

香港特別行政區政府

The Government of the Hong Kong Special Administrative Region

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

電話 Tel. No.: 3509 8200

傳真 Fax No.: 3904 1774

本局檔號 OUR REF.: THB(T) L1/12/65

來函檔號 YOUR REF.: LS/R/2/16-17

By Fax: 2877 5029

17 May 2017

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

Dear Ms CHENG,

**Two proposed resolutions under section 13 of the Fixed Penalty  
(Traffic Contraventions) Ordinance (Cap. 237) and section 12 of the  
Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240)**

I refer to your letter of 4 May 2017 requesting further information and clarification relating to section 13 of Cap. 237. Our response is enclosed at Annex.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Winnie WY WONG'.

( Ms Winnie WY WONG )

for Secretary for Transport and Housing

c.c. DoJ (Attn: Mr Gary LI, GC)  
Legal Adviser  
Senior Assistant Legal Adviser 1  
Clerk to the Subcommittee

While section 7(2) of the Interpretation and General Clauses Ordinance (Cap. 1) provides that “[w]ords and expressions in the singular include the plural and words and expressions in the plural include the singular”, the effect of section 7(2) of Cap. 1 is subject to contrary intention as appeared from the context of Cap. 237 (see section 2(1) of Cap. 1).

As explained before, the ordinary and natural meaning of section 13 of Cap. 237 is that Legislative Council may only increase the amount of the fixed penalty set out therein. There is nothing to suggest that this includes a power to prescribe different levels of fixed penalties for contravention of different provisions. Apart from long title of Cap. 237 and the Explanatory Memorandum of the Fixed Penalty (Traffic Contraventions) Bill in 1970, this view is also reinforced by the Hansard for the Bill in 1970, which refers to a scheme of uniform penalty and the simplicity and practicality of such a scheme:-

“... the principal objection to the system was the fixing of a uniform penalty regardless of the gravity of the contravention and of the frequency of contraventions by a particular vehicle. This point was thoroughly discussed by the TAC<sup>1</sup>, which in spite of the various proposals including one of sliding scale of penalties according to the frequency of the contraventions and another providing for forenoon and afternoon offences, supported the scheme for reasons of simplicity and practicability”.

There is only one fixed penalty set out in section 13 of Cap. 237, which is different from the way that fixed penalties are prescribed in the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240). While the wording of the long title of Cap. 240 is similar to that of Cap. 237, the Explanatory Memorandum of the Fixed Penalty (Criminal Proceedings) Bill in 1974 clearly indicates that different levels of fixed penalty are prescribed for different offences by way of a Schedule:-

---

<sup>1</sup> The “TAC” in the Hansard refers to the Transport Advisory Committee.

“...The Offences for which notices may be given, and the amount of the fixed penalty for each offence, are shown in the Schedule to the Bill.

...Clause 12 enables the Schedule to be amended by resolution of the Legislative Council.”

In the light of the above, the Government is of the view that the effect of section 7(2) of Cap. 1 is displaced by the contrary intention as appeared from the context of Cap. 237, and the Legislative Council has not been empowered to prescribe by resolution under section 13 of Cap. 237 different levels of fixed penalties for different contraventions.