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**Paper for the House Committee meeting
on 17 June 2005**

**Report of the Subcommittee to
Study Four Items of Subsidiary Legislation
under the Road Traffic Ordinance**

Purpose

This paper reports on the deliberations of the Subcommittee to Study Four Items of Subsidiary Legislation under the Road Traffic Ordinance.

The four items of subsidiary legislation

2. On 6 May 2005, the Administration published the following amendment regulations in the Gazette:

- (a) Road Traffic (Safety Equipment) (Amendment) Regulation 2005 (L.N. 65);
- (b) Road Traffic (Traffic Control) (Amendment) Regulation 2005 (L.N. 66);
- (c) Road Traffic (Registration and Licensing of Vehicles) (Amendment) (No. 2) Regulation 2005 (L.N. 67); and
- (d) Road Traffic (Construction and Maintenance of Vehicles) (Amendment) Regulation 2005 (L.N. 68).

The Subcommittee

3. The House Committee agreed at its meeting on 13 May 2005 to form a Subcommittee to study the four items of subsidiary legislation. Chaired by Hon Miriam LAU Kin-ye, the Subcommittee held a total of three meetings to

discuss the amendment regulations. The membership list of the Subcommittee is in **Appendix I**.

4. The Council passed a resolution on 1 June 2005 to extend the scrutiny period of the four items of subsidiary legislation from 8 June 2005 to 29 June 2005.

Deliberations of the Subcommittee

Standing passengers on moving vehicles

Background and justifications for amendments

5. A float vehicle is a decorated vehicle. For those mounted with a decorated platform, their operation is subject to movement permits issued by the Commissioner for Transport (the Commissioner) under the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E) (“the Registration and Licensing of Vehicles Regulations”). If the decoration or modification made to the vehicle does not render it in contravention of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg. A), the need to obtain a movement permit does not exist.

6. Under regulation 53(2) of the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G) (“the Traffic Control Regulations”), a driver of a vehicle (except a public service vehicle licensed to carry standing passengers) on a road shall not permit a passenger to travel in the vehicle unless the passenger is seated in a properly constructed seat secured to the bodywork of the vehicle. In addition, under regulation 53(3) of the Registration and Licensing of Vehicles Regulations, it is a condition of every movement that vehicles operating under movement permits are not allowed to carry loads other than such equipment, spares or fuel as are normally carried on such vehicles.

7. The Hong Kong Disneyland is scheduled for opening in the summer of 2005. Float parades will be one of the major regular events in the Disneyland. To cater for such parades as well as other occasions on which float parades would be held, L.N. 66 amends the Traffic Control Regulations to, inter alia, empower the Commissioner to exempt a float in a parade from the requirement of regulation 53(2) of the Traffic Control Regulations and to impose conditions on the exemption. L.N. 67 amends the Registration and Licensing of Vehicles Regulations to provide that every movement permit shall be subject to a condition as to speed limit and to make the condition specified in regulation 53(3) of the said Regulations apply to a vehicle operating under a movement permit only when the Commissioner imposes such a condition on the permit.

Float parades held for procession purpose

8. The Subcommittee is concerned whether the exemption granted under the proposed regulation 53A of the Traffic Control Regulations would apply to vehicles used in a procession and whether a float may be decorated for the purpose of a parade held for procession purpose.

9. The Subcommittee notes that a float, in relation to a parade, is defined in the proposed regulation 53A (7) of the Traffic Control Regulations as a vehicle decorated for the purpose of the parade, or a vehicle fitted with a platform for holding performance, or displaying decoration, for the purpose of the parade. The question of whether the exemption granted under the proposed regulation 53A of the Traffic Control Regulations would apply to vehicles used in a procession would depend on whether a procession is regarded as a parade.

10. The Administration advises that when considering whether an exemption shall be granted under the proposed regulation 53A of the Traffic Control Regulations, the paramount consideration is the safety of the passengers standing on the float. The provision would be applicable to parades for all purposes, not just those for entertainment or amusement. In other words, it is possible that a float may be decorated for the purpose of a parade held for procession purpose.

11. On the need to provide a separate definition of “parade” in the legislation to cover procession of people or things to avoid disputes in future, the Administration has advised that since the meaning of “parade” is generally understood, there is no need to provide a definition of the word in the legislation. The ordinary meaning of “parade” is wide enough to include any procession of people or vehicles moving through a public place.

Exemption conditions

12. Under the proposed regulation 53A(4) of the Traffic Control Regulations, the Commissioner shall not grant an application for a vehicle to be exempted from regulation 53(2) unless he is satisfied that -

- (a) the vehicle will be used as a float in a parade during the time, and on the roads along the route, stated in the application;
- (b) during that time, those roads will be designated to be used exclusively for the purpose of the parade; and
- (c) adequate measures will be adopted to ensure the safety of passengers standing on the vehicle during that time.

The Subcommittee is concerned that the Commissioner may refuse to grant an application for exemption under the proposed regulation 53A of the Traffic Control Regulations on the ground that partial road closure or lane closure for the purpose of a public procession held on a road does not satisfy the exemption requirement under the proposed regulation 53A(4)(b) as the road so designated may not be regarded as being used exclusively for the purpose of the parade.

13. The Administration clarifies that the words “those roads” in the proposed regulations 53A(4)(b) and (6)(a)(ii) of the Traffic Control Regulations refer to “the roads along the route” of the parade as mentioned in regulations 53A(4)(a) and (6)(a)(i) respectively. The Administration’s major concern is that the road in question is the road along the route of the parade, irrespective of whether it covers the whole stretch or one direction or some of the lanes of the road. Nonetheless, whether an exemption would be granted or not would depend on the circumstances of each case. The Commissioner would need to consider the safety of the persons on the float and other road users, as well as the likely impact of the exemption on other vehicles in the vicinity. In addition, the exemption given under the proposed regulation 53A of the Traffic Control Regulations is only related to the prohibition against standing passengers in regulation 53(2) and does not exempt the applicant or any person from compliance with other legal requirements.

Vehicle used as a float in a parade

14. The Subcommittee has examined whether it is possible to use an ordinary vehicle as a float in a parade and be exempted from regulation 53(2) of the Traffic Control Regulations, and whether a movement permit is required for the purpose. The Administration points out that an ordinary vehicle with a banner hung on the vehicle for the purpose of a parade can also be regarded as a float, and hence, the proposed regulation 53A of the Traffic Control Regulations would apply. Further, a movement permit is not a necessary condition for granting an exemption under the proposed regulation 53A of the Traffic Control Regulations. For a vehicle which had been licensed, and if any decoration or modification made to the vehicle does not render the vehicle in contravention of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg. A) applicable to the vehicle when driven on a road, there is no need to obtain a movement permit for the vehicle for the purpose of using the vehicle in a parade.

Application of the seat belt legislation

15. The Subcommittee has also examined whether it is necessary for the person concerned to apply at the same time for an exemption from the seat belt requirements provided in the Road Traffic (Safety Equipment) Regulations

(Cap. 374 sub. Leg. F) (“the Safety Equipment Regulations”) if a float happens to fall within the types of vehicles to which Part III of the said Regulations applies.

16. The Administration points out that a parade float is normally registered as a special purpose vehicle, and hence the requirements prescribed in Part III of the Safety Equipment Regulations do not apply. Even if the vehicle being used as a float is registered as a class covered by Part III of the Safety Equipment Regulations, the seats and seat belts are normally removed thus rendering the requirements inapplicable. In addition, the Commissioner may also grant an exemption from the requirements by virtue of regulation 10 of the Safety Equipment Regulations in case any of the passengers on the float have to be seated. In view of the above, the Administration considers that it would not be necessary to provide in the Safety Equipment Regulations a provision similar to the proposed regulation 53A of the Traffic Control Regulations.

Exemption duration

17. On the duration of the exemption, the Subcommittee notes that this will vary from case to case. The Commissioner may grant a one-off exemption for a parade to be held on a specific date, or an exemption with a longer validity period for parades to be held on a regular basis (like the Disneyland float parades). The Administration does not see it necessary to expressly provide for this in the amended Traffic Control Regulations. It points out that section 40(2)(b) of the Interpretation and General Clauses Ordinance (Cap. 1) has already provided that where any Ordinance confers power to grant an exemption, such power shall include the power to impose reasonable conditions. The period of validity should be a reasonable condition

Enforcement and penalty

18. The Subcommittee has queried why no penalty is provided for contravention of any of the conditions imposed under the proposed regulation 53A(6) of the Traffic Control Regulations.

19. The Administration’s explanation is that the proposed regulation 53(2) of the Traffic Control Regulations requires a driver of a vehicle not to permit a passenger to stand on a vehicle. If the driver without reasonable excuse contravenes this requirement, he will commit an offence under regulation 61. The requirement does not apply to a vehicle that is exempted under the proposed regulation 53A. The proposed Regulation 53A(6) provides that such an exemption may be granted subject to certain conditions. In other words, a vehicle is exempted from the requirements under regulation 53(2) only if the conditions subject to which the exemption is granted have been fulfilled. Where a condition of the exemption is not fulfilled, the driver cannot rely on

the exemption to excuse himself from satisfying the requirement of regulation 53(2) of the Traffic Control Regulations. In any case, when there is a breach of any of the exemption conditions, the enforcement authority on the spot will order the passengers standing on the float to be seated.

20. The Administration assures the Subcommittee that it will set out clearly in the exemption document that the exemption will become invalid during the continuance of the breach if any of the conditions is breached. In this case, if a driver permits a passenger to stand on the vehicle, he is in breach of regulation 53(2) of the Traffic Control Regulations and commits an offence since the exemption under the proposed regulation 53A does not apply. As such, the Administration considers it unnecessary to create a separate offence in respect of the contravention of an exemption condition.

Vehicles used for canvassing activities

21. Some members of the Subcommittee consider that the Administration should take a broader view and the proposed Amendment Regulations should aim at facilitating not only the float parades to be held at the Hong Kong Disneyland but also canvassing activities during elections. They point out that standing up in moving vehicles for canvassing activities during elections has existed for a long time and the Administration should not evade the long standing issue of the need to enact legislation to provide for exemption from regulation 53(2) of the Traffic Control Regulations for vehicles used for canvassing activities. If necessary, the Administration could consider imposing certain conditions or safety requirements for compliance by candidates.

22. The Administration points out that under the proposed regulation 53A of the Traffic Control Regulations, exemption from regulation 53(2) of the Traffic Control Regulations may only be granted to floats travelling at a specified speed (which will be a very low speed) at a specific time on a specific route, and the roads along such route will be used exclusively for the purpose of the parade. Given that the vehicles used for election-related activities do not operate under the same conditions, the safety requirements for standing passengers on such vehicles go beyond the ambit of the present legislative amendments. The Administration undertakes to separately examine this proposal in detail.

Proposed amendments to be moved by the Administration

23. Proposed regulation 53A(6)(b) of the Traffic Control Regulations provides that the Commissioner may impose such other conditions of the exemption as he considers necessary after consultation with the Commissioner of Police. Proposed regulation 53(3A) of the Registration and Licensing of Vehicles Regulations also provides that the Commissioner may impose on a

movement permit any other conditions the Commissioner, in consultation with the Commissioner of Police and any other authority, considers necessary. The Subcommittee considers that whilst it would be reasonable for the Commissioner to impose conditions that are related to road safety and/or traffic control under the Traffic Control Regulations and the Registration and Licensing of Vehicles Regulations, the scope and nature of conditions that the Commissioner may impose under the said Regulations are too wide. This may give rise to disputes, particularly when the Commissioner of Police may also propose other conditions for compliance by applicants.

24. Having considered the Subcommittee's views, the Administration agrees to amend the two regulations such that the "other conditions" to be imposed by the Commissioner would be those "relating to the regulation of road traffic, the use of vehicles and roads". In addition, the references to consultation with the Commissioner of Police and other authorities would be deleted from the regulations.

"Keep Left" and "No-stopping" signs

25. L.N. 66 also amends regulation 59(1) of, and Schedule 1 to the Traffic Control Regulations to reflect the changes regarding traffic signs. The Subcommittee considers that the new "KEEP LEFT" sign and "NO STOPPING" signs are more user-friendly.

Standards for protective helmets and seat belts

26. L.N. 65 amends the Safety Equipment Regulations to update the specifications and standards for protective helmets and seat belts, and to provide that where the Commissioner approves a type of protective helmets as approved protective helmets, the Commissioner has to publish his approval by notice in the Gazette. The Subcommittee notes that such notice does not carry any legislative effect.

Commencement date of the subsidiary legislation

27. The four items of subsidiary legislation shall come into operation on 30 June 2005 except the parts relating to the amendments to regulation 59 and Schedule 1 of the Traffic Control Regulations to reflect changes regarding traffic signs. The relevant sections shall come into operation on a day to be appointed by the Secretary for the Environment, Transport and Works by notice published in the Gazette.

Recommendation

28. The Subcommittee supports the four items of subsidiary legislation and the amendments to be moved by the Administration at the Council meeting on 29 June 2005.

Advice sought

29. Members are requested to note the recommendation of the Subcommittee at paragraph 28.

Council Business Division 1
Legislative Council Secretariat
16 June 2005

**Subcommittee to Study Four Items of Subsidiary Legislation
under the Road Traffic Ordinance**

Membership list

Chairman	Hon Miriam LAU Kin-ye, GBS, JP
Members	Hon LEE Cheuk-yan Hon Margaret NG Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP Hon CHAN Yuen-han, JP Hon Howard YOUNG, SBS, JP Hon LAU Kong-wah, JP Hon Andrew CHENG Kar-foo Hon LEE Wing-tat Hon Jeffrey LAM Kin-fung, SBS, JP
	(Total : 10 Members)
Clerk	Mr Andy LAU
Legal Adviser	Ms Connie FUNG
Date	20 May 2005