

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

Follow-up actions required of the Administration

Introduction

The purpose for introducing the proposal as reflected in the captioned Amendment Bill is to deal with the circumvention problem in the service of summonses issued under the Road Traffic (Driving-offence Points) Ordinance (Cap.375)(‘the DOP Ordinance’). During the consideration of the Amendment Bill, the Administration is requested to explain the two issues in paragraph 2 below.

2. The issues raised by the Bills Committees are as follows -

- (a) To explain with reference to relevant provisions in the Fixed Penalty (Criminal Proceedings) Ordinance (Cap 240) or any other Ordinance as appropriate, the mechanism in place to address problems such as that a driver tries to evade the accumulation of driving offence points (DOP) by –
 - (i) not paying fixed penalty in respect of a scheduled offence and by avoiding to receive orders and/or warrants issued under sections 3A and 5 of Cap.240 respectively; or
 - (ii)not responding to a summons served on the driver in respect of a scheduled traffic offence to which the driver may plead guilty by letter.
- (b) To provide the number of cases in which the driver, before accumulating 15 DOPs, has circumvented the DOP system in the way elaborated in (ii) above, and the number of cases in which the driver has circumvented the DOP system by avoiding receiving summonses issued under the DOP Ordinance and any disqualification order to be made against the driver after he has accumulated 15 or more DOPs.

Whether a driver may evade the accumulation of the DOPs by not paying the fixed penalty ticket

3. Section 4(1) of the DOP Ordinance provides that a person shall incur the specified number of DOPs when he -

- (a) is convicted of a scheduled offence; or
- (b) becomes liable to a fixed penalty in respect of a scheduled offence.

4. It is stipulated under section 2(2) of the DOP Ordinance that a person becomes liable to a fixed penalty when –

- (a) he pays the fixed penalty in accordance with a notice served on him under section 3(1) or (3) of Cap 240;
- (b) he is ordered to pay penalties under section 3A of Cap 240;
- (c) he has notified the Commissioner of Police that he wishes to dispute liability in accordance with a notice served under section 3(3) of Cap 240 but subsequently pays the fixed penalty, the additional penalty and costs in accordance with section 9 of Cap 240; or
- (d) his liability to a fixed penalty revives under section 4B of the DOP Ordinance.

5. The operation of section 2(2)(b) – (d) of the DOP Ordinance together with the relevant provisions in the Fixed Penalty (Criminal Proceedings) Ordinance Cap 240 may be related to the concern raised by LegCo members.

6. According to section 3A(1) of Cap 240, where a person on whom a notice under section 3(3) of Cap 240 has been served has not paid the fixed penalty and has not notified the Commissioner of Police, in

accordance with that notice, that he wishes to dispute liability for the offence, a magistrate shall, on an application which may be made in the absence of that person, order him to pay the fixed penalty together with an additional penalty equal to the amount of the fixed penalty, within 14 days of being served with notice of the order.

7. A notice under section 3(3) of Cap 240 shall be served by sending it by post to the registered address of the offender and in the application under section 3A of Cap 240 in the absence of the offender, an order under section 3A(1) of Cap 240 shall be made upon the production by the applicant or the prosecution of –

- (a) a copy of the notice served under section 3(3) of Cap 240 and a certificate of posting of that notice under section 29 of the Evidence Ordinance (Cap 8) (Annex A);
- (b) a certificate under section 8 of Cap 240 (Annex B).

Upon production of the certificate of posting under section 29 of Cap 8 and the certificate under section 8 of Cap 240, the certificates shall be *prima facie* evidence that the notice has been served upon the drivers concerned unless the contrary is proved.

8. By operation of section 3A(1) of Cap 240 and section 2(2)(b) and 4(1)(b) of the DOP Ordinance, once an order under section 3A(1) is made, the appropriate number of DOP in respect of the offence committed would be registered to his DOP record kept by Transport Department ('TD').

9. It may be noted that the magistrate may exercise his power under section 3B of Cap 240 to rescind the section 3A(1) order if he is satisfied that the notice issued under section 3(3) of Cap 240 has not come to the personal notice of the offender without any neglect. Notwithstanding the above, it seems reasonable to infer that an offender has to appear in court before he can prove to the court's satisfaction that he had no neglect in not receiving the section 3(3) notice. Accordingly, the circumvention problem would unlikely arise in this type of cases.

10. For cases where an offender seeks to dispute liability, section 5 of Cap 240 provides similar mechanism, which is applicable to the service of summons, as in section 7 of Cap 240 (see paragraph 7 above). As the offender has expressly indicated his/her intention to dispute liability, the offender would undoubtedly appear in court to explain his/her position.

Whether the driver may evade the accumulation of DOPs by not responding to a summons served on him in respect of a scheduled traffic offence to which the driver may plead guilty by letter

11. According to section 18E of the Magistrates Ordinance (Cap 227), an offender may, in the case of an offence specified in the Third Schedule to Cap 227, plead guilty by letter addressed to the magistrate. Offences specified in the Third Schedule to Cap 227 are generally minor offences that may be prosecuted by way of summonses. The examples of such offences are -

- Failing to comply with traffic sign (including speeding in excess of not more than 45 kph); and
- Failing to comply with road markings (including crossing double white lines)

12. Section 8 of Cap 227 applies to the service of summons for offences listed in the Third Schedule to Cap 227. Though it may not be impossible that the circumvention problem as envisaged in the service of DOP summonses may go upstream to the service of summonses for scheduled DOP offences listed in the Third Schedule to Cap 227, it appears from the breakdown of DOP cases below that the percentage of DOP offences to which summonses were issued (including cases where scheduled DOP offences listed in the Third Schedule to Cap 227) is relatively low.

Breakdown of DOP cases

13. Offenders who have committed DOP offences are to be prosecuted by way of charges¹, summonses and fixed penalty tickets.

¹ For more serious cases including dangerous driving causing death, dangerous driving, driving under the influence of drink or drugs, and driving in a motor race.

According to the DOP records kept by the TD, about 90% of the DOP offences are dealt with through the issue of Fixed Penalty Tickets, while some 10% were dealt with by way of summons and charges. A breakdown of the DOP cases in 2008 is broadly shown in the following table –

(a) Total no. of DOP cases in 2008	217,200
(b) Of (a), no. of cases dealt with by fixed penalty	193,840 (89.25%)
(c) Of (a), no. of cases dealt with by summonses	21,730 (10%)
(d) Of (a), no. of cases dealt with by charge	1,630 (0.75%)

Traffic offences cases where charges are to be laid

14. Traffic cases where charges are to be laid cover more serious traffic offences. Should the defendant, who is usually on bail, fail to appear before the court to answer the charge(s), the magistrate may issue a warrant of arrest against the defendant. Upstream circumvention for such cases is unlikely a concern.

Traffic Offences to be dealt with by fixed penalty tickets

15. The great majority of DOP offences are relatively minor in nature and are dealt with by fixed penalty tickets. The person to whom a fixed penalty ticket is issued may discharge liability to conviction for the offence by payment of the fixed penalty, and the relevant DOPs will be recorded under the DOP system.

16. Under the Cap 240, if a person has not paid the fixed penalty and

has not notified the police that he wishes to dispute liability in writing upon expiry of the payment date specified in the Demand Note, the police may under section 3A(1) of Cap. 240 apply in the absence of that person to the magistrate to issue a court order for the person to pay the fixed penalty together with an additional penalty equal to the amount of the fixed penalty. Once the court order is issued and signed, the relevant DOPs will be recorded under the DOP system. On the other hand, if a person has notified the police that he wishes to dispute liability, the Police will apply for a summons to bring the person before the court. As the person has gone through a complaint or review stage, it is his own will to attend court to dispute his case. Such summonses are rarely unserved.

17. As indicated in paragraphs 3 to 10 above, it seems that upstream circumvention is unlikely a concern for traffic offences dealt with by fixed penalty tickets.

Traffic offences to be dealt with by summonses

18. For DOP offences that are to be dealt with by way of summons, defendants may choose to plead guilty by letter for offences depicted in section 18E (3)(1), Magistrates Ordinance (Cap. 227). Our assessment as mentioned in paragraph 12 above is that the risk of upstream circumvention is relatively low. When it is evident that a defendant has tried to evade receiving the summons, the Police will apply to the court for the issue of an arrest warrant under section 9 of Cap 227.

The number of cases which the driver has circumvented the DOP system by avoiding receiving summons

19. As regards the summonses issued under the DOP Ordinance for the disqualification hearings, some 90% of the cases were successfully dealt with in the past three years, and details are given in the following table –

Year	2006	2007	2008
Number of summons issued under Cap. 375	4,106	4,513	5,104
Disqualification order issued in respect of the summonses issued in the year	3,822	4,114	4,189
Percentage of disqualification order over total number of summonses	93%	91%	82%

Note: The table shows the position as at end February 2009. Among the 5,104 summonses issued in 2008, 171 of them have hearing dates after end February 2009.

20. The above figures show that the great majority of drivers do not avoid receiving summonses issued under the DOP Ordinance. As at end January 2009, the number of drivers who incurred 15 DOPs or more to whom summonses could not be served was about 650. We are of the view that the “deemed served” provisions, if introduced, will be effective in overcoming the problem of “unserved” DOP summonses and non-appearance of the driver concerned in disqualification proceedings under the DOP Ordinance.

Transport and Housing Bureau
25 March 2009

Annex A

Chapter:	8	Title:	EVIDENCE ORDINANCE	Gazette Number:	
Section:	29	Heading:	Certificate of posting of documents	Version Date:	30/06/1997

(1) Where any Ordinance authorizes or requires any document to be served or any notice to be given by post or by registered post, a certificate purporting-

(a) to certify-

- (i) that a specified document or notice, addressed to a person named in the certificate, was addressed to that person at a specified address;
- (ii) that the appropriate postage on the said document or notice was prepaid; and
- (iii) that the said document or notice was despatched by post or by registered post at a time and place specified in the certificate; and

(b) to be signed at the time and place specified in the certificate by the person who-

- (i) ensured that the appropriate postage on the said document or notice was prepaid; and
- (ii) despatched the said document or notice by post or by registered post at the said specified time and place,

shall be admitted in any criminal or civil proceedings before any court on its production without further proof.

(2) On the production of a certificate under subsection (1)-

(a) the court before which it is produced shall, until the contrary is proved, presume-

- (i) that the facts stated therein relating to the posting of the document or notice specified therein are true;
- (ii) that the certificate was signed at the time and place specified therein by the person who posted the specified document or notice; and

(b) the certificate shall be *prima facie* evidence of all of the matters contained therein.

(Added 35 of 1972 s. 3)

Annex B

Chapter:	240	Title:	FIXED PENALTY (CRIMINAL PROCEEDINGS) ORDINANCE	Gazette Number:	
Section:	8	Heading:	Evidence by certificate	Version Date:	30/06/1997

A certificate in the prescribed form stating-

- (a) that the person specified in it was at the time so specified either the registered owner of the vehicle, or the holder of the driving licence, so specified;
- (b) that the address specified in it was at the time so specified the registered address of such person;
- (c) that payment of the fixed penalty in respect of the scheduled offence was not made before the date specified in the certificate; and
- (d) in the case of an application under section 3A(1), that the person specified in it had not, before the date specified in the certificate, notified the Commissioner of Police that he wished to dispute liability for the offence, (Added 57 of 1981 s. 7)

and purporting to be signed by or on behalf of the Commissioner of Police shall be admitted in any proceedings, or in any application under section 3A(1), on its production without further proof and-

- (i) until the contrary is proved, the court shall presume that the certificate was so signed; and
- (ii) the certificate shall be prima facie evidence of the facts stated therein.

(Amended 57 of 1981 s. 7)