

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

Follow-up to Meeting on 7 January 2002

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 7 January 2002, Members requested the Administration to :-

- (a) to provide a copy of the draft code of practice setting out, inter alia, the following –
 - (i) partial completion of a driving improvement course should be fully recognised and transferable, and the general conditions including the validity period of the partially-completed course; and
 - (ii) the conditions and minimum requirements which a person needed to be satisfied in order to obtain an authorisation from the Commissioner for Transport (“C for T”) to give a driving improvement course.
- (b) to consider whether there is a need to define the term “magistrate” to include temporary magistrate; and
- (c) to consider redrafting the new section 102E to the effect that the Commissioner for Transport (C for T) had a duty to issue a code of practice for the purpose of implementing a driver improvement scheme.

Draft Code of Practice

3. As requested by the Bills Committee, a copy of the draft Code of Practice for the DIS is enclosed at **Annex A** for Members' reference.

Definition of the Term "Magistrate"

4. Members of the Bills Committee have raised the question of whether the term "magistrate" used in the new section 72A of the Bill should be defined to include "temporary magistrate".

5. In this connection, we have sought the advice of the Judiciary. The Judiciary has confirmed that the term "temporary magistrate", which is commonly used in the magistrates' courts, in fact refers to a "deputy magistrate" who is appointed under section 5A of the Magistrates Ordinance (Cap. 227) (**Annex B1**).

6. According to section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) (**Annex B2**), a "magistrate" means "any person appointed to be a permanent or special magistrate under the Magistrates Ordinance (Cap. 227)". Under section 5A(1) of the Magistrates Ordinance (Cap. 227), the Chief Justice may appoint a person to be a deputy magistrate, and under section 5A(2), a deputy magistrate shall have all the jurisdiction, powers and privileges, and perform all the duties of a permanent magistrate and any reference in any law to a magistrate shall be construed accordingly. As such, although only the term "magistrate" is referred to in the new section 72A of the Bill, by virtue of Cap. 1 and Cap. 227, it also applies to a "deputy magistrate". As such, the Administration considers that there is no need to expressly define the term "magistrate" to include a "temporary magistrate".

Redrafting New Section 102E

7. A Member of the Bills Committee has requested the Administration to consider whether the new section 102E of the Bill should be amended to the effect that the C for T had a duty to issue a Code of Practice for the purpose of implementing the DIS.

8. The Administration appreciates that the underlying objective for this suggestion is to ensure that there will be a Code of Practice to spell out the operational details for the DIS. Our legal advice however considers that there will be enforcement problems in the suggested approach given the lack of remedies for failure in compliance.

9. As the Administration sees it, the new section 102E is an empowering provision providing the necessary legal basis for C for T to issue and from time to time revise a Code of Practice for implementing the DIS. The way it is drafted is largely similar to those other similar provisions in the Road Traffic Ordinance (Cap. 374) empowering C for T to issue different codes of practice, e.g. those for vehicle emission testing centres, vehicle testing centres and driving schools under sections 77F, 88F and 88N respectively. As a matter of consistency, the Administration prefers to adopt a similar drafting approach in the new section 102E.

10. The Code of Practice will be an important administrative document without which there is no way the Administration can implement DIS and exercise proper control and regulation over the driving improvement schools. This can be reflected in the reference made to the Code of Practice in the new sections 102B and 102C of the Bill. As such, the Administration can undertake that there will be a Code of Practice for the implementation of the DIS. Such undertaking could also be included in the Secretary for Transport's speech of resumption of second reading for this Bill.

Transport Bureau
17 January 2002

DRAFT

**CODE OF PRACTICE
FOR
THE DRIVING IMPROVEMENT SCHOOL
DESIGNATED FOR
THE DRIVER IMPROVEMENT SCHEME**

**Issued by the Commissioner for Transport
under Section 102E(a) of the
Road Traffic Ordinance, Cap. 374**

CODE OF PRACTICE FOR THE DRIVING IMPROVEMENT SCHOOL

This document is issued under Section 102E(a) of the Road Traffic Ordinance, Cap. 374, as the Code of Practice for the driving improvement school designated for the Driver Improvement Scheme. A failure on the part of the school to observe any rules or requirements set out in this code is not itself an offence, though it may constitute a breach of the condition of the designation and clause _____ of the Agreement made on _____ between the Government of the Hong Kong Special Administrative Region and _____ as the compliance of this code has been made a condition of the designation and agreement.

CODE OF PRACTICE FOR
THE DRIVING IMPROVEMENT SCHOOL
DESIGNATED FOR THE DRIVER IMPROVEMENT SCHEME

1. APPLICATION AND CONDITION OF DESIGNATION

1.1 This Code of Practice is applicable to any place designated as a driving improvement school by the Commissioner for Transport (hereunder referred to as “the Commissioner”) under section 102B of the Road Traffic Ordinance (Cap. 374). The proprietor of the driving improvement school to which the designation relates shall comply with the provisions stipulated in this Code of Practice. Failure to comply with any of the provisions herein may lead to revocation of the designation under section 102C of the Road Traffic Ordinance (Cap. 374).

2. GENERAL REQUIREMENTS

2.1 Bankers Guarantee

2.1.1 The proprietor of a driving improvement school shall, within 14 days after his driving improvement school has been so designated, furnish the Administration a first demand Banker’s Guarantee issued by an approved bank to an amount to be determined by the Commissioner.

2.1.2 The Commissioner may from time to time publish a list of the banks approved by him for the purpose of section 2.1.1.

2.2 Premises, buildings and other facilities

2.2.1 The premises of a driving improvement school shall have the following facilities -

- (a) lecture rooms of at least 30m² in area (capable of accommodating 20-25 course participants at any one time) each with suitable audio and visual equipment for the provision of the driving improvement course. The number of lecture rooms required of a driving improvement school shall be determined having regard to the maximum number of course participants allowed for that school as approved by the Commissioner;
- (b) suitable fire-hazard warning devices such as fire-alarms and smoke detectors, and clear fire escape routes;

- (c) reception and waiting areas of sufficient sizes for course participants;
- (d) an administration office for handling course registration procedures and enquiries from course participants; and
- (f) suitable computer and record keeping systems to maintain records of the operation of the driving improvement school including information about the proprietor, staff, personnel and the course participants.

2.2.2 The proprietor of the driving improvement school shall submit plans and details of the facilities described in section 2.2.1 to the Commissioner for approval no later than two months before the driving improvement school commences operation.

2.2.3 If it is in the view of the Commissioner that changes to the submission made under section 2.2.2 are necessary, the proprietor shall, at his own cost, make changes to the facilities to the satisfaction of the Commissioner.

2.2.4 No driving improvement school shall commence operation unless express approval is obtained from the Commissioner under section 2.2.2.

2.2.5 The proprietor of the driving improvement school shall file an application with the Commissioner if he wishes to make any alterations or additions to the facilities approved by the Commissioner under section 2.2.2. No alterations shall be made unless express approval has been given by the Commissioner.

2.2.6 The Commissioner may determine the maximum number of course participants that can register with a driving improvement school having regard to the size and facilities of the premises of that school.

2.3 *Course Instructors*

2.3.1 The proprietor of a driving improvement school shall only employ qualified course instructors to give driving improvement courses.

2.3.2 For the purpose of section 2.3.1, a qualified course instructor is one who -

- (a) has Form 5 standard or above;

- (b) holds a valid driving licence in Hong Kong for more than 10 years;
- (c) has no previous conviction record of careless, dangerous or drink driving;
- (d) has not been disqualified from holding a driving licence;
- (e) has, at his own cost, attended and passed the driving improvement scheme instructor training course provided by the Vocational Training Council or any other institution as approved by the Commissioner, and
- (f) has been issued a course instructor certificate by the Commissioner.

2.3.3 Each course instructor certificate shall be valid for three years. A course instructor must, at his own cost and before the expiry date of the certificate, attend and pass a driving improvement scheme instructor refresher course provided by the Vocational Training Council or any other institution as approved by the Commissioner. A new course instructor certificate valid for three years will be issued by the Commissioner to the course instructors upon completion of the refresher course.

2.3.4 The Commissioner shall disqualify a course instructor from giving driving improvement courses if the course instructor -

- (a) fails to attend and pass the refresher course on or before the expiry date of the course instructor certificate; or
- (b) has been convicted of an offence under section 36 or 39 of the Road Traffic Ordinance (Cap. 374).

2.3.5 A course instructor disqualified under section 2.3.4 above shall have no claim for the cost he has incurred for taking the driving improvement scheme instructor training course or refresher course.

2.3.6 Course instructors shall at all times behave in a civil, orderly and professional manner in the giving of driving improvement courses and in their contacts with course participants

2.4 Provision of Driving Improvement Courses

- 2.4.1 Subject to sections 2.4.2 and 2.4.3, the proprietor of a driving improvement school shall arrange a person who has registered with the school and paid the course fee to attend a driving improvement course as soon as practicable and in no event later than three weeks from the date of registration.
- 2.4.2 Section 2.4.1 shall not apply if the person registered with the school specifically requests to attend a driving improvement course at a date later than three weeks from the date of registration, but the date so requested must not be later than two months from the date of registration.
- 2.4.3 The proprietor of a driving improvement school shall ensure that a driving improvement course is provided by the school to the holder of a driving licence other than -
- (a) a learner's driving licence issued under regulation 12 or 12A of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg.);
 - (b) a temporary driving licence issued under regulation 13 of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg.); or
 - (c) a driving licence to drive Government vehicles.
- 2.4.4 The proprietor of a driving improvement school shall provide flexible course schedules for course participants to choose from. Specifically, an option should be provided to the course participant at the time of registration such that he can either choose to complete the course in one stretch on one day or in two sessions on two different days. In case of the latter, the time interval between the two sessions must not be more than two months.
- 2.4.5 The performance of a course participant shall be assessed at the end of each session of the driving improvement course he has attended and completed.
- 2.4.6 The proprietor of a driving improvement schools shall issue to a course participant who opts to attend the driving improvement course in two sessions on two different days an attendance record at the end of the first session showing the following information –

- (a) the name of the course participant as shown on his Hong Kong Identity Card or any other identification document acceptable to the Commissioner;
- (b) the number of the Hong Kong Identity Card, or any other identification document acceptable to the Commissioner, of the course participant;
- (c) the serial number of the attendance record;
- (d) the modules/topics which the course participant has attended and completed during the first session;
- (e) the date of completion of the first session;
- (f) the assessment of the performance of the course participant during the first session;
- (g) the signature of an authorised person of the driving improvement school, and
- (h) the embossing seal of the driving improvement school.

2.4.7 If a course participant opts to attend a driving improvement course in two sessions on two different days and the driving improvement school ceases operation after the first session, he may re-register with any other driving improvement school for the continuation of the driving improvement course by presenting the attendance record which he has received from the previous driving improvement school. No proprietor of a driving improvement school shall refuse registration of such a person provided that the registration with the new driving improvement school is completed

within two months from the date of issue of the attendance record.. The course fee to be collected by the current driving improvement school shall be equivalent to the total cost of the parts of the course that the course participant will be attending at the current driving improvement school.

- 2.4.8 If a course participant opts to attend a driving improvement course in two sessions on two different days and wishes to discontinue his attendance at the driving improvement school after the first session, he may apply in writing to the proprietor of the driving school indicating his intention before the date of the second session. The proprietor of the driving improvement school shall refund to the course participant an amount equivalent to the total cost of the parts of the course which has not been attended by him. The proprietor may, however, charge the course participant an administrative fee of no more than 10% of the amount of the refund.
- 2.4.9 The course participant who has discontinued his attendance at a driving improvement school under section 2.4.8 may re-register with any other driving improvement school for the continuation of the driving improvement course by presenting the attendance record which he has received from the previous driving improvement school. No proprietor of a driving improvement school shall refuse registration of such a person provided that the registration with the new driving improvement school is completed within two months from the date of issue of the attendance record. The course fee to be collected by the current driving improvement school shall be equivalent to the total cost of the parts of the course that the course participant will be attending at the current driving improvement school.
- 2.4.10 The proprietor of a driving improvement school shall make provision to provide driving improvement course to both local and English-speaking drivers. The proprietor shall also make special arrangements to accommodate drivers with physical disabilities for attending the driving improvement course.
- 2.4.11 The proprietor of a driving improvement school shall arrange suitable course instructor to provide driving improvement course in English whenever there is such a need.

2.5 Course Content

- 2.5.1 The proprietor of a driving improvement school shall cause to provide to

the course participants a driving improvement course of no less than 7 hours in duration.

2.5.2 For the purpose of calculating the duration of a driving improvement course under section 2.5.1, all lecture and practical sessions shall be counted, but recesses and meal breaks in-between the course shall not be counted.

2.5.3 The following modules/topics shall be covered in the driving improvement course provided by a driving improvement school -

- (a) updated traffic legislation;
- (b) safe driving strategies;
- (c) pre-trip inspection and planning;
- (d) driver's responsibility, courtesy, emotion management;
- (e) occupant protection;
- (f) passing, turning, changing lanes, approaching intersections;
- (g) speeding;
- (h) emergency handling;
- (i) driving under the influence of substances; and
- (j) aggressive driving behaviour.

2.5.4 Subject to section 2.5.5 below, the proprietor of a driving improvement school may decide to add any other road safety-related topics for the driving improvement course provided by his school.

2.5.5 The curriculum of the driving improvement course, including the course contents and supporting materials used, of each driving improvement school shall be submitted to the Commissioner for approval no later than one month prior to the commencement of operation of that school.

2.5.6 For practical sessions of the driving improvement course, the proprietor of the driving improvement school shall be responsible for providing suitable

vehicles which have been registered for use in Hong Kong for the use of course participants.

3. FEES

- 3.1 The fees that the proprietor of a driving improvement school may charge for the provision of a driving improvement course and the issue of an attendance certificate or course certificate shall not exceed their respective maximums as determined by the Commissioner from time to time by notice in the Gazette.
- 3.2 The proprietor of a driving improvement school shall cause to submit a fee schedule proposal to the Commissioner for approval no later than one month prior to the commencement of operation of his driving improvement school.
- 3.3 The proprietor of a driving improvement school shall not cause any changes to the fee schedule of his driving improvement school without obtaining the express approval of the Commissioner.
- 3.4 In case the designation of a driving improvement school is revoked or terminated under section 102C(2) or 102D(1) of the Road Traffic Ordinance (Cap. 374) respectively, the last proprietor of the driving improvement school shall refund to any person the fee he has paid for taking a driving improvement course in accordance with section 102C(9) or 102D(3) of the Road Traffic Ordinance (Cap. 374) respectively.
- 3.5 The proprietor of a driving improvement school shall cause to issue a receipt for any fee collected from any person who registers at the driving improvement school for taking a driving improvement course.

4. ISSUE OF ATTENDANCE CERTIFICATE OR COURSE CERTIFICATE

- 4.1 The proprietor of a driving improvement school shall issue an attendance certificate or course certificate to a course participant if he has attended and completed a driving improvement course in accordance with the conditions laid down in sections 4.2 or 4.3 below, as the case may be.
- 4.2 An attendance certificate shall be issued to a course participant if he has fully attended the driving improvement course and completed all assignments required thereof. In case of a course participant who is transferred from another driving improvement school under section 2.4.7 or 2.4.9, the attendance record which he has obtained from the previous driving improvement school shall be deemed as evidence that he has fully attended those parts of the course taken at the previous driving improvement school and completed all the assignments required thereof.
- 4.3 A course certificate shall be issued to a course participant if he has fully attended the driving improvement course and completed all assignments required thereof with a satisfactory performance. In case of a course participant who is transferred from another driving improvement school under section 2.4.7 or 2.4.9, a course certificate shall be issued only if his performances for all sessions are assessed to be satisfactory.
- 4.4 For the purpose of section 4.3, satisfactory performance is defined as –
- (a) having a full attendance throughout the driving improvement course;

- (b) paying attention during the course;
 - (c) participating actively during in-class and group discussions; and
 - (d) passing all written or practical assignments of the course.
- 4.5 The attendance certificate or course certificate shall be in a form as specified by the Commissioner and only such specified forms shall be used and issued by the driving improvement school.
- 4.6 Only persons authorised in writing by the Commissioner may sign and issue attendance certificate or course certificate on behalf of a driving improvement school. The authorisation of the Commissioner shall be sought again immediately if there is any change in the persons issuing such certificates in a driving improvement school.
- 4.7 An attendance certificate or course certificate must bear the following information –
- (a) the name of the course participant as shown on his Hong Kong Identity Card or any other identification document acceptable to the Commissioner;
 - (b) the number of the Hong Kong Identity Card, or any other identification document acceptable to the Commissioner, of the course participant;
 - (c) the serial number of the certificate;

- (d) the date of completion of the driving improvement course;
- (d) the date of issue of the certificate;
- (e) the signature of the authorised person of the driving improvement school, and
- (f) the embossing seal of the driving improvement school.

4.8 An attendance certificate or course certificate shall have no effect if any of the following applies -

- (a) the attendance certificate or course certificate has not been issued properly in accordance with section 4.2 or 4.3 above, as the case may be;
- (b) the form of the attendance certificate or course certificate is different from the standard specified by the Commissioner under section 4.5;
- (c) the attendance certificate or course certificate is not issued by a person authorised by the Commissioner in writing under section 4.6;
- (e) the attendance certificate or course certificate does not bear all the information as specified in section 4.7; or
- (f) the particulars on the attendance certificate or course certificate have been incorrectly stated for fraudulent purpose;

- 4.9 The validity of an attendance certificate or course certificate shall not be affected by the revocation or termination of the designation of the driving improvement school to which it relates, provided that the certificate has been lawfully issued by the driving improvement school concerned.
- 4.10 The proprietor of a driving improvement school shall issue an attendance certificate or course certificate, as the case may be, to a course participant on the same date as he has completed the driving improvement course.

5. PROVISION OF RECORD AND INFORMATION

- 5.1 The proprietor of a driving improvement school shall maintain records and documents of the following for inspection by the Commissioner -
- (a) the particulars of every course instructor;
 - (b) the details of each driving improvement course given, including attendance figures;
 - (c) the number and particulars of the course participants registered;
 - (d) the details of attendance or course certificate issued;
 - (e) the maintenance records of the school's assets including vehicles or equipment used for the giving of the driving improvement course; and
 - (f) the profit and loss account of the driving improvement school.
- 5.2 The proprietor of a driving improvement school shall cause the following information to be submitted to the Commissioner -
- (a) the list of registered course participants and completion on daily basis; and
 - (b) the overdue cases on daily basis.

- 5.3 The proprietor of a driving improvement school shall cause the following information to be submitted to the Commissioner no later than the 16th day of each month following the month to which such information relates -
- (a) the average waiting time for the course participants who have registered for the course;
 - (b) the details of the complaints and suggestions received;
 - (c) the personnel employed in connection with the management and operation of the driving improvement school; and
 - (d) such other records and information as may reasonably be required from time to time by the Commissioner.

6. LIAISON GROUP

- 6.1 There shall be a liaison group established comprising the proprietor of a driving improvement school, representatives from the training institution and Transport Department. The liaison group shall meet half-yearly and discuss the following issues -
- (a) content of the driving improvement course,
 - (b) operation of the driving improvement school and improvement measures; and
 - (c) feedback from course participants.

Transport Department
January 2002

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Section of Enactment

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Chapter:	227	Title:	MAGISTRATES ORDINANCE	Gazette Number:	L.N. 172 of 1999
Section:	5A	Heading:	Appointment of deputy magistrates	Version Date:	05/07/1999

(1) The Chief Justice may by warrant appoint any person to be a deputy magistrate for such period and on such terms as he thinks fit. Such appointment shall be notified in the Gazette.

(2) Subject to the terms of appointment, a deputy magistrate shall, during the period for which he is appointed, have all the jurisdiction, powers and privileges, and perform all the duties of a permanent magistrate and any reference in any law to a magistrate shall be construed accordingly.

(3) Every appointment made in accordance with this section may be terminated by the Chief Justice at any time.

(4) Where the hearing of any proceedings before a deputy magistrate is adjourned or where judgment is reserved therein or where the determination of any matter is subject to review, the deputy magistrate shall have power to resume the hearing and determine the proceedings or to deliver as the judgment of the magistrate's court the judgment which he has reserved or to review the determination which he has made, notwithstanding that before the hearing is resumed or judgment is delivered or the review is disposed of, his appointment has expired or has been terminated.

(5) For the purposes of subsection (4), the power of a deputy magistrate to determine the proceedings in a resumed hearing includes the power of awarding costs and the making of any order ancillary to or consequential upon the award of costs.

(Added 21 of 1999 s. 13)

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