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Paper for the House Committee

**Report of the Subcommittee on Road Traffic (Construction and
Maintenance of Vehicles) (Amendment) Regulation 2014**

Purpose

This paper reports on the deliberations of the Subcommittee on Road Traffic (Construction and Maintenance of Vehicles) (Amendment) Regulation 2014 ("the Subcommittee").

Background

2. The existing regulation 39 of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374A) stipulates the installation and maintenance requirement of reflecting mirrors. The regulation requires the mirrors to be so constructed and fitted to the vehicle as to assist the driver, if he so desires, to become aware of the traffic to the rear and on both sides rearwards. However, there are blind spots that the driver cannot detect at the rear of a vehicle, especially when a goods vehicle ("GV") is loaded with goods. This may pose a risk to the traffic and pedestrians at the rear.
3. In 2000, regulation 38 of Cap. 374A was amended to require the installation of an automatic audible warning device to help warn pedestrians and other vehicles of the approach of a reversing GV.
4. Reversing video device ("RVD") may also be installed to assist the driver in reversing a GV. RVD basically consists of a camera unit, a visual display unit, and the necessary connecting cables to each other and the power supply. A guideline containing the relevant specifications was issued by Transport Department in 2007 to facilitate the voluntary installation of RVD. RVD is increasingly installed on GVs on a voluntary basis.
5. To further enhance the safety of reversing GVs, legislative amendments

are now introduced to require mandatory installation of RVD in addition to mirrors and the audible warning device.

6. The key provisions of the Road Traffic (Construction and Maintenance of Vehicles) (Amendment) Regulation 2014 ("the Regulation") are to –
 - (a) require every new GV (except tractors of a certain type and trailers) first registered after the commencement date of the Regulation to be fitted with RVD;
 - (b) specify the installation and performance requirements of RVD;
 - (c) include a defence for contravention of the requirement that RVD be maintained in good working order; and
 - (d) exclude a camera unit of RVD from being taken into account when determining the vehicle's overall length.
7. The Regulation will come into operation on 1 October 2014.

The Subcommittee

8. At the meeting of the House Committee on 24 January 2014, Members decided to form a subcommittee to examine the Regulation. The membership list of the Subcommittee is in **Appendix**. Under the chairmanship of Hon CHAN Kam-lam, the Subcommittee has held one meeting with the Administration.

9. To allow more time for the Subcommittee to scrutinize the Regulation, a motion was moved by Hon CHAN Kam-lam, on behalf of the Subcommittee, at the Council meeting of 19 February 2014 to extend the scrutiny period of the Regulation from the Council meeting of 19 February 2014 to that of 19 March 2014.

Deliberations of the Subcommittee

10. The Subcommittee is generally in support of the Regulation and some members even point out that the legislative requirement has come too late. In the course of deliberation, members have examined the requirements of RVD to be installed on GVs, the defence provision, readiness of the trade to comply, reasons for the non-application of the Regulation to existing GVs, and the proposed amendments to regulation 39A(6) (a) and (b).

Requirements of RVD

11. Regulation 39A(3) provides that RVD must be maintained in good working order. Regulation 39A(4)(b) also provides that the view of RVD so fitted to the GV must be clear to the driver in the driving position, whether in the daytime or at night, except when the visibility is reduced by weather conditions. The Subcommittee is concerned about the clarity of the exception provided under regulation 39A(4)(b) and has examined whether an objective standard should be set out in the Regulation to quantify the concept of visibility.

12. The Administration explains that the capability of the camera unit of RVD to provide a clear view may unavoidably be limited by weather conditions such as heavy rain, cloud and fog and therefore an exception is expressly provided for in the regulation to ensure that an owner or driver of a GV will not contravene the regulation and commit a criminal offence simply due to an external factor which is beyond his or her control. The Administration indicates that for the purposes of this exception, it is not possible for the concept of visibility to be quantified. Various weather conditions will, in one way or the other, make the closed-circuit view of RVD unclear. The Administration advises that the court will decide each case on its own merits having regard to the evidence and circumstances of the case.

Consultation with the trade

13. The Subcommittee notes that when the Administration carried out consultation with the trucking industry associations and GV drivers associations regarding the mandatory installation of RVD, the trade had expressed concerns over the reliability of RVD and the legal liabilities in case of malfunctioning of the device. There is also resistance from the trade to the legislative requirement due to the absence of similar statutory requirement overseas.

14. To address the concerns of the trade, a defence provision is provided under regulation 39A(6) which provides that it is a defence in any proceedings for a contravention of regulation 39A(3) if the person concerned can prove that—

- (a) the defect occurred in the course of the journey during which the contravention was detected; or
- (b) at the time when the contravention was detected, steps had already been taken to have the defect remedied with all reasonable expedition.

Proposed amendment to the defence provision

15. The Subcommittee considers that the Chinese rendition of the word "detected" in regulation 39A(6)(a) and (b) should be amended from "揭發" to "發覺" because the underlying meaning of "揭發" implies that something has been concealed and then revealed. Hence, it is not an appropriate rendition of the word "detected" in the English text. Having considered the views of the Subcommittee, the Administration agrees to move an amendment to repeal the Chinese texts of "揭發" as appeared in the Chinese rendition of regulation 39A(6)(a) and (b) and substitute it with "發覺".

Readiness of the trade to comply and the commencement date

16. The Subcommittee has examined the readiness of the trade to comply with the Regulation. Some members, including Hon CHAN Kam-lam, Hon Frankie YICK and Hon WONG Kwok-hing are of the view that the effective date of the Regulation should be advanced from 1 October 2014 to an earlier date, say 1 August 2014, so as to enhance road safety at the earliest opportunity.

17. The Administration explains that since the mandatory installation of RVD will be applicable to all GVs which consist of many different models and types, it will be appropriate to allow 6 to 7 months after the completion of the negative vetting procedures of the Legislative Council for all the relevant stakeholders to get prepared for complying with the Regulation, and to clear the current stock.

Reasons for the non-application of the Regulation to existing GVs

18. As the Regulation will only be applied to new GVs which are first registered on or after 1 October 2014, the Subcommittee has examined whether the requirement for the installation of RVD can be extended to cover existing GVs which is in line with the policy objective to enhance road safety.

19. The Administration explains that given the current state of technology and RVDs available in the market, not all GVs can be fitted with RVDs with the necessary reliability or scope of vision. The Administration advises that GVs are usually subject to much harsher working conditions in construction sites or on roads due to high vibration and shock loads. RVD intended for GV should be able to withstand heavy and constant vibration and should be shock-proof. However, as many RVD components available on the market at present are designed for non-vehicle use or for use on smaller vehicles with better suspension systems and lower voltages, retrofitting of unsuitable RVD by inexperienced after-market installers onto existing GVs is a reason for early

failure.

20. The Administration further explains that a retrofitted RVD will be attached to the vehicle body externally. The exposure of components (such as wiring, voltage converters and camera units) to a wide range of ambient conditions (such as rain, heat and moisture) as well as harsh environments may lead to frequent failure. In addition, vehicle manufacturers and suppliers in general do not provide technical support for after-market installations. The lack of support will render a retrofitted RVD more unreliable.

21. Having considered all the circumstances, the Administration considers it not appropriate to mandate the installation of RVD on existing GVs. The Administration advises that it will continue to launch public education and publicity activities for drivers and pedestrians, in particular the elderly and children, to enhance road safety awareness.

22. At the request of the Subcommittee, the Administration undertakes to review the mandatory installation of RVD on existing GVs in 1 to 2 years' time having regard to the latest state of technology. To this end, Hon Cyd HO has reminded the Administration to take into account the latest policy implemented by the Environment Bureau to phase out old diesel commercial GVs and consider the resultant impact on the trade if the requirement of the mandatory installation of RVD on existing GVs is to be implemented.

Proposed amendment to regulation 39A(6)(a) and (b)

23. Apart from the Administration's proposed amendment as highlighted in paragraph 15 and agreed by the Subcommittee, the Subcommittee will not move any amendments to the Regulation.

Advice sought

24. Members are invited to note the deliberations of the Subcommittee.

**Subcommittee on Road Traffic (Construction and Maintenance of Vehicles)
(Amendment) Regulation 2014**

Membership List

Chairman Hon CHAN Kam-lam, SBS, JP

Members Hon WONG Kwok-hing, BBS, MH
Hon Cyd HO Sau-lan
Hon Frankie YICK Chi-ming
Hon WU Chi-wai, MH
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu

(Total : 7 Members)

Clerk Ms Sophie LAU

Legal Adviser Miss Evelyn LEE