

File Ref: TRAN 1/12/130 (99)

LEGISLATIVE COUNCIL BRIEF

Eastern Harbour Crossing Ordinance (Cap. 215)
Magistrates Ordinance (Cap. 227)
Road Tunnels (Government) Ordinance (Cap. 368)
Tate's Cairn Tunnel Ordinance (Cap. 393)
Western Harbour Crossing Ordinance (Cap. 436)
Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474)
Tsing Ma Control Area Ordinance (Cap. 498)

ROADS AND TUNNELS LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 1999

THE PROBLEM

At the meeting of the Executive Council on 11 May 1999, the Council ADVISED and the Chief Executive ORDERED that the Roads and Tunnels Legislation (Miscellaneous Amendments) Bill 1999, at Annex, should be introduced into the Legislative Council to improve the efficiency of procedures for prosecution of traffic offences in private and Government tunnels. The Bill also seeks to rectify a technical difficulty connected with payment arrangements to the operators of Government tunnels.

BACKGROUND AND ARGUMENT

Prosecution of Traffic Offences

2. The existing build, operate and transfer (BOT) and Government tunnels are governed by their respective legislation as follows -

BOT Tunnels

Eastern Harbour Tunnel
Tate's Cairn Tunnel
Western Harbour Crossing
Route 3 (Country Park Section)

Legislation

Eastern Harbour Crossing Ordinance
Tate's Cairn Tunnel Ordinance
Western Harbour Crossing Ordinance
Tai Lam Tunnel and Yuen Long Approach
Road Ordinance

Government Tunnels

Airport Tunnel, Shing Mun
Tunnels, Lion Rock Tunnel,
Tseung Kwan O Tunnel and
Aberdeen Tunnel
Tsing Ma Control Area

Legislation

Road Tunnels (Government) Ordinance *
Tsing Ma Control Area Ordinance

Since the various pieces of legislation were enacted at different points in time, there are inconsistencies in the procedures for prosecution of traffic offences in different tunnels and toll roads. The Administration has conducted a review recently and identified a number of measures for improvement.

(A) Giving of Information Relating to Drivers

3. The Ordinances for tunnels and toll roads stipulate that any person (including both the registered owner of the vehicle and the person suspected of being the driver of the vehicle at the time of the alleged offence) shall, on demand made within a certain duration after the date of the alleged offence, give to an authorised officer the name, address and driving licence number of the person driving the vehicle at the time of the alleged offence and his relationship (if any) to the driver.

4. The duration allowed under the various Ordinances ranges from three to six months. A table indicating the duration provided for under each Ordinance is as follows -

* The Cross-Harbour Tunnel (CHT) will be incorporated into this Ordinance upon the expiry of the BOT franchise on 31 August 1999, subject to Legislative Council's approval.

Existing Legislation

Eastern Harbour Crossing Ordinance	3 months
Tate's Cairn Tunnel Ordinance	3 months
Western Harbour Crossing Ordinance	3 months
Tai Lam Tunnel and Yuen Long Approach Road Ordinance	3 months
Road Tunnels (Government) Ordinance	3 months
Tsing Ma Control Area Ordinance	6 months
Road Traffic Ordinance	6 months

5. We propose to synchronise the duration to six months to bring it in line with similar provisions in the Road Traffic Ordinance. This would also allow more time for the gathering of evidence to support prosecution actions.

(B) Making False Statements and Omitting Material Particulars

6. Another inconsistency in the tunnels and toll roads legislation is related to making false statements and omitting material particulars on the person driving the vehicle at the time of an alleged offence and his relationship (if any) to the driver. The existing legislative framework is as follows -

Existing legislation

Eastern Harbour Crossing Ordinance	No offence
Tate's Cairn Tunnel Ordinance	No offence
Western Harbour Crossing Ordinance	No offence
Tai Lam Tunnel and Yuen Long Approach Road Ordinance	No offence
Road Tunnels (Government) Ordinance	Offences punishable by a fine of \$5,000 and to imprisonment for six months.

Tsing Ma Control Area Ordinance

Offences punishable by a fine at Level 2 (\$5,000) and to imprisonment for six months.

7. We propose to amend the tunnels and toll roads legislation to render the making of false statements and omitting material particulars demanded an offence liable to a fine at Level 2 (\$5,000) and six-month imprisonment. We also propose to re-define the elements of these offences under the Road Tunnels (Government) Ordinance and the Tsing Ma Control Area Ordinance and to provide for specific defences to them. These offences and their respective defences will be introduced into other tunnels and toll roads legislation.

(C) Admission of Certificates of Image Recordings in Court

8. At present, provisions for the admission of certificates of image recording, printing devices and certificates as to photographic process in court proceedings vary amongst different tunnel legislation. The provisions on image recording and printing device apply to toll evasion cases whereas that on photo developing apply mainly to speeding cases in practice, although the law allowed them to be admitted as evidence in all civil and criminal proceedings. Details of the existing arrangements are as follows -

Existing legislation

Eastern Harbour Crossing Ordinance	No such provision
Tate's Cairn Tunnel Ordinance	No such provision
Western Harbour Crossing Ordinance	No such provision
Tai Lam Tunnel and Yuen Long Approach Road Ordinance	No such provision
Road Tunnels (Government) Ordinance	Certificates admissible
Tsing Ma Control Area Ordinance	Certificates admissible

Although private and Government tunnels are all currently equipped with the devices of image recording, printing device and photo developing, only operators who are allowed by law can present a certificate indicating their

authenticity without the need for the person handling the processing of the documents to appear in court.

9. The proposed amendments seek to align the tunnels and toll roads legislation to allow the admission of certificates of image recording and printing devices and certificates as to photographic process as evidence in legal proceedings against offences in all tunnels and toll roads. With the proposed amendments, the person handling the processing of the documents will no longer be required to appear in court unless requested by the court or any party to the proceedings.

(D) Pleading Guilty by Letter

10. By way of a previous amendment to the Magistrates Ordinance which incorporated the tunnels and toll roads legislation into the Third Schedule of this Ordinance, a defendant who has committed any offences against the regulations or by-laws on all major road tunnels and the Tsing Ma Control Area may plead guilty by letter if the fine is below \$2,000. As the Tai Lam Tunnel and Yuen Long Approach Road Bylaw was enacted after this amendment, it was not included in the Third Schedule. It is proposed that the Tai Lam Tunnel and Yuen Long Approach Road Bylaw should be added to the Third Schedule to the Magistrates Ordinance to bring it in line with such practice allowed in other tunnels and toll roads legislation.

(E) Rectification of Payment Arrangement to Government Tunnel and Toll Area Operators

11. To improve efficiency, it has been an established practice for Government to engage private operators in management agreements to manage Government tunnels. Under such agreement, private operators are responsible for the operation and management of the tunnels, including the collection of tolls and fees from users of the tunnels. In return, Government will pay the operators an agreed sum of remuneration.

12. Government is currently engaging in three management agreements with tunnel operators, including the Aberdeen Tunnel, Lion Rock Tunnel, Shing Mun Tunnels and Tseung Kwan O Tunnel, which are all toll tunnels, and the Airport Tunnel where a toll is not required for its usage. Under the conditions set out in the management agreements, the statutory tolls and fees for using the tunnels are first collected for and on behalf of the Government by the operators. The operator may retain a portion of those tolls and fees that is equivalent to

their remuneration and reimbursement under the management agreement and the balance is then remitted to Government. The same arrangement will apply to the CHT when it is incorporated into the Schedule to the Road Tunnels (Government) Ordinance.

13. We have recently conducted a review on the remittance arrangement and found that such arrangement is technically at variance with the Public Finance Ordinance (PFO). Unless otherwise provided in the PFO or any other enactment, statutory fees and tolls collected by the tunnel operators, being moneys raised or received for the purposes of Government, form part of the general revenue under section 3(1) of the PFO. No portion of the general revenue should be retained by tunnel operators without going through the statutory procedures prescribed under the PFO.

14. To rectify this technical difficulty, we propose to amend the Road Tunnels (Government) Ordinance by adding a new provision that, where the terms of a management agreement has been approved by the Financial Secretary, such portion of moneys raised or received for the purposes of the Government under the agreement, which the operator is entitled to retain by way of remuneration or reimbursement, shall not form part of the general revenue. The amendments will also enable the Government to adopt similar payment arrangement in future management agreements.

THE BILL

15. The Bill comprises amendments to the various Ordinances concerned in seven Schedules. **Schedules 1 and 3 to 7** provide for the extension of the period for demanding information on drivers, render the making of false statement or omitting material particulars an offence and enable the admission of certificates of image recording and printing devices and photographic processing in court where necessary.

16. **Schedule 2** incorporates offences against the Tai Lam Tunnel and Yuen Long Approach Road Bylaw into the Third Schedule of the Magistrates Ordinance to enable offenders to plead guilty by letter for offences incurring a fine below \$2,000.

17. **Schedules 3** rectifies the payment arrangement for remuneration and reimbursement to the operators of Government tunnels.

LEGISLATIVE TIMETABLE

18. The Legislative timetable for the Bill will be as follows -

Publication in the Gazette	14 May 1999
First Reading and commencement of Second Reading debate	26 May 1999
Resumption of Second Reading debate	to be notified

BASIC LAW IMPLICATIONS

19. The Department of Justice advises that the proposed legislation is consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

20. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

21. The proposed amendments will not affect the current binding effect of the Ordinances.

FINANCIAL AND STAFFING IMPLICATIONS

22. The proposed amendments do not have any financial or staffing implications.

PUBLIC CONSULTATION

23. The tunnel companies concerned have been consulted on the proposed amendments and they all agreed to the proposals. The Legislative

Council Panel on Transport noted the proposals at its meeting on 23 April 1999 without any adverse comments.

PUBLICITY

24. A press release will be issued when the Bill is gazetted on 14 May 1999. A spokesman will be available to answer media enquiries.

ENQUIRIES

25. For any enquiries relating to this Brief, please contact -

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14 May 1999
Transport Bureau
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