

Legislative Council Bills Committee on Race Discrimination Bill

Consequential amendments to other ordinances

Purpose

At the meeting held on 16 January 2007, Members asked the Administration –

“to consider whether consequential amendments to other ordinances (in addition to those already proposed in the Bill) would be necessary, such as the Road Traffic Ordinance in relation to the requirement to wear crash helmets.”

This paper presents for Members’ information our views and the outcome of our consideration.

General

2. We are sincerely grateful for the suggestion. At the same time, Members may also be aware that the Bill was prepared after extensive and thorough consultation both with the public and with government bureaux and departments. To our understanding and knowledge, Clauses 86 to 94 of the Bill contain all the consequential amendments to other ordinances which we regard necessary. However, if additional consequential amendments are considered necessary in the course of Members’ scrutiny of the Bill, we will take these on board in consultation with the relevant bureaux and departments .

Consequential amendment to Road Traffic Ordinance

3. At the meeting on 16 January 2007, Members drew reference to the practice in the UK and specifically asked whether the Road Traffic Ordinance should be amended to exempt Sikh followers from the requirement to wear protective helmets while riding motorcycles.

4. In the UK, Section 16 of Road Traffic Act 1988 governs the wearing of protective headgear while driving or riding on motorcycles. It provides that –

“(1) The Secretary of State may make regulations requiring, subject to such exceptions as may be specified in the regulations, persons driving or riding (otherwise than in side-cars) on motor cycles of any class specified in the regulations to wear protective

headgear of such description as may be so specified.

- (2) A requirement imposed by regulations under this section shall not apply to any follower of the Sikh religion while he is wearing a turban.
- (3) Regulations under this section may make different provision in relation to different circumstances.
- (4) A person who drives or rides on a motor cycle in contravention of regulations under this section is guilty of an offence; but notwithstanding any enactment or rule of law no person other than the person actually committing the contravention is guilty of an offence by reason of the contravention unless the person actually committing the contravention is a child under the age of sixteen years.”

5. In Hong Kong, the legal requirement for wearing protective helmet while driving or riding a motorcycle is contained in Regulations 3 and 10 of the Road Traffic (Safety Equipment) Regulations (Cap 374F). Regulation 3 states that –

- “(1) Subject to regulation 10, no person shall drive a motor cycle, or ride as a passenger on a motor cycle (other than as a passenger seated in a side car attached thereto), unless he is wearing an approved protective helmet which is securely fastened to his head.
- (2) No person shall drive a motor cycle when there is a passenger (other than a passenger seated in a side car attached thereto) riding on it who is not wearing an approved protective helmet securely fastened to his head, unless such passenger has been exempted from compliance with subregulation (1) under regulation 10.”

Regulation 10 provides for the power of the Commissioner for Transport to grant exemptions –

“The Commissioner may, on application made to him in such form as he may determine, exempt any person or any class of persons from compliance with regulation 3, 7(1) or (2), 7A(1) or (2), 7B(1) or 8B for such period and subject to such conditions as he may specify in any particular case.”

6. In short, whereas the UK legislation provides a blanket exemption for all Sikh followers wearing turbans, in Hong Kong such exemptions are granted on an individual basis by the Commissioner for Transport. As at 31 December 2006, the Commissioner for Transport has granted exemption to 324 persons (including 323 Sikh followers and one Rastafarian¹) from wearing protective helmets.

7. We have reviewed the practice in consultation with both Transport Department which is responsible for granting the exemptions and with the Police which is responsible for enforcement of the relevant legislation. We are cautious that a blanket exemption may present unnecessary confusions and enforcement difficulties. It may be noted, in particular, that people do not normally carry proof of their religion. Thus, it would be difficult for front-line police officers to establish on the spot the bona fides of a person who claimed himself to be a Sikh follower. On the other hand, the certificates of exemption issued by the Commissioner for Transport would provide a clear identification and help avoid unnecessary arguments and conflicts between the police and the public. Moreover, there have not been any complaints nor public demands for changing the present arrangement.

Concluding observations

8. The present arrangement in Hong Kong for exemptions from wearing protective helmets has worked well. It makes for certainty of identification and facilitates effective enforcement. It also helps maintain an amicable relationship between law enforcement officers and members of the public. We therefore do not consider it advisable to introduce any changes by amending the Road Traffic (Safety Equipment) Regulations.

9. This paper has been prepared in response to item (t) of the “List of issues raised by members”. It is presented for Members’ information and for consideration at the Bills Committee meeting to be held on 5 February 2007.

Home Affairs Bureau
January 2007

¹ Some Rastafarians have long dreadlocks which makes wearing an approved protective helmet not feasible.