

**For discussion
on 17 June 2022**

Legislative Council Panel on Transport

**Legislative Proposals for
Implementation of Traffic e-Enforcement**

PURPOSE

This paper aims to seek Members' views on the legislative amendment proposals related to the implementation of Traffic e-Enforcement.

BACKGROUND

2. Smart mobility is a key component in the Government's Smart City Blueprint. One of the new initiatives introduced by the Government to this end is the issuance of fixed penalty notices ("FPNs") under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237) and Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) by electronic means. The aim of this initiative is to increase the overall efficiency of enforcement actions through the application of technology by implementing the Traffic e-Enforcement System; and, in the long run, to foster better driving attitude amongst drivers, which is conducive to reducing traffic accidents and illegal parking, thereby enhancing road safety and alleviating traffic congestion.

Traffic e-Enforcement System

3. The Finance Committee ("FC") of the Legislative Council ("LegCo") approved a new commitment at its meeting on 25 June 2021 to enable the Hong Kong Police Force ("the Police") to develop a Traffic e-Enforcement System to replace the existing manual-based operation for traffic enforcement.

4. Upon the funding approval by the FC of the LegCo, the Police is developing a Traffic e-Enforcement System which will digitalise the existing

enforcement workflows¹. Meanwhile, the Police will also develop a citizen-centric Traffic e-Enforcement thematic portal, using which members of the public can view their traffic contravention/offence records and handle related matters online. The Police has commenced the detailed design of the System with a view to rolling it out by phases starting from the first quarter of 2023.

5. The issuance of FPNs by electronic means (“e-FPNs”) will be an integral part of the Traffic e-Enforcement System; however it is currently not allowed under Cap. 237 and Cap. 240. Thus, we have to first amend the relevant legislation.

Existing Traffic Enforcement Procedures

Serving of Cap. 237 FPNs

6. At present, regarding the issue of FPNs under Cap. 237 in relation to parking contraventions, the Police has to deliver an FPN in the prescribed form in accordance with section 15 of Cap. 237 (i.e. Form 1 FPN in the Schedule to the Fixed Penalty (Traffic Contraventions) Regulations (Cap. 237A)) personally to the person in charge of the vehicle or fix it on the vehicle. Where the penalty is not paid within 21 days after the date of the contravention, the Police will serve a notice demanding payment of fixed penalty (i.e. Form 2 FPN in the Schedule to Cap. 237A) to the registered address of the registered owner² by post.

¹ All the procedures will be digitalised, including those from the start of collecting details and evidence by frontline officers, data processing and storage, etc. after the commission of a contravention/an offence up to the issuance of e-FPNs to the offending registered owner or driver. Frontline law enforcement officers can also use mobile devices to take pictures or videos to record the details of contravention or offence as evidence. All captured data will be uploaded to a centralised internal platform in real time using mobile connection.

² Under section 2 of Cap. 237, “registered owner” means the person in whose name a motor vehicle is registered in accordance with the Road Traffic Ordinance (Cap. 374); and in relation to a motor vehicle to which a trade plate or permit issued under the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E) is affixed, the person to whom the relevant trade licence or permit is issued under those regulations.

Serving of Cap. 240 FPNs

7. As for the issue of FPNs under Cap. 240 in relation to traffic offences (i.e. scheduled offences³), the Police may deliver a notice in the prescribed form (i.e. Form 1 FPN in the Schedule to the Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240A)) personally to the offender (“the offending driver”) or fix it on the vehicle concerned. Regardless of whether a Form 1 FPN has been settled, a notice demanding payment of fixed penalty (i.e. Form 2 FPN in the Schedule to Cap. 240A) will be served on the offending driver by post within one month of the commission of the offence.

8. Moreover, pursuant to Cap. 240, the Police also has the option of only serving a Form 2 FPN to the offender by post within one month of the commission of the offence⁴ (without the prior issuance of Form 1 FPN⁵). This option is put in place because drivers contravening the scheduled offences under Cap. 240 (e.g. red light jumping, speeding on highways) may not be intercepted onsite, but are caught by traffic enforcement cameras; in other words, the Police needs to take an extra step in identifying the offending driver through contacting the registered owner or other related persons before a Form 2 FPN under Cap. 240 can be issued.

9. The Police has been adopting electronic means in the enforcement actions under Cap. 237 and Cap. 240. Frontline officers, when taking enforcement actions, can use a mobile application running on their dedicated smart phones to capture images of the incident scene as supporting evidence, and record information of the offending vehicle or driver. They are also equipped

³ Under section 2 of Cap. 240, “scheduled offence” means an offence the general nature of which is described in the second and third columns of the Schedule to Cap. 240, such as speeding, unlawfully entering box junction, picking up/setting down passengers in restricted zone, etc.

⁴ Under Cap. 240, a notice demanding payment of fixed penalty shall be served within one month of the commission of the offence. Provided that where the identity or address of the offender cannot be ascertained within seven days after the commission of the offence, the notice may be served not more than six months after the commission of the offence.

⁵ The issuance of FPN under Cap. 240 is different from that of Cap. 237. Cap. 237 requires a Form 2 FPN to be preceded by a Form 1 FPN.

with portable printers to prepare and print an FPN onsite⁶ for delivering it personally to the person in charge of the offending vehicle under Cap. 237 or to the offending driver under Cap. 240, or fixing it on the vehicle concerned. Given the existing legal constraint (i.e. requiring that an FPN must be personally delivered or fixed on the vehicle) and pending the completion of constructing the Traffic e-Enforcement System, FPNs cannot be issued by electronic means yet.

LEGISLATIVE PROPOSALS

10. To enable the Police to adopt electronic means to serve FPNs in the future, we have to make legislative amendments to define an e-FPN and prescribe its contents, establish a proper workflow of serving an e-FPN, empower the Commissioner of Police to specify the format of such FPNs, and require the registered owners, holders of various types of licences and permits⁷ and holders of driving licence to provide the Commissioner for Transport with the electronic mailing (“email”) addresses or mobile phone numbers at which the persons concerned can be reached. The amendments also cover the adoption of electronic means to demand registered owners or other related persons to furnish information on the identity of the offending driver. The details will be set out in the following paragraphs. The Ordinances and subsidiary legislation requiring amendments include –

- (a) the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237);
- (b) the Fixed Penalty (Traffic Contraventions) Regulations (Cap. 237A);
- (c) the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240);

⁶ The arrangement has been running smoothly since its launch in March 2020, and has proven to be effective in reducing human errors in issuance of handwritten FPNs and manual data input.

⁷ Including holders of international circulation permit, trade licence and movement permit issued under the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E).

- (d) the Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240A);
- (e) the Road Traffic Ordinance (Cap. 374);
- (f) the Road Traffic (Driving Licences) Regulations (Cap. 374B); and
- (g) the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374E).

To enable effective and flexible law enforcement actions by the Police, the practice of issuing paper FPNs under the existing mechanism (as mentioned in paragraphs 6 and 7) will be maintained.

Proposed traffic e-enforcement procedures

(I) Workflow of serving an e-FPN

11. The proposed implementation of traffic e-enforcement and the relevant legislative amendments aim at allowing the issuance of FPNs by electronic means while continuing to achieve the following primary purposes of issuing FPNs –

- (a) to duly serve an FPN on the registered owner of the vehicle involved in traffic contravention or the person who has committed a scheduled offence; and
- (b) to provide relevant information in an FPN so that the liable person is advised on how to discharge or dispute the liability.

e-FPN and its contents

12. Upon the implementation of the Traffic e-Enforcement System, frontline officers of the Police, when taking enforcement actions, will use a mobile application running on their dedicated smart phones to capture images of the incident scene as supporting evidence, input information of the offending vehicle or driver, or retrieve such information from the vehicle licence or driving licence, for the issuance of an e-FPN within a reasonable time frame. An e-FPN

consists of two parts: the first part is an “SMS/email Notice” which contains the essential information of an FPN, such as the date, time and location of the contravention or scheduled offence committed, the vehicle registration mark, the penalty, the e-FPN number and payment number, etc., and will be served on the registered owner or offending driver⁸ by electronic means (i.e. SMS or email) via the mobile phone number or email address he/she provided. Generally speaking, such an “SMS/email Notice” contains adequate information for the registered owner/offending driver to understand the particulars of the contravention or scheduled offence committed and pay the penalty. The second part is an “Online Notice” with the same contents as the conventional paper FPN, providing details on the payment methods and the ways to dispute liability, etc., in addition to the particulars related to the contravention or scheduled offence committed. The Police will upload the “Online Notice” to its Traffic e-Enforcement thematic portal for viewing by the registered owner or offending driver.

Duly serving the e-FPN

13. As mentioned in paragraphs 6 and 7, currently the Police will serve a Form 1 FPN under Cap. 237 by fixing it on the windscreen of the vehicle or delivering it personally to the person in charge of the vehicle onsite. As for the enforcement action taken under Cap. 240, the offending driver intercepted onsite will be directly served a Form 1 FPN⁹.

14. Upon the implementation of the Traffic e-Enforcement System, the Police will send an “SMS/email Notice” to the registered owner or offending driver via the e-contact means he/she provided and upload the “Online Notice” to the Traffic e-Enforcement thematic portal for his/her viewing. These two steps must be taken before the entire procedure for serving an e-FPN is legally regarded as completed.

⁸ According to section 3 of Cap. 240, the person liable for the fixed penalty under that Ordinance shall be the offender of that particular offence (i.e. the offending driver).

⁹ The handling of a driver who is not intercepted onsite for a scheduled offence committed will be explained in paragraph 20.

15. Regarding the notices demanding payment of fixed penalty (i.e. the Form 2 FPN as stipulated in the respective Schedules to Cap. 237A and Cap. 240A mentioned in paragraphs 6 and 7), the Police also plans to serve them by electronic means via the Traffic e-Enforcement thematic portal, apart from the current way by post. As in the case of Form 1 e-FPN, the serving of Form 2 e-FPN also involves two steps, namely sending an “SMS/email Notice” to the registered owner or offending driver via the e-contact means he/she provided, and uploading the “Online Notice” to the thematic portal for his/her viewing. So long as the Police can prove that the Form 2 FPN has been duly sent and uploaded¹⁰, it will prove that the e-FPN has been duly served as required by Cap. 237 or Cap. 240. This is in line with the prevailing practice that the due service of a paper FPN is proved by the proof of its being sent by post to the registered address of the recipient.

16. Regarding the time frame for serving the e-FPNs, we propose that the Form 1 FPN issued under Cap. 237 and Cap. 240 should be served within 12 hours¹¹ after a police officer has reason to believe that a contravention or a scheduled offence has been committed. This has taken into account the fact that e-FPNs issued through the electronic system may not be delivered instantly. As for the Form 2 FPN issued under Cap. 237 and Cap. 240, the time frame stipulated under the existing legislation will continue to apply¹².

¹⁰ It suffices for the Police to prove that the e-FPN has been uploaded to the thematic portal and that it has been issued to the registered owner or offending driver via SMS or email. There is no need to prove that the registered owner or offending driver has actually read the SMS or email notification, or that he/she has viewed the e-FPN online.

¹¹ The time frame covers the sending of an “SMS/email Notice” and the uploading of the “Online Notice” to the thematic portal, both of which have to be done within 12 hours.

¹² Pursuant to section 15(3) of Cap. 237, if a fixed penalty is not paid within 21 days after the date of a contravention, a Form 2 FPN shall be served within 6 months from the date of the contravention. Pursuant to sections 3(3), 3(4) and 3(5) of Cap. 240, where the Commissioner of Police is of the opinion that a person alleged to be guilty of a scheduled offence ought to be proceeded against under Part II of Cap. 240 in respect thereof, no matter whether the fixed penalty has been paid, a Form 2 FPN has to be served on that person by post within one month after the commission of the offence (see also footnote 4).

The format of e-FPNs

17. We also propose to revise the requirements for the prescribed formats of FPNs specified in Cap. 237, Cap. 237A, Cap. 240 and Cap. 240A.

18. Currently, the FPNs issued under Cap. 237 and Cap. 240 should be in the prescribed forms (i.e. both the Form 1 and Form 2 FPNs specified in the Schedules to Cap. 237A and Cap. 240A). Any changes to the prescribed forms must be made by legislative amendments to the relevant ordinances. Since the format of e-FPNs may be subject to change quite frequently as software develops and upgrades, to enable timely updating of the format details (e.g. the design of bar code, Quick Response (“QR”) code and tick boxes in future) and payment information (e.g. additions or changes to the places and means of payment) of the FPNs, and to allow for greater flexibility in format editing in the future, we propose to amend the ordinances by repealing the prescribed forms of FPNs as required under Cap. 237 and Cap. 240, and specifying instead all the essential information of the FPNs in the respective Schedules to Cap. 237A and Cap. 240A. We also propose to authorise the Commissioner of Police to specify the formats of FPNs (both paper and electronic forms) by notice in the Gazette. The types and items of essential information (including the particulars of the vehicles concerned, details of the contravention or scheduled offence committed, and due date for payment, etc.) will be the same as those set out in the current prescribed forms.

(II) Collection of e-contact means

19. To enable the sending of “SMS/email Notices” to registered owners and offending drivers via the mobile phone numbers or email addresses they provided, provisions shall be added to Cap. 374 and its subsidiary legislation to require the registered owners, holders of various licences and permits, and holders of driving licence to provide the Commissioner for Transport with their mobile phone numbers or email addresses at which the persons concerned can be

reached¹³, and to empower the Commissioner for Transport to require the persons concerned to produce proof of the mobile phone numbers or email addresses they provided. With reference to the current practice of updating addresses¹⁴, the above-mentioned persons are also required to notify the Transport Department (“TD”) within 72 hours of any changes to the mobile phone numbers and email addresses they provided. This helps ensure that the records kept by TD’s Vehicles and Drivers Licensing Integrated Data System are accurate and up-to-date, which would in turn facilitate the issuance of e-FPNs under Cap. 237 and Cap. 240.

(III) Expanding the means of serving Form 2 FPNs under Cap. 240 on drivers who are not intercepted onsite and whose identities have to be ascertained in accordance with Cap. 374

20. As mentioned in paragraph 8, offending drivers may not be intercepted onsite but are caught by traffic enforcement cameras for committing a scheduled offence and thus be issued an FPN under Cap. 240. Since traffic enforcement cameras can only identify the vehicle registration mark of the offending vehicle, to issue an FPN, the Police has to first ascertain the identity of the offending driver (i.e. the person on whom an FPN shall be served) by demanding the registered owner of the offending vehicle or other related persons to provide information of the driver’s identity under section 63 of Cap. 374¹⁵. In this connection, a police officer may, pursuant to section 63 of Cap. 374, serve a notice (“Section 63 Notice”) in person or by post on the registered owner or other related persons, demanding them to furnish information on the identity of the driver at the time of

¹³ At present, registered owners and holders of various types of licences and permits are required to provide their “e-contact means” under Cap. 374E. However, the definition of “e-contact means” under Cap. 374E does not fit for the purpose of serving e-FPNs as pursued under the current legislative amendment exercise. As for the holders of driving licence, they are currently not required to provide their “e-contact means” under Cap. 374B.

¹⁴ Under section 18 of Cap. 374B, as well as sections 19, 31A, 43A and 53 of Cap. 374E, holders of driving licence, registered owners and holders of various types of permits are required to notify the Commissioner for Transport within 72 hours of any changes to their addresses.

¹⁵ See footnote 4.

the alleged offence. The recipient of the Section 63 Notice must furnish the Police with such information in writing. According to section 63, both the demand of the police officers cannot be made and the replies of the registered owners cannot be given by electronic means.

21. To further automate the entire procedure of traffic e-enforcement, upon the implementation of the Traffic e-Enforcement System, the backend processing system may automatically issue a Section 63 Notice under section 63 of Cap. 374 when necessary, and a Form 2 FPN under Cap. 240 when the registered owner has replied to the Section 63 Notice. To this end, we propose that Cap. 374 be amended to provide an option for the Police to serve the Section 63 Notice by electronic means¹⁶ in addition to the existing modes of serving in-person or by post. The recipient of the Section 63 Notice may also reply through the thematic portal.

OTHER RELATED MEASURES

22. Taking into account the different needs of the users of the Traffic e-Enforcement System, apart from building a thematic portal, the Police will also develop and provide a dedicated mobile application to registered owners and motorists for viewing the contents of the FPNs at any time and place for follow-up actions. Besides, the registered owners and motorists will be timely alerted by an automated notification function to pay the penalty on time.

23. To address the different needs of individual vehicle owners, motorists, commercial vehicle drivers and car rental companies, the Police considers adding a function to the thematic portal and dedicated mobile application for the

¹⁶ The electronically served Section 63 Notice will have two components: (a) an SMS/email notification sent to the registered owner or other related persons via the mobile phone number or email address they provided; and (b) a notice uploaded to the Traffic e-Enforcement thematic portal for their viewing upon login. The prevailing time frame for issuing Section 63 Notice (i.e. within six months after the date of the alleged offence or accident) will continue to apply. The serving of the subsequent Form 2 e-FPN (upon confirmation of the offending driver's identity with the Section 63 Notice) shall continue to follow the time frame as specified in section 3(4) of Cap. 240 (see footnote 4).

management of FPNs issued to vehicles. With that function, registered owners are allowed to register additional email address(es) for each of their vehicles so that other related persons may assist in viewing and following up the FPNs received. The Police is finalising the details of the measures to ensure that they will be rolled out together with the Traffic e-Enforcement System.

24. The use of mobile applications and online services has seen increasing popularity and increasing public acceptability in recent years. The Police will also enhance the education and promotion to registered vehicle owners and motorists on how the e-FPNs work to better prepare for the full implementation of serving and handling FPNs by electronic means in the future. The Police will also provide appropriate assistance to those who have difficulties in viewing the e-FPNs as and when necessary.

IMPLEMENTATION PLAN

25. We plan to introduce a Bill into the LegCo by the end of this year. Subject to the passage of the Bill, TD will start, from mid-2023, collecting e-contact means from registered owners, holders of various types of licences and permits, and holders of driving licence at which the persons concerned can be reached for the purpose of traffic enforcement¹⁷. It is expected that the Police will be well placed to fully implement traffic e-enforcement after TD's e-contact means collection exercise has been conducted for around 12 to 16 months¹⁸.

¹⁷ Meanwhile, the Police plans to first roll out the Traffic e-Enforcement System in phases from the first quarter of 2023 onwards. The services provided in the first phase will enable the public to view FPNs and make online payment to settle the penalty.

¹⁸ Under section 21 of Cap. 374E, a vehicle licence has to be renewed annually at the least. Given that a registered owner can apply for licence renewal four months before the expiry date of the licence, TD will generally be able to have collected the e-contact means of all registered owners after 12 to 16 months. We consider that, after the passage of the legislative amendments, the e-contact means of all vehicle licence holders must first be collected for the full implementation of the Traffic e-Enforcement System. As for the holders of driving licence, they are generally required to renew their driving licences every 10 years under section 11 of Cap. 374B. When the Traffic e-Enforcement System is in place, the Police may demand the drivers intercepted onsite for being suspected of having

ADVICE SOUGHT

26. Members are invited to advise on the legislative proposals for the implementation of Traffic e-Enforcement.

Transport and Housing Bureau

Hong Kong Police Force

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committed a scheduled offence to provide their e-contact means. On the other hand, if the identity of drivers can only be ascertained with the assistance of the vehicle owners (the identity of a driver must be ascertained for issuing an e-FPN, as mentioned in paragraph 20), the Police will have to contact the vehicle owners first in any event.