

For information

Bills Committee on Road Traffic Legislation (Amendment) Bill 2008

Introduction

At the meeting of the Bills Committee on 9 May 2008, Members requested the Administration to provide information on a recent magistracy case related to section 63 of the Road Traffic Ordinance (Cap. 374). The Committee also requested the Administration to look into the validity period of a driving instructor's licence. Our response is set out below.

The Magistracy Case - *HKSAR v Richard Ethan Latker*

2. In *HKSAR v Richard Ethan Latker* (KCS 33295/2007), the defendant, as the registered owner of a vehicle, was charged with the offence of failing to provide the details of the driver at the time of an alleged offence under section 63 of Cap. 374. The magistrate on 8 May 2008 held that section 63 was inconsistent with the Hong Kong Bill of Rights.

3. The Department of Justice has already applied for a review of the Magistrate's decision under section 104 of the Magistrates Ordinance. In the light of this development, it is not appropriate for us to provide information on this case or discuss it further at this stage.

Present Position

4. According to our legal advice, the decision of the *Richard Ethan Latker* case is the decision of a single magistrate and therefore, not binding. Until the conclusion of the review mentioned in paragraph 3 above, the current position of the law is still as stated in *AG v TSANG Wai-keung* (1996) 7 HKPLR 163. In *TSANG's* case, it was held that section 62A of the Cross Harbour

Tunnel Ordinance (which is in equivalent terms to section 63 of Cap. 374) was not in contravention to Article 11(2)(g) of Hong Kong Bill of Rights. Provisions similar to section 63 of Cap. 374 have also been upheld in other jurisdictions, namely, the Privy Council in *Brown v Stott* [2003] 1 AC 681 and the European Court of Human Rights in *O'Halloran & Francis v United Kingdom* ECHR Grand Chamber, 29 June 2007. These two overseas authorities were cited with approval in the judgment of the Court of Final Appeal in *KOON Wing Yee v Insider Dealing Tribunal and the Financial Secretary* FACV No. 19 of 2007¹.

Validity Period of Driving Instructors' Licences

5. At present, driving instructors' licences are valid for one year under Regulation 22 of the Road Traffic (Driving Licences) Regulation (Cap. 374B). The Transport Department has taken note of the Bills Committee's request and will look into the validity period of such licences in the next review of driving instructors' licences to be conducted in late 2008.

Transport and Housing Bureau
16 May 2008

¹ Copies of the judgments of *AG v TSANG Wai-keung*, *Brown v Stott*, *O'Halloran & Francis v United Kingdom*, and *KOON Wing Yee v Insider Dealing Tribunal and the Financial Secretary* have been passed to the Clerk to Bills Committee.