

立法會
Legislative Council

LC Paper No. CB(1)1868/03-04

Ref: CB1/SS/6/03

**Paper for the House Committee meeting
on 21 May 2004**

**Report of the Subcommittee on
Proposed resolution under section 12 of
the Fixed Penalty (Criminal Proceedings) Ordinance**

Purpose

This paper reports on the deliberations of the Subcommittee on Proposed resolution under section 12 of the Fixed Penalty (Criminal Proceedings) Ordinance.

Background

2. The Administration tabled the Road Traffic (Construction and Maintenance of Vehicles) (Amendment) (No. 2) Regulation 2002 and the Road Traffic (Safety Equipment) (Amendment) Regulation 2002 (Amendment Regulations) at the Legislative Council on 23 October 2002 to extend the seat belt legislation to the rear seats of newly registered public light buses (PLBs) and to provide for the installation of high back seats on these PLBs. The Amendment Regulations had gone through the negative vetting procedure of the Council without amendments. To allow sufficient time for the vehicle manufacturers to develop and produce the new protection equipment, the Administration plans to bring the Amendment Regulations into effect on 1 August 2004.

3. Under the Road Traffic (Safety Equipment) (Amendment) Regulation 2002, the responsibility of wearing seat belts rests with the passengers on PLBs. Following the enactment of the Amendment Regulation, the Administration needs to move a resolution to introduce a consequential amendment to the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) (the Ordinance) to reflect that it is not 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. Accordingly, the Secretary for the Environment, Transport and Works (SETW) gave notice to move a resolution under the Ordinance at the Council meeting on 19 May 2004.

The Subcommittee

4. At the meeting of the House Committee on 7 May 2004, members agreed that a Subcommittee should be formed to study the proposed resolution made under section 12 of the Ordinance. In response to the House Committee's request, SETW withdrew her notice previously given to move the motion at the Council meeting on 19 May 2004 in order to allow time for the Subcommittee to study the proposed resolution.

5. The Subcommittee comprises six members including Hon Miriam LAU Kin-ye who was elected Chairman at the Subcommittee meeting on 17 May 2004. The membership list of the Subcommittee is in **Appendix I**.

Deliberations of the Subcommittee

6. The Subcommittee supports in principle the extension of the seat belt legislation to enhance PLB safety. The Subcommittee notes that the objective of the proposed resolution (**Appendix II**) is to reflect the change in the responsibility of wearing seat belts on PLBs from the driver to the passenger as provided in the Road Traffic (Safety Equipment) (Amendment) Regulation 2002. Under the Ordinance, a PLB driver is currently still subject to a fixed penalty if any of his passengers under the age of 15 in the front seat is not securely fastened with a seat belt. While the Subcommittee has no objection to the consequential amendment to reflect this change in responsibility, some members are concerned about the safety of PLB front seat passengers under the age of 15 and the impact of the arrangement on safety measures to address the relatively high accident rate of PLBs.

Change in responsibility of wearing seat belts on PLBs

7. The Subcommittee notes the Administration's explanation that at present, no PLBs are provided with front seats. With the extension of the seat belt legislation to the rear seats of new PLBs, the Administration considers it fair and more practicable to hold passengers rather than the driver criminally liable when the passengers fail to wear seat belts because it would not be possible for a PLB driver to monitor and ensure that all passengers on his vehicle have securely fastened their seat belts. This arrangement is similar to the existing arrangement for taxis. As regards those light buses providing Residents' Services, the Administration confirms that they are classified as private light buses. The drivers of private light buses still have the legal responsibility to ensure that front seat passengers who are under the age of 15 are securely fastened with seat belts if provided.

8. Some members however remain concerned about the additional safety risks associated with PLB front seats. With the introduction of the Road Traffic (Amendment) Bill 2003 which is currently pending scrutiny by the Council, the maximum gross vehicle weight of light buses will be relaxed from 4 tonnes to 5.5 tonnes. It is still unclear at this stage as to whether new designs of PLBs with front-seat configuration might be re-introduced with the proposed relaxation of the maximum gross weight of PLBs. To protect the young PLB passengers, the driver is

in the best position to remind such passengers to fasten their seat belts. These members consider that the Administration should maintain the status quo.

9. On the other hand, the Subcommittee also notes the view that it is virtually impossible for PLB drivers to concentrate on the road conditions while at the same time check the age of front seat passengers and ensure that such passengers observe the seat belt requirement during the whole trip. Instead of making PLB drivers responsible, the Administration should adopt a more positive approach in stepping up publicity on the seat belt requirement so that passengers of all ages are aware of their responsibility to protect themselves by using the seat belts provided on PLBs.

10. Notwithstanding the different views put forward by individual members, the Subcommittee is aware that the proposed resolution is a consequential amendment following the enactment of Amendment Regulations. If discussion on the responsibility issue is to be re-opened, it would inevitably impact on the extension of the seat belt legislation to the rear seats of PLBs which is an important PLB safety initiative generally supported by the community and the PLB trade. The Subcommittee therefore urges the Administration to actively encourage PLB drivers to remind passengers of their responsibility to wear seat belts if provided. The Administration also undertakes that it will keep in view the development of new PLB models in future to ensure that front-seat configuration will be avoided as far as possible.

Public education during implementation

11. The Subcommittee notes and supports the Administration's proposal to step up publicity on the new safety requirement prior to its implementation on 1 August 2004. The Subcommittee considers that apart from the initial publicity efforts, the Administration should launch another round of publicity as and when more PLBs with the enhanced safety equipment are brought into service.

Recommendation

12. The Subcommittee has completed deliberation on the proposed resolution and recommends that the Administration could move the proposed resolution in the Council.

Advice sought

13. Members are invited to support the Subcommittee's recommendation in paragraph 12 above.

**Subcommittee on
Proposed resolution under section 12 of
the Fixed Penalty (Criminal Proceedings) Ordinance**

Membership list

Chairman	Hon Miriam LAU Kin-ye, JP
Members	Dr Hon David CHU Yu-lin, JP Hon LAU Kong-wah, JP Hon Andrew CHENG Kar-foo Hon LI Fung-ying, JP Hon Audrey EU Yuet-mee, SC, JP

(Total: 6 members)

Clerk	Ms Alice AU
Legal Adviser	Ms Connie FUNG
Date	17 May 2004

FIXED PENALTY (CRIMINAL PROCEEDINGS) ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

Resolution made and passed by the Legislative Council under section 12 of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) on 2004.

RESOLVED –

- (a) that the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance be amended, in item 53, by adding "private" before "light"; and
- (b) that this Resolution 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.

Clerk to the Legislative Council

2004