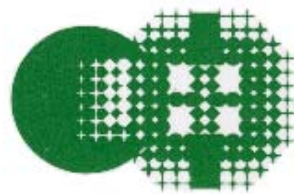


DIRECT INVESTIGATION REPORT

DRIVING-OFFENCE POINTS SYSTEM

September 2010



Office of The Ombudsman
Hong Kong

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EXECUTIVE SUMMARY

Direct Investigation Driving-offence Points System

Background

The driving-offence points (“DOP”) system was introduced in 1984 under the Road Traffic (Driving-offence Points) Ordinance, Cap. 375 (“the DOP Ordinance”) to deter inappropriate driving behaviour. A driver shall incur DOP when he is convicted in court or becomes liable to a fixed penalty in respect of a traffic offence in the Schedule of the DOP Ordinance. On accumulation of 15 DOP within two years, the driver is liable to be disqualified by the court from driving.

2. In 2008, the media reported that drivers with 15 or more DOP were able to evade court summonses by providing untrue or incomplete addresses to the Transport Department (“TD”) or refusing to acknowledge receipt of the summonses. Without successful delivery of summons, the court could not disqualify such drivers from driving.

3. In February 2009, the Administration proposed to amend the DOP Ordinance to plug the loopholes.

4. Concerned that the Administration still seemed unable to promptly disqualify wilful evaders, The Ombudsman decided to initiate a direct investigation to examine:

- (a) the loopholes in the DOP system;
- (b) the effectiveness of the remedial measures taken by the Administration;
and
- (c) other measures, if any, for further improvement.

The 2009 Amendment

5. The Administration’s legislative amendment (“the 2009 Amendment”) took effect on 29 May 2009. Following the amendment, summonses are served, as before, by ordinary post first. However, if the driver does not appear in court, the summons will be served again by registered post to the driver’s last known address. The summons will be deemed served, even if it is returned undelivered. If the driver still does not appear in court, the court will issue a non-appearance arrest warrant, upon which the Police will step in to make contact with the driver and ask him to surrender to a Police station or to the court. The Commissioner for Transport (“C for T”) has also been empowered to refuse to issue, reissue or renew the driving licence of the driver who has been served a summons and has failed to appear in court for it.

The Administration’s Review

6. The Administration reviewed the 2009 Amendment after six months and concluded that it was effective in resolving the evasion problem in the service of summons as most of the drivers concerned had been brought to the court for disqualification hearings.

7. The number of drivers with 15 or more DOP who appeared at first and second hearings had risen from 2,392 (accounting for 83% of summonses issued) in 2008¹ to 2,756 (accounting for 88% of summonses issued) in 2009². The number of non-appearance arrest warrants issued had also increased from 65 (accounting for 2% of summonses issued) in 2008³ to 358 (accounting for 11% summonses issued) in 2009⁴.

Our Observations

Plugging of Loopholes

8. After the 2009 Amendment, there remain a considerable number of recalcitrant drivers who do not appear in court for disqualification hearing despite the non-appearance arrest warrants issued against them.

9. As at May 2009, there were 536 recalcitrant drivers to whom summonses could not be served. After the 2009 Amendment, summonses were deemed served to all those drivers. Yet, as at 31 January 2010, 210 of those drivers still had not appeared in court for disqualification hearing even though they had all been issued non-appearance warrants. Despite the 2009 Amendment, they could not be disqualified from driving until they show up for court hearing or their driving licences expire.

No Disincentive for Evasion

10. There is no provision under the DOP Ordinance for additional penalty on wilful evaders. This is unfair to those drivers who readily accept disqualification.

11. There is also no incentive for compliance, such as acceptance of drivers' plea of guilty and acceptance of disqualification by letter to the court.

Limited Effect of Non-renewal

12. Through the 2009 Amendment, C for T is empowered to refuse renewal of a driving licence where the driver has been served a summons under the DOP system and failed to appear in court for it. However, most driving licences are valid for as long as ten years. The prospect of non-renewal, therefore, has limited deterrent effect.

Need for Further Streamlining

13. In the course of our inquiry, TD has reduced the processing time of disqualification cases from 14 to 7 weeks. We commend TD's efforts and consider that TD should continue to monitor and streamline its procedures and practices for efficiency and effectiveness.

¹ 29 May – 31 December 2008

² 29 May (date of enactment of the 2009 Amendment) – 31 December 2009

³ Same as Footnote 1

⁴ Same as Footnote 2

Need for Monitoring

14. Currently, the statistics maintained by TD on road traffic accidents do not cover the number of accidents involving drivers with 15 or more DOP. Such statistics are necessary for providing timely indication of the effectiveness of the DOP system in deterring inappropriate driving behaviours. TD should liaise closely with the Police with a view to systematically maintaining statistics on traffic accidents involving drivers with DOP and keep the situation under review.

Conclusion and Recommendations

15. We commend the Administration for promptly devising measures in response to community concern over the loopholes in the DOP system and for expediently reducing the processing time for disqualification. The 2009 Amendment reflects the Administration's commitment to tackling the problems. However, the Administration has not arrived at a complete solution to the problems relating to evasion of law enforcement.

16. We cannot over-emphasise the importance of the rights of citizens to road safety. Tougher measures against offenders are called for if there is evidence that the current scheme allows drivers posing a threat to road safety to slip through.

17. The Ombudsman recommends that the Administration:

- (a) consider legislation to empower the court to impose a longer disqualification period on evidence of any deliberate attempt by drivers to frustrate law enforcement;
- (b) consider accepting drivers' guilty plea by letter to the court in the same spirit as the fixed penalty system;
- (c) consider empowering C for T to refuse issue and renewal of other licences, such as vehicle licences, to any driver who evades court attendance or Police arrest;

18. The Ombudsman also recommends that TD:

- (d) streamline its procedures and practices to further shorten the disqualification process; and
- (e) systematically maintain and regularly analyse statistics on drivers with DOP, including related accidents, with a view to identifying problems in the DOP system for review and early remedy.

1

INTRODUCTION

BACKGROUND

1.1 In June 2008, the media reported widely that in the previous two years, many drivers with 15 or more driving-offence points (“DOP”) could still keep their licences and drive, on account of the Transport Department (“TD”)’s difficulty in revoking their licences. Reportedly, some drivers had evaded summonses to court by providing untrue or incomplete addresses to TD or refusing to acknowledge receipt of the summonses.

1.2 As this would defeat the purpose of the DOP system and in turn endanger road users, The Ombudsman started in July 2008 to inquire into the matter and closely monitor the Administration’s efforts to rectify the anomaly, including its plan to introduce legislative amendments.

1.3 On 4 February 2009, the Administration introduced the Road Traffic (Driving-offence Points) (Amendment) Bill 2009 (“the Amendment Bill”) into the Legislative Council. The Amendment Bill, however, tackled only some of the problems in the DOP system, namely, those associated with the service of summonses to drivers who have incurred 15 or more DOP, but not the problems associated with wilful evaders who refuse to appear in court.

1.4 The Ombudsman is concerned that despite the measures introduced, the Administration seems unable to promptly disqualify such evaders.

SCOPE OF INVESTIGATION

1.5 Against this background, The Ombudsman decided on 19 March 2009 to initiate a direct investigation to examine the DOP system in depth. Specifically, we were to probe into:

- (a) the loopholes in the DOP system;
- (b) the effectiveness of the remedial measures taken by the Administration; and
- (c) other measures, if any, for further improvement.

1.6 The Amendment Bill was passed by the Legislative Council on 25 May 2009. The new legislation (“the 2009 Amendment”) took effect on 29 May 2009.

METHODOLOGY

1.7 We have sought and studied information from TD, including departmental circulars and guidelines, case files and statistical data, and met TD representatives for clarification and elaboration. We have studied relevant Legislative Council papers. We have also considered TD’s research on the practices of DOP systems in other jurisdictions and its paper on review of the implementation of the 2009 Amendment.

INVESTIGATION REPORT

1.8 On 17 June 2010, we sent our Draft Investigation Report to the Commissioner for Transport (“C for T”) for comments. Having duly considered and incorporated his views, we issued this Final Report on 7 September 2010.

2

THE DOP SYSTEM

OVERALL

2.1 The DOP system was introduced in August 1984 under the Road Traffic (Driving-offence Points) Ordinance, Cap. 375 (“the DOP Ordinance”) to deter inappropriate driving behaviour.

2.2 Under the system, a person shall incur the appropriate number of DOP when he is convicted in court or becomes liable to a fixed penalty in respect of a traffic offence in the Schedule of the DOP Ordinance which has direct bearing on road safety (e.g. five DOP for careless driving, three to ten DOP for speeding). A driver who has accumulated 15 DOP within two years is liable to be disqualified from driving by the court under section 8 of the DOP Ordinance.

2.3 The number of summonses issued for disqualification hearing and the number of disqualification orders made between 2004 and 2009 is shown in **Table 1**.

Table 1 Rate of disqualification (position as at 30 April 2010)

	2004	2005	2006	2007	2008	2009
Number of summonses applied to court	3,236	3,258	4,106	4,513	5,104	4,842
Number of disqualification orders made in respect of summonses applied in the year	3,034	3,145	3,964	4,306	4,846	4,572
Number of withdrawn cases[#]	168	64	46	70	60	27
Remaining cases*	34	49	96	137	198	243
Disqualification rate (%)	99%	98%	98%	97%	96%	95%

[#] *These summonses were withdrawn because the DOP or traffic offences in the summonses had been cancelled; the offender had deceased or emigrated from Hong Kong or had been proven to be suffering from serious or permanent disability.*

^{*} *These include: summonses which have been issued with warrant; summonses which cannot be delivered as the defendants are not in Hong Kong or are in prison; and summonses which have been scheduled for disqualification at a later date.*

PROCEDURES AND PRACTICES

2.4 The DOP of drivers are monitored by TD. For a driver to be disqualified from holding a driving licence, the following steps have to be taken.

2.5 Register of Points. TD maintains a computerised register of DOP incurred by drivers. Once a driver is convicted of a scheduled offence or, alternatively, he becomes liable to a fixed penalty in respect of a scheduled offence, the corresponding DOP are recorded against him in the register.

2.6 Application to court. TD conducts checks on the weekly reports on DOP records. Once the computer generates an alert of a driver having incurred 15 or more DOP within two years, TD will verify the records internally and with the Police. TD will then lay the information before the court, applying, by way of complaint, for the issue of summons under section 8(2) of the DOP Ordinance.

2.7 Service of summons. Summonses are served by ordinary post first. Prior to the 2009 Amendment (**paras. 2.18 and 2.19**), if the driver concerned failed to appear in court on the date required by the summons, the summons would be served again by hand by court bailiff or the Police. If the court was satisfied that the summons had been served on the driver and he still did not appear in court, the court would issue a non-appearance arrest warrant.

2.8 Following the 2009 Amendment, the summons will be served by ordinary post first and if the driver does not appear in court during the first scheduled hearing, the summons will be served by registered post to the driver's last known address. It will be deemed served, even if it is returned undelivered¹. If the

¹ *Section 14A(5) of the DOP Ordinance provides that "If the summons is served by registered post, the summons is deemed to have been served at the time at which it would have been delivered in the ordinary course of post, even if it is returned through the post undelivered to the person to be served."*

driver still does not appear in court, the court will issue a non-appearance arrest warrant.

2.9 The details of the arrest warrant will be accessible to all frontline police officers. To track down the driver, the Police will send letters to ask him to surrender to a Police station or to the court. The Police will also try to locate the driver at the reported address(es) or any address(es) that have surfaced during subsequent enquiries.

2.10 Hearing of summons. Disqualification proceedings normally take place four weeks after the service of the summons. During that period, TD conducts checks and drafts documents in preparation for the disqualification proceedings. Upon hearing of the case, if satisfied that the circumstances for disqualification apply to the driver concerned, the court will order the driver to be disqualified from holding or obtaining a driving licence under the DOP Ordinance for a period of three or six months, taking into consideration factors such as previous instances of conviction or disqualification². Upon conviction, the driver will surrender the driving licence to the court.

TIMELINE FOR DISQUALIFICATION

2.11 Previously, at least 14 weeks were needed in total for TD to verify records and for the court to order disqualification (**paras. 2.4 – 2.10**) (**Table 2**). In July 2010, TD advised this Office that it had taken steps to shorten the processing time. Where necessary, it would liaise with the Judiciary to arrange additional court sessions for hearing of DOP summons. It now takes a minimum of seven weeks for TD to verify records and for the court to order disqualification (**Table 3**).

² Section 8(3) of the DOP Ordinance stipulates that the magistrate shall order a driver to be disqualified from holding or obtaining a driving licence –

- “(a) for a period of 3 months from the date of the order if no previous disqualification has been imposed on him under this Ordinance; and*
- (b) for a period of 6 months from the date of the order if any previous disqualification has been imposed on him under this Ordinance, unless the magistrate is satisfied, having regard to all the circumstances not excluded by subsection (4), that there are grounds to order a shorter period of disqualification or not to order him to be disqualified.”*

Table 2 Time taken to disqualify a driver – BEFORE review

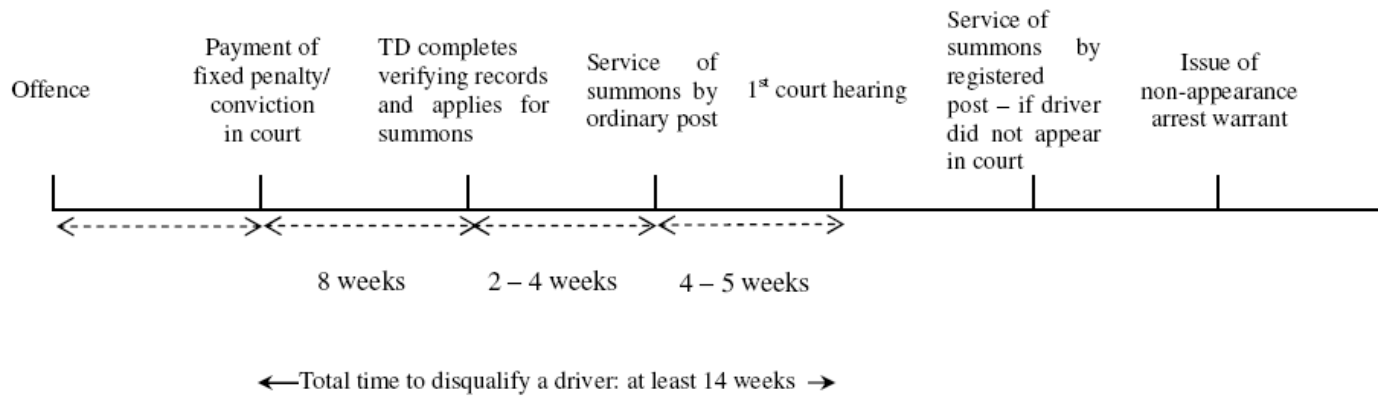
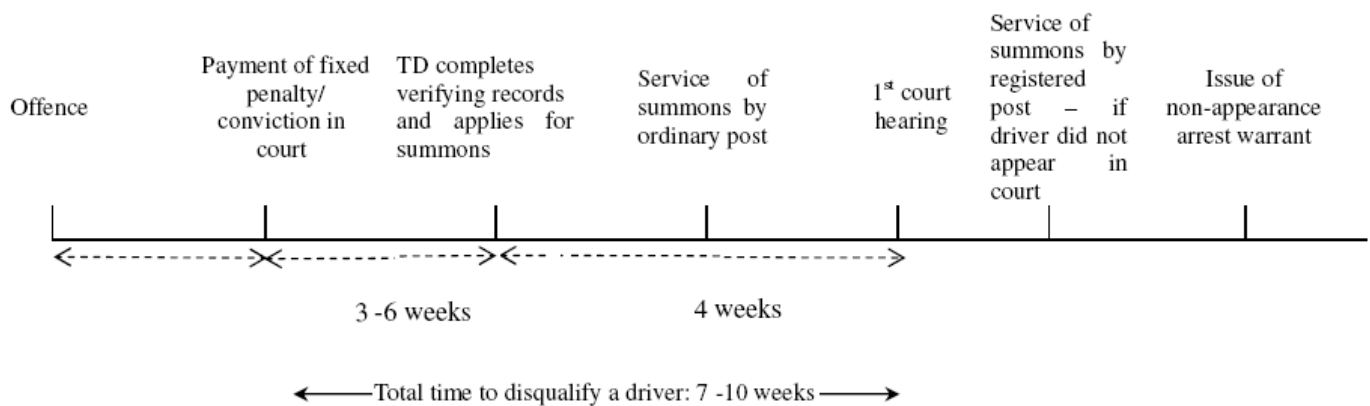


Table 3 Time taken to disqualify a driver – AFTER review



2.12 TD has conducted a tracking study of the time taken to effect disqualification (**Table 4**). As at 1 December 2008, there were 2,309 drivers with 15 or more DOP who were yet to be disqualified. 1,064 (or 46%) of these drivers were issued with disqualification orders within the subsequent three months; 282 (or 12%) within four to six months; 290 (or 13%) within seven to ten months; and 179 (or 8%) within 11 to 12 months. The number of drivers who were yet to be issued with disqualification orders after 12 months was 494 (or 21%). Among the 2,309 drivers, 70 (or 3%) were involved in accidents causing injuries of various degrees during the six-month period, from 1 December 2008 to 31 May 2009.

Table 4 Time taken to disqualify drivers

Total number of drivers with 15 or more DOP (as at 1 December 2008)		2,309	100%
Number of drivers disqualified	within the next 3 months	1,064	46%
	within 4 to 6 months	282	12%
	within 7 to 10 months	290	13%
	within 11 to 12 months	179	8%
Number of drivers not yet disqualified after 12 months (as at 30 November 2009)	Non-appearance arrest warrant issued	474	20%
	Pending issue of non-appearance arrest warrant or other action	20	1%

2.13 Long processing time is not conducive to protecting other road users or deterring drivers from engaging in inappropriate driving behaviours. TD should continue to monitor the situation and try to reduce the processing time as far as practicable.

CORRELATION BETWEEN DOP AND TRAFFIC ACCIDENTS

2.14 Generally speaking, drivers with 15 or more DOP are those who repeatedly and frequently demonstrate inappropriate driving behaviours. Systematic recording and analysis will help reveal the extent to which they are more prone to driving accidents than drivers who have no DOP. TD has not conducted any such analysis on the correlation between drivers' DOP and their frequency of involvement in traffic accidents. Upon our request, TD has conducted a snapshot study based on its raw data on DOP and Police records.

2.15 According to TD, among the 740 drivers who had incurred 15 or more DOP but could not be disqualified because of unsuccessful service of summonses as at 30 June 2008, 12 (1.6%) were involved in traffic accidents causing casualties between April and June 2008 (**Table 5**).

Table 5 Accidents in April to June 2008, involving the 740 drivers who at the end of June 2008 carried 15 or more DOP but were not yet disqualified from driving

Month	Severity of accident		
	Fatal ³	Serious ⁴	Slight ⁵
April 2008	0	1	2
May 2008	0	2	2
June 2008	0	1	4
TOTAL	0	4	8

2.16 This percentage is significantly higher than that for all driving licence holders. Between April and June 2008, 5,749 (0.3%) out of the 1,757,000 holders of full driving licence were involved in traffic accidents.

2.17 The above statistics offer a snapshot of the accident rates of drivers with 15 or more DOP. They are by no means representative of the full picture. TD should systematically collect and analyse statistics on how traffic offenders under the DOP system impact on road safety and law enforcement. Such analysis is important for the monitoring of the DOP system and for reviewing its effectiveness in deterring inappropriate driving behaviours.

The 2009 AMENDMENT

2.18 The 2009 Amendment took effect on 29 May 2009 to address two problems relating to the service of summons, namely:

- (a) *Failure to serve summonses.* Before the enactment of the legislative amendments, where a summons had not been successfully served on the driver, the court could not issue an arrest warrant under section 18A of the Magistrates Ordinance,

³ A “fatal” accident is defined as one in which one person is killed immediately, or is injured and subsequently dies of his injuries within 30 days of the accident.

⁴ A “serious” accident is defined as one in which one or more person(s) are injured and detained in hospital for more than 12 hours.

⁵ A “slight” accident is defined as one in which one or more person(s) are injured but not to the extent that detention in hospital is required for more than 12 hours.

Cap. 227⁶. Without a warrant, no arrest was possible since the Police could not arrest a person merely on the ground that there had been an unserved summons against him. This loophole enabled evaders to avoid court hearing and disqualification by providing false or inaccurate addresses or refusing to acknowledge receipt of the summonses.

- (b) *Inability to refuse issuance of driving licence.* Because the law did not empower the C for T to refuse to issue, reissue or renew the driving licence of a person until he was disqualified by a court of law, drivers who had accumulated 15 or more DOP might still apply for issue, reissue or renewal of their driving licences. While knowing that those drivers had incurred 15 or more DOP or suspecting that they had been avoiding summonses deliberately, C for T was obliged by law to issue, reissue or renew their driving licences.

2.19 The Amendment, therefore, provides that a summons served by registered post to the drivers' last known address shall be deemed to have been satisfactorily delivered. It also empowers C for T to refuse to issue, reissue or renew a driving licence, if the driver has been served a summons and has failed to appear in court for it.

2.20 Nevertheless, the Amendment also stipulates that the court shall not disqualify a driver in his absence. According to the Administration, the provision balances the interests of different parties, including the need to reflect the prevailing court practice and drivers' right to fair hearing under Article 10 of the Bill of Rights. It aims to protect those drivers who are genuinely unaware of the disqualification action against them as well as to enable professional drivers to state their case in court as their livelihood may be adversely affected by a disqualification order.

⁶ Section 18A of the Magistrates Ordinance provides that –

“Subject to sections 18E and 19A(5), in any case where a summons has been served on the defendant a reasonable time before the hearing and at the time and place appointed for the hearing only the complainant or informant appears, the magistrate may issue a warrant to arrest the defendant and bring him before a magistrate and adjourn the hearing for such time as he may think fit.”

3

THE ADMINISTRATION'S REVIEW

BACKGROUND

3.1 During the Legislative Council's deliberation of the Amendment Bill in May 2009, the Administration undertook to review the effectiveness of the amendments in tackling the evasion problem in the service of summons six months into their implementation. On 26 February 2010, the Transport and Housing Bureau ("THB") submitted a report to the Legislative Council.

THE ADMINISTRATION'S REVIEW

3.2 THB concluded that the 2009 Amendment is effective in resolving the evasion problem in the service of summons and has succeeded in bringing most of the drivers concerned to the court for disqualification hearings. Some of the statistics featured below are excerpted from THB's report.

"Deemed Served" Provision and Non-Appearence Arrest Warrant

3.3 In **Table 6**, we compare the rates of drivers' appearance at court hearings, before and after the 2009 Amendment. Between 29 May and 31 December 2008, 2,889 cases of new DOP summons were issued. During the corresponding

period in 2009 (i.e. between 29 May and 31 December 2009), 3,119 cases of new DOP summons were issued. Of those cases, the number of drivers with 15 or more DOP who appeared at first and second hearings had risen from 2,392 (accounting for 83% of the summonses issued) in 2008 to 2,756 (accounting for 88% of the summonses issued) in 2009. The number of non-appearance arrest warrants issued had also increased from 65 (accounting for 2% of the summonses issued) in 2008 to 358 (accounting for 11% of the summonses issued) in 2009. The figures show that there was improvement after the 2009 Amendment.

Table 6 Drivers' appearance rates at first and second hearings before and after the 2009 Amendment

Period	29 May – 31 December 2008ⁱ (Position as at 31 January 2009)	29 May - 31 December 2009ⁱⁱ (Position as at 31 January 2010)
Summonses Issued	2,889 (100%)	3,119 (100%)
(a) Appeared at first hearing (i.e. after service of summonses by ordinary post)	2,055 (71%)	2,528 (81%)
(b) Appeared at second hearing (i.e. after service by hand or registered post)	337 ⁱⁱⁱ (12%)	228 ^{iv} (7%)
(c) Pending scheduled hearings	432 ^v (15%) (as at 31 Jan 09)	5 (0.2%) (as at 31 Jan 10)
(d) Failed to appear at scheduled hearing and to whom warrants have been issued	65 ^{vi} (2%) (as at 31 Jan 09)	358 ^{vii} (11%) (as at 31 Jan 10)
(e) Of (d), subsequently appeared before the court and were disqualified	22 (34% of (d)) (as at 31 Jan 09)	189 (53% of (d)) (as at 31 Jan 10)

ⁱ These statistics were provided by TD upon our request.

ⁱⁱ These statistics were reported in THB's report.

ⁱⁱⁱ The defendant appeared at the second hearing after summons had been delivered by personal service.

^{iv} The defendant appeared at the second hearing after summons had been delivered by registered mail.

^v These refer to cases either pending scheduled hearings or waiting for re-service of summonses by personal service.

^{vi} Warrants were issued by court after summonses had been served to the defendants by hand.

^{vii} Warrants were issued by court after summonses had been deemed served.

Recalcitrant Drivers

3.4 When the loophole in the service of DOP summonses was reported widely in the media in June 2008, there were 740 recalcitrant drivers to whom summonses could not be served over the years. As at May 2009, before the 2009 Amendment was enacted, summonses remained unserved to 536 of these drivers. Pursuant to the enactment, the summonses to all such drivers were deemed served when they were served by registered post. As at 31 January 2010, 320 (60%) of the 536 drivers attended disqualification hearing and were disqualified from driving; six (1%) were outside Hong Kong and could not be served summonses or warrants; while the remaining 210 (39%) had not yet appeared in court for disqualification hearing even though they had all been issued non-appearance arrest warrants.

Power to Refuse Licence Issue, Reissue and Renewal

3.5 As at 31 January 2010, C for T had refused applications from 44 drivers for issue or renewal of driving licences as they had failed to appear in court as required by summons. Among them, 41 have been disqualified from driving as ordered by the court.

4

PRACTICES IN OTHER JURISDICTIONS

BACKGROUND

4.1 At the suggestion of this Office, TD conducted research on the practices of the DOP systems in other jurisdictions to understand how they disqualify a driver from holding a driving licence as a result of conviction of traffic offences. TD is specifically requested to explore the possibility of adopting “automatic disqualification” in Hong Kong in the light of experience elsewhere.

4.2 The nine jurisdictions under study are the United Kingdom (“UK”), New South Wales and Queensland of Australia, New Zealand, Singapore, Ontario of Canada, New York and Wisconsin of the United States of America, and the Mainland.

AUTOMATIC DISQUALIFICATION

4.3 Except UK, disqualification in these jurisdictions is effected administratively, without having to go through court proceedings. Except UK and the Mainland, suspension of driving licence is imposed by means of a notice served to the driver, informing the driver the start date of the licence suspension. The driving licence is required to be surrendered to the authority, other than in Australia (New South Wales and Queensland) and the United States (New York and Wisconsin). In UK, disqualification is ordered by the court. In the Mainland,

the driver is informed of the disqualification upon his own checking of his own demerit points, upon renewal of driving licence or upon being stopped on the road.

Service of Notice

4.4 Among the seven jurisdictions serving notices of suspension, the notice in New South Wales and Queensland, Singapore, Ontario, New York and Wisconsin is first served by ordinary mail to the registered address of the driver. The notice in New Zealand is served by hand, and if unsuccessful, the Police will serve the notice in person on the road. In Singapore, if the first service of notice is unsuccessful, the notice will be served again by registered mail, and if there is still no response, then it will be served by hand.

Overcoming the Problems of Non-delivery

4.5 In Ontario, New York and Wisconsin, when service of notice by mail fails, the disqualification will be triggered. To allow for drivers who genuinely have not received the notice, the police will not prosecute them when they are caught driving for the first time while the disqualification order is in force. Instead, the police will serve the driver a notice of disqualification on the spot and make due record.

4.6 In Ontario, the suspension period will only start when the driver surrenders his licence. If the driver does not surrender his licence within two years, the suspension will be nullified. In New South Wales, Queensland, New Zealand and Singapore, disqualification will not commence until the notice is duly served.

Addressing Driving Needs

4.7 To cater for genuine needs for driving during suspension, drivers in New Zealand, New York and Wisconsin can apply for a temporary licence or restricted/occupational licence while their licences are being suspended. Applications are considered by the court on a case-by-case basis and, if approved, will be subject to very strict conditions governing the time and route of the use of the licence.

4.8 In New South Wales, instead of immediate suspension of licence, the driver can choose to commit to good behaviour for a 12-month period. But he/she will have to serve a disqualification period twice as long as the original one if he/she incurs two or more DOP during the 12-month period⁷.

TD'S OBSERVATIONS

4.9 TD considers automatic disqualification in the jurisdictions concerned to be apparent rather than real. In four jurisdictions, actual suspension of driving licence will not commence, until the notice is duly served. In three other jurisdictions, suspension of licence will start on the date specified in the notice, irrespective of whether the notice has successfully served. However, even if the driver is caught driving while the disqualification order is in force, the driver will not be prosecuted by the police.

4.10 TD considers it not necessary to further amend the DOP Ordinance to implement an "automatic disqualification" system in Hong Kong. In its opinions, the "deemed service" provision since 29 May 2009 has resolved the circumvention problem in the service of DOP summons and has worked effectively in bringing the drivers concerned to the court for a hearing on the offences committed.

⁷ *In New South Wales, an accumulation of 12 points will lead to suspension of driving licence. Individual offence points range from 1 to 7.*

5

OUR OBSERVATIONS

5.1 Having regard to the problems associated with the DOP system, the 2009 Amendment and the practices in other jurisdictions, we have the following observations.

PLUGGING OF LOOPHOLES

5.2 The 2009 Amendment has mended the loopholes in the service of summons. By providing for “deemed service” of summons, the issue of non-appearance arrest warrant is no longer held back by failure in the service of summons to the last known address of the driver.

5.3 The statistics show that there have indeed been improvements in the figures after the 2009 Amendment. The first and second hearing attendance has increased by 5 percentage points, from 83% before the 2009 Amendment to 88% after the 2009 Amendment (**para. 3.3**). Besides, the number of recalcitrant drivers has also decreased, from 536 drivers before the 2009 Amendment to 210 after the 2009 Amendment (**para. 3.4**).

NO DISINCENTIVE FOR EVASION

5.4 Section 8(3) of the DOP Ordinance stipulates that the Magistrate shall order a driver to be disqualified from driving for a period of three months (if there is no previous disqualification) and for a period of six months (if there is previous disqualification). No additional penalty may be imposed even if there is proof that the driver is a wilful evader. This is unfair to those drivers who readily accept

disqualification.

5.5 To entirely remove the temptation to evade summonses or court attendance, the Administration should consider legislation to empower the court to impose a longer disqualification period on evidence of any deliberate attempt to frustrate law enforcement. To encourage compliance, the Administration should also consider accepting drivers' guilty plea and acceptance of disqualification by letter to the court in the same spirit as the fixed penalty system, which would save the drivers' time.

LIMITED EFFECT OF NON-RENEWAL

5.6 Through the 2009 Amendment, C for T is empowered to refuse renewal of a driving licence where the driver has been served a summons under the DOP system and failed to appear in court for it. However, most driving licences are valid for as long as ten years. The prospect of non-renewal, therefore, has limited deterrent effect.

5.7 A more effective way of deterring such drivers from evading court attendance or Police arrest may be to empower C for T to refuse issue and renewal of other licences, including vehicle licences (which are normally renewable every 12 months), to any such driver.

5.8 Some may see this measure as affecting the rights of those who are connected one way or another to the driver (for example, those who use a vehicle registered in the driver's name). However, in such circumstances, those affected persons should urge the driver to remedy the situation by turning in.

NEED FOR FURTHER STREAMLINING

5.9 The key to an effective DOP system is the immediacy of the punishment to the offender. The minimum of 14 weeks between a driver's accumulation of 15 or more DOP and his disqualification from driving was too long (**paras. 2.11**). We are glad that, in the course of our inquiry, TD has improved the situation by reducing the processing time to a minimum of seven weeks. We urge TD to continue monitoring the situation and reviewing its procedures and practices for

efficiency and effectiveness.

MONITORING

5.10 TD maintains statistics on road traffic accidents with breakdown. However, these do not cover the number of accidents involving drivers with 15 or more DOP. The casualty figures in **paras. 2.15 – 2.16** have been specially generated by TD at our request. In any case, those figures represent only a snapshot of the full picture.

5.11 For proper monitoring, TD should liaise closely with the Police with a view to systematically maintaining statistics on traffic accidents involving drivers with DOP and keep the situation under review. This would give TD timely indication of the effectiveness of the DOP system in deterring inappropriate driving behaviours in order to ensure road safety.

PRACTICES ELSEWHERE

5.12 We appreciate that there are pros and cons in different systems. We agree with TD's observations and comments on the practices elsewhere as its study revealed. We note, too, that the Administration is not in favour of adopting those practices because of practical concerns and the need to give drivers fair court hearing. That said, we urge the Administration to continue to keep in view practices in other jurisdictions for reference in improving its own DOP system.

6

CONCLUSION AND RECOMMENDATIONS

CONCLUSION

6.1 We commend the Administration for promptly devising measures in response to community concern over the loopholes in the DOP system and for expediently reducing the processing time for disqualification. The 2009 Amendment reflects the Administration's commitment to tackling the problems. However, the Administration has not arrived at a complete solution to the problems relating to evasion of law enforcement. For instance, as at 31 January 2010, some 210 of the 536 drivers to whom summonses could not be served over the years before the 2009 Amendment and who had been issued non-appearance arrest warrants after the 2009 Amendment, had yet to appear in court for disqualification hearing (**para. 3.4**).

6.2 We are entirely with the Administration in respecting drivers' right to fair hearing. However, we cannot over-emphasise the importance of the rights of citizens to road safety and to life and limb. A right balance must be struck between the offending drivers and innocent road users at risk from them. Tougher measures against offenders are called for if there is evidence that the current scheme allows dangerous drivers to slip through.

RECOMMENDATIONS

6.3 In this light, The Ombudsman recommends that the Administration:

- (a) consider legislation to empower the court to impose a longer disqualification period on evidence of any deliberate attempt by drivers to frustrate law enforcement (**para. 5.5**);
- (b) consider accepting drivers' guilty plea and acceptance of disqualification by letter to the court in the same spirit as the fixed penalty system (**para. 5.5**);
- (c) consider empowering C for T to refuse issue and renewal of other licences, such as vehicle licences, to any driver who evades court attendance or Police arrest (**para. 5.7**);

6.4 The Ombudsman also recommends that TD:

- (d) streamline its procedures and practices to further shorten the disqualification process (**para. 5.9**); and
- (e) systematically maintain and regularly analyse statistics on drivers with DOP, including related accidents, with a view to identifying problems in the DOP system for review and early remedy (**para. 5.11**).

ACKNOWLEDGEMENT

6.5 The Ombudsman thanks C for T and his staff for their assistance throughout this investigation.

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