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BACKGROUND BRIEF

Road Traffic (Amendment) Bill 2003

This paper sets out the background to the Road Traffic (Amendment) Bill 2003, which is part and parcel of the extension of seat belt legislation to the rear seats of public light buses (PLBs). In addition, the Amendment Bill also seeks to transfer the power to appoint Transport Tribunals and the power to appoint members to the Transport Tribunals' panel from the Chief Secretary for Administration to the Secretary for the Environment, Transport and Works (SETW).

Extension of Seat Belt Legislation to the Rear Seats of PLBs

2. As a safety measure to reduce the number of occupant casualties in vehicles, seat belt legislation was first introduced to drivers and front seat passengers of private cars in October 1983. It was subsequently extended to drivers and front seat passengers of taxis and light buses in July 1989 and then to goods vehicles in January 1990. With effect from 1 June 1996, the legislation was extended to rear seats of new private cars and middle front seats of all new private cars, taxis, light buses and goods vehicles registered on or after that date. The compulsory fitting and wearing of seat belt was extended to drivers of buses on 1 July 1997. On 1 January 2001, the legislation was further extended to rear seats of taxis registered on or after that date. It is noted that after the introduction of the seat belt legislation, there is a significant decrease in the casualties of drivers and passengers in traffic accidents.

3. An analysis of the accident statistics revealed that the accident rate and the rear seat casualty rate of PLBs have been relatively high among all classes of vehicles. The 2003 accident and casualty rates per 1000 vehicles for PLBs were about 221 and 145 respectively whereas those for all motor vehicles were about 25 and 9 respectively. Given that PLBs are a very popular mode of public transport, we consider it necessary to install passenger protection equipment, including seat belts and high back seats, on

PLBs to enhance the safety of passengers. The Legislative Panel on Transport gave its support for this proposal in January 2001.

Relevant Legislative Amendments

4. There are three major areas of legislative amendments relating to this proposal –

- (a) Amending the Road Traffic (Safety Equipment) Regulations and the Road Traffic (Construction and Maintenance of Vehicles) Regulations to provide for the fitting and wearing of seat belts in the rear seats of newly registered PLBs;
- (b) Amending the Fixed Penalty (Criminal Proceedings) Ordinance and its Regulations to reflect that it is no longer an offence for a person to drive a PLB when a front seat passenger under 15 years of age is not securely fastened with a seat belt; and
- (c) Amending the Road Traffic Ordinance and the Second Schedule to the Road Traffic (Construction and Maintenance of Vehicles) Regulations to relax the gross vehicle weight of light bus from 4 to 5.5 tonnes.

5. On paragraph 4(a), the Road Traffic (Safety Equipment) (Amendment) Regulation 2002 and the Road Traffic (Construction and Maintenance of Vehicles) (Amendment) (No. 2) Regulation 2002 which provide for the fitting and wearing of seat belts in the rear seats of newly registered PLBs plus the requirement of high back seats were passed by the Legislative Council in November 2002.

6. On paragraph 4(b), we consider it fair and more practicable to hold passengers rather than the driver responsible for not wearing seat belts. This has taken into account the fact that PLB drivers would have difficulties monitoring and ensuring that all passengers observe the seat belt requirement throughout the journey. The Road Traffic (Safety Equipment) (Amendment) Regulation 2002 already provides that PLB drivers will not be criminally liable if a front seat passenger under the age of 15 is not securely fastened with a seat belt. Instead, the responsibility of wearing seat belts rests with

passengers on PLBs. To reflect this change of responsibility, the Fixed Penalty (Criminal Proceedings) Ordinance has to be amended consequentially. Regarding the safety of passengers under the age of 15 in the front seats of PLBs, we would like to point out that no PLB is currently equipped with front seats. We will ensure that new PLBs will not be installed with front seats. We have submitted a proposed resolution to make the amendments. A sub-committee was set up to examine the proposed amendments on 17 May 2004 and Members indicated their support for the proposed resolution. The Secretary for the Environment, Transport and Works will move the resolution on 9 June 2004.

7. Similarly, Form 1 of the Schedule to the Fixed Penalty (Criminal Proceedings) Regulations has to be amended as well. In accordance with section 11 of the Fixed Penalty (Criminal Proceedings) Ordinance, the Secretary for the Environment, Transport and Works has published the Fixed Penalty (Criminal Proceedings) (Amendment) Regulation 2004 in the Gazette on 28 May 2004 and will table it in the Legislative Council for negative vetting on 2 June 2004.

8. As regards paragraph 4(c), according to section 2 of the Road Traffic Ordinance and the Second Schedule to the Road Traffic (Construction and Maintenance of Vehicles) Regulations, the maximum gross vehicle weight of light bus is 4 tonnes. The requirements of high back seats and seat belts will increase the weight of PLBs to beyond the current limit of the gross vehicle weight. Accordingly, the captioned Amendment Bill was introduced into the Legislative Council on 22 October 2003. A copy of the Amendment Bill is at the **Annex A**.

Transfer of Power

9. The Amendment Bill also seeks to transfer the power to appoint Transport Tribunals and the power to appoint members to the Transport Tribunals' panel from the Chief Secretary for Administration to SETW. This has arisen from the review of the implementation of the accountability system and is intended to apply to all bureaux and departments. The detailed justifications have been set out in LC Paper No. CB(2)331/03-04(10) (copy at **Annex B**).

Implementation Date

10. In line with the existing seat belt legislation, we propose that high back seats and seat belts will only be required on all new PLBs registered on or after a designated date and retro-fitting of existing vehicles will not be required. We propose that the seat belt and high back seat requirements shall apply to new PLBs registered on or after 1 August 2004, and that the legislative amendments relating to the seat belt requirement should come into effect on the same date. As for the amendments relating to the transfer of power, we propose that they should take effect on the day on which the relevant Ordinance is published in the Gazette.

Environment, Transport Works Bureau
Government Secretariat
1 June 2004

A BILL

To

Amend the Road Traffic Ordinance and the Road Traffic
(Construction and Maintenance of Vehicles) Regulations.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Road Traffic
(Amendment) Ordinance 2003.

(2) Sections 2, 5, 6 and 7 shall come into operation on a
day to be appointed by the Secretary for the Environment,
Transport and Works by notice published in the Gazette.

2. Interpretation

Section 2 of the Road Traffic Ordinance (Cap. 374) is amended
in the definition of "light bus" by repealing "having a permitted
gross vehicle weight not exceeding 4 tonnes which is".

3. Transport Tribunals' panel

Section 16(2) and (4) is amended by repealing "Chief
Secretary for Administration" and substituting "Secretary for the
Environment, Transport and Works".

4. Appointment of Transport Tribunals

Section 17(1) and (2)(a) is amended by repealing "Chief Secretary for Administration" and substituting "Secretary for the Environment, Transport and Works".

**Road Traffic (Construction and Maintenance
of Vehicles) Regulations**

5. Second Schedule amended

The Second Schedule to the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg. A) is amended in Part I by repealing "4.0" and substituting "5.5".

Consequential Amendments

**Motor Vehicles (First Registration
Tax) Ordinance**

6. Interpretation

Section 2(1) of the Motor Vehicles (First Registration Tax) Ordinance (Cap. 330) is amended in the definition of "light bus" by repealing "having a permitted gross vehicle weight not exceeding 4 tonnes which is".

Road Tunnels (Government) Regulations

7. Interpretation

Regulation 2(1) of the Road Tunnels (Government) Regulations (Cap. 368 sub. leg. A) is amended in the definition of "light bus" by repealing "having a permitted gross vehicle weight not exceeding 4 tonnes which is".

Explanatory Memorandum

The main purpose of this Bill is to amend the Road Traffic Ordinance (Cap. 374)("the Ordinance") to -

- (a) increase the maximum gross vehicle weight of a light bus from 4.0 tonnes to 5.5 tonnes; and
- (b) transfer the power to appoint a Transport Tribunals' panel and Transport Tribunals from the Chief Secretary for Administration to the Secretary for the Environment, Transport and Works.

2. Clause 2 amends section 2 of the Ordinance to remove the restriction on gross vehicle weight from the definition of "light bus".

3. Clause 3 amends section 16(2) of the Ordinance to transfer the power to appoint a Transport Tribunals' panel from the Chief Secretary for Administration to the Secretary for the Environment, Transport and Works. The clause also amends section 16(4) of the Ordinance so that a notice of resignation by a member of the panel may be given to the Secretary for the Environment, Transport and Works.

4. Clause 4 amends section 17(1) and (2)(a) of the Ordinance to transfer the power to appoint Transport Tribunals and a chairman of a Transport Tribunal from the Chief Secretary for Administration to the Secretary for the Environment, Transport and Works.

5. Clause 5 amends the Second Schedule to the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg. A) to increase the maximum gross vehicle weight of a light bus from 4.0 tonnes to 5.5 tonnes.

6. Clauses 6 and 7 repeal the references to permitted gross vehicle weight of a light bus in other enactments.

For information
on 17 November 2003

Legislative Council Panel on Constitutional Affairs

Transfer of Statutory Powers and Functions of the Chief Secretary for Administration and the Financial Secretary

Introduction

As reported to the Legislative Council Panel on Constitutional Affairs in July 2003, we have completed an internal review of the transfer of statutory powers and functions currently vested in the offices of the Chief Secretary for Administration (CS) and the Financial Secretary (FS) to the responsible Directors of Bureaux. The proposed transfer of powers and functions is to better reflect the latter's policy portfolios and responsibilities pursuant to the implementation of the accountability system. This paper sets out the general principles and guidelines governing the internal review for Members' information.

Background

2. In the course of discussing the accountability system, the Administration undertook to review the statutory powers and functions vested in the offices of the CS and the FS to see if some of these functions should continue to be vested in them, or if such functions should be transferred to the Directors of Bureaux taking charge of the respective policy portfolios. Members were informed via the Administration's "Twelve-month Report on Implementation of the Accountability System for Principal Officials" issued to the Legislative Council in July 2003 that we have completed the review.

Internal Review

3. In consultation with all Bureaux, we conducted an internal review of the statutory powers and functions vested in the offices of the CS and the FS with a view to determining whether some should be transferred to the responsible Directors of Bureaux under the accountability system. The review does not affect the important powers and functions vested in the Chief Executive (CE) or the Chief Executive-in-Council (CE-in-Council). In these cases, it remains the prerogative of the CE to delegate to the responsible principal officials his statutory powers and functions on a need basis.

4. Pursuant to the implementation of the accountability system in July 2002, Directors of Bureaux are directly appointed by and held accountable to the CE for their respective policy portfolios. In conducting the review, a basic principle for consideration of transfer of a statutory power or function is that the power or function falls tidily and clearly within the Director of Bureau's policy portfolio and is essential for the Director of Bureau to perform his/her functions effectively. In other words, the transfer is necessary to enable the Director of Bureau to assume full responsibility and authority in managing his/her statutory functions and policy portfolios. Under this basic principle, we have, in consultation with Bureaux, developed a set of general guidelines to ensure a consistent and coherent approach among the Bureaux. The general guidelines governing the review are set out in paragraphs 5 to 8 below.

Transfer of the CS' powers to Directors of Bureaux

5. As a general rule, except for the important powers held by the CE or the CE-in-Council, all those statutory powers and functions that fall clearly within the policy purview and responsibility of a Director of Bureau should be considered for transfer to the latter. Examples include -

- (a) routine, procedural or administrative functions such as certification of non-official membership of Government boards and committees, tabling of annual reports of statutory authorities housekept by the Director of Bureau at the Legislative Council;
- (b) save for important boards or committees or in cases where a conflict of interest by the Director of Bureau may arise (see paragraph 6(d) below), appointment of members to panels or tribunals to hear and determine complaints relating to operational matters under the policy portfolio of a Director of Bureau; or
- (c) save for cases where a conflict of interest by the Director of Bureau may arise, power to determine appeals against the decisions of a Head of Department under the portfolio of a Director of Bureau, such as appeals against the decision of a Department Head to refuse to grant a permit to sell any commodity in a country park or to issue a licence in respect of a pleasure vessel.

Powers to remain with the CS

6. Statutory powers and functions of the following nature should continue to be vested in the office of the CS to facilitate effective cross-bureaux coordination or implementation, or reflect the appropriate level of representation within the Government on such matters -

- (a) functions that involve privileges and immunities or an international dimension such as consular matters or matters concerning international organisations;
- (b) functions that do not pertain to any specific Director of Bureau but reflect the Government's position as a whole such as matters concerning the Government's relationship with the Legislative Council;
- (c) functions that cut across the work of more than one Bureau or Department such as receiving reports on contravention of pollution control provisions by various Departments under the environment-related Ordinances; or
- (d) functions that should not be undertaken by the Director of Bureau himself/herself to avoid conflict of interest or to ensure impartiality of a Government decision, such as the determination of appeals against the decision of a Director of Bureau.

Powers vested in the FS

7. As a general rule, the FS would not transfer to Directors of Bureaux those statutory powers and functions that –

- (a) are central to the Government's annual budgets such as the preparation of the annual estimates of expenditure and revenue, and in-year changes to the estimates;
- (b) relate to Government incomes and assets;
- (c) may have significant impact on Government expenditure or revenue such as financial matters of major publicly-funded organizations;
- (d) should be exercised centrally so as to ensure necessary consistency such as write-off and surcharge, or to provide some central services such as investment of Government money and the Financial Secretary Incorporated; or
- (e) relate to the FS' portfolio on the monetary and financial systems as well as the Exchange Fund.

8. Statutory powers and functions that fall clearly outside the above parameters and are within the policy purview and responsibility of a Director of Bureau would be transferred to the latter. Examples include the remuneration of members of boards and committees, regulation of utilities and corporations, and payment of certain fees.

Way Forward

9. Directors of Bureaux have been working with the Department of Justice to identify the most appropriate legislative vehicle and draw up the necessary legislative programme to effect the transfer of those statutory powers or functions that fulfill the above general guidelines. Directors of Bureaux will brief the relevant Legislative Council Panels on their transfer proposals and timetables before introduction of the respective legislative proposals.

Administration Wing,
Chief Secretary for Administration's Office
Financial Services and Treasury Bureau
November 2003