

LEGISLATIVE COUNCIL BRIEF

Fixed Penalty (Criminal Proceedings) (Amendment) Regulation 2004

INTRODUCTION

As a consequential amendment to the Road Traffic (Safety Equipment) (Amendment) Regulation 2002, the Schedule to the Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240, sub. leg.) needs to be amended to reflect that it is not an offence for a person to drive a public light bus (PLB) where a front seat passenger under 15 years of age is not securely fastened with a seat belt.

BACKGROUND AND ARGUMENT

Extension of Seat Belt Legislation to the Rear Seats of Public Light Buses

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 increase the maximum gross vehicle weight of a 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 public light bus is currently equipped with front seats. We will ensure that new public light buses 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 made the Fixed Penalty (Criminal Proceedings) (Amendment) Regulation 2004. A copy of the Amendment Regulation is at **Annex**.

8. As regards paragraph 4(c), according to section 2 of the Road Traffic Ordinance (Cap. 374) and the Second Schedule to the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg.), the maximum gross vehicle weight of a 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 Road Traffic (Amendment) Bill 2003 was introduced into the Legislative Council on 22 October 2003. The Bills Committee scrutinised the proposed amendments on 2 June and was supportive of the amendments.

Implementation Date

9. 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 all the above amendments should come into effect on the same date.

THE AMENDMENT REGULATION

10. As explained in paragraph 7 above, the objective of the Fixed Penalty (Criminal Proceedings) (Amendment) Regulation 2004 is to amend the relevant description of the list of offences appearing in the "Notice of Particulars of Alleged Fixed Penalty Traffic Offence" in order to reflect the change in the responsibility of wearing seat belts for PLBs as provided in section 4 of the Road Traffic (Safety Equipment) (Amendment) Regulation 2002. The requirement for private light buses will remain intact.

LEGISLATIVE TIMETABLE

11. The Secretary for the Environment, Transport and Works has published the Amendment Regulation in the Gazette on 28 May 2004 and will table it in the Legislative Council for negative vetting on 2 June 2004. Subject to negative vetting by the Legislative Council, we intend to bring the Amendment Regulation into effect on 1 August 2004.

IMPLICATIONS OF THE REGULATION

12. The Amendment Regulation will not affect the current binding effect of the Fixed Penalty (Criminal Proceedings) Ordinance and is in conformity with the Basic Law, including the provisions concerning human rights. The proposed amendment has no additional financial and staffing implications, nor will there be any economic, productivity, environmental or sustainability implications.

PUBLIC CONSULTATION

13. We have consulted the Legislative Council Panel on Transport, the Transport Advisory Committee and the transport trade, including vehicle suppliers and PLB trade associations, and they are supportive of the proposal.

PUBLICITY

14. A press release has been issued on 28 May 2004 on the gazettal of the Amendment Regulation. In addition, a series of publicity activities including television and radio Announcements of Public Interest as well as pamphlets and stickers will be made available to inform the public of their responsibility to wear seat belts, if provided, when travelling on PLBs. We will also encourage PLB drivers to remind passengers to wear seat belts on PLBs.

OTHERS

15. For any enquiries, please contact Ms Elizabeth Tai, Principal Assistant Secretary for the Environment, Transport and Works, at 2189 2182.

Environment, Transport Works Bureau
Government Secretariat
2 June 2004

**FIXED PENALTY (CRIMINAL PROCEEDINGS)(AMENDMENT)
REGULATION 2004**

(Made under section 11 of the Fixed Penalty (Criminal
Proceedings) Ordinance (Cap. 240))

1. Commencement

This Regulation 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. Schedule amended

The Schedule to the Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240 sub. leg. A) is amended, in Form 1, in the List of Offences and Fixed Penalty, in code number 53 –

- (a) by repealing "小型巴士" and substituting "私家小巴";
- (b) by adding "private" before "light".

Secretary for the Environment,
Transport and Works

24 May 2004

Explanatory Note

Section 4 of the Road Traffic (Safety Equipment)(Amendment) Regulation 2002 (L.N. 148 of 2002) amends regulation 7A(3) of the Road Traffic (Safety Equipment) Regulations (Cap. 374 sub. leg. F) so that it is no longer an offence for a person to drive a public light bus when a front seat passenger under 15 years of age is not securely fastened with a seat belt. This Regulation consequentially amends the description of that regulation 7A(3) in Form 1 in the Schedule to the Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240 sub. leg. A).