

**For discussion
28 November 2008**

Legislative Council Panel on Transport

Legislative Proposals to Improve the Service of Summons under the Road Traffic (Driving-offence Points) Ordinance (Cap. 375)

Introduction

This paper briefs Members 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 existing mechanism for the service of summonses under the Driving-offence Points (DOP) system.

The Driving-offence Points System

2. The Ordinance provides the legislative framework for the DOP System, which first came into operation in August 1984. 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, he shall be liable to be disqualified from driving by the court under section 8 of the Ordinance.

3. The DOP records of drivers are administered and monitored by the Transport Department (TD). If a driver has committed a scheduled offence, and has paid or ordered by the court to pay a fixed penalty or is convicted by court, the corresponding DOPs incurred by him will be recorded in TD’s computer system. When the driver has incurred 15 or more DOPs within a period of two years, 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. The service of a summons issued by the magistrate is governed by section 8(2) to (4) of the Magistrates Ordinance (Cap. 227)¹. 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 consider issuing a non-appearance arrest warrant under section

¹ Section 8(2) – (4) of Cap. 227 provides that –

“(2) (a) Every such summons shall be served-

(i) by hand; or

(ii) by post.

(b) 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 for the appearance of that person, such service shall be deemed to have never been effected, and the summons shall thereafter be served by hand.

(c) Where a summons is served by hand, the police officer, the usher or other officer of a magistrate's court ... who served the summons shall, save as provided in subsection (3), attend before a magistrate at any time and place specified by a magistrate to depose, if necessary, to its service.....

(e) In this subsection-

"served by hand" (由專人送達) means served by a police officer, usher or other officer of a magistrate's court, or officer of the Independent Commission Against Corruption 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;

"served by post" (以郵遞方式送達) means sent by an usher or other officer of a magistrate's court by ordinary post to the residential or business address of the person to whom it is directed.

(3) A statutory declaration by a police officer, usher or other officer stating that he delivered a summons to the person to whom it is directed personally or that he left it with a third person for that person at that person's last or most usual place of abode, shall on its production be admissible in evidence without further proof, and until the contrary is proved the magistrate before whom it is produced shall presume-

(a) that the facts stated therein are true; and

(b) that the summons was duly served in accordance with subsection (2)(a)(i).

(4) Notwithstanding subsection (3) a magistrate may require the police officer, usher or other officer who served a summons to attend before him and give evidence on oath as to its service.

18A of Cap. 227² if it satisfies 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. Some drivers are believed to try 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 person named on the summons is 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 a person merely on the grounds that there have been unserved summonses issued by the court and the drivers have failed to appear in court.

6. Furthermore, under existing legislation, the Commissioner for Transport (“the Commissioner”) has no authority to refuse to issue, reissue or renew the driving licence of a person who has failed to appear in court in accordance with the summons.

Legislative Proposals

7. We consider that it is not acceptable for repeat traffic offenders who should have been disqualified from driving to hold on to their driving licence through circumventing the DOP system. We share the public’s concern that this anomaly should be addressed. We have developed the following legislative proposals to improve the mechanism for the service of a summons issued under the Ordinance.

² Section 18A of Cap. 227 provides that –
“Subject to sections 18E and 19A(5), in any case where a summons has been served on the defendant a reasonable time before the hearing and at the time and place appointed for the hearing only the complainant or informant appears, the magistrate-
(a) may issue a warrant to arrest the defendant and bring him before a magistrate and adjourn the hearing for such time as he may think fit; (See Form 2)
(b) may adjourn the hearing under section 20 and if the defendant does not appear at the time and place to which the hearing is adjourned may issue a warrant to arrest the defendant and bring him before a magistrate; or
(c) may, upon the application of the complainant or informant, dismiss the complaint or information.”

To deem summons to have been served

8. We propose to amend the Ordinance to the effect 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 under the Regulations, even if it is returned undelivered to the person.** 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 would continue. If the driver fails to appear in court at the date and time specified in the summons, the summons will then be served to the person again by registered post, and as proposed, the summons would then be regarded as "deemed served" even if it is returned undelivered to the driver.

9. To tie in with the proposed "deemed served" provision, we also propose to specify in the Ordinance a self-contained mechanism on the manner in which a summons should be served. Express provisions are proposed to specify that a summons must be served by hand or by post and 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.

10. The proposed "deemed served" provision is considered appropriate in view of the following considerations -

- (a) A person is required to provide an address to the Commissioner when making an application for the issue of a driving licence. He is also required to notify the Commissioner if there is any change to his particulars, including his address, under regulation 18 of the Regulations. Hence, it is reasonable and fair for the Commissioner to believe that his address kept in TD's record is up to date and can be used for the service of summons to him (if issued) under the Ordinance;

- (b) Under the proposal, a summons would first be served by ordinary post, and if the person fails to appear in court at the date and time specified, the summons would then be served to the person again by registered post. In other words, the proposed “deemed served” provision would only be invoked when the summons is served for the second or more times by post (except for the initial service by ordinary post, all by registered post); and
- (c) Before 15 or more DOPs are to be accumulated by a driver and recorded in TD’s computer system, he should have either paid the fixed penalty or been convicted by court of the corresponding traffic offences. Hence, he should be aware of the traffic offences he has committed and the DOPs so incurred. In most cases, the driver should have received notices demanding payment of the fixed penalty and/or summonses related to the traffic offences he committed, sent to the address he has registered with TD.

The Commissioner to refuse issue or renewal of driving licence

11. In addition, we propose that the Regulations be amended 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 the Ordinance, including a summons that is deemed to have been served.** This would rectify the anomaly that the Commissioner is required to issue a driving licence to an applicant even if he had incurred 15 or more DOPs and should be brought to the court for a disqualification proceedings under the Ordinance. Once the person appears in court as required, it will be up to the court to consider making a disqualification order, and the Commissioner would then continue to process his application for a driving licence as appropriate, taking into account the court’s decision.

Effect of the Legislative Proposals and Protection of Human Rights

12. The purpose of the proposed “deemed served” provision is to address the problem of “unserved” summonses and non-appearance at court hearing. The provision will allow us to trigger the following

mechanisms which help bring the person before a magistrate to go through the disqualification proceedings -

- (a) the magistrate to issue an arrest warrant under section 18A of Cap. 227; and
- (b) the Commissioner to refuse to issue, reissue or renew the person's driving licence if the person fails to appear before the court after the summons has been served.

13. Before taking forward the proposed "deemed served" provision, we have considered that there is a need to safeguard a person's rights for a fair hearing, which is protected under Article 10 of the Hong Kong Bill of Rights. Fairness requires the presence of the person and his participation in the disqualification proceedings. We therefore propose to add a new provision in the Ordinance to provide expressly that the magistrate is not empowered to order a person to be disqualified from driving in the absence of that person. In addition, a person may have genuine reasons for not being able to receive a summons delivered by registered post to his address; and is therefore unable to attend a court hearing. When the person eventually appears in court for the relevant proceedings, he may rebut the "deemed served" provision if cogent evidence to the contrary is produced.

Proposed Legislative Timetable

14. We are finalizing the legislative proposals set out in paragraphs 8 to 13 above. We plan to submit the Amendment Bill to the Legislative Council within the first quarter of 2009.

Advice Sought

15. Members are requested to note the legislative proposals to improve the service of summons under the DOP system with a view to enhancing road safety.

Transport and Housing Bureau
November 2008