

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

Follow-up actions required of the Administration

- 1. In regard to the 80% successful rate and the 20% unsuccessful rate in the execution of traffic arrest warrants in 2008, the Administration is required to provide information on the types of offences involved respectively.**
 - The Police do not maintain a breakdown on the type of offences in respect of the warrants that were successfully or unsuccessfully executed because such information was not printed on the warrants concerned. A copy of a typical traffic arrest warrant is at the Appendix 1 for reference.
 - Typically, warrants are mainly issued to apprehend persons for non-payment of fine under the Fixed Penalty (Criminal Proceedings) Ordinance. The traffic offences involved include speeding, failing to comply with traffic signals, etc. and a person may discharge the liabilities through payment of fine. There are also 'non appearance arrest warrant' issued to persons who committed various types of traffic offences and failed to answer court bail. The Police do not maintain records on the types of the traffic offences under the 'non appearance arrest warrant' either.

- 2. To provide a paper to explain 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 Bill.**
 - Please refer to a separate paper on this issue.

3. Measures to be implemented by the Transport Department and the Judiciary to avoid the issue of summonses under Cap. 375 at the defendants' old addresses.

- The Transport Department (TD) and the Judiciary have jointly reviewed the procedures for the issue of summonses under Cap. 375 (DOP summonses) and have agreed on a set of revised procedures. To tie in with the new measures proposed under the Road Traffic (Driving-offence Points) (Amendment) Bill 2009, the computer systems of TD and the Judiciary are being enhanced to allow data transfer of updated addresses of defendants, hearing dates and hearing results of the cases on a daily basis.
- Under the revised work procedures, when TD makes an application to the court for issue of DOP summons to a person, his latest address shown in the record of driving licences kept by TD will be passed to the court for issue of the summons. The summons will first be served by ordinary post. Two days before and on the day of hearing, TD will check the address of the person concerned again. If there is any change of address and the person concerned is absent from the scheduled hearing, TD will ask the court to arrange re-issue of the summons with the updated address, if any. The summons will then be served to the person concerned by registered post again. The revised procedures will ensure that summonses will be issued to the most updated address of the person concerned.

4. Need for qualification of “third person” in the proposed new section 14A(2)(b)

- The term “third person” is not defined under the Evidence Ordinance (Cap. 8), Magistrates Ordinance (Cap. 227), or Road Traffic (Driving-offence Points) Ordinance (Cap. 375) in the context of service of summons by hand. Notwithstanding this, a bailiff and a police officer, who serve summonses by hand in urban and NT regions respectively, will only serve a summons on a third person if he has reasons to believe that such third person would pass the summons to the person to whom the summons is directed.

- According to existing practices, in the event that a bailiff or a police officer has to serve a summons on a third person, he has to ensure that the third person is at the address of the person to whom the summons is directed, apparently not under 16, and willing to accept service on behalf of the person to whom the summons is directed. Besides, the bailiff or police officer has to ascertain the identities of the third person and his relationship with the person to whom the summons is directed before leaving the summons with the third person. The third person, who is willing to accept the summons on behalf of the person to whom the summons is directed, will also be required to sign a 'Certificate of Service' (Appendix 2), which will be used as evidence in the 'Proof of Serving' should the person to whom the summons is directed fail to attend court subsequently.
- Section 8(4) of Cap. 227 provides that a magistrate may require the officer serving the summons to attend before him and give evidence on oath as to the service.
- Cap. 375 does not provide for the proof of service. By virtue of section 16(2) of Cap. 375, the provisions for proof of service as set out in section 8(2)(c), (3) and (4) of Cap. 227 shall, with necessary adaptations, apply to the service of a summons issued in relation to the disqualification proceedings under Cap. 375.

5. Concern on the drafting of the new Regulation 6(3) of the Road Traffic (Driving Licences) Regulations that it may be misinterpreted as once a driver fails to appear in court in answer to a traffic summons, the Commissioner for Transport will not issue, reissue or renew the driving licence to him, even though the driver has subsequently answered the summons.

The proposed new regulation 6(3) of the Road Traffic (Driving Licences) Regulations (Cap 374B) reads:

If—

- (a) a person applies to the Commissioner under these regulations for the issue, reissue or renewal of a driving licence;*

- (b) *a summons issued under section 8(2) of the Road Traffic (Driving-offence Points) Ordinance (Cap.375) has been served on the person in accordance with section 14A of that Ordinance; and*
- (c) *the person has failed to appear before a magistrate in answer to the summons,*

the Commissioner shall not issue, reissue or renew the driving licence to the person.”

Paragraphs (a), (b) and (c) of the new regulation 6(3) must be read together. Where a summons under Cap 375 is served on a person and the person appears before a magistrate in answer to the summons, the new regulation 6(3) would not be applicable to the person concerned. The practice of the magistrate's court is such that if a person fails to appear in court to answer a summons served on him, the same summons with a new hearing date will be served on him. A person who, after failing to appear in court once, subsequently appeared in court would likewise not fall under paragraph (c) of the new regulation 6(3) as only one summons has ever been issued against him in respect of this set of proceedings. We are therefore of the view that amendment to the new regulation 6(3) is not necessary.

Magistrates Ordinance, Cap. 227
s. 101A, Form 29

Case No.
Writ No.

KCM [REDACTED]
KCX [REDACTED]



**WARRANT
TO APPREHEND FOR NON-PAYMENT OF FINE**
HONG KONG SPECIAL ADMINISTRATIVE REGION
Kowloon City MAGISTRATES' COURTS
Kowloon City Law Courts Building, 147M Argyle Street, Kowloon

TO: Each and all of the police officers of Hong Kong Special Administrative Region :

[REDACTED]
[REDACTED]

DRIVING LIC : [REDACTED]
Sex : Male
Age : 57

[REDACTED]

Whereas the said Defendant was on or before 13 July 2007 convicted of one or more offences in the following case(s), it was then adjudged that the Defendant should pay the following sum(s) on or before 16 September 2008 :-

Case Nos.	by way of Fine	as Compensation /Restitution	Costs	Others
KCM [REDACTED]	1200.00	0.00	0.00	0.00

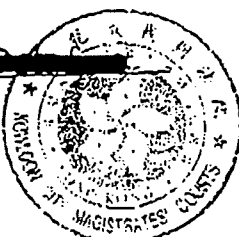
[REDACTED]
[REDACTED]
[REDACTED]

making a total sum of \$ 1200.00

To date, the accumulated payments received from or made on behalf of the Defendant amount to only \$ 0.00

so the UNPAID AMOUNT IS \$ 1200.00

THIS WARRANT THEREFORE ORDERS YOU forthwith to apprehend the Defendant and to bring the Defendant before a magistrate of Hong Kong to show cause why a warrant of commitment should not be issued and to be further dealt with according to law

[REDACTED]
Magistrate 

ISSUE date
Date : 13 SEP 2008
6:00 PM

Bail \$ 1400.00

[L.S.]

CERTIFICATE OF SERVICE

文書送達證明書

(To be completed at time of service)

(須於送達時填寫)

Name of Defendant : _____

Served upon the Defendant by :-

將文書送達被告者:-

(a) Serving personally on (Name) _____
送達其本人親收(姓名)

at (Address) _____

送達(地址) _____

(b) Leaving with a person for the Defendant at the Defendant's last or most usual place of abode
在被告最新近或最經常居住的地點留下文書由別人代收

(Name) _____

(姓名)

(Address) _____

(地址)

(Relationship to Defendant) _____

(與被告人的關係)

Remarks (備註) _____

(c) Leaving the summons at the registered office of the company
留下文書於被告公司註冊辦事處

at (Address) _____

(地址) _____

Remarks (備註) _____

Signature of person who receives Summons _____

收票人簽署

Signature of Serving Officer _____

送達人簽署

Serving Officer's Name & Office (in English & block capital letters) _____

送達人員的姓名及其辦事處(用英文正楷)

Date Served _____ Time Served _____

送達日期

送達時間