

立法會
Legislative Council

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**Paper for the House Committee Meeting
of the Legislative Council
on 17 March 2000**

**Legal Service Division Further Report on
Road Traffic (Traffic Control) (Amendment)
Regulation 2000 (L.N. 39 of 2000)**

Members may recall that the Legal Service Division made a report to the House Committee on the above Amendment Regulation on 11 February 2000 (LegCo Paper No. LS80/99-00 refers). To recap, the Amendment Regulation amends 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.

2. At the House Committee meeting on 11 February 2000, Members agreed to defer consideration of the Amendment Regulation so that Hon James To Kun-sun would have more time to consider the meaning of "driving" in the Amendment Regulation.

3. At the House Committee meeting on 3 March 2000, we explained to Members how the term "driving" was to be construed by courts in the context of the legislation in which the term appeared. Members raised no further query on the Amendment Regulation.

4. After the House Committee meeting on 3 March 2000, Hon James To informed us that he would need more time to consider the Amendment Regulation as he was concerned about the scope of application of the new driving rule proposed in the Amendment Regulation. The scrutiny period in relation to the Amendment Regulation was extended under section 34(4) of the Interpretation and General Clauses Ordinance (Cap. 1) to the Council meeting on 29 March 2000 following the passage of the motion to extend the scrutiny period moved by Hon James To at the Council meeting on 15 March 2000.

5. On behalf of Hon James To, we have written to the Administration asking for clarification on the scope of application of the new driving rule. Hon James To suggested that the new driving rule should not apply to stationary vehicles and to the act of punching buttons of a mobile phone for the purpose of making a call while holding it by hand.

6. The Administration has since given its reply to the concerns raised by Hon James To. The gist of its reply is as follows :

- (a) if a motor vehicle is brought to a halt in a stationary position and intended to be clear of the flow of traffic, regardless of whether or not the engine is running, the new driving rule should not be applicable;
- (b) the new driving rule will apply to situations where a driver uses a mobile phone while holding it by hand, having stopped the motor vehicle in front of the red traffic light signal or in a traffic jam. "Stop-and-go" before a traffic light or in a traffic jam forms part of the normal traffic pattern in the driving environment of Hong Kong. The Administration is of the view that the whole purpose of enhancing road safety will be defeated if the Amendment Regulation is amended to allow the use of mobile phones in such situations;
- (c) the objective of the new driving rule is to enhance road safety by prohibiting the use of mobile phones while holding them by hand when driving as this would affect the driver's steering and cause distraction to the driver. The purpose of the new driving rule would be defeated if drivers are allowed to hold the mobile phone by hand and punch buttons;
- (d) if a driver is allowed to hold the mobile phone to punch buttons for the purpose of making a call, it would create a loophole in the legislation as nowadays most mobile phones contain software to enable functions such as playing games, sending e-mails, displaying stock prices, etc. Such activities could cause substantial distraction to drivers. It will go against the whole purpose of the Amendment Regulation if drivers are allowed to use mobile phones for such activities;
- (e) although the Administration does not prohibit the use of hands-free kit for mobile phones, it is not the Administration's intention to encourage drivers to use mobile phones while driving. It is recognized that a total ban on the use of mobile phones while driving would not be possible as there may be occasions that using mobile phones or other communication devices when driving may be justified. To strike a balance, the Administration considers that the Amendment Regulation should prohibit the use of mobile phones while holding them by hand. This is the practice of other countries (e.g. Australia and Malaysia), which have similar legislation controlling the use of mobile phones while driving.

7. Having considered the Administration's reply, Hon James To is of the view that there is no reasonable justification to prohibit 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 allow the use of a mobile phone by placing it elsewhere when driving on the other. The reason is that the use of a mobile phone in the latter situation could equally cause distraction to drivers. Hon James To has asked the Administration to relax the prohibition imposed by the Amendment Regulation by making the prohibition apply to the use of a mobile phone when driving "while holding it by hand and placing it by the ear or between the driver's head and shoulder". The Administration is considering his suggestion. Hon James To has indicated that he is considering moving an amendment to the Amendment Regulation in the event that the Administration is not prepared to accept his suggestion.

Prepared by

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