

**Sub-Committee on
Road Traffic (Traffic Control)(Amendment) Regulation 2000**

INTRODUCTION

This paper sets out the scope of application of the Road Traffic (Traffic Control)(Amendment) Regulation 2000.

BACKGROUND

2. 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.

3. Overseas researches 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 those who do not. The Road Traffic (Traffic Control)(Amendment) Regulation 2000 is therefore proposed to enhance road safety by controlling the use of hand-held mobile phones while driving.

USE OF MOBILE PHONE

4. In view of the associated risk of traffic accidents, there appears to be a case for prohibiting the use of mobile phones while driving. However, the Administration recognized that there could be occasions where a driver may need to use a mobile phone while driving and total prohibition may not be acceptable to the public. The Administration has examined the practice of overseas countries and found that in the five countries where there were specific legislation prohibiting the use of mobile phones while driving, they all applied to the use of hand-held mobile phones only. Using mobile-phones with hands-free kits while driving in these countries are not prohibited. Having regard to overseas practices and the need for the use of mobile phones while driving on some occasions, the Administration proposes that the ban should only apply to hand-held phones.

5. To achieve our legislative intent, the Regulation is drafted to control the use of mobile phone while holding by hand or between the driver's head and shoulder only. As the term "use" is not defined in the Regulation or in Cap.374, it should be given its common sense meaning which would include the act of punching buttons and communicating with others on the phone.

6. If drivers have to use mobile phones, they should pull over their cars to the kerb side before making any phone calls. If a driver has to use a mobile phone while driving, he should install suitable hands-free kits in the vehicle to facilitate the use of mobile phone. Hands-free kits are readily available in the market.

DEFINITION OF DRIVING

7. Some Members were concerned about the lack of definition of driving in the Regulation and asked for clarification as to whether the Regulation would apply to the following situations -

- (a) where a driver uses a mobile phone while holding it by hand, having pulled his motor vehicle aside and stopped the vehicle but leaving the vehicle engine running; and
- (b) 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.

8. The term "driving" is not defined in Cap.374 and its regulations. Hong Kong's Road Traffic Ordinance is closely modelled on the UK Road Traffic Act which also does not have a definition of the term. The approach of not defining "driving" in the proposed regulation is 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 should 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.

9. In accordance with the ordinary meaning of driving, it is clear that "stop-and-go" before a traffic light should be considered "driving". On the other hand, if a vehicle is brought to a halt in a stationary position intended to be clear of the flow of traffic, especially in a car park or at the roadside, it should not be considered "driving".