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**Paper for the House Committee meeting
on 24 June 2005**

**Report of the Subcommittee on Proposed Resolutions under the
Road Traffic (Driving-offence Points) Ordinance (Cap. 375) and the
Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240)**

Purpose

This paper reports on the deliberations of the Subcommittee on Proposed Resolutions under the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) and the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240).

Background

2. In May 2005, the Secretary for the Environment, Transport and Works (“the Secretary”) gave notices to move two motions at the Legislative Council meeting of 15 June 2005, namely a motion under section 4(3) of the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) (“the Driving-offence Points Ordinance”) and a motion under section 12 of the Fixed Penalty (Criminal Proceedings Ordinance) (Cap. 240) (“the Fixed Penalty Ordinance”). The two motions seek to introduce measures to improve road safety.

Proposed resolution under section 4(3) of the Driving-offence Points Ordinance

3. This proposed resolution seeks the Legislative Council’s approval to amend item 12 of the Schedule to the Driving-offence Points Ordinance to increase the driving-offence points for the offence of failure to comply with traffic signals under regulation 18 of the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G) (“the Traffic Control Regulations”) from 3 to 5.

Proposed resolution under section 12 of the Fixed Penalty Ordinance

4. The main purpose of this proposed resolution is to seek the Legislative Council's approval to amend the Schedule to the Fixed Penalty Ordinance to increase the fixed penalty for the offence of failing to comply with traffic signals from \$450 to \$600, and to prosecute three existing traffic offences by way of fixed penalty. The three traffic offences are –

- (a) using hand-held telecommunications equipment while the vehicle is in motion (regulation 42(1)(g) of the Traffic Control Regulations);
- (b) driving a motor cycle or motor tricycle without keeping the obligatory lamps lighted (regulation 47(1A) of the Traffic Control Regulations); and
- (c) failing to drive in the nearside lane of the carriageway of an expressway (regulation 12(1) of the Road Traffic (Expressway) Regulations (Cap. 374 sub. leg. Q).

If passed, the proposed resolutions will come into operation on 1 January 2006.

The Subcommittee

5. The House Committee agreed at its meeting on 3 June 2005 to form a Subcommittee to study the proposed resolutions. The Secretary was then requested to withdraw her notices for moving the resolutions at the Council meeting on 15 June 2005.

6. Chaired by Hon Alan LEONG Kah-kit, the Subcommittee held a total of three meetings to discuss the proposed resolutions. The membership list of the Subcommittee is in **Appendix I**.

7. The Subcommittee also received views from the transport trades and automobile associations. A list of organizations which have given views to the Subcommittee is in **Appendix II**.

Deliberations of the Subcommittee

8. The Subcommittee recognizes that red light jumping is a very serious offence that can bring about grave consequences. It endangers not only the driver and passenger(s) of the vehicle, but also other road users, especially vulnerable pedestrians whose lives are at great risk in car crashes. The number of prosecutions against red light jumping has increased from 22 590 in 2003 to 39 376 in 2004. At present, about 100 red light jumping offences are

caught each day, and there is a daily average of 2 casualties arising from red light jumping accidents. Red light jumping is also 4 times more likely to cause accidents than speeding. As such, the Subcommittee agrees that there is a need to combat deliberate red light jumping to enhance road safety which is also supported by the public and the transport trades.

9. The Subcommittee also notes that the growing number of serious traffic accidents caused by red light jumping in recent years has resulted in a marked increase in the insurance premium for many types of commercial vehicles. This imposes extra burden on the transport trades. The proposal to increase the penalties for red light jumping will reduce accident rates, and, in turn, help lower the trade's insurance premium and improve its operating environment.

10. Whilst supporting the proposal to raise the penalties for deliberate red light jumping to create a stronger deterrent effect, there is much debate about the Government's present proposal to increase the penalties for the offence of failure to comply with traffic signals which cover not only red light jumping but also amber light jumping and other scenarios such as failure to stop behind the stop line on the carriageway provided in conjunction with the light signals. In view of the serious concern expressed by the depositions about the grey area associated with red light and amber light jumping in cases where the enforcement action is taken by observation by Police officers, the Subcommittee has reviewed the related prosecution policy and the need for separating red light jumping and amber light jumping into two offences carrying different penalties.

11. The Subcommittee also takes note of the depositions' views that there exists a lot of traps at road junctions. As a result, drivers would easily commit red light jumping inadvertently. The depositions are of the view that the Administration should improve the existing traffic light systems and road conditions to facilitate drivers to comply with traffic signals. Prior to completion of the necessary improvement works, the Administration should defer increasing the penalties for failure to comply with traffic signals. The Subcommittee appreciates the concerns expressed by the transport trades and has explored with the Administration the implementation programme for:

- (a) expanding red light camera coverage to minimize disputes between the Police and drivers on charges of red light jumping;
- (b) installing overhead traffic lights to enhance visibility of traffic signals;
- (c) the feasibility of installing vehicular countdown device or flashing green system to facilitate drivers to comply with traffic signals; and

- (d) the feasibility of extending the duration of amber light to allow drivers to stop before the stop line.

Details of the deliberations of the Subcommittee are set out in the ensuing paragraphs.

Prosecution policy and relevant legislation governing failure to comply with traffic signals

12. Regulation 18 of the Traffic Control Regulations provides that unless otherwise provided in the Road Traffic Ordinance (Cap. 374), no driver of a vehicle on a road shall fail to comply with the indication given by a red or amber light or intermittent red lights when shown by light signals in accordance with regulation 16 or 17. Regulation 17 provides, inter alia, that

- (a) the red light signal shall indicate the prohibition that vehicular traffic shall not proceed beyond the stop line on the carriageway provided in conjunction with the light signals or, if the stop line is not for the time being visible or there is no stop line, beyond the light signals; and
- (b) where an amber light signal is provided it shall, when shown alone, indicate the prohibition that vehicular traffic shall not proceed beyond the stop line or, if the stop line is not for the time being visible or there is no stop line, beyond the light signals, except in the case of any vehicle which when the light signal first appears is so close to the stop line or light signals that it cannot safely be stopped before passing the stop line or light signals;

13. As the offence of failure to comply with traffic signals covers not only red light jumping but also other scenarios, the Subcommittee has queried the justifications for increasing the penalties for amber light jumping and whether such increase has the support of the public as well.

14. The Administration points out that from the road safety angle, it is important for drivers to stop when the red or amber light is on. This is the spirit of the current legislation. Regarding prosecution policy, the Administration points out that:

- (a) irrespective of whether the enforcement action is taken by observation by Police officers or based on the photos taken by red light cameras, the standard of proof and the enforcement policy are the same in all cases;

- (b) it has been the Police's prosecution policy not to prosecute amber light jumping unless there is sufficient evidence to prove the offence beyond reasonable doubt. In cases where there are elements of uncertainty, the driver in question will be given the benefit of the doubt;
- (c) where a vehicle has proceeded slightly beyond the stop line, but no accident and no injury has been caused, under normal circumstances no prosecution action will be instituted;
- (d) where a vehicle has legitimately passed the traffic signals but then has to stop at the junction because the traffic ahead does not allow it to exit the junction, under normal circumstances no prosecution action will be instituted; and
- (e) aggrieved person can appeal to the Traffic Branch Headquarters for a review of the charge.

15. Regarding the proposal to differentiate the offence of red light jumping from amber light jumping for the purpose of imposing different penalties, the initial view of the Administration is that this would bring about immense enforcement problems for frontline police officers because the difference in the penalty level will provide a good incentive for red light jumpers to argue that they have merely jumped the amber light. Such enforcement problems should not be overlooked.

16. The Administration understands the argument that some amber light jumping offences may be inadvertently committed because of special circumstances and thus may not warrant a higher penalty. In this connection, the Administration has provided the following information:

- (a) camera-based prosecution already constitutes some 80% of red light jumping prosecutions, and this will gradually increase to 97% by the end of 2006 with the installation of 68 additional red light cameras, making up a total of 96 red light cameras at red light jumping black spots. These cameras will only "catch" red light jumping offences, not amber light jumping; and
- (b) for the remaining non-camera prosecutions, the Police's prosecution policy is that owing to the presence of a statutory defence in Regulation 17(1)(e) of the Traffic Control Regulations, where there are any elements of uncertainty, the driver in question is always given the benefit of the doubt. For this reason, there has been zero prosecution on amber light jumping in the past three years. The Administration confirms that this prosecution policy will continue.

17. Nevertheless, in view of members' suggestion, the Administration agrees to review the relevant legislation governing failure to comply with traffic signals after the new penalties have been effected. It will examine if there are valid grounds to differentiate red light jumping from amber light jumping, taking into account the statistics for such offences, enforcement problems and overseas practices. The Administration aims to complete the review by the end of 2006.

18. Some members remain unconvinced of the Administration's reply. They maintain the view that the legislation should be amended so that different penalties would be imposed for different scenarios of failure to comply with traffic signals in order to better reflect the relative gravity of the offences. To this end, they consider that the necessary amendments should be dealt with in the context of the present exercise.

19. Some other members however consider that the timetable proposed by the Administration is acceptable so long as the existing prosecution policy remains unchanged. In particular, members ask the Administration to take into account the following scenarios in the review:

- (a) whether amber light jumping shall be regarded as an offence, and if so, whether it shall carry the same penalty as red light jumping;
- (b) whether offenders committing amber light jumping will be prosecuted for red light jumping for ease of prosecution;
- (c) whether a vehicle has proceeded slightly beyond the stop line or impinged upon the pedestrian crossing shall be regarded as an offence for failure to comply with traffic signals; and
- (d) whether a vehicle has legitimately passed the traffic signals but then has to stop at the box junction because the traffic ahead does not allow it to exit the junction shall be regarded as an offence for failure to comply with traffic signals.

20. On the statutory defence provision under regulation 17(1)(e) of the Traffic Control Regulations, the Subcommittee has requested the Administration to set out clearly in writing how the discretionary power is exercised by police officers to enhance the transparency of the prosecution policy. A member is of the view that the Administration should make public its interpretation whether the burden of proving the exception in regulation 17(1)(e), namely that the vehicle is so close to the stop line or light signal that it cannot safely be stopped before passing them, should be on the police. If so the provision should be reviewed so as to state clearly that the evidence of proving the exception is with the police. The member also suggests that if

such a review is required then, for protection of drivers before the completion of the review the Administration should make public its prosecution practice regarding failure to comply with amber light.

Implementation programme for expanding red light camera coverage

21. To improve objectivity in deciding prosecutions, some members and the transport trades consider that the Administration should install red light cameras at all road junctions so as to minimize disputes between drivers and the Police on charges of red light jumping. The proposal will also help enhance road safety as drivers are caught at the moment they commit the offence.

22. The Administration points out that there are over 1 700 signalized junctions in Hong Kong, and most of them have two or more sets of traffic lights. Installing cameras at all junctions would neither be practicable nor cost-effective. Nevertheless, the Administration will procure 68 additional cameras and install 20 additional camera housings, thus making a total of 96 cameras and 131 camera housings. The project will cover the procurement of cameras specifically designed to meet the evidential requirements of the court, installation of new camera housings and ancillary equipment, as well as the procurement of equipment for investigation and prosecution work. The Administration plans to seek funding approval from the Finance Committee on 8 July 2005. Thereafter, it will start the tender exercise. The manufacturing and installation works will start in late 2005 and be completed by late 2006. The Administration assures members that even after the completion of this exercise, it will continue to install additional cameras and housings, with a view to further expanding their coverage in the territory. Upon completion of the work, the vast majority of prosecutions will be camera-based.

23. Some members remain of the view that the Administration should not increase the penalties for failure to comply with traffic signals prior to the completion of the expansion programme for red light cameras.

Improvements to road junctions and traffic signals

24. The Subcommittee notes the deputations' views that the current design of the traffic signals in Hong Kong may have deficiencies and drivers may commit red light jumping inadvertently. The transport trades therefore strongly urge the Administration to implement measures to facilitate drivers to comply with traffic signals.

Vehicular countdown devices or flashing green systems

25. Regarding the transport trade's suggestion to install vehicular countdown devices or flashing green systems, the Administration's view is that they require careful consideration. The Administration points out that the countdown devices and flashing green systems are not compatible with the computerized traffic signal system in Hong Kong. Besides, some advanced cities have carried out extensive studies on the hesitation period during signal changes and these studies are supported by abundant empirical evidence. Studies and trials conducted overseas (e.g. the United Kingdom, Australia, Israel, Austria, etc) found that such devices would significantly increase the risk of head-rear collision because drivers react differently to such devices, i.e. some would rush through the junction while others would stop when the flashing green/countdown begins. The conclusion of these studies is that the most effective way to reduce accident is simply to give drivers no choice and minimize the duration of hesitation. The golden rule is "slow down and be prepared to stop" when approaching junctions. The Administration points out that it needs to further examine the suggestion to install vehicular countdown devices or flashing green systems to ensure that any new measures introduced will be effective in enhancing road safety.

26. The Subcommittee notes that the transport trades hold a different view and they consider that with the installation of vehicular countdown devices or flashing green systems, it would help drivers to stop before the red light is on.

Installing Overhead Traffic Lights

27. Regarding the suggestion to install more overhead traffic lights, the Subcommittee notes that the Administration has begun to install overhead traffic lights at 40 wider junctions to improve the visibility of traffic signals. The Administration points out that it welcomes suggestions from the transport trades and would continue to carry out improvement works as and when necessary.

Extending the duration of amber light

28. The Administration advises the Subcommittee that it has examined the suggestion to extend the duration of amber light. The conclusion is that the current 3-second amber time should be adequate if drivers follow the speed limit. Lengthening the amber period would affect the overall traffic throughput, and may increase the risk of head-rear collision. Nevertheless, the Administration would consider adjusting the duration of amber light of individual junctions, having regard to the road condition and configuration on a need basis.

29. Regarding the timetable for the overall improvements to road junctions and traffic signals vis-à-vis the Administration's plan to increase the penalties for the offence of failure to comply with traffic signals, some members take the view that the Administration has adopted double standards in that it hastens the proposal to raise the penalty for failure to comply with traffic signals but procrastinate on improvements to relevant road facilities. They are also disappointed that the Administration has not taken heed of the improvement proposals as suggested by the transport trades which aim at enhancing road safety and facilitating drivers to comply with traffic signals.

30. The Administration clarifies that there is no question of the Administration adopting double standards. It is necessary to take forward the legislative and other measures in parallel to attain the objective of enhancing road safety. The implementation of certain measures requires further study and/or funding approval and thus it takes some time to complete the needed procedures and work. The Administration stresses that the issues pertinent to enhancing road safety have already been discussed at different forums over the past eight months. During this period, traffic accidents caused by red light jumping, some of which involved heavy casualties, continue to occur. It would not be desirable to delay the measure of raising the penalty for red light jumping.

Three common traffic offences

31. At present, using handheld telecommunications equipment while the vehicle is in motion, driving motor cycle or motor tricycle without the necessary lights illuminated, and failing to drive in the nearside lane of an expressway are currently enforced by ways of summons. The Administration advises the Subcommittee that the number of prosecutions for these offences have increased substantially in the past three years, indicating that they are rather common offences. The Administration therefore proposes to simplify the means of prosecution by including these offences in the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance, so that prosecution can be done by way of fixed penalty ticket. This could facilitate enforcement and enhance the deterrent effect.

32. The fixed penalty for driving a motor cycle or motor tricycle without keeping the obligatory lamps lighted is proposed to be \$320. As for the other two offences, the fixed penalty is proposed to be \$450. According to the Administration, in considering the levels of fixed penalty for these three offences, it has taken into account the level of fines imposed by the courts for these offences as well as the penalty for similar offences that are already punishable by fixed penalty.

Commencement

33. The Subcommittee notes that the proposed resolutions would not come into operation until 1 January 2006 but it is the Administration's intention to conclude the legislative exercise within the current legislative session. The Administration explains that upon the approval of the resolutions by the Council, the Administration would need to introduce the relevant subsidiary legislation into the Council for amending Form 1 in the Schedule to the Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240 sub. leg. A) to reflect changes in the penalties for failure to comply with traffic signals and the inclusion of three other common traffic offences as scheduled offences. Taking into account the duration of the scrutiny period of subsidiary legislation which can last for 7 weeks, there is a need to conclude the legislative exercise within the current legislative session so as to ensure timely submission of the related subsidiary legislation to the Legislative Council for scrutiny with a view to effecting the revised penalties as from 1 January 2006 onwards. The early passage of the resolutions would also allow time for drivers to adapt and change their driving behaviour prior to the commencement of the revised penalties as from 1 January 2006.

34. Some members consider that there is no need to rush through the legislative process. The Administration should take heed of the requests of the transport trades and put in adequate support measures to facilitate drivers to comply with traffic signals. The Administration should also review the legislation to differentiate red light jumping from amber light jumping during the summer recess and speed up the installation of red light cameras to ensure fair prosecution. Even if the passage of the resolutions were deferred to October 2005, there is still ample time for the Administration to complete the legislative process, and the revised penalties for red light jumping can still take effect from 1 January 2006. They caution that the Administration's move to increase the penalties for failure to comply with traffic signals prior to the completion of the corresponding improvement to support measures might arouse serious objection from the transport trades, thereby causing social unrest. The Administration should adopt a conciliating approach to discuss with the transport trades with a view to enhancing road safety which is the common target of all parties.

35. Some other members are of the view that raising the penalty for red light jumping would not affect law-abiding drivers and the proposal would be effective in deterring reckless drivers. To allay the concerns expressed by the transport trades, members urge the Administration to speed up the necessary improvement works as far as practicable. They also call on the Administration to ensure the objectivity of prosecution and review the relevant legislation in a speedy manner.

36. The Subcommittee notes that Members of the Democratic Party, Democratic Alliance for the Betterment and Progress of Hong Kong and The Alliance are in support of the Administration's proposal.

Recommendation

37. The Subcommittee notes that the Secretary has given notice to move two motions at the Legislative Council meeting of 6 July 2005 and invites members to take note of the deliberations of the Subcommittee.

Advice sought

38. Members are requested to note the recommendation of the Subcommittee at paragraph 37.

Council Business Division 1
Legislative Council Secretariat
23 June 2005

**Subcommittee on Proposed Resolutions under the
Road Traffic (Driving-offence Points) Ordinance (Cap. 375) and
Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240)**

Membership list

Chairman	Hon Alan LEONG Kah-kit, SC
Members	Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP Hon LEE Cheuk-yan Hon Martin LEE Chu-ming, SC, JP Hon Margaret NG Hon Bernard CHAN, JP Hon LEUNG Yiu-chung Hon Howard YOUNG, SBS, JP Hon LAU Kong-wah, JP Hon Miriam LAU Kin-ye, GBS, JP Hon Andrew CHENG Kar-foo Hon Abraham SHEK Lai-him, JP Hon LI Fung-ying, BBS, JP Hon Albert CHAN Wai-yip Hon Audrey EU Yuet-mee, SC, JP Hon WONG Kwok-hing, MH Hon Jeffrey LAM Kin-fung, SBS, JP Hon CHEUNG Hok-ming, SBS, JP Hon CHIM Pui-chung Hon Patrick LAU Sau-shing, SBS, JP
	(Total : 20 Members)
Clerk	Mr Andy LAU
Legal Adviser	Mr LEE Yu-sung
Date	10 June 2005

**Subcommittee on Proposed Resolutions under the
Road Traffic (Driving-offence Points) Ordinance (Cap. 375) and the
Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240)**

List of organizations which have given views on the proposed resolution

1. The Kowloon Taxi Owners Association Ltd.
2. Quadripartite Taxi Service Association Ltd.
3. 的士權益協會有限公司
4. Hong Kong, Kowloon and N.T. Public & Maxicab Light Bus Merchants' United Association
5. Motor Transport Workers General Union
6. Mixer Truck Drivers Association
7. Hong Kong Automobile Association
8. G.M.B. Maxicab Operators General Association Ltd.
9. Citybus Limited Employees Union
10. New World First Bus Company Staff Union
11. United Friendship Taxi Owners & Drivers Association Ltd.
12. Association of N.T. Radio Taxicabs Ltd.
13. Hong Kong Taxi Association
14. 中重型貨車關注組
15. Hong Kong Driving Instruction Club
16. Taxi & PLB Concern Group
17. Urban Taxi Drivers Association Joint Committee Co. Ltd.
18. Kowloon Truck Merchants Association Ltd.
19. Sai Kung Taxi Operators Association Ltd.

20. The Environmental Light Bus Alliance
21. The Kowloon Motor Bus Holdings Ltd. Staff Association
22. Hong Kong Kowloon Taxi & Lorry Owners Association Ltd.
23. New Territories Taxi Merchants Association Limited
24. Lok Ma Chau China-Hong Kong Freight Association
25. Institute of Advanced Motorists Hong Kong
26. Hong Kong Dumper Truck Drivers Association
27. Public Omnibus Operators Association Ltd.
28. The Federation of Hong Kong & Kowloon Labour Unions
29. 全港職業司機反對衝紅燈加重扣分大聯盟
30. New Territories Taxi Drivers' Rights Alliance
31. Federation of Hong Kong Transport Worker Organizations
32. Right Hand Drive Motors Association (HK) Ltd.
33. CTOD Association Company Limited
34. HK Public-Light Bus Owner & Driver Association
35. HK Logistics Association
36. Hong Kong (Cross Border) Transportation Drivers' Association