

**BILLS COMMITTEE ON
ROAD TRAFFIC LEGISLATION (AMENDMENT) BILL 2001**

Follow-up to Meeting on 15 December 2001

PURPOSE

This paper sets out the Administration's response to the issues raised by Members in relation to the Driver Improvement Scheme (DIS).

BACKGROUND

2. At the meeting of the Bills Committee on Road Traffic Legislation (Amendment) Bill 2001 held on 15 December 2001, Members requested the Administration to :-

- (a) consider imposing a penalty term for failure to issue an attendance certificate or course certificate by a driving improvement school; and
- (b) consider allowing holder of a probationary driving licence or a driving licence to drive Government vehicles to attend a driver improvement course.

Penalty for failure to issue an attendance certificate or course certificate by a driving improvement school

3. It is the intention of the Administration to safeguard the interest of the course participants in the cases of revocation or termination of the designation of driving improvement schools. It has therefore been laid down clearly in the proposed sections 102C(9) and 102D(3) of the Bill that the proprietor of a driving improvement school has to refund a person the fee he has paid for taking a driving improvement course but which has not been taken due to the revocation or termination of the designation of that school.

4. In addition to the legislative requirement, the Administration will also administratively require the proprietor of the driving improvement school to furnish the Administration with a first demand Banker's Guarantee issued by an approved bank. This serves as a security for the school's due and faithful performance of the designation, which includes the proper and timely issue of attendance and course certificates. In the event the designation of a driving improvement school is revoked or terminated and where the proprietor cannot be traced or becomes insolvent, the bank issuing the Banker's Guarantee will be required to refund the course participants in accordance with the proposed section 102C(9) or 102D(3).

5. In cases where the school has become unable to issue attendance certificates or course certificates to those people who have duly completed the course, the Administration will arrange to have the certificates issued and recover the costs incurred from the Banker's Guarantee. In addition, driving improvement schools will be required under the code of practice to issue attendance or course certificates to course participants immediately after the completion of each course.

6. In order to set out more clearly the protection provided for the course participants regarding the issue of attendance or course certificates, we propose to add a new sub-clause under section 102E stipulating that the Commissioner for Transport may arrange for the issue of attendance or course certificates where a driving improvement school fails to issue such certificates and that the proprietor of the school or, in the case of a school the designation of which has been revoked or terminated, the last proprietor, would be responsible for the cost so incurred. (The proposed new sub-clause is set out in **Annex**.) Under the above mechanism, the interest of the course participants are safeguarded and any cost so incurred would be recovered from the proprietor in question. As such, the Administration is of the view that it is not necessary to impose additional penalty on the proprietor of the driving improvement school for failing to issue attendance or course certificates.

Eligibility of holder of a probationary driving licence or a driving licence to drive Government vehicles to attend driving improvement course

7. Having taken into account the comments of the Bills Committee and to maximise the benefits of DIS, the Administration considers that there is no major difficulty in extending DIS to probationary driving licence holders. In this connection, the Administration proposes to amend section 102B(3)(a) of the Bill accordingly.

8. As for holders of driving licences to drive Government vehicles, it is worth noting that while there are at present some 29,200 persons having a driving licence for Government vehicles, more than 99.6% of them also possess ordinary driving licences and are already covered by the existing scope of the DIS. As at 1 September 2001, there are only 96 Government vehicle driving licence holders who do not at the same time possess driving licence for any other civilian vehicles. These drivers are mainly responsible for driving special types of vehicles, and most of which are police vehicles and fire engines. Given the control of such vehicles particularly in emergency situations would require advanced and special driving skills, there are tailor-made training courses for these drivers provided by the respective departments. In addition, refresher driving courses and advanced driving courses are organised periodically for these drivers to maintain and improve their driving skills. As the skills required for driving these vehicles are different from those for ordinary vehicles, DIS courses would not be able to cater for the need of these drivers. The Administration therefore does not see a strong need to extend the application of DIS to such drivers.

Committee Stage Amendments (CSAs)

9. As discussed at the last meeting, the Administration proposes to amend the proposed section 72A of the Bill such that a court may impose a lighter penalty on a person who has been directed to attend a DIS. The proposed wording of the amended section 72A, together with other proposed CSAs, are at **Annex**.

ROAD TRAFFIC LEGISLATION (AMENDMENT) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for Transport

Clause

Amendments Proposed

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In the proposed section 72A –

(a) by deleting subsection (1) and substituting –

"(1) Where a court convicts a person of an offence specified in Schedule 10A, it may do either or both of the following –

(a) impose any penalty that may be imposed for the offence;

(b) order the person to attend and complete a driving improvement course.

(1A) Where a court makes an order under subsection (1)(b) in addition to imposing a penalty under subsection (1)(a), the penalty so imposed may be a penalty that is lighter than it might have imposed had the order not been made." ;

(b) in subsection (2), by adding "(b)" after "(1)";

(c) by deleting subsection (4) and substituting –

"(4) An application under subsection (3) shall be -

(a) where the order referred to in subsection (1)(b) is made by a judge of the Court of First Instance, made in writing to a judge of the Court of First Instance and sent to the Registrar;

(b) where the order referred to in subsection (1)(b) is made by a judge of the District Court, made in writing to a judge of the District Court and sent to the Registrar;

(c) where the order referred to in subsection (1)(b) is made by a magistrate, made in writing to a magistrate and sent to the magistrates' clerk.";

(d) in subsection (6), by adding "(b)" after "(1)";

(e) by adding -

"(8A) The Legislative Council may by resolution amend Schedule 10A.";

(f) in subsection (9), in the definition of "judge", in paragraph (b), by deleting ", the" and substituting ", a District Judge and a deputy".

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(a) In the proposed section 102A -

- (i) in the definition of "attendance certificate", by adding "or 102E(d)" after "102B(3)(b)(i)" where it twice appears;
- (ii) in the definition of "course certificate", by adding "or 102E(d)" after "102B(3)(b)(ii)" where it twice appears.

(b) In the proposed section 102B(3) -

- (i) by deleting paragraph (a)(ii),
- (ii) in paragraph (b)(ii) -
 - (A) by deleting "並按照實務守則";
 - (B) by adding "按照實務守則" after "已".

(c) By deleting the proposed section 102C(1)(a) and substituting -

- "(a) has breached -
- (i) Schedule 11;
 - (ii) a code of practice; or
 - (iii) any of the conditions referred to in section 102B(2)(a)(iii) and
 - (iv);".

(d) In the proposed section 102E -

- (i) in paragraph (b), by deleting "and";

(ii) in paragraph (c), by deleting the full stop and substituting "; and";

(iii) by adding -

"(d) (where a driving improvement school fails to issue an attendance certificate under section 102B(3)(b)(i) or a course certificate under section 102B(3)(b)(ii)) cause the attendance certificate or course certificate to be issued for the school, and recover any expenses incurred thereby from -

(i) the proprietor of the school; or

(ii) (where the designation in respect of the school has been revoked under section 102C(2) or terminated under section 102D(1)) the last proprietor of the school.".

New By adding -

"5A. Schedule 10A added

The following is added –

"SCHEDULE 10A [s. 72A]

OFFENCES SPECIFIED FOR THE
PURPOSES OF SECTION 72A

Any offence mentioned in the Schedule to the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) other than an offence mentioned in item 5, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 28, 29, 32, 33, 34, 37, 38, 41, 42, 43, 46, 47, 50, 53, 54, 55, 58 or 59 of that Schedule."."

- 6 In the proposed Schedule 11, in section 2(b), by adding "向東主發出的" after "藉".