is the offence of failing to comply with traffic signals, contrary to regulation 18 of the Traffic Control Regulations. The fixed penalty for this offence is at present set at \$450. The proposed resolution seeks to raise the fixed penalty to \$600 with a view to increasing the deterrent effect upon potential offenders.

8. The proposed resolution also seeks to make three existing traffic offences punishable by fixed penalty. These offences are –

- (a) using hand-held telecommunications equipment while the vehicle is in motion (regulation 42(1)(g) of the Traffic Control Regulations);
- (b) driving a motor cycle or motor tricycle without keeping the obligatory lamps lighted (regulation 47(1A) of the Traffic Control Regulations); and
- (c) failing to drive in the nearside lane of the carriageway of an expressway (regulation 12(1) of the Road Traffic (Expressway) Regulations (Cap. 374 sub. leg. Q).

9. At present, prosecution of these offences is instituted by way of summons at the magistrates' courts. In view of the substantial increase in the number of prosecutions for these offences in the past three years, the Administration considers it necessary to simplify the means of prosecution of these offences. The Administration therefore proposes to include these three offences in the Schedule to the Fixed Penalty Ordinance so that the offences may become punishable by fixed penalty. The effect of this proposal is that where a person has received a fixed penalty notice for the relevant offence and has paid the full amount of the fixed penalty shown in the notice, he will not be liable to be prosecuted or convicted for the offence specified in the notice.

10. The fixed penalty for driving a motor cycle or motor tricycle without keeping the obligatory lamps lighted is proposed to be \$320. As for the other two offences, the fixed penalty is proposed to be \$450. According to the Secretary's draft speech, in considering the levels of fixed penalty for these three offences, the Administration has taken into account the level of fines imposed by the courts for these offences as well as the penalty for similar offences that are already punishable by fixed penalty.

11. Apart from the above amendments, the proposed resolution also rectifies certain clerical errors in the Schedule to the Fixed Penalty Ordinance.

Commencement

12. If passed, the above proposed resolutions will come into operation on 1 January 2006.

Public Consultation

13. According to the Administration, the Transport Advisory Committee and the Road Safety Council fully supported the proposal to increase the driving-offence points for failing to comply with traffic signals. The proposals contained in the proposed resolution under section 12 of the Fixed Penalty Ordinance have received the support of the Transport Advisory Committee.

Consultation with LegCo Panel

14. The Panel on Transport was consulted at its meeting on 14 December 2004 on the proposed measures to enhance road safety in Hong Kong. At the meeting, members and various organizations from the transport trades expressed their

views on the proposed measures, with the majority focusing on the proposed increase in the driving-offence points for red light jumping offences. After deliberation, the Panel passed a motion requesting the Government to adopt all possible and practical measures to improve the design of road junctions and the display of traffic light signals to ensure the effective detection of deliberate red light jumping offences before considering increasing the driving-offence points for such offences.

15. At the meeting on 18 March 2005, the Administration consulted the Transport Panel on a revised proposal which sought to increase the driving-offence points for failing to comply with traffic signals from 3 to 5, instead of from 3 to 8 as originally proposed. While some members supported the proposal to increase the penalty for red light jumping, they considered that the Administration should take heed of the views of the transport trades and make improvements to the road environment to facilitate drivers' compliance with traffic signals. To reduce disputes between the Police and drivers on charges against red light jumping, members urged the Administration to accelerate the procurement and installation of red light cameras and camera housings at signal-controlled road junctions. Some members were of the view that the legislation should be amended so that different penalties would be imposed for different scenarios of failure to comply with traffic signals in order to better reflect the relative gravity of the offences. They considered that the proposed penalty of 5 driving-offence points and the proposed fixed penalty of \$600 should only apply to cases where it was clear that the vehicle did not stop and went ahead when the red light was on, and for other cases of failure to comply with traffic signals, the existing level of penalty should be maintained.

Conclusion

16. The legal and drafting aspects of the above proposed resolutions present no problem. In the light of the views expressed by members of the Transport Panel, members may decide whether to form a subcommittee to deliberate on the relevant policy issues.

Prepared by

FUNG Sau-kuen, Connie
Assistant Legal Adviser
Legislative Council Secretariat
30 May 2005