

ETWB(T) 1/12/41, 1/12/44, 1/12/137

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18 May 2005

By Fax [2877 5029]

Ms Connie Fung
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
8 Jackson Road
Central, Hong Kong

Dear Ms Fung,

**Road Traffic (Safety Equipment) (Amendment) Regulation 2005
(L.N. 65 of 2005)**
**Road Traffic (Traffic Control) (Amendment) Regulation 2005
(L.N. 66 of 2005)**

I refer to your letter dated 10 May 2005 on the captioned subject.
The Administration's responses are as follows –

L.N. 65 of 2005

The Commissioner for Transport is already empowered by the Road Traffic (Safety Equipment) Regulations (the Safety Equipment Regulations) to grant type approval for protective helmets that meet the prescribed standards. The proposed amendment only imposes an additional administrative requirement for the Commissioner to publicise his approval by notice in the Gazette. As it is clear that the notice does not carry any legislative effect, we do not think it is necessary to state specifically that the notice concerned is not subsidiary legislation. You may wish to note that a similar notification system for safety seat belts is also in place under paragraph 2 of Part I of Schedule 2 to the same Regulations, which has not specifically state that the notice concerned is not subsidiary legislation.

L.N. 66 of 2005

- (a) When considering whether an exemption shall be granted under the proposed regulation 53A of the Road Traffic (Traffic Control) Regulations (the Traffic Control Regulations), our paramount consideration is the safety of the passengers standing on the float. It is our intention that the provision would be applicable to parades for all purposes, not just those for entertainment or amusement.
- (b) The duration of the exemption 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). We do not expressly provide for this in the regulation to allow for flexibility. In addition, 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.
- (c) Under the proposed regulation 53A(5) of the Traffic Control Regulations, the Commissioner will be required to inform the applicant of the reasons for his refusal to grant exemption. The aggrieved applicant may re-submit his application after taking into account those reasons. We do not see the need for a statutory appeal mechanism for the exemption under the proposed regulation 53A, as its impact on people's livelihood is relatively small. However, the aggrieved applicant may apply for judicial review if he has grounds to do so.
- (d) The amended 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 regulation 53A. 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).

We 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) and commits an offence since the exemption under regulation 53A does not apply. As such, we consider it unnecessary to create a separate offence in respect of the contravention of an exemption condition.

- (e) 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, we consider that it would not be necessary to provide in the Safety Equipment Regulations a provision similar to the new regulation 53A of the Traffic Control Regulations.

Please let me know if we could be of further assistance.

Yours sincerely,

(Elizabeth Tai)
for Secretary for the Environment,
Transport and Works

cc. DoJ (Attn: Miss Selina Lau)