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Panel on Transport

**Background brief on
measures to combat drink driving and
use of hand-held mobile telephone or telecommunications equipment
while the vehicle is in motion**

Purpose

This paper sets out the background to the Administration's measures to combat drink driving and the use of hand-held mobile telephone or telecommunications equipment while the vehicle is in motion, and summarizes the views expressed by members of the Transport Panel (the Panel) and other committees in the past.

Drink driving

Drink driving legislation

2. In 1995, the Administration introduced a new set of drink driving legislation to prescribe a legal limit of alcohol concentration in a driver's blood, urine and breath, and to impose a legal obligation on drivers to provide samples of blood, urine or breath for testing under specified circumstances. The implementation of the new drink driving legislation had put across the essential message to the public that drinking and driving should be separated. Statistics showed that there was a 7% reduction over a two-year period (1996 and 1997) in the number of night-time accidents involving fatalities and serious injuries.

3. In 1998, the Administration introduced the Road Traffic (Amendment) Bill 1998 (the Bill) into the Legislative Council (LegCo). The Bill sought to lower the statutory limit of blood alcohol concentration (BAC) from 80mg to 50mg¹ of alcohol in 100ml of blood, and correspondingly lower the limits of breath-alcohol concentration from 35µg to 22µg of alcohol in 100ml of breath and urine-alcohol concentration from 107mg to 67mg of alcohol in 100ml of urine. According to the

¹ The Blood Alcohol Concentration (BAC) of 80mg for most people equates to about three to four cans of mild beer or 3 small glasses of wine in the first hour. The more stringent 50mg threshold for most people equates to about two cans of mild beer or 1.5 small glasses of wine in the first hour.

Administration, the proposal was in line with international trend. Overseas research had borne out the effectiveness of the proposed legal limit. The Bill also contained proposal to streamline the drink driving testing procedures.

4. In the course of deliberation, members of the Bills Committee had expressed divergent views on the Administration's proposal to tighten the BAC level. Some members held the view that tightening the BAC limit would help moderate the drinking behaviour of drivers and enhance road safety. As the effect of drink driving was not only on drivers but also on other road users, its deterrence would be beneficial to the community as a whole, and a further tightening of the limit to zero might even be considered if necessary. The fact that the problem of drink driving was not deteriorating only served to demonstrate the usefulness of existing legislation but this did not negate the need for further restrictions. Furthermore, the change would also accord with the international trend.

5. Other members, however, did not support the above views. As opposed to a BAC limit of zero, they took the view that the proposed tightening of BAC level from 80 mg to 50 mg was only marginally beneficial. They also pointed out that drink driving was not the same as drunken driving and the impact of alcohol on people varied depending on a wide range of factors. In the absence of statistics to show that the drink driving problem had deteriorated, and the lack of concrete evidence of a high correlation between alcohol intake and accident rates, there were inadequate justifications for the change since 80 mg was also adopted in many overseas countries and an individual's lifestyle should not be unduly jeopardized in a free society.

6. The Bills Committee had also examined if there was a need to raise the penalty level for drink driving to enhance the deterrent effect. The Administration pointed out that a driver who was convicted of drink driving was already subject to a maximum fine of \$25,000 and a maximum sentence of 3 years' imprisonment. Such penalty levels were deemed to be sufficient and the Administration did not see the need for a change. As regards the suggestion for imposing different levels of penalties for different BAC levels beyond the legal limit, the Administration did not agree with the approach since this might give the wrong impression that such levels had varying degrees of acceptability.

7. The Bill, including the proposed tightening of BAC level as proposed by the Administration, was passed by the Council on 16 July 1999 and the relevant amendments took effect on 1 October 1999.

Review of the penalty level for drink driving

8. In replying to a written question raised by a member in June 2004, the Administration reiterated that it had no plan to raise the maximum penalty level for drink driving which included a maximum fine of \$25,000, a maximum sentence of 3 years' imprisonment and disqualification from holding a driving licence for such period as determined by the court. Further, 10 Driving-offence Points would be

incurred in the driver's driving licence record. In case the accident had led to the death of other parties, the driver could be prosecuted for causing death by dangerous driving. If convicted, the driver would be subject to a maximum fine of \$50,000, a maximum sentence of 5 years' imprisonment, 10 Driving-offence Points and disqualification for at least 2 years on the first conviction or at least 3 years on the second or subsequent convictions. The above penalty levels are commensurate with those in overseas countries.

9. Regarding the numbers of drink driving-related traffic accidents in which there were casualties of other parties, and the numbers of drivers prosecuted for drink driving and the prosecution results, the Administration had provided the following information in June 2004:

| Year | Number of drink driving-related traffic accidents | Number of drivers prosecuted for drink driving | Number of drivers convicted |
|------|---|--|-----------------------------|
| 2001 | 42 | 1 040 | 934 |
| 2002 | 64 | 1 123 | 945 |
| 2003 | 79 | 1 308 | 557 |

10. The Administration considers that apart from legislation, public education is most important. The Administration assures Members that it would step up publicity to remind motorists to refrain from driving after consuming alcohol.

Discussion by the Panel

11. The Panel last reviewed the Administration's plan to combat inappropriate driving behaviour, including ways to tackle drink driving on 17 December 2004. Members reiterated that drink-driving had serious consequences jeopardizing the safety of other road users and urged the Administration to step up the enforcement, education and publicity work.

Use of handheld mobile telephones or telecommunications equipment while the vehicle is in motion

Background

12. According to overseas research studies, the use of mobile telephones while driving would cause distraction to drivers and would affect to a certain degree drivers' concentration and performance, in particular, the reaction time in emergency situations. The risk of collision of drivers of motor vehicles who use mobile telephones is about four times higher than that of those who do not.

13. In view of the significant increase in the risk of traffic accidents, the Administration takes the view that use of mobile telephones while driving should be

prohibited. The prohibition should also apply to hand-held radio phones and other similar hand-held telecommunications equipment that are commonly used by drivers of taxis, coaches, and express delivery vehicles, etc. while driving as they carry a similar risk to hand-held mobile telephones.

Legislative amendments

14. In February 2000, the Administration introduced the Road Traffic (Traffic Control)(Amendment) Regulation 2000 (the Amendment Regulation) which sought to prohibit a driver to use, while holding by hand or between his head and shoulder, a mobile telephone or any other telecommunications equipment, when driving a motor vehicle on a road.

15. Whilst accepting the policy intent to regulate the use of hand-held mobile telephone while driving, the Subcommittee formed to examine the Amendment Regulation took the view that without a clear definition of the term “driving” in the Regulation, it would be impossible to determine the scope of its application because the elements which constituted the act of “driving” could vary according to different precedent cases and would give rise to ambiguity and dispute as to whether a driver had committed an offence under the new driving rule. The Administration accepted the Subcommittee’s view and revised the proposal to the effect that if a motor vehicle being driven by him is in motion, he should not use, while holding by hand or between his head and shoulder, a mobile telephone or any other telecommunications equipment.

16. The penalty for using a hand-held mobile telephone and telecommunications equipment while the vehicle is in motion is subject to a maximum fine of \$2,000. Prosecution of these offences is instituted by way of summons.

17. The Amendment Regulation came into effect in phases. The part on hand-held mobile telephones came into effect on 1 July 2000 whereas the part on other hand-held telecommunication equipment (including radio phones) on 1 July 2001.

Review of the means of prosecution

18. In view of the substantial increase in the number of prosecutions for using mobile telephones and telecommunication equipments in the past three years², the Administration considered it necessary to simplify the means of prosecution of these offences. The Administration therefore proposed to include the relevant offence in the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) so that the

²

| Year | No. of prosecution |
|------|--------------------|
| 2001 | 2 988 |
| 2002 | 3 818 |
| 2003 | 6 188 |

offence may become punishable by fixed penalty.

19. In considering the levels of fixed penalty for the offence, the Administration points out that it has taken into account the level of fines set down by the court as well as the fixed penalty levels for similar offences that are already enforceable by fixed penalty tickets. In the past, the majority of offenders for using handheld telecommunications equipment while the vehicle is in motion were fined \$400 - \$500. The Administration therefore proposed that the fixed penalty be set at \$450.

20. A relevant resolution was passed by the Council and the change took effect on 1 January 2006.

Discussion by the Panel

21. At the Panel meeting on 19 December 2005, members were briefed on the latest progress on measures to enhance road safety and safety of public light bus (PLB) operation. Hon Albert CHAN and Hon WONG Kwok-hing raised the issue that some PLB drivers had used the telecommunications equipment in an inappropriate manner which caused disturbance and safety concern to the passengers. Although the telecommunications equipment was approved by the Office of the Telecommunications Authority and hand-free kit was installed, the PLB drivers used the equipment indiscreetly that the contents of their conversation and the voice level would invariably be an annoyance to the passengers and this caused distraction and affected the driver's reaction in emergency situations.

22. A list of the relevant papers is in **Appendix I**.

**Drink-driving and
use of handheld mobile telephone and telecommunications equipment while the vehicle is in motion**

List of relevant papers

| Panel/Committee | Date | Paper |
|---|----------------|--|
| Transport Panel | 9 January 1998 | <p>Administration's paper on the review of drink driving legislation (PLC Paper No. CB(1)730/(01))</p> <p>http://www.legco.gov.hk/yr97-98/english/panels/tp/papers/tp0901-4.htm</p> <p>Minutes of the meeting (PLC Paper No. CB(1)1094)</p> <p>http://www.legco.gov.hk/yr97-98/english/panels/tp/minutes/tp090198.htm</p> |
| Bills Committee on Road Traffic (Amendment) Bill 1998 (the Bills Committee) | 12 March 1999 | <p>Legislative Council brief on the Road Traffic (Amendment) Bill 1998</p> <p>http://www.legco.gov.hk/yr98-99/english/bc/bc07/general/27_brf.pdf</p> <p>Report of the Bills Committee to the House Committee (LC Paper No. CB(1)991/98-99)</p> <p>http://www.legco.gov.hk/yr98-99/english/hc/papers/h1203991.pdf</p> |
| Council meeting | 16 July 1999 | <p>Resumption of the Second Reading debate at the Council meeting</p> <p>http://www.legco.gov.hk/yr98-99/english/counmtg/hansard/99716fe1.pdf</p> |

| Panel/Committee | Date | Paper |
|---|------------------|---|
| Transport Panel | 26 October 1999 | <p>Administration's paper on the use of mobile telephones while driving (LC Paper No. CB(1)188/99-00(05))</p> <p>http://www.legco.gov.hk/yr99-00/english/panels/tp/papers/a188e05.pdf</p> <p>Minutes of the meeting (LC Paper No. CB(1)612/99-00)</p> <p>http://www.legco.gov.hk/yr99-00/english/panels/tp/minutes/tp261099.pdf</p> |
| Subcommittee on Road Traffic (Traffic Control) (Amendment) Regulation 2000 (the Subcommittee) | 26 May 2000 | <p>Legislative Council Brief: Road Traffic (Traffic Control) (Amendment) Regulation 2000 (TRAN 3/9/30 Pt 2)</p> <p>http://www.legco.gov.hk/yr99-00/english/hc/sub_leg/sc02/general/sc02_brf.pdf</p> <p>Report of the Subcommittee to the House Committee (LC Paper No. CB(1)1671/99-00)</p> <p>http://www.legco.gov.hk/yr99-00/english/hc/papers/cb1-1671.pdf</p> |
| Council meeting | 12 November 2003 | <p>Hon Miriam LAU raised a written question on the drink driving legislation</p> <p>http://www.legco.gov.hk/yr03-04/english/counmtg/hansard/cm1112ti-translate-e.pdf</p> |
| Council meeting | 9 June 2004 | <p>Hon LI Fung-ying raised a written question on drink driving</p> <p>http://www.legco.gov.hk/yr03-04/english/counmtg/hansard/cm0609ti-translate-e.pdf</p> |

| Panel/Committee | Date | Paper |
|---|------------------|---|
| Transport Panel | 26 November 2004 | Administration's paper on measures to enhance road safety (LC Paper No. CB(1)298/04-05/(06)) http://www.legco.gov.hk/yr04-05/english/panels/tp/papers/tp1126cb1-298-6e.pdf Minutes of the meeting (LC Paper No. CB(1)468/04-05) http://www.legco.gov.hk/yr04-05/english/panels/tp/minutes/tp041126.pdf |
| Transport Panel | 17 December 2004 | Administration's paper on review of measures to combat inappropriate driving behaviour (LC Paper No. CB(1)466/04-05/(03)) http://www.legco.gov.hk/yr04-05/english/panels/tp/papers/tp1217cb1-466-3e.pdf Minutes of the meeting (LC Paper No. CB(1)679/04-05) http://www.legco.gov.hk/yr04-05/english/panels/tp/minutes/tp041217.pdf |
| Subcommittee on Proposed Resolutions under the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) and the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) | 24 June 2005 | Report of the Subcommittee to the House Committee (LC Paper No. CB(1)1860/04-05) http://www.legco.gov.hk/yr04-05/english/hc/papers/hc0624cb1-1860e.pdf |

| Panel/Committee | Date | Paper |
|------------------------|------------------|---|
| Council meeting | 6 July 2005 | The Secretary for the Environment, Transport and Works moved a resolution under section 12 of the Fixed Penalty (Criminal Proceedings) Ordinance to make, inter alia, that traffic offence in relating to the use of hand-held mobile telephone or telecommunications equipment while the vehicle is in motion can be punishable by fixed penalty. http://www.legco.gov.hk/yr04-05/english/counmtg/hansard/cm0706ti-translate-e.pdf |
| Transport Panel | 19 December 2005 | Administration's paper on measures to enhance road safety and safety of public light bus operation (LC Paper No. CB(1)526/05-06(01)) http://www.legco.gov.hk/yr05-06/english/panels/tp/papers/tp1219cb1-526-1e.pdf |

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