

For information
15 June 2000

LegCo Panel on Security

Regulation of Transportation of Used Motorcycles/ Vehicles and Related Spare Parts

Introduction

This paper informs members of the proposed measures to facilitate the safe transportation of used motorcycles/ vehicles and related spare parts containing residue fuel in freight containers.

Background

2. Three explosion incidents involving freight containers carrying used motorcycles and parts took place in February 1997, March 1998 and May 1999 respectively, causing a total of one death and four injuries.

3. During the time, departments concerned have been working on possible measures to enhance the safe transportation of used motorcycles/ vehicles and related spare parts in containers. Proposals include the formulation of safety guidelines to be followed by the trade and promulgation of the guidelines in the form of a code of practice under the road safety legislation. Departments have also taken intensive efforts in the regular publicity of the guidelines to the trade. Details of the measures taken are at **Annex A**.

Problem

4. To further facilitate the trade's compliance with the safety guidelines, the Commissioner for Transport has incorporated the guidelines into the Code of Practice for the Loading of Vehicles which was issued formally under the Road Traffic Ordinance in September 1999. In the interim, concerned departments and bureaux also considered the need to give more direct legislative effect to the safety guidelines and the most

appropriate ordinance that would serve the purpose.

5. The Code of Practice issued under the Road Traffic Ordinance (Cap. 374) is not a statutory instrument by itself. The Ordinance provides that violation of the Code is not an offence per se but failure to comply with the Code may be taken into account in any proceedings for offence(s) under the relevant regulations in court. The Ordinance as it stands does not control the transportation of specific types of goods, i.e. used motorcycles/ vehicles and related spare parts in this case.

6. Under the Dangerous Goods Ordinance (DGO) (Cap. 295), fuel is classified as dangerous goods but limited quantity of fuel (e.g. below 20L for petrol) is exempted from the statutory control. The exemption arrangement is in line with international practices which are established to ensure the safe conveyance and storage of bulk quantity of classified dangerous goods. If the exemption clause were removed, not only used motorcycles and spare parts containing residual fuel would be brought under the control of the DGO, all vehicle owners/ drivers, spare parts dealers and even household users in possession of limited quantity of fuel will also be caught and implicated unnecessarily. Indeed, in the departments' attempt to research into overseas experience, none of the overseas authorities that have responded indicate that they are controlling or would seek to control the transportation of motorcycles and vehicles under their dangerous goods legislation.

Recommendations of the Coroner and The Ombudsman

7. A death inquest was held pursuant to the explosion incident in May 1999. In delivering his verdict in April 2000, the Coroner recommended, inter alia, that the Code of Practice currently in force should be incorporated into the Road Safety legislation. Details of Coroner's recommendations are at **Annex B**.

8. The Ombudsman also initiated a direct investigation under The Ombudsman Ordinance and an investigation report was issued on in May 2000. In essence, it recommended that the Administration should control the transportation of used motorcycles and related spare parts under the DGO. Recommendations in the investigation report are at **Annex C**.

Proposal

9. The diverse recommendations by the Coroner and The Ombudsman regarding the legislative approach reflect the complexity of the problem. Rather than spending more time to re-examine the feasibility of resorting to the Road Traffic Ordinance or the DGO, the Fire Service Department (FSD) agrees to assist in the enforcement work to facilitate the trade's compliance with the safety guidelines already codified under the Code of Practice for the Loading of Vehicles.

10. In the context of a recent review of the Fire Services Ordinance (FSO) (Cap. 95) to ensure effective enforcement against different types of fire hazards, the FSD raises the feasibility of defining improper loading and conveyance of used motorcycles and related spare parts in enclosed containers as a fire hazard. Subject to confirmation by the legal adviser, the loading and conveyance of these special items without taking the prescribed precautionary measures or complying with the safety guidelines could be made an offence. Therefore, there is also the possibility of making reference to the safety guidelines in defining this particular type of fire hazard such that direct legislative impact may be given to the Code of Practice accordingly. If this proves legally feasible, the FSD will be able to take a proactive role in the inspection and enforcement work under the FSO to help enhance the safe transportation of used motorcycles and related spare parts in containers.

11. Relevant departments including the Transport Department, the Police, the Custom & Excise Department (C&ED) and the Marine Department are supportive of the FSD's proposal. In particular, the C&ED and the Police may assist in the inspection work by referring to the FSD any freight containers at the boundary control points that are found to be carrying used motorcycles or related spare parts. The goods being transported across the border control points must be declared to the C&ED properly and correctly. If the cargo items found inside the containers do not tally with the description shown on the cargo manifest, the C&ED may consider prosecution under the Import and Export Ordinance (Cap. 60).

12. With regard to the control framework applicable to marine transportation, the Merchant Shipping (Safety) (Dangerous Goods and

Marine Pollutants) Regulation (under Cap. 413) provides for the control of carriage of dangerous goods on board ocean going vessels. For the purpose of the legislation, dangerous goods include, inter alia, empty receptacles for the carriage of dangerous goods unless they have been cleaned and dried. These should cover motorcycles and related parts. The Regulation requires dangerous goods to be properly documented, packed and packaged, marked and labelled, stowed and segregated in accordance with the International Maritime Dangerous Goods Code. Nevertheless, the Regulation governs ocean going vessels only and does not cover locally licensed or river trade vessels stipulated under the Shipping and Port Control Ordinance. The Administration is reviewing the feasibility and possible arrangements to extend the control framework currently applicable to ocean going vessels to all locally licensed and river trade vessels by introducing amendments to the marine safety related legislation under the Marine Department's purview.

Way Forward

13. The FSD is seeking legal advice to confirm the feasibility and effectiveness of its proposal to define improper loading and conveyance of motorcycles and related parts with residual fuel inside freight containers as a fire hazard. Subject to legal advice, necessary amendments to the Fire Services Ordinance will be proposed. We aim to introduce the bill in the coming legislative session. Departments concerned will continue with their concerted effort to follow through other recommendations made by the Coroner and The Ombudsman. In particular, they will review the effectiveness of the safety measures regularly and the Transport Department will update the Code of Practice as required. Notwithstanding the proposed legislative approach and enforcement framework, the FSD, the Transport Department and the Marine Department will continue their visits to scrap yards or discussions with the trade to exchange views on the subject and facilitate their full compliance with the safety guidelines.

Security Bureau
June 2000

Measures Taken to Enhance the Safe Transportation of Used Motorcycles/ Vehicles and Related Spare Parts in Containers

Measures taken by departments concerned are appended below-

- (a) An interdepartmental working group comprising representatives from the Fire Services Department (FSD), the Transport Department (TD), the Marine Department (MD) and the Police was set up in early 1997 to look into ways to enhance the safe conveyance of motorcycles and parts in containers.
- (b) The departments jointly prepared a set of safety guidelines for the transportation of motorcycles/ vehicles and spare parts. The guidelines were promulgated to the trade by TD in mid 1997.
- (c) Departments have also stepped up publicity and education of the trade on the safety guidelines -
 - FSD, TD, and the Police have organized briefing sessions to members of the trade, including second-hand motorcycles and accessory dealers and other relevant groups.
 - FSD, TD, and the Police have conducted visits to scrap yards for used vehicles to explain to the operators the safety measures.
 - TD has issued advisory letters to remind the trucking industry to observe the safety guidelines and procedures.
 - MD has promulgated the safety guidelines and issued a MD Notice in April 1998 to remind owners, shippers, consignees, masters, etc to observe the safety guidelines. In November 1999, MD issued another Notice on the safe working practice for carriage of used motorcycles and related parts by vessels.
 - Such safety issues have also been covered in the regular liaison or committee meetings between TD/ MD and the trade.

**The Coroner's Findings on the Explosion of a Container
with Fuelled Motorcycles on 25 May 1999**

Following the death inquest into the incident, the Coroner recommended on 11 April 2000 that -

- (a) As a matter of urgency, the working group comprising Security Bureau, Transport Bureau, Transport Department, Marine Department, Fire Services Department and Police should comprehensively review the existing legislation and practices used in the transportation of fuelled vehicles. Without limiting the generality of the review, it may wish to consider if loading containers with fuelled vehicles should be an act notifiable to the Transport Department which should have the right, possibly through the Fire Services Department to approve loading and packing before the container doors are sealed; whether businesses engaged in dismantling/transporting fuelled vehicles should be registered and staff certificated; if containers used for the transportation of fuelled vehicles should be canvas topped; the clear marking of containers containing fuelled vehicles as such.
- (b) In the interim, the Codes of Practice currently in force should be incorporated into Road Safety legislation.
- (c) For international maritime purposes, the carriage of "Engines, Internal Combustion" was deleted from the list of dangerous cargo in 1997 because of the safe transportation record of such cargo. Consistent with its international obligations the Marine Department should notify the agency responsible for promulgating the International Maritime Dangerous Goods Code of the three explosions which occurred in Hong Kong with a view to restoring the term "Engines-Internal Combustion" to the international list of dangerous cargo.

**Summary of Recommendations in The Ombudsman's
Investigation Report on the Regulatory Mechanism for the
Import/Export, Storage and Transportation of
Used Motor Vehicles/Cycles and Related Spare Parts**

The Ombudsman initiated a direct investigation on 29 June 1999 under Section 7(1)(a)(ii) of The Ombudsman Ordinance. In the investigation report issued on 8 May 2000, The Ombudsman recommended that all bureaux and departments concerned should contribute to an inter-departmental programme, with the Security Bureau (SB) acting as the central coordinator, to take forward the following recommendations-

- (a) SB and the Transport Bureau (TB), in conjunction with FSD, TD and MD to find a practical and achievable solution for the safe conveyance on land and at sea of used motor vehicles/cycles and their spare parts;
- (b) SB and FSD to explore and develop all means necessary to satisfactorily remove/resolve the current anomalies surrounding the definition of “dangerous goods” and “container” and related exemptions, say, by introducing specific provisions in DGO governing the conveyance of fuelled vehicles and spare parts of sizeable quantities;
- (c) SB and TB to consider extending the control mechanism adopted in the Merchant Shipping (Safety) (Carriage of Cargoes) Regulations and the Merchant Shipping (Safety) (Dangerous Goods and Marine Pollutants) Regulation to conveyance on land of vehicle spare parts with fuel residue;
- (d) FSD, TD and MD to establish a mechanism for regular reviews of the safety measures contained in the Loading Code and the relevant Marine Department Notice;
- (e) FSD to intensify publicity visits to vehicle scrap yards;
- (f) FSD, TD and MD to make more publicity efforts and explore new and more effective publicity channels;

- (g) FSD, TD and MD to facilitate appropriate training and briefing activities targeting operators and workers of vehicle scrap yards, truck drivers, wharf stevedores and others in the trade; and
- (h) SB, TB, FSD, TD and MD to expedite actions in formulating a comprehensive action plan and an achievable timetable for implementing of the above proposals.