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**Bills Committee on Road Traffic (Driving-offence Points)
(Amendment) Bill 2009**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper gives an account of the discussion of the Panel on Transport (the Panel) on the legislative proposals for amending the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) (the Ordinance) and the Road Traffic (Driving Licences) Regulations (Cap. 374B) (the Regulations) to improve the mechanism for the service of summonses under the Driving-offence Points (DOP) system.

Background

2. The Ordinance provides the legislative framework for the DOP System. The Schedule to the Ordinance specifies a list of offences and the corresponding number of DOPs to be incurred for each offence. A driver shall incur the specified DOPs when he is convicted of a scheduled offence or becomes liable to a fixed penalty in respect of a scheduled offence. If the driver has incurred 15 or more DOPs within a period of two years, the Transport Department (TD) will, in accordance with section 8 of the Ordinance, apply to a magistrate by way of complaint for the issue of a summons to the driver for appearance in court.

3. The service of a summons issued by the magistrate is governed by section 8(2) to (4) of the Magistrates Ordinance (Cap. 227). Currently, the summons (if issued) is served by post in the first instance. If the driver fails to appear before the court at the date and time as specified in the summons, the summons will be served again by hand by a police officer or bailiff.

4. In the majority of cases, the driver will appear in court in accordance with the time and place specified in the summons and the court will then consider making a disqualification order under the Ordinance as it thinks appropriate. In some other cases where the driver fails to appear in court at the date and time specified in the summons, the court will then consider issuing a non-appearance arrest warrant under section 18A of Cap. 227 if it is satisfied that the summons has been served on the driver. Any police officer may then execute the warrant at any time under section 53 of the Police Force Ordinance (Cap. 232).

Problem in the service of summons

5. According to the Administration, some drivers have tried to circumvent the DOP system by avoiding receiving summonses issued under the Ordinance and any disqualification order to be made against them. For example, they do not answer the door when the summonses are served by hand to the addresses they registered with TD, or there are claims that the persons named on the summonses are not living thereat. For such cases, as summonses have not been served on the drivers, the magistrate could not issue an arrest warrant under section 18A of Cap. 227, and in that connection, the Police cannot arrest the drivers concerned merely on the grounds that there have been unserved summonses issued by the court and those drivers have failed to appear in court.

6. Furthermore, under the existing legislation, the Commissioner for Transport (the Commissioner) has no authority to refuse to issue, reissue or renew the driving licence of a person even if he has failed to appear before a magistrate in answer to the summons.

Panel discussions on the legislative proposals

7. The Administration briefed the Panel on 28 November 2008 on the legislative proposals contained in the Bill. Major views/concerns of members and the Administration's responses are set out in the ensuing paragraphs.

Number of cases

8. Members were informed that only a minority of drivers had tried to evade service of summonses issued to them. In 2007, of the 4 460 summonses issued under the Ordinance, 4 053 disqualification orders (i.e. over 91%) were successfully issued. The success rates over the past few years were similarly high.

9. In response to a member's concern that there were reportedly some 1 900 repeat traffic offenders who had incurred 15 or more DOPs and held on to their driving licence through circumventing the DOP system, the Administration advised that many of these drivers were already being lined up to go to the court for trial. About 690 drivers of them had not been successfully served with summonses. Among them, some 100 had been issued more than two summonses (i.e. they had incurred 30 DOPs or more).

Proposed "deemed served" provision

10. Hon Ronny TONG expressed concern that if a driver's address kept in TD's record was wrong and so he had all along failed to receive fixed penalty notices and summonses, it was possible that the driver was not aware that he had incurred 15 or more DOPs. He suggested that in drafting the proposed "deemed served" provision, reference should be made to the relevant civil procedure on the service of summonses by post where the court had to be satisfied that every alternative means had been exhausted in serving the summons, and that a notice had to be published in three newspapers in relation to the service of the summons, before the summons was deemed served.

11. The Administration considered that the "deemed served" provision as currently proposed was appropriate for the following reasons –

- (a) A person was required to provide an address to the Commissioner when making an application for the issue of a driving licence. Under regulation 18 of the Regulations, a driver was required to notify the Commissioner if there was any change to his particulars, including his address, within 72 hours of the change. Hence, it was reasonable and fair for the Commissioner to believe that his address kept in TD's record was up to date and could be used for the service of summons to him (if issued) under the Ordinance;
- (b) The proposed "deemed served" provision would only be invoked when the summons was served for the second or more times by post (except for the initial service by ordinary post, all subsequent service would be by registered post); and
- (c) TD's existing arrangement that when eight DOPs or more had been incurred by a driver, TD would issue an Advice of DOP to remind him of the consequences of the accumulation of more points. Hence, the driver should be aware of the traffic offences he had committed and the DOPs so incurred.

Proposed new section 16(1A)

12. Members noted that another new provision (new section 16(1A)) was proposed to be added to the Ordinance to provide expressly that the magistrate was not empowered to order a person to be disqualified from driving in the absence of that person. Hon LI Fung-ying questioned why the proposed "deemed served" provision, which sought to plug the existing loophole that allowed some drivers to circumvent the DOP system by avoiding receiving summonses, was proposed alongside inclusion of the new section 16(1A).

13. The Administration explained that the new provision was proposed mainly based on the consideration of the need to safeguard a person's rights for a fair hearing, which was protected under Article 10 of the Hong Kong Bill of Rights. The Administration considered it necessary to give a driver a chance to be heard in court and to participate in the disqualification proceedings, in view of the profound impact of a disqualification order particularly on the livelihood of a professional driver.

Other views

14. Some members considered that the Administration should propose stringent measures, such as empowering the Commissioner to suspend the driving licences of blatant drivers, e.g. those had accumulated 30 or more DOPs and had failed to appear in court to answer summonses issued to them. These members opined that repeat traffic offenders who had failed to comply with the requirement of furnishing a correct address to TD and had accumulated 30 or more DOPs should deserve more stringent actions to be taken against them in view of the danger they posed to the public.

15. The Administration stressed that there was a need to strike a balance between ensuring road safety and safeguarding a person's rights for a fair hearing. After internal deliberation and consulting the Department of Justice, the Administration did not intend to pursue the option of automatically suspending a driver's driving licence through administrative means.

Relevant papers

16. Members are invited to access the Legislative Council's website (<http://www.legco.gov.hk>) for details of the relevant papers and minutes of the meeting of the Panel.