

立法會
Legislative Council

LC Paper No. CB(1) 1601/08-09

Ref: CB1/BC/1/08

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

Purpose

This paper reports on the deliberations of the Bills Committee on Road Traffic (Driving-offence Points) (Amendment) Bill 2009 (the Bill).

Background

Driving-offence Points (DOP) system

2. The DOP system came into operation in August 1984. The main objective of the system is to tackle the repeat traffic offenders by imposing an additional penalty of disqualifying a driver from driving if he has accumulated 15 or more DOPs within a period of two years. The DOP system seeks to enhance the deterrent effect for inappropriate driving behaviour.

3. The Road Traffic (Driving-offence Points) Ordinance (Cap. 375) provides the legislative framework for the DOP System. The Schedule to Cap. 375 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 Cap. 375, apply to a magistrate by way of complaint for the issue of a summons to the driver for appearance in court.

4. 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.

5. 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 Cap. 375 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).

Circumvention problem in the service of summons

6. According to the Administration, some drivers have tried to circumvent the DOP system by avoiding receiving summonses issued under Cap. 375 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 have registered with TD, or there are claims that the persons named on the summonses are not living thereat. For such cases, since summonses have not been served on the drivers, the magistrate cannot issue an arrest warrant under section 18A of Cap. 227, and in that connection, the Police cannot arrest the drivers concerned. According to the Administration, as at end January 2009, the number of drivers who incurred 15 DOPs or more to whom summonses could not be served was about 650.

7. 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.

8. In order to address the circumvention problem, the Administration introduced the Bill into the Legislative Council (LegCo) on 4 February 2009.

The Bill

9. The Bill proposes to amend Cap. 375 and the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B) (the Regulations). The purposes of the Bill are to –

- (a) specify the manner in which a summons issued under Cap. 375 is to be served;
- (b) provide that a summons served by registered post in accordance with Cap. 375 is deemed to have been served even if it is returned as undelivered; and
- (c) require the Commissioner to refuse to issue, reissue or renew

a driving licence to a person under the Regulations if the person fails to appear in court to answer a summons served on the person under Cap. 375.

The Bills Committee

10. At the House Committee meeting held on 13 February 2009, Members formed a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix**.

11. Under the chairmanship of Hon Miriam LAU, the Bills Committee has held four meetings with the Administration. The Bills Committee has invited views from the public on the Bill, and a District Council member presented his views to the Bills Committee at one of its meetings¹.

Deliberations of the Bills Committee

Introducing a self-contained mechanism on the service of summons for the DOP system and the "deemed served" provision (Clause 4)

12. At present, the service of a DOP summons issued under Cap. 375 is governed by section 8(2) to (4) of Cap. 227. Clause 4 amends Cap. 375 by adding a new section 14A to specify the manner in which a summons issued under Cap. 375 is to be served. The self-contained mechanism on the manner in which a summons should be served as specified in the new section 14A is essentially the same as that specified in Cap. 227. Express provisions are made to specify that a summons must be served by hand or by post. If it is to be served by post, it must be served by forwarding it by ordinary post or registered post to the driver by prepaying and posting an envelope (containing the summons) addressed to him at his address registered with TD. Under the proposal, the existing arrangement that a summons issued by the magistrate is to be served by ordinary post to the driver in the first instance will continue.

13. A new section 14A(5) is proposed in clause 4 to provide that a summons is deemed to have been served if it is served on a person by registered post at the person's address shown in the record of driving licences kept by the Commissioner, even if it is returned undelivered to the person. If the driver fails to appear in court at the date and time specified in the summons, the summons would then be served to the person again by registered post, and as proposed, the summons would be regarded as "deemed served" even if it is returned undelivered to the driver. The effect of the proposed section 14A(5) is

¹ At the Bills Committee meeting on 24 April 2009, Mr HIEW Moo-siew, chairman of the Traffic and Transport Committee of Sai Kung District Council, presented views on the Bill.

that, if the driver fails to appear in court at the time and place specified in the summons served on the driver by registered post, a warrant of arrest may be issued under section 18A of Cap. 227 against the driver.

14. Hon Audrey EU has asked the Administration to explain why it is necessary to provide a self-contained mechanism on the service of summons for the DOP system in particular, and to provide that a DOP summons is deemed to have been served if it is served by registered post, whereas no similar arrangements are made for other types of offences for which the service of summons is also governed by Cap. 227. As Cap. 227, with necessary adaptations as far as it is consistent with Cap. 375, applies to proceedings under Cap. 375 as provided in section 16 of Cap. 375, members have specifically asked why the circumvention problem in the service of DOP summonses cannot be dealt with by the existing mechanism under section 8 of Cap. 227, and the mechanism for dealing with non-appearance of defendant under section 18A of the same ordinance.

15. The Administration has explained that section 18A of Cap. 227 provides, amongst others, that where a summons has been served on a person a reasonable time before the hearing and only the complainant or informant appears at the time and place appointed for the hearing, the magistrate may issue a warrant to arrest the defendant. The successful service of the relevant summons is therefore a prerequisite of triggering the provision.

16. Section 8(2)(a) of Cap. 227 provides that every summons shall be served by hand or by post. Section 8(2)(b) of Cap. 227 further provides that where a summons is served by post and the person to whom it is directed does not appear at the time and place specified in the summons, such service shall be deemed to have never been effected, and the summons shall thereafter be served again by hand by a bailiff or police officer. The Administration has explained that a person who intentionally circumvents the DOP system will not appear in court at the time and place specified in the summons served on him by post, and the summons has then to be served by hand.

17. Section 8(2)(e) of Cap. 227 provides that “served by hand” means served by, amongst others, a police officer, usher or other officer of a magistrate's court on the person to whom the summons is directed –

- (a) by delivering the summons to that person personally; or
- (b) by leaving it with a third person for that person at that person's last or most usual place of abode.

18. The Administration has pointed out that a person who seeks to circumvent the DOP system will use different means as explained in paragraph 6 to avoid receiving the summons to be served on him by hand. The

Administration considers that applying sections 8 and 18A of Cap. 227 alone is inadequate to deal with the circumvention problem in the service of summons issued under Cap. 375, as demonstrated by the existence of about 650 outstanding cases that cannot be further dealt with by the court in the absence of successful service of the relevant summonses.

19. The self-contained service provision (i.e. new section 14A added to Cap. 375) has incorporated two new measures, namely "service by registered post" and the "deemed served" provision, which are not found in the existing mechanism on the service of summons under section 8 of Cap. 227. The Administration has explained that the inclusion in Cap. 375 of this new provision specifying a revised mechanism on the service of DOP summons will make Cap. 375 more comprehensible without the need for much cross-referencing between the two ordinances, so as to avoid causing confusion to parties concerned.

20. The Administration has also pointed out that under section 9 of Cap. 227, the magistrate may issue a warrant to arrest a person in the first instance or notwithstanding that a summons has been previously issued. However, it is the prosecution's experience that the magistrate would usually require extensive proof as to why the summons could not be served in the normal course of service before he would consider exercising discretion to grant an arrest warrant under this provision. In cases where the person concerned has intention to circumvent the service of summons, it is resource-wise impossible for carrying out extensive tracing of each person concerned repeatedly until 'sufficient evidence' is collected before applying for an arrest warrant under section 9. The Administration is, therefore, of the view that the proposed "deemed served" provision is necessary to deem a summons to have been served if it is served by registered post, even if it is returned undelivered. The magistrate may then proceed to issue a warrant under section 18A of Cap. 227 to arrest the person concerned.

21. Hon James TO has asked the Administration to consider whether the term "third person" in the new section 14(A)(2)(b) should be defined as one who the police officer serving the summons has reasons to believe will pass the summons to the driver to whom the summons is directed.

22. The Administration has responded that the term "third person" is not defined under the Evidence Ordinance (Cap. 8), Cap. 227 or Cap. 375, in the context of service of summons by hand. Notwithstanding this, the Administration has assured members that a bailiff and a police officer, who serve summonses by hand in urban and NT regions respectively, will only serve a summons on a third person if he has reasons to believe that such third person would pass the summons to the person to whom the summons is directed. The Administration has also provided a detailed account of its existing practices which will help ensure that evidence in the proof of service of summons by officers concerned can be provided to the magistrate where necessary.

23. Hon Audrey EU has enquired about the definition of "address" as referred to in the new section 14A(3) of Cap. 375. The Administration has confirmed that the term "address" in the provision refers to the residential address as well as the correspondence address (if provided by the driver) shown in the record of driving licences kept by the Commissioner under Cap. 375. The Administration has advised that it is specified in the relevant TD's application form for issue of driving licence that an applicant is required to provide his residential address, and a correspondence address as well if his residential address cannot be used for the purposes of contact and mailing.

Rationale for adding a new section 16(1A) to Cap. 375
(Clause 5)

24. Section 16(1A) proposed to be added to Cap. 375 provides that a magistrate is not empowered to order a person to be disqualified from holding or obtaining a driving licence in the absence of that person. The Administration has explained that the purpose of the provision is to ensure that a person would not be disqualified from driving without being given a chance of rebutting the deeming provision and defending himself in front of an independent, impartial and competent tribunal.

25. The legal adviser to the Bills Committee has sought the Administration's clarification on the effect of the proposed section 16(1A) on the court's discretionary power to try a charge in the absence of the defendant, and explanation of the rationale for the introduction of the provision.

26. The Administration has pointed out that there is no dispute that a magistrate may in criminal proceedings make an order as he sees fit against a person in his absence if evidence shows that such person is deliberately absent from a hearing. The Administration has pointed out that, however, under the "deemed served" provision, the possibility of a driver not having received a summons served by registered post on him, and hence not attending the hearing where his civil rights would be determined, cannot be dismissed in its entirety. On this basis, the Administration has proposed that the court shall not order a person to be disqualified from driving in his absence, with a view to safeguarding the person's right to fair hearing, which is protected under Article 10 of the Hong Kong Bill of Rights. This will also help to ensure that if a person has genuine reasons for not having received a summons delivered by registered post to his address, and is therefore unable to attend a court hearing, the person may rebut the "deemed served" provision if cogent evidence to the contrary is produced when the person eventually appears in court for the relevant proceedings.

27. The Administration has further pointed out that a disqualification order may jeopardize the pecuniary interest of a professional driver and even affect his livelihood. Moreover, it is noted from the prosecution experience that

DOP-related proceedings where the driver fails to attend the hearing as required by the summons are typically adjourned for hearing at a further date. No disqualification order has ever been imposed by the court in the absence of the driver. The Administration has advised that it has consulted the Judiciary in coming up with the proposed section 16(1A).

28. Hon Miriam LAU has expressed grave concern that the proposed section 16(1A) may render the Bill ineffective in tackling the problem that some drivers have intentionally circumvented the mechanism for the service of DOP summons and, therefore, evaded disqualification. She has pointed out that those drivers can still continue to drive and pose a danger to road safety until they are tracked down by the Police and brought before the magistrate. She has asked the Administration to provide the reasons for not considering empowering the Commissioner to suspend the driving licence of a driver who has accumulated 15 or more DOPs or in his absence. The Bills Committee has noted that The Ombudsman has also raised the same concerns in announcing the decision to initiate direct investigation into the implementation of the DOP system on 19 March 2009.

29. While supporting the need to safeguard a person's right to fair hearing, Hon Ronny TONG has expressed a similar concerns about the effectiveness of the Bill as he considers that the proposed "deemed served" provision will mainly facilitate the issue of arrest warrant by the magistrate under section 18A of Cap. 227. He has pointed out that the Bill proposes no further measures to help stop those repeat traffic offenders from driving on the road.

30. The Administration has responded that it has also considered whether a driver should be deemed to have been disqualified from driving once he has incurred 15 or more DOPs within a period of two years but found it not appropriate to introduce any mechanism whereby a driver will be disqualified from driving automatically.

31. The Administration has explained that automatic disqualification is a deviation from the existing provisions under Cap. 375 and may give rise to the following practical concerns -

- (a) the driver who does not appear in the hearing would not hand over his driving licence as required under section 10 of Cap. 375²;
- (b) he may not be aware that a disqualification order has been made on him, and is still driving on the road;

² Under section 10 of Cap. 375, where a magistrate makes an order that a person shall be disqualified from holding or obtaining a driving licence, the person shall deposit the licence with the magistrate within 72 hours of the making of the order or such longer period as the magistrate may determine.

- (c) ignorant of the fact that he was disqualified from driving, he might continue to drive and commit the offence of driving whilst disqualified under section 44 of the Road Traffic Ordinance (Cap. 374); and
- (d) the anomaly of the record of his DOPs for the summons concerned would be cleared upon the completion of the disqualification period ordered by the court without the driver even knowing that the disqualification order was made against him, would occur.

32. The Administration has advised that the above situations may also give rise to insurance concerns. If a driver causes an accident whilst driving during his automatic disqualification period (assuming that he has no notice of the disqualification order made against him), an argument as to the effectiveness of the insurance policy, insofar as the driver is concerned, during his driving of the vehicle may arise. The Administration has pointed out that the fact that no disqualification order has ever been imposed in the absence of the driver shows that the court has been fully aware of the problems of making a disqualification order in the absence of the driver.

33. The Administration has advised that the rate of successful execution of non-appearance arrest warrants arising from DOP-incurred traffic summonses issued in 2006 and 2007 were consistently over 80%, and the same level of execution is expected to be achieved for those issued in 2008. With an arrest warrant issued, the defendant chased by the Police can be added to the Immigration Department's "Watch List" where circumstances warrant. The Administration has advised that this measure will be particularly effective for apprehending the defendant who cannot be located by other means.

34. Instead of proposing automatic disqualification, the Administration is of the view that the "deemed served" provision, if introduced, will be effective in overcoming the problem of "unserved" DOP summonses and non-appearance of the driver concerned at court hearing, and help bring a person to go through the disqualification proceedings. The provision will also allow triggering the mechanism whereby the Commissioner may refuse to issue, reissue or renew a person's driving licence if the person fails to appear before the court after the summons has been served (please refer to paragraph 37). The Administration considers that this mechanism will also achieve deterrent effect.

35. In view of members' concern about the effectiveness of the Bill in overcoming the circumvention problem, the Administration has also undertaken to review the effectiveness of the Bill about six months after its implementation, and to consider any other necessary additional measures in the light of comments received.

36. The Bills Committee has received a written submission made by The Ombudsman on the background to his direct investigation into the implementation of the DOP system. The Bills Committee has noted that The Ombudsman is in the course of exploring with the Administration his initial views about additional measures to tackle the circumvention problem. The Bills Committee has sought the Administration's confirmation that the Administration will continue discussion with The Ombudsman and consider any necessary improvement in the context of the review on the effectiveness of the Bill to be conducted by the Administration.

The Commissioner to refuse issue or renewal of driving licence
(Clause 6)

37. Clause 6 amends regulation 6 of the Regulations so that the Commissioner shall not issue, reissue or renew a driving licence to a person if the person fails to appear in court to answer a summons served on him under Cap. 375, including a summons that is deemed to have been served.

38. In view of the long validity of driving licences (mostly 10 years), Hon James TO has asked the Administration to consider proposing that in the above circumstances, the Commissioner shall also refuse issue or renewal of the person's vehicle licence(s), which is/are renewable every 12 months, so as to enhance the deterrent effect.

39. The Administration has pointed out that the above proposed measure will not be able to pinpoint professional drivers who are hired to drive without owning any vehicle. The Administration has advised that in coming up with the current proposal, the Administration has considered the proportionality principle, as well as the general principle under existing road traffic legislation that a driver is penalized by not issuing or not renewing his vehicle licence(s) only when he has committed offences relating to vehicle maintenance, not offences relating to inappropriate driving behaviour.

Possibility of whether a driver may evade the accumulation of DOPs

40. Hon James TO and Hon Ronny TONG have expressed concern whether it is possible that after the enactment of the Bill, some drivers would evade incurring DOPs by -

- (a) not paying the fixed penalty in accordance with a notice served on him under the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240); or
- (b) not responding to or avoiding to receive summonses issued to them in respect of a scheduled traffic offence to which the driver can plead guilty by letter.

41. These members are concerned that by evading incurring DOPs, a driver can evade the accumulation of 15 or more DOPs and will, therefore, not be subject to the "deemed served" provision. The Administration has advised that offenders who have committed DOP offences may be prosecuted by way of charges³, summonses and fixed penalty tickets. According to the DOP records kept by TD, about 90% of the DOP offences are dealt with through the issue of fixed penalty tickets, while some 10% are dealt with by way of summons and charges. A breakdown of the 217 200 DOP cases in 2008 is given below –

No. of cases dealt with by fixed penalty	193 840 (89.25%)
No. of cases dealt with by summonses	21 730 (10%)
No. of cases dealt with by charge	1 630 (0.75%)
Total:	(217 200)

42. The Administration has explained that traffic cases where charges are to be laid cover more serious traffic offences. Should the defendant, who is usually on bail, fail to appear before the court to answer the charge(s), the magistrate may issue a warrant of arrest against the defendant. The Administration has assessed that upstream circumvention for such cases is unlikely a concern.

43. The Administration has also advised that the great majority of DOP offences are relatively minor in nature and are dealt with by fixed penalty tickets. The person to whom a fixed penalty ticket is issued may discharge liability to conviction for the offence by payment of the fixed penalty, and the relevant DOPs will be recorded under the DOP system.

44. Under Cap 240, if a person has not paid the fixed penalty and has not notified the police that he wishes to dispute liability in writing, a Demand Note will be issued to that person. Upon expiry of the payment date specified in the Demand Note, the Police may under section 3A(1) of Cap. 240 apply in the absence of that person to the magistrate to issue a court order for the person to pay the fixed penalty together with an additional penalty equal to the amount of the fixed penalty and cost. Once the court order is issued and signed, the relevant DOPs will be recorded under the DOP system. On the other hand, if a person has notified the police that he wishes to dispute liability, the Police will apply for a summons to bring the person before the court. As the person has made a complaint, it is his own will to attend court to dispute his case. Such summonses are rarely unserved. The Administration has advised that upstream

³ For more serious cases including dangerous driving causing death, dangerous driving, driving under the influence of drink or drugs, and driving in a motor race.

circumvention is also unlikely a concern for traffic offences dealt with by fixed penalty tickets.

45. For DOP offences that are to be dealt with by way of summons, defendants may choose to plead guilty by letter for offences specified in Schedule 3 to Cap. 227. The Administration's assessment is that the risk of upstream circumvention is relatively low. The Administration has advised that when it is evident that a defendant has tried to evade receiving the summons, the Police will apply to the court for the issue of an arrest warrant under section 9 of Cap 227.

Strengthening of supportive measures to enhance the implementation of the DOP system

46. Members have requested that to tie in with the new measures proposed in the Bill, the Administration should take effective measures to ensure that summonses will be issued to the updated address of the person concerned because, under the "deemed served" provision, a summons issued to the defendant's old address by registered post will also be deemed to have been served even if it is returned undelivered.

47. The Administration has informed the Bills Committee that TD and the Judiciary have jointly reviewed the work procedures for the issue of DOP summonses under Cap. 375 and have agreed on a set of revised work procedures. To tie in with the new measures proposed in Bill, the computer systems of TD and the Judiciary have been enhanced to allow data transfer. Under the revised work procedures, when TD makes an application to the court for issue of DOP summons to a person, his latest address shown in the record of driving licences kept by TD will be passed to the court for issue of the summons. The summons will first be served by ordinary post. Two days before and on the day of hearing, TD will check the address of the person concerned again. If there is any change of address and the person concerned is absent from the scheduled hearing, TD will ask the court to arrange re-issue of the summons with the updated address, if any. The summons will then be served to the person concerned by registered post again. The revised work procedures are aimed at ensuring that summonses will be issued to the updated address of the person concerned.

48. Hon WONG Kwok-hing has suggested that the Administration should step up prosecution against persons in breach of the existing statutory requirement that a person holding a driving licence has to notify the Commissioner if there is any change to his particulars, including his address, under regulation 18 of the Regulations. In response, the Administration has undertaken that it will step up publicity on this notification requirement and make sustained efforts in encouraging persons to provide TD with their updated addresses.

Resumption of Second Reading debate

49. The Bills Committee supports the resumption of the Second Reading debate on the Bill on 20 May 2009.

Committee Stage amendments

50. No Committee Stage amendments are proposed to be moved.

Follow-up actions by the Administration

51. The Administration has undertaken to review the effectiveness of the Bill in tackling the circumvention problem in the service of summons in about six months after its implementation and to report the outcome of the review to the Panel on Transport.

Advice sought

52. Members are requested to note the deliberations of the Bills Committee.

Consultation with the House Committee

53. The House Committee was consulted on 8 May 2009 and supported the recommendation of the Bills Committee in paragraph 49.

Council Business Division 1
Legislative Council Secretariat
15 May 2009

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

Membership list

Chairman Hon Miriam LAU Kin-ye, GBS, JP

Members Hon James TO Kun-sun
Hon Andrew CHENG Kar-foo
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon CHEUNG Hok-ming, SBS, JP
Hon Ronny TONG Ka-wah, SC

(Total: 7 Members)

Clerk Ms Joanne MAK

Legal Adviser Mr Kelvin LEE

Date 26 February 2009