

## **LEGISLATIVE COUNCIL BRIEF**

### **ROAD TRAFFIC (DRIVING-OFFENCE POINTS) (AMENDMENT) BILL 2009**

#### **INTRODUCTION**

Annex At the meeting of the Executive Council on 13 January 2009, the Council ADVISED and the Chief Executive ORDERED that the Road Traffic (Driving-offence Points) (Amendment) Bill 2009, at **Annex**, should be introduced into the Legislative Council.

#### **JUSTIFICATIONS**

##### **Background**

2. The Driving-offence Points (“DOP”) system first came into operation in August 1984. The main objective of the system is to tackle the repeat traffic offenders by imposing an additional penalty of disqualifying a driver from driving if he has accumulated 15 or more DOPs within a period of two years. The DOP system can enhance the deterrent effect for inappropriate driving behaviour.

3. The Road Traffic (Driving-offence Points) Ordinance (Cap.375) (“the Ordinance”) provides the legislative framework for the DOP System. The Schedule to the Ordinance specifies a list of offences and the corresponding number of DOPs to be incurred for each offence. A driver shall incur the specified DOPs when he is convicted of a scheduled offence or becomes liable to a fixed penalty in respect of a scheduled offence. If the driver has incurred 15 or more DOPs within a period of two years, he shall be liable to be disqualified from driving by the court under section 8 of the Ordinance.

4. DOP records of drivers are administered and monitored by Transport Department (“TD”). When the driver has incurred 15 or more DOPs within a

period of two years, TD will, in accordance with section 8 of the Ordinance, apply to a magistrate by way of complaint for the issue of a summons to the driver for appearance in court. The service of a summons issued by the magistrate is governed by section 8(2) to (4) of the Magistrates Ordinance (Cap. 227). Currently, the summons (if issued) is served by post in the first instance. If the driver fails to appear before the court at the date and time as specified in the summons, the summons will be served again by hand by a police officer or bailiff.

5. In the great majority of cases, the driver will appear in court in accordance with the time and place specified in the summons and the court will then consider making a disqualification order under the Ordinance as it thinks appropriate. In some other cases where the driver fails to appear in court at the date and time specified in the summons, the court will consider issuing a non-appearance arrest warrant under section 18A of Cap. 227 if it satisfies that the summons has been served on the driver. Any police officer may then execute the warrant at any time under section 53 of the Police Force Ordinance (Cap. 232).

### **Problem in the Service of Summons**

6. Some drivers have tried to circumvent the DOP system by avoiding receiving summonses issued under the Ordinance and any disqualification order to be made against them. For example, they do not answer the door when the summonses are served by hand to the addresses they registered with TD, or there are claims that the persons named on the summonses are not living thereat. For such cases, as summonses have not been served on the drivers, the magistrate could not issue an arrest warrant under section 18A of Cap. 227, and in that connection, the Police cannot arrest the drivers concerned merely on the grounds that there have been unserved summonses issued by the court and those drivers have failed to appear in court.

7. Furthermore, under the existing legislation, the Commissioner for Transport (“the Commissioner”) has no authority to refuse to issue, reissue or renew the driving licence of a person even if he has failed to appear before a magistrate in answer to the summons.

8. We consider that it is not acceptable for repeat traffic offenders who should have been disqualified from driving to hold on to their driving licences through circumventing the DOP system. We share the public's concern that this anomaly should be addressed.

## **THE PROPOSALS**

### **To Deem Summons To Have Been Served**

9. We propose that –

- (a) the existing arrangement that a summons issued by the magistrate is to be served by ordinary post to a driver in the first instance would continue. If the driver fails to appear in court at the date and time specified in the summons, the summons will then be served to the driver again by registered post;
- (b) 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) ("the Regulations"), even if it is returned undelivered to the person;
- (c) to tie in with the proposed "deemed served" provision, we also propose to –
  - (i) specify in the Ordinance a self-contained mechanism on the manner in which a summons should be served. Express provisions are proposed to specify that a summons must be served by hand or by post. If it is to be served by post, it must be served by forwarding it by ordinary post or registered post to the driver by prepaying and posting an envelope (containing the summons) addressed to him at his address registered with TD; and
  - (ii) to provide that the magistrate shall not order a person to be disqualified from driving in the absence of that person. This is

to safeguard a person's rights for a fair hearing, which is protected under Article 10 of the Hong Kong Bill of Rights. Fairness requires the presence of the person and his participation in the disqualification proceedings.

10. The proposed "deemed served" provision is considered appropriate in view of the following considerations –

- (a) A person is required to provide an address to the Commissioner when making an application for the issue of a driving licence. He is also required to notify the Commissioner if there is any change to his particulars, including his address, under regulation 18 of the Regulations. Hence, it is reasonable and fair for the Commissioner to believe that his address kept in TD's record is up to date and can be used for the service of summons to him (if issued) under the Ordinance;
- (b) Under the proposal, a summons would first be served by ordinary post, and if the person fails to appear in court at the date and time specified, the summons would then be served to the person again by registered post. In other words, the proposed "deemed served" provision would only be invoked when the summons is served for the second or more times by post (except for the initial service by ordinary post, all subsequent service will be by registered post);
- (c) Before 15 or more DOPs are to be accumulated by a driver and recorded in TD's computer system, the driver should have either paid the fixed penalty or been convicted by the court of the corresponding traffic offences. Hence, he should normally be aware of the traffic offences he has committed and the DOPs so incurred. In most cases, the driver should have received notices demanding payment of the fixed penalty and/or summonses related to the traffic offences he committed, sent to the address he has registered with TD; and
- (d) To safeguard a person's rights for a fair hearing, we have included an express provision that the magistrate cannot order a person to be disqualified from driving in the absence of that person. This will also help to ensure that if a person has genuine reasons for not having

received a summons delivered by registered post to his address, and is therefore unable to attend a court hearing, the person may rebut the “deemed served” provision if cogent evidence to the contrary is produced when the person eventually appears in court for the relevant proceedings.

### **The Commissioner to Refuse Issue or Renewal of Driving Licence**

11. We propose that the Commissioner shall not issue, reissue or renew a driving licence to a person if the person fails to appear in court to answer a summons served on him under the Ordinance, including a summons that is deemed to have been served. Once the person appears in court as required, it will be up to the court to consider making a disqualification order, and the Commissioner would then continue to process his application for a driving licence as appropriate, taking into account the court’s decision.

### **Effect of the Proposals**

12. The purpose of the proposed “deemed served” provision is to address the problem of “unserved” summonses and non-appearance at court hearing. The provision will allow us to trigger the following mechanisms which help bring a person before a magistrate to go through the disqualification proceedings –

- (a) the magistrate to issue an arrest warrant under section 18A of Cap. 227; and
- (b) the Commissioner to refuse to issue, reissue or renew the person’s driving licence if the person fails to appear before the court after the summons has been served.

### **THE BILL**

13. The main provisions of the Bill are –

- (a) Clause 1 sets out the short title of the Bill when enacted;
- (b) Clause 4 adds a new section 14A to the Ordinance to specify the

manner in which a summons issued under section 8 of the Ordinance is to be served and the circumstances under which a summons is deemed to have been served;

- (c) Clause 5 amends section 16 of the Ordinance to make it clear that a magistrate is not to order a person to be disqualified from holding or obtaining a driving licence in the absence of the person; and
- (d) Clause 6 amends regulation 6 of the Regulations so that the Commissioner shall not issue, reissue or renew a driving licence to a person if a summons issued under the Ordinance has been served on the person and the person has failed to appear before a magistrate in answer to the summons.

## **LEGISLATIVE TIMETABLE**

14. The legislative timetable will be –

Publication in the Gazette	23 January 2009
First Reading and commencement of Second Reading debate	4 February 2009
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## **COMMENCEMENT**

15. The Bill shall come into operation on the day on which the enacted Road Traffic (Driving-offence Points) (Amendment) Ordinance 2009 is published in the Gazette.

## **IMPLICATIONS OF THE PROPOSAL**

16. The proposal has no productivity, environmental, sustainability or economic implications.

### **Basic Law Implications**

17. The Bill is in conformity with the Basic Law, including the provisions concerning human rights.

### **Binding Effect of the Legislation**

18. The amendments in the Bill will not affect the current binding effect of the Ordinance and the Regulations.

### **Financial and Civil Service Implications**

19. A one-off capital cost totalling \$1.4 million is required for enhancement of the existing computer system on driving licence in TD, and the case management system in the Judiciary Administration. The capital funding will be sought through established resource allocation procedures.

20. Under the proposal, summonses issued under the Ordinance will no longer be served by hand by police officers or bailiffs under normal circumstances. There will be savings in manpower. However, summonses served under the Ordinance only constitute 5% of the total traffic summons served by police officers and 1% of all summonses served by bailiffs. On the other hand, the Judiciary Administration expects that additional workload and postage expenses will arise from the new arrangement of serving summonses by registered post if the driver fails to appear in court at the date and time specified in the summons served to him by ordinary post. The additional workload and postage expenses will be absorbed by the Judiciary Administration.

## **PUBLIC CONSULTATION**

21. We have consulted the Transport Advisory Committee and the Legislative Council Panel on Transport. The Committee and the Panel

generally welcomed and supported the proposals. It was agreed that the “deemed served” proposal would help plug the existing loophole that allows some drivers to circumvent the DOP system by avoiding receiving summonses. However, there are suggestions that the Administration should consider temporarily suspending the driving licences of those blatant drivers who had, for example, incurred 30 DOPs or more, and had failed to appear in court according to the summonses issued to them. In the determination of a person’s rights and obligations, the person shall be entitled to a fair hearing. It is thus inappropriate for the court to make a disqualification order in the absence of the driver, or for TD to seek to disqualify the driver from driving through administrative means.

## **PUBLICITY**

22. We will issue a press release on 20 January 2009. A spokesman will be available to answer media enquiries.

## **ENQUIRIES**

23. Any enquiries concerning the brief can be directed to Miss Rosanna Law, Principal Assistant Secretary for Transport and Housing, at 2189 2182.

**Transport and Housing Bureau**  
**20 January 2009**

A BILL

To

Amend the Road Traffic (Driving-offence Points) Ordinance and the Road Traffic (Driving Licences) Regulations to –

- (a) provide for the service of a summons issued under the Ordinance;
- (b) require the Commissioner for Transport not to issue, reissue or renew a driving licence to a person if a summons issued under the Ordinance has been served on the person and the person has failed to appear before a magistrate in answer to the summons; and
- (c) provide for related matters.

Enacted by the Legislative Council.

**1. Short title**

This Ordinance may be cited as the Road Traffic (Driving-offence Points) (Amendment) Ordinance 2009.

**2. Evidence**

Section 9(2) of the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) is amended by repealing “is served under section 8” and substituting “issued under section 8(2) is served in accordance with section 14A”.

**3. Service**

Section 14 is amended by repealing the heading and substituting “**Service of notice**”.

**4. Section added**

The following is added –

**“14A. Service of summons**

(1) A summons issued under section 8(2) may be served on a person by hand in accordance with subsection (2) or by post in accordance with subsection (3).

(2) If the summons is to be served on a person by hand, the summons must be served by a police officer, usher or other officer of a magistrate’s court –

- (a) delivering it to the person personally; or
- (b) leaving it with a third person for the person at the person’s address shown in the record of driving licences kept by the Commissioner under the Road Traffic Ordinance (Cap. 374).

(3) If the summons is to be served on a person by post, the summons must be served by forwarding it by ordinary post or registered post to the person by prepaying and posting an envelope addressed to the person at the person’s address shown in the record of driving licences kept by the Commissioner under the Road Traffic Ordinance (Cap. 374) and containing the summons.

(4) If the summons is served by ordinary post, and the person to be served fails to appear at the time and place specified in the summons for the appearance of the person, the service is deemed to have never been effected and the summons must then be served on the person by hand or by registered post.

(5) If the summons is served by registered post, the summons is deemed to have been served at the time at which it would have been delivered in the ordinary course of post, even if it is returned through the post undelivered to the person to be served.”.

## **5. Procedure**

(1) Section 16(1) is amended by repealing “has been served on a person under section 8” and substituting “issued under section 8(2) has been served on a person in accordance with section 14A”.

(2) Section 16 is amended by adding –

“(1A) Subsection (1) does not empower the magistrate to order a person to be disqualified from holding or obtaining a driving licence in the absence of that person.”.

(3) Section 16(2) is amended by repealing “subsection (1)” and substituting “subsections (1) and (1A)”.

### **Related Amendment**

#### **Road Traffic (Driving Licences) Regulations**

## **6. Restrictions on issue of driving licences**

Regulation 6 of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B) is amended by adding –

“(3) 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.”.

## **Explanatory Memorandum**

The purposes of this Bill are to –

- (a) specify the manner in which a summons issued under the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) (“the Ordinance”) is to be served;
- (b) provide that a summons served by registered post in accordance with the Ordinance is deemed to have been served even if it is returned as undelivered; and
- (c) require the Commissioner for Transport to refuse to issue, reissue or renew a driving licence to a person under the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B) (“the Regulations”) if the person fails to appear in court to answer a summons served on the person under the Ordinance.

- 2. Clause 1 sets out the short title of the Bill when enacted.
- 3. Clause 4 adds a new section 14A to the Ordinance to specify the manner in which a summons issued under section 8(2) of the Ordinance is to be served and the circumstances under which a summons is deemed to have been served.
- 4. Clause 5 amends section 16 of the Ordinance to make it clear that a magistrate is not to order a person to be disqualified from holding or obtaining a driving licence in the absence of the person.
- 5. Clause 6 amends regulation 6 of the Regulations so that the Commissioner for Transport shall not issue, reissue or renew a driving licence to a person if a summons issued under the Ordinance has been served on the person and the person has failed to appear before a magistrate in answer to the summons.