

LCQ10: Mechanism for Combating Driving Offences and Hiring Drivers

Following is a question by the Hon Miriam Lau and a written reply by the Secretary for Transport and Housing, Ms Eva Cheng, at the Legislative Council meeting today (November 17):

Question:

Some members of the transport trade have pointed out that when hiring a driver, vehicle owners in the trade can hardly know, by checking the details on the applicant's driving licence, if he has been disqualified from driving for having incurred 15 points or more within two years because of driving offences; and the employer will not without apparent reason check his driving licence after hiring him. Moreover, if the driver fails to appear in court after incurring 15 points or more, his driving licence will not be seized and he can continue to drive until it expires. There is no way for vehicle owners in the trade to crosscheck such information, according to sections 42(3) and 42(4) of the Road Traffic Ordinance (Cap. 374), yet any person who permits a motor vehicle to be driven by a person who is not the holder of a valid driving licence of the class to which such vehicle belongs commits an offence, vehicle owners in the trade are thus afraid of being charged innocently. In this connection, will the Government inform this Council:

(1) since the Government amended the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) last year, of the total number of drivers who had incurred 15 points or more but failed to appear in court up to this month; and among them, the number of those who are drivers of commercial vehicles;

(2) focusing on the problem that drivers can still drive on roads after incurring 15 points or more, what proposals the authorities have to combat such situation, so as to protect the safety of road users; and

(3) given that at present, vehicle owners have no way of knowing the driving records of a driver (including whether he has committed any driving offence or whether he has incurred almost 15 points) by checking the details on his driving licence, whether the authorities will consider asking the Transport Department to provide channels for vehicle owners to inspect such records or provide a blacklist for their reference, so as to ensure that they will not be charged innocently; if they will, of the plan and the time to implement it; if not, the reasons for that?

Reply:

President,

The Road Traffic (Driving-offence Points) (Amendment) Ordinance 2009 (Cap.375) (the Amendment Ordinance) took effect on May 29, 2009. The Amendment Ordinance has introduced various measures to address the situation that some drivers have tried to circumvent the Driving-offence Points (DOP) System by avoiding receiving summons. Such measures include the introduction of the "deemed served" mechanism regarding the service of DOP summonses, and authorising the Commissioner for Transport (CforT) to refuse issue, reissue or renewal of the driving licence of those who fail to appear in court upon receiving the summons.

Our replies to the specific questions are as follows:

(1) According to the records of the Transport Department (TD), during the period between the enactment of the Amendment Ordinance on May 29, 2009 and end October 2010, there are a total of 5,599 cases in which summonses were issued to drivers with 15 or more DOPs under the DOP System. Out of these cases, 4,947 cases (about 88%) had been dealt with in either the first or second court hearing, and the drivers concerned had been disqualified from driving. For the rest of the cases, the drivers in 601 cases were issued with an arrest warrant by the court for failing to appear in court as scheduled, and another 51 cases were being scheduled for court hearing. For cases where warrants were issued, 467 warrants (about 78%) had been executed and the drivers concerned had been disqualified eventually. For the remaining 134 cases where the arrest warrants were still in force, they involved 127 drivers including 60 drivers who were holding commercial vehicle driving licences. The above figures reveal that, since the coming into force of the Amendment Ordinance, the great majority of summonses issued under the DOP System have been dealt with successfully.

(2) The Amendment Ordinance has introduced the "deemed served" mechanism. Under this mechanism, if a driver has incurred 15 or more DOPs due to traffic offences, the court will serve the driver concerned a summons by ordinary post to his address registered under TD. If the driver concerned fails to appear in his disqualification hearing, the court will serve the summons again by registered post, which will be deemed to have been served even if it is returned undelivered. If the

driver concerned still does not appear in court, an arrest warrant will be issued by the court. CforT will also refuse issue, reissue or renewal of the relevant driving licences.

As shown by the figures in part one of this reply, following the enactment of the Amendment Ordinance, the great majority of summonses issued under the DOP System have been dealt with successfully through court hearing and execution of the arrest warrants by the Police, and the drivers concerned have been disqualified. In addition, since the coming into force of the Amendment Ordinance, CforT had refused the issue, reissue and renewal of the driving licences of 74 drivers against whom an arrest warrant had been issued, and 64 of them been disqualified by the court. We believe the measures introduced by the Amendment Ordinance have effectively improved the situation where drivers continue to drive on roads after they have accumulated 15 or more DOPs. We will continue to monitor the situation.

(3) The Secretary for Justice will make prosecution decision on a case by case basis in accordance with the established principles in the Statement of Prosecution Policy and Practice. We understand that the authorities concerned may not prosecute a case if there is insufficient evidence or the public interest does not require a prosecution.

At present, drivers may apply for a Certificate Relating to Previous Conviction (the Certificate) from the Police under section 75(5) of the Road Traffic Ordinance (Cap.374) to obtain the following information:

- (a) previous conviction record under the Road Traffic Ordinance (Cap. 374) in the past ten years;
- (b) payment record under the Fixed Penalty (Criminal Proceedings) Ordinance (Cap.240) in the past three years;
- (c) record of driving-offence points under section 3(2) of the Road Traffic (Driving-offence Points) Ordinance (Cap.375) in the past five years; and
- (d) record of Disqualification Order issued under section 8 of the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) in the past ten years.

Drivers may authorise a person to collect the Certificate on their behalf when submitting application.

Employers or vehicle owners may consider requiring the candidates to produce such a Certificate when recruiting drivers, and request the drivers employed to produce their DOP records from time to time.

As to whether the authorities concerned would offer other channels for vehicle owners to inspect the driving licence records of their drivers, or providing a "black list" for employers' or vehicle owners' reference, we have to handle this issue carefully as the relevant records involve personal data which is protected by the Personal Data (Privacy) Ordinance (Cap.486). We are of the view that the existing arrangement is able to strike a balance among the needs of different parties. That said, we will continue to monitor the situation and will explore whether there are better means to meet the needs of the parties concerned.

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