

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

Follow-up actions required of the Administration

This paper provides the information required under items (c), (d) and (e) of the Annex to the letter of 18 March 2009 from the Bills Committee.

(c) Provide the reasons for not considering to introduce additional measures, e.g. empowering the Commissioner for Transport to suspend the driving licences of those blatant drivers who have incurred 30 DOPs or more and have failed to appear in court according to summonses issued to them, as there is concern that the current proposal may not be able to effectively tackle the circumvention problem.

2. When drafting the amendment Bill, we have considered whether a driver should be deemed to have been disqualified from driving once he has incurred 15 or more Driving-Offence Points ('DOPs) within a period of two years but found it not appropriate to introduce any mechanism whereby a driver will be disqualified from driving automatically.

3. Automatic disqualification is a deviation from the existing provisions under the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) and may give rise to practical concerns as follows –

- (a) a driver may not be aware that a disqualification order has already been made on him, and is still driving on the road;
- (b) the driver would not hand over his driving licence as required under section 10 of Cap. 375;
- (c) ignorant of the fact that he was disqualified from driving, the driver concerned might continue to drive and commit the offence of driving whilst disqualified under section 44 of the Road Traffic Ordinance (Cap. 374); and
- (d) the anomaly of the record of his driving-offence points for the summons concerned would be cleared upon the completion of the automatic disqualification period without the driver even knowing

that the disqualification order was made against him, would occur. It would help clear his DOPs, instead of requiring him to serve the penalty under the DOP system.

4. The above situation will not help enhance road safety but may give rise to insurance concerns. It is not uncommon that there is a condition in a motor vehicle (third party risks) insurance policy that the vehicle driver shall hold or is not disqualified from holding a driving licence. If, a driver causes an accident whilst driving during his automatic disqualification period (assuming that he has no notice of the disqualification order made against him), an argument as to the effectiveness of the insurance policy, insofar as the driver is concerned, during his driving of the vehicle may arise. Although the victim may at the end seek compensation from the Motor Insurance Bureau, there would likely be arguments as to whether he/she may obtain compensation from the insurance company under the third party risks insurance policy.

5. Apart from the above, there are also concerns that automatic disqualification may jeopardize the pecuniary interest of a professional driver and even affect his or his family's livelihood, and as such, it would not be appropriate to disqualify a driver automatically before giving him an opportunity to make representation in respect of the disqualification.

6. In the amendment Bill, we have proposed –

- (a) that a summons is deemed to have been served if it is served on a person by registered post at the person's address shown in the record of driving licences kept by the Commissioner under the Road Traffic (Driving Licences) Regulations (Cap. 374B), even if it is returned undelivered; and
- (b) the Commissioner shall not issue, reissue or renew a driving licence to a person if the person fails to appear before a magistrate in answer to the summons issued under Cap. 375, including a summons that is deemed to have been served.

The above proposed measures, if introduced, will address the problem of 'unserved' summonses and non-appearance at court hearing, and help bring a person to go through the disqualification proceedings.

(d) Address a member's concern that section 3A of Cap. 240, under which a magistrate may order a person to pay the fixed penalty (together with any additional penalty) in the absence of that person and before that person has made any notification in accordance with the notice under section 3(3) of Cap. 240, maybe in breach of Basic Law

7. Failure to pay any penalty under section 3A of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) will not carry the consequences as mentioned in paragraphs 3 to 5 above. Therefore, the fixed penalty regime under Cap. 240 is not directly comparable with the DOP scheme under the amendment Bill.

8. Unlike the amendment Bill, Cap. 240 does not rely on a deeming provision to enforce the fixed penalty regime. The fixed penalty regime set up under Cap. 240 still relies on whether the driver has personal notice of a notice made under section 3(3) or an order made under section 3A(1). While an order may be made under section 3A(1) in the absence of a person to order him to pay the fixed penalty, the provision must be read together with section 3B(1) which provides that 'Where a magistrate is satisfied that the notice mentioned in section 3(3) has not come to the personal notice of the person to whom it is addressed without any neglect by that person, the magistrate may, on an application of which reasonable notice has been given to the Commissioner of Police, rescind the order made under section 3A(1)'. Since a driver without personal notice of a notice made under section 3(3) through no neglect of his own can ask the magistrate to rescind the order made under section 3A(1) and to dispute liability, it is our view that section 3A(1) would not raise any human rights concern.

(e) to undertake that a review of the effectiveness achieved in tackling the circumvention problem will be conducted six months after the Bill has come into operation, and the outcome of the review will be reported to the Panel on Transport

9. We hope the amendment Bill will come into operation as soon as possible and undertake to review its effectiveness in tackling the circumvention problem in about six months after implementation.

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

**Transport and Housing Bureau
25 March 2009**