

LEGISLATIVE COUNCIL BRIEF

Road Traffic (Traffic Control)(Amendment) Regulation 2000

INTRODUCTION

Under section 11(d) of the Road Traffic Ordinance (Cap.374) and section 28(1)(c) of the Interpretation and General Clauses Ordinance (Cap.1), the Secretary for Transport is empowered to make and amend the Road Traffic (Traffic Control) Regulations (Cap.374 sub. leg.) for controlling and regulating driving manner.

2. In exercise of this power, the Secretary for Transport has made the Road Traffic (Traffic Control)(Amendment) Regulation 2000 at Annex A.

BACKGROUND AND ARGUMENT

3. At present, there is no specific legislation in Hong Kong that controls the use of mobile phones while driving. However, drivers may be charged with the offence of “careless driving” under section 38(1) of the Road Traffic Ordinance (Cap. 374) if they drive a motor vehicle carelessly within the definition of section 38(2) of Cap.374 as a result of using a mobile phone while driving.

4. A review of the legislative framework of 13 major overseas countries on the use of mobile phones while driving has been conducted, and it is found that there is specific legislation in five countries prohibiting the use of hand-held mobile phones while driving.

5. Overseas researches also indicate that the use of mobile phones while driving would cause distraction to drivers and would affect to a certain degree drivers’ concentration and performance, in particular, the reaction time in emergency situations. The risk of collision of drivers of motor vehicles who use mobile phones is about four times higher than that of those who do not.

6. In view of the significant increase in the risk of traffic accidents, the use of mobile phones while driving should be prohibited. However, having regard to the current state of overseas practice and the need for usage of mobile phones while driving on some occasions, it is considered that the ban should only apply to hand-held phones. Such prohibition would help promote safe

driving. The prohibition would also apply to hand-held radio phones and other similar hand-held telecommunication equipment that are commonly used by drivers of taxis, coaches, and express delivery vehicles, etc. while driving as they carry a similar risk to hand-held mobile phones.

7. For those drivers of motor vehicles who have a real need to use mobile phones while driving, they can install hands-free kits in vehicles to facilitate the use of mobile phones, radio phones or similar telecommunication equipment. These devices are readily available in the market.

8. The relevant trades representing the interest of commercial vehicles have expressed concern over the ban on hand-held radio phones since some drivers of commercial vehicles would need to use such phones regularly for operational reasons. Taking into account the trades' views, a grace period of one year would be granted for the implementation of the ban on hand-held radio phones and similar hand-held telecommunication equipment to allow adequate time for the installation of hands-free kits in the affected commercial vehicles.

9. Regulation 42 of the Road Traffic (Traffic Control) Regulations is required to be amended to effect the ban on the use of hand-held mobile phones and other telecommunication equipment while driving. Under Regulation 61(2) of the Road Traffic (Traffic Control) Regulations, a breach of this regulation will entail a maximum fine of \$2,000.

AMENDMENT REGULATION

10. The purpose of the Amendment Regulation is to prohibit a driver to use, while holding by hand or between his head and shoulder, a mobile phone or any other telecommunication equipment, when driving a motor vehicle on a road.

PUBLIC CONSULTATION

11. The Transport Advisory Committee and the Legislative Council Panel on Transport were consulted in September and October 1999 respectively, and supported the proposed amendment.

BASIC LAW IMPLICATIONS

12. The Department of Justice advises that the proposed legislative amendments are consistent with those provisions of the Basic Law carrying no human rights implication.

HUMAN RIGHTS IMPLICATIONS

13. The Department of Justice advises that the proposed legislative amendments are consistent with the human right provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

14. There are no financial and staffing implications.

ECONOMIC IMPLICATIONS

15. There are no economic implications.

LEGISLATIVE TIMETABLE

16. The Amendment Regulation on the ban on hand-held mobile phones will come into effect on 1 April 2000. However, a one year grace period will be granted for the ban on other hand-held telecommunication equipment (including radio phones) and the relevant section will come into effect on 1 April 2001.

PUBLICITY

17. The Amendment Regulation will be gazetted on 3 February 2000.

Government Secretariat
Transport Bureau
2 February 2000

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The Secretary for Transport submits the following note for Members' information -

Title of the Note

Date of Gazette

Road Traffic (Traffic Control)
(Amendment) Regulation 2000

3 February 2000

2 February 2000

Transport Bureau

ROAD TRAFFIC (TRAFFIC CONTROL) (AMENDMENT) 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 April 2000.

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

2. General driving rules

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

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

(b) by adding -

“(g) when driving a motor vehicle on a road, use, while holding by hand or between his head and shoulder -

(i) a mobile telephone; or

(ii) any other equipment, apparatus or device, whether or not installed in the 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.”.

Secretary for Transport

31 January 2000

Explanatory Note

This Regulation amends the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg.) by adding a new driving rule that prohibits the use of hand-held communication equipment by a driver when driving a motor vehicle on a road. Contravention of the provision constitutes an offence.