

立法會
Legislative Council

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**Paper for the House Committee meeting
on 26 May 2000**

**Report of the
Subcommittee on Road Traffic
(Traffic Control) (Amendment) Regulation 2000**

This paper reports on the deliberations of the Subcommittee on Road Traffic (Traffic Control) (Amendment) Regulation 2000.

Background

2. The Road Traffic (Traffic Control) (Amendment) Regulation 2000 (the Regulation) seeks to amend the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg.) by adding a new driving rule that prohibits a driver to use, while holding by hand or between his head and shoulder, a mobile phone or any telecommunication equipment, when driving a motor vehicle on a road. Any person who without reasonable excuse contravenes this driving rule commits an offence and is liable to a fine of \$2,000.

3. When the Regulation was discussed by the House Committee at the meetings on 11 February and 17 March 2000, Members raised a number of concerns and queries about the scope of application of the new rule. Whilst Members fully appreciated that a new driving rule to regulate the use of mobile phones when driving should be put in place as soon as possible, they considered it highly unsatisfactory for the Regulation to take effect when there were still many unresolved concerns and queries about the scope of its application. Members therefore agreed at the House Committee meeting on 17 March 2000 that the Chairman of the House Committee should move a motion to repeal the Regulation at the Council meeting on 30 March 2000. At the same meeting, members agreed that a subcommittee should be set up to follow up the matter to enable the Administration to introduce a revised proposal for the consideration of the Council within a shorter timeframe.

Subcommittee

4. The Subcommittee comprises 12 members with Hon Mrs Miriam LAU elected as Chairman. The membership list of the Subcommittee is at **Appendix I**. The Subcommittee has held two meetings with the Administration.

Deliberations of the Subcommittee

5. The lack of definition of "driving" in the Regulation is one of the major concerns of the Subcommittee. According to the Administration, the term "driving" is not defined in the Road Traffic Ordinance (Cap. 374) and its regulation. Hong Kong's Road Traffic Ordinance is closely modelled on the United Kingdom Road Traffic Act which also does not have a definition of the term. The approach of not defining "driving" in the regulation is therefore consistent with the current practice as it may not be possible to define exhaustively all the scenarios that are considered as "driving". Under the circumstances, the term shall be given its ordinary meaning and whether a driver can be regarded as "driving a motor vehicle on a road" depends on all the circumstances existing at the relevant time. In accordance with the ordinary meaning of driving, if a vehicle is brought to a halt in a stationary position intended to be clear of the flow of traffic, especially at the roadside, it shall not be considered driving. On the other hand, "stop-and-go" before a traffic light or in a traffic jam should be considered "driving".

6. The Subcommittee does not accept the Administration's explanation. Members take the view that without a proper definition of "driving" in the Regulation, it will be impossible to determine the scope of its application because the elements which constitute the act of "driving" can vary according to different precedent cases and will give rise to ambiguity and dispute as to whether a driver has committed an offence under the new driving rule.

7. Concern has also been raised by the Subcommittee about the inconsistency of the new driving rule which prohibits the use of a mobile phone while holding it by hand or between the driver's head and shoulder when driving on one hand, but allows the use of a mobile phone by placing it elsewhere when driving on the other.

8. The Administration has pointed out to members that although the Regulation does not prohibit the use of hands-free kit for mobile phones, the Administration has no intention to encourage the use of mobile phones while driving. It is recognized that a total ban on the use of mobile phones while driving will not be possible as there may be occasions that using mobile phones when driving may be justified. To strike a balance, the Administration considers that the Regulation shall prohibit the use of a mobile phone while holding it by hand. To enhance road safety, the driver shall instead use a proper type of in-vehicle hands-free kit which includes a stationary base unit for holding the mobile phone, as well as a microphone and a loudspeaker, both installed in fixed positions.

9. The Subcommittee does not agree with the Administration's explanation and points out that if a vehicle is in motion, making an outgoing call on a mobile phone held by the base unit may be even more dangerous than holding it by hand because the driver has to reach out for pressing the buttons.

Revised proposal

10. Whilst accepting the policy intent to regulate the use of hand-held mobile phone while driving, members consider that it is not clear in the proposed Regulation as to the circumstances under which the new driving rule shall apply. Having reviewed the practice of overseas countries, the Subcommittee is of the view that the Singaporean legislation which prohibits a driver to use a mobile phone while a motor vehicle is in motion is more suitable for the case in Hong Kong. In terms of facilitating the detection of offences and enforcement, narrowing down the scope of application of the Regulation to this effect will also clarify the position.

11. Having considered members' view, the Administration agrees to revise the proposal to the effect that:

- (a) a driver is prohibited to use a mobile phone while the vehicle is in motion except for the use of hands-free kit for conversing only but a driver will not be prohibited to press buttons of a mobile phone which is placed in the base unit while a motor vehicle is in motion;
- (b) a driver is prohibited to use, while holding in his hand, any accessory to a mobile telephone like a microphone or loudspeaker while a motor vehicle is in motion; and
- (c) no restriction will be imposed if the vehicle is stationary.

The revised regulation put forward by the Administration is in **Appendix II**.

12. Members of the Subcommittee are generally in support of the revised proposal put forward by the Administration. However, as the new driving rule is not intended to cover situations such as adjusting the orientation of a microphone or ear-piece to improve the clarity of communication or picking up a microphone or ear-piece when it is dropped off, a closer police observation of the act of a suspected driver over a longer period of time before taking any action against the driver would be required. The Administration also assures that as a further safeguard, the Central Traffic Prosecutions Bureau will review each and every case to ensure that prosecutions under these situations will be excluded.

Application of the driving rule to driving instructors

13. As to whether the new driving rule will apply to driving instructors, the Administration clarifies that the proposed regulation applies to the driver of a motor vehicle and does not specifically target at driving instructors. Under section 2 of the Road Traffic Ordinance (Cap. 374), "driver" means any person who is in charge of or assisting in the control of a vehicle. If in any particular case any person, including a driving instructor, falls within the definition of "driver", the proposed regulation, same as all other provisions in Cap. 374 and its subsidiary legislation which are applicable

to "driver", will apply accordingly.

Recommendation

14. The Subcommittee supports the revised proposal put forward by the Administration and notes that the Administration will shortly introduce the revised legislation into the Legislative Council for Members' approval.

Advice Sought

15. Members are invited to note the deliberations of the Subcommittee and support the recommendation at paragraph 14 above.

Council Business Division 1
Legislative Council Secretariat
24 May 2000

《2000年道路交通(交通管制)(修訂)規例》小組委員會
Subcommittee on
Road Traffic (Traffic Control) (Amendment) Regulation 2000

委員名單
Membership list

劉健儀議員(主席)	Hon Mrs Miriam LAU Kin-ye, JP (Chairman)
何鍾泰議員	Ir Dr Hon Raymond HO Chung-tai, JP
吳清輝議員	Pror Hon NG Ching-fai
周梁淑怡議員	Hon Mrs Selina CHOW LIANG Shuk-ye, JP
夏佳理議員	Hon Ronald ARCULLI, JP
涂謹申議員	Hon James TO Kun-sun
陳鑑林議員	Hon CHAN Kam-lam
梁智鴻議員	Dr Hon LEONG Che-hung, JP
黃宏發議員	Hon Andrew WONG Wang-fat, JP
劉江華議員	Hon LAU Kong-wah
劉漢銓議員	Hon Ambrose LAU Hon-chuen, JP
鄭家富議員	Hon Andrew CHENG Kar-foo

合共: 12 位議員
Total: 12 members

日期: 2000年4月7日
Date: 7 April 2000

ROAD TRAFFIC (TRAFFIC CONTROL) (AMENDMENT) (No. 2) REGULATION
2000

(Made under section 11 of the Road Traffic Ordinance (Cap.
374))

1. Commencement

(1) This Regulation, except as provided in subsection
(2), shall come into operation on 1 July 2000.

(2) Section 2, as it relates to new regulation
42(1)(g)(ii) and (iii)(B), shall come into operation on 1 July
2001.

2. General driving rules

Regulation 42 of the Road Traffic (Traffic Control)
Regulations (Cap. 374 sub. leg.) is amended -

(a) by renumbering it as regulation 42(1);

(b) in subregulation (1) -

(i) in paragraph (f)(ii), by repealing the
full stop and substituting a semicolon;

(ii) by adding -

"(g) if a motor vehicle being
driven by him is in motion -

(i) use a mobile
telephone while

holding it in his
hand or between his
head and shoulder;

(ii) use any other
telecommunication
s equipment while
holding it in his
hand; or

(iii) use, while holding
in his hand, any
accessory to -

(A) a mobile
telephone; or

(B) any other
telecommunicat
ions
equipment.";

(c) by adding -

"(2) In subregulation (1)(g) -

"accessory" (附件) means, in relation to a
mobile telephone or any other
telecommunications equipment, any
accessory or fitting -

(a) which forms part of the mobile
telephone or other

telecommunications

equipment; or

- (b) which is associated with, attached or connected to the mobile telephone or other telecommunications equipment in order to facilitate the use of the mobile telephone or telecommunications equipment;

"telecommunications equipment" (電訊設備)

means any equipment, apparatus or device, whether or not installed in a motor vehicle, which is designed to be or capable of being used to communicate with any person orally by means of radio waves or other electromagnetic means."

Explanatory Note

This Regulation amends the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg.) by adding a new driving rule that prohibits a driver from using, while the motor vehicle driven by him is in motion, a mobile telephone or other telecommunications equipment in the manner specified. Contravention of the provision constitutes an offence.