

立法會
Legislative Council

LC Paper No. LS55/13-14

Paper for the House Committee

**Further Report by Legal Service Division on
Road Traffic (Driving Licences) (Amendment) Regulation 2014 (L.N. 48)
gazetted on 11 April 2014**

Members may recall that at the House Committee meeting on 2 May 2014, the Legal Service Division reported that it had written to the Administration for clarification in respect of the scope of the empowering provision for making the Road Traffic (Driving Licences) (Amendment) Regulation 2014 (the Amendment Regulation) and will report further after studying the Administration's reply.

2. The Amendment Regulation seeks to increase the fees for the issue of record of traffic convictions and certificate of no recorded convictions. The Amendment Regulation is made under section 8(1A)(a) of the Road Traffic Ordinance (Cap. 374), which provides that "the Chief Executive in Council may make regulations to provide for the fees to be charged in respect of any licence or permit granted to any person to drive a vehicle of a particular class or to instruct other persons to drive vehicle". In response to our query on whether the fees in question fall within the scope of the enabling provision, the Administration invited us to construe the enabling provision widely to include fees of items in relation to licences or permits. A copy of the Administration's reply is at Annex.

3. In considering whether a piece of subsidiary legislation is made within the scope of its empowering provision under the principal Ordinance, a fair and liberal construction as will best attain its objects would be adopted¹. Having considered the Administration's reply in light of the objects of principal ordinance and Regulations 12I and 12L of the Road Traffic (Driving Licences) Regulations (Cap. 374B) under which the Commissioner for Transport may cancel a driving licence issued if its holder has been convicted of a scheduled offence, we are satisfied that there are no outstanding legal issues to be followed up.

Encls.

Prepared by

TAM Shuk-fong, Clara
Assistant Legal Adviser
Legislative Council Secretariat
12 May 2014

¹ Carroll v A-G for New Zealand [1933] NZLR 1461 at 1478, CA.

政府總部
運輸及房屋局

運輸科
香港添馬添美道 2 號
政府總部東翼



Transport and
Housing Bureau
Government Secretariat

Transport Branch
East Wing, Central Government Offices,
2 Tim Mei Avenue,
Tamar, Hong Kong

本局檔號 Our Ref. THB(T)CR 25/5591/79
來函檔號 Your Ref. LS/S/21/13-14

電話 Tel. No.: (852) 3509 8203
傳真 Fax No.: (852) 3904 1775

Ms Clara TAM
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

30 April 2014

(Fax No. 2877 5029)

Dear Ms TAM,

**Re: Road Traffic (Driving Licences) (Amendment) Regulation 2014
(L.N. 48 of 2014)**

I refer to your letter dated 25 April 2014 seeking our clarification of the empowering section for making the Road Traffic (Driving Licences) (Amendment) Regulation 2014 ("the Regulation"). Our reply is as follows:

The Road Traffic (Driving Licences) Regulations 1983 (L.N. 287/83) was first made by the Governor in Council under sections 5 and 8 of the Road Traffic Ordinance (Cap. 374) ("the Ordinance"). The fee for "record of convictions" was in the Second Schedule in the Road Traffic (Driving Licences) Regulations 1983.

Section 8 of the Ordinance then existing provided that the Governor in Council may make regulations to provide for –

“....

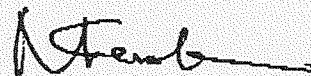
- (f) the fees to be charged in respect of any licence or permit granted to any person to drive a vehicle of a particular class or to instruct other persons to drive vehicle; and
- (g) the waiving, exemption, reduction or refund of fees.”

The above two subsections were rearranged in 1994 as section 8(1A)(a) and (b) of the Ordinance (preserving the regulation-making power for fees for the Governor in Council whilst other regulation-making power has been delegated to the Secretary for Transport). Adaptation was made in 2002 substituting “Chief Executive in Council” for “Governor in Council”.

Under section 75(5) of the Ordinance, “record of convictions” and “certificate of no recorded convictions” are issued in respect of a holder of a driving licence. In our view, fees for “record of convictions” and “certificate of no recorded convictions” are charged in respect of a licence. The words “in respect of” in section 8(1A)(a) of the Ordinance should be construed widely to include fees of items in relation to licences or permits.

Should you have further questions on the above, please contact the undersigned at 3509 8203.

Yours sincerely,



(Niki KWOK)

for Secretary for Transport and Housing