

**Bills Committee on Road Traffic (Driving-offence Points)
(Amendment) Bill 2009**

**Provision of a self-contained mechanism on the
service of summons under the Driving-Offence Points System**

Purpose

This paper explains why the circumvention problem in the service of summonses issued under the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) cannot be dealt with by sections 8 and 18A under the Magistrates Ordinance (Cap. 227) and why it is necessary to introduce the “deemed served” provision as proposed under the Road Traffic (Driving-offence Points)(Amendment) Bill 2009 (‘the Bill’).

Background

2. At present, the Transport Department (‘TD’) will, in accordance with section 8 of Cap. 375, apply to a magistrate by way of complaint for the issue of a summons to a driver who has incurred 15 or more Driving-offence Points (‘DOP’) within a period of two years. The service and proof of service of summons are governed by sections 8(2) to (4) of Cap. 227.

Powers of Magistrate under sections 8 and 18A of Magistrates Ordinance, Cap. 227

3. Section 18A of Cap. 227 provides, amongst others, that where a summons has been served on a person a reasonable time before the hearing and at the time and place appointed for the hearing only the complainant or informant appears, the magistrate may issue a warrant to arrest the defendant.

4. Section 8(2)(a) of Cap. 227 provides that every summons shall be served by hand or by post. Section 8(2)(b) of Cap. 227 further provides that where a summons is served by post and the person to whom it is directed does not appear at the time and place specified in the summons, such service shall be deemed to have never been effected, and the summons shall thereafter be served again by hand by a bailiff or police officer. A person who intentionally circumvents the DOP system would not appear in court at the time and place specified in the summons served on him by post and the summons has then to be served by hand.

5. Section 8(2)(e) of Cap. 227 provides that “served by hand” means served by, amongst others, a police officer, usher or other officer of a magistrate's court on the person to whom the summons is directed –

- (a) by delivering the summons to that person personally; or
- (b) by leaving it with a third person for that person at that person's last or most usual place of abode.

A person who seeks to circumvent the DOP system would use different means to avoid receiving the summons to be served on him by hand. For instance, he may choose not to answer the door when the summons is served by hand to the address he registered with TD, or there may be claims that the person named in the summons does not live at the said address. Applying sections 8 and 18A of Cap. 227 alone is inadequate to deal with the circumvention problem in the service of summons issued under Cap. 375, as demonstrated by the existence of outstanding cases that cannot be further dealt with by the court in the absence of successful service of the relevant summonses.

Introduction of “service by registered post” and the ‘deemed served’ provision

6. Under the proposed section 14A(5) of the Bill, a summons is deemed to have been served if it is served on the person by registered post. As a matter of practice, we will invoke this “deemed served” provision only if the summons has been served by ordinary post and the person concerned has failed to appear in court at the time and place specified in the summons. Such an approach aims to address the circumvention problem mentioned in paragraph 5 above. Specifically, when the summons is served by registered post, it is deemed to have been served, even if it is returned undelivered. The magistrate may then proceed to issue a warrant under section 18A of Cap. 227 to arrest the person concerned, and any police officer may execute the relevant warrant at any time.

Feasibility of Alternative Solution

7. Under section 9 of Cap. 227, the magistrate may issue a warrant to arrest a person in the first instance or notwithstanding that a summons has been previously issued. It is the prosecution's experience that the

magistrate would usually require extensive proof as to why the summons could not be served in the normal course of service before he would consider exercising discretion to grant an arrest warrant under this provision. In cases where the person concerned has intention to circumvent the service of summons, it is resource-wise impossible for carrying out extensive tracing of each person concerned repeatedly until 'sufficient evidence' is collected before applying for an arrest warrant under section 9. The 'deemed served' provision is designed to address the problem of intentional circumvention, and to facilitate the process of bringing the person concerned to which the summons is directed to the court.

Setting up a self-contained mechanism on the service of summons for the Driving-Offence Points System

8. The service of DOP summons is governed by section 8 of Cap. 227 but, as explained above, some drivers has intentionally circumvented the mechanism for service of DOP summons. We have therefore proposed a revised mechanism to address the problem in a self-contained service provision (i.e. new section 14A) under Cap. 375, instead of introducing amendments to spell out the exceptions either under Cap. 227 or Cap. 375. This proposal would make Cap. 375 more comprehensible without the need for much cross-referencing between Cap. 227 and Cap. 375, which may be a source of confusion for all parties concerned.

9. Department of Justice has a policy of updating and refining the drafting of essentially similar provisions where an opportunity arises in accordance with the latest drafting conventions. The wording in the proposed new section 14A(2) and (4) under the Bill are slightly different from that in the existing section 8(2) of Cap. 227 partly because we have followed the latest drafting practices with the intention to make the provision easier to comprehend. Given the design of our new section 14A, we also consider it not necessary to provide for a definition of "served by hand" or "served by post" as in Cap. 227 as the elements concerned have already been incorporated into our new section 14A(2) and (3).

10. Members are requested to note the contents of the paper.