

立法會
Legislative Council

LC Paper No. LS34/08-09

**Paper for the House Committee Meeting
on 6 February 2009**

**Legal Service Division Report on
Road Traffic (Driving-offence Points) (Amendment) Bill 2009**

I. SUMMARY

1. **Objects of the Bill** To amend the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) (the Ordinance) to -
 - (a) provide for the service of a summons issued under the Ordinance; and
 - (b) require the Commissioner of Transport (the Commissioner) not to issue, reissue or renew a driving licence to a person if a summons issued under the Ordinance has been served on that person and that person has failed to appear in court in answer to the summons.

2. **Comments** The Bill -
 - (a) specifies the manners in which a summons issued under the Ordinance is to be served;
 - (b) provides that a summons is deemed to have been served if it is served by registered post on a person's address shown in the record of the driving licences kept by the Commissioner. If the driver fails to appear in court, a warrant of arrest may be issued against the driver under section 18A of the Magistrates Ordinance (Cap. 227).

3. **Public Consultation** No public consultation has been conducted but the Transport Advisory Committee has been consulted.

4. **Consultation with LegCo Panel** The Panel of Transport was consulted. It was in general supportive of the legislative proposals but Members have raised concerns on the effectiveness of the proposals.

5. **Conclusion** Members may wish to form a Bills Committee to study the Bill in detail in view of Members' concerns.

II. REPORT

Objects of the Bill

To amend the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) (the Ordinance) to -

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

LegCo Brief

2. Members may refer to the LegCo Brief dated 20 January 2009 issued by the Transport and Housing Bureau (File Ref: THB(T) CR 2/14/3231/00) for further information.

Date of First Reading

3. 4 February 2009.

Comments

4. Under the Ordinance, when a person is convicted of or becomes liable to a fixed penalty in respect of an offence listed in the Schedule to the Ordinance, the person shall incur the number of points as specified in the Schedule to the Ordinance. Where 15 or more points have been incurred by a person of offences which were committed within a period of 2 years of each other, the Commissioner shall apply to a magistrate by way of a complaint for a summons for the person to appear in court. Upon hearing of the summons and upon being satisfied that 15 or more points have been incurred, unless there are grounds to order a shorter period of disqualification, the magistrate shall order that person be disqualified from holding or obtaining a driving licence for a period of 3 months from the date of the order if no previous disqualification has been imposed under the Ordinance, or for a period of 6 months from the date of the order if any previous disqualification has been imposed.

5. At present, the service of a summons issued under the Ordinance is governed by the Magistrates Ordinance (Cap. 227). Every summons shall be served by hand or by post. If a summons has been served on a person a reasonable time

before the hearing and the person failed to appear at the appointed time and place, the magistrate may issue a warrant under section 18A of the Magistrates Ordinance (Cap. 227) to arrest the person and to bring that person to court.

6. According to the LegCo Brief, some drivers have avoided receiving the summons. As the summons is not "served" on the driver, a magistrate cannot issue a warrant of arrest to bring the driver to court nor to disqualify the driver from holding or obtaining a driving licence.

7. The Bill amends the Ordinance by specifying the manners in which a summons is to be served, which are essentially the same as those specified in the Magistrates Ordinance (Cap. 227). However, a new section 14A(5) is proposed in clause 4 of the Bill which provides that if a summons is served by registered post to the driver at the address shown in the record of driving licences kept by the Commissioner, the summons is deemed to have been served on the driver.

8. The effect of the proposed section 14A(5) is that if the driver fails to appear in court at the time and place specified, a warrant of arrest may be issued under section 18A of the Magistrates Ordinance (Cap. 227) against the driver. However, under a new section 16(1A) proposed by clause 5 of the Bill, a magistrate cannot disqualify the driver from holding or obtaining a driving licence in the absence of the driver. The Legal Service Division is making inquiry as to whether the proposed section 16(1A) will affect the court's discretion to try a charge in the absence of a defendant and the consideration for the introduction of the proposed section 16(A).

9. The Bill also amends the Road Traffic (Driving Licences) Regulation (Cap. 374 sub. leg. B). If a summons has been issued under the Ordinance and served on the person and the person has failed to appear in court in answer to the summons, the Commissioner shall not issue, reissue or renew a driving licence.

Commencement

10. There is no specific provision for the commencement of the Bill. The Bill will therefore come into operation on the date of gazettal after enactment.

Public Consultation

11. No public consultation has been conducted. However, the Transport Advisory Committee has been consulted and it is in general supportive of the proposals.

Consultation with LegCo Panel

12. The Panel on Transport was consulted on the legislative proposals contained in the Bill at its meeting on 28 November 2008. The Panel in general was supportive of the legislative proposals. A member suggested that in drafting the proposed "deemed served" provision and related procedure, reference should be made to the relevant civil procedure on the service of summonses by post where the court had to be satisfied that every alternative means had been exhausted in serving the summons, and that a notice had to be published in three newspapers in relation to the service of the summons, before the summons was deemed served. Another member expressed concern about whether the desired effect of the proposed "deemed served" provision would be undermined by the Administration's proposal to add another new provision to the Ordinance (i.e. the proposed new section 16(1A)) to provide expressly that the magistrate was not empowered to order a person to be disqualified from driving in the absence of that person. There was also general concern about the need for the Administration to propose stringent measures against drivers who had accumulated 30 or more driving-offence points and failed to appear in court to answer summonses, such as empowering the Commissioner for Transport to suspend the driving licences of those drivers.

13. Members may wish to refer to the minutes of the meeting of the Panel on 28 November 2008 (LC Paper No. CB(1)632/08-09) for details of the discussion.

Conclusion

14. The Legal Service Division is making inquiries with the Administration regarding the proposed section 16(1A) in the light of Members' concerns.

15. In view of the concerns expressed by Members in paragraph 12 above, Members may wish to form a Bills Committee to study the Bill in detail.

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