

**Bills Committee on
Road Traffic Legislation (Amendment) Bill 2001**

**Summary of Administration's response to
queries/comments raised by Legal Service Division (LSD) on the
Road Traffic Legislation (Amendment) Bill 2001**

| Clause and Issue | LSD's queries/comments | Administration's Response |
|---|---|--|
| <p><i>Clause 4 - Proposed section 72A of the Road Traffic Ordinance (Cap. 374) -</i></p> <p>Power of court to order persons to attend driving improvement courses</p> | <p>(i) Whether it is intended that an application under proposed section 72A(3) should be made to the same court that ordered the driver to attend and complete a driving improving course in the first place. If so, the drafting of proposed section 72A(3) and (4) should be improved to reflect this intention¹.</p> | <p>(i) Yes. To make this intention clear, the Administration is prepared to move a CSA to amend proposed section 72A(4) to improve the drafting of the section as follows -</p> <p>"(4) An application under subsection (3) shall be in writing and -</p> <p>(a) where the order concerned is made by a judge of the Court of First Instance, the application shall be made to a judge of the Court of First Instance and sent to the Registrar;</p> <p>(b) where the order concerned is made by a judge of the District Court, the application shall be made to a judge of the District Court and sent to the Registrar;</p> <p>(c) where the order concerned is made by a magistrate, the application shall be made to a magistrate and sent to the magistrates' clerk."</p> |
| | <p>(ii) Whether the court is provided with power to enforce the order to attend and complete a driving improvement course.</p> | <p>(ii) Non-compliance with a court order to attend and complete a driving improvement course under proposed section 72A(1) constitutes an offence under proposed section 72A(8) and the court may impose sentence accordingly.</p> |
| | <p>(iii) Whether the proposed definition of "judge" should include a deputy District Judge.</p> | <p>(iii) Yes. The Administration is prepared to move a CSA to amend the definition of "judge" in proposed section 72A(9) to include a District Judge and a deputy District Judge of the District Court.</p> |

¹ From the way proposed section 72A(3) and (4) is currently drafted, it appears possible for a person who has been ordered by a magistrate to attend and complete a driving improvement course to make an application to a judge for an extension of time.

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| <p><i>Clause 5</i> <i>Proposed section 102B(3)(b)(ii) of Cap. 374 -</i></p> <p>Issue of course certificates by driving improvement schools</p> | <p>The meanings reflected by the English and Chinese texts of proposed section 102B(3)(b)(ii) appear to be different. According to the English text of proposed section 102B(3)(b)(ii), a course certificate issued by a driving improvement school will indicate that the person concerned has attended and completed the course in accordance with the code of practice. This, however, is not the meaning adopted in the Chinese text. According to the Chinese text, the course certificate will be issued to the person concerned on the direction of the Commissioner for Transport (C for T) and in accordance with the code of practice.</p> | <ul style="list-style-type: none"> ● There are two “levels” of completion of the driving improvement course. Any person who attends and completes a driving improvement course will be issued an “attendance certificate” under section 102B(3)(b)(i). This is the first level of completion as the certificate will be issued regardless of that person’s performance during the course. Also, a person who is directed by the court to attend and complete a driving improvement course under proposed section 72A(1) will be regarded as having complied with that order upon receiving the “attendance certificate”. ● The second level of completion is for those people who can complete the driving improvement course with satisfactory performances. A “course certificate” will be issued to these people and, subject to the conditions laid down in proposed section 6A of the Road Traffic (Driving-offence Points) Ordinance (Cap. 375), they will enjoy a deduction of 3 driving offence points from the total number of points they have previously incurred. In this respect, the criteria for deciding whether a person has completed a driving improvement course satisfactorily will be set out clearly in the “code of practice” to be issued by C for T under proposed section 102E(a). ● Against this background, we are of the view that the English version of proposed section 102B(3)(b)(ii) sufficiently reflects our policy intention. We however consider that the Chinese version has to be fine-tuned to match the English version. We therefore suggest amending the Chinese text by deleting “並按照實務守則” and adding “按照實務守則”, after “顯示”. We are prepared to move a CSA to this effect. |

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| <p><i>Clause 5</i> <i>Proposed section 102B(5)(a) of Cap. 374 -</i></p> <p>Determination of maximum fees for a driving improvement course</p> | <p>Factors to be taken into account by C for T in determining the maximum fees that may be charged by the proprietor of a driving improvement school for the provision of a driving improvement course and whether those factors will be stipulated in the Bill.</p> | <ul style="list-style-type: none"> ● In considering the maximum fee that may be charged by the proprietor of a driving improvement school for the provision of driving improvement course, C for T will take into account all relevant factors including, but not limited to, the demand and supply of the course, affordability of the public, the average fine for traffic offences attracting three to five driving offence points (people committing these offences do have the chance to be directed by the court to attend the course), the operating environment of the proprietors and their profit margins, etc. ● As there are quite a number of such factors and it is possible that C for T will need to consider a combination of different factors at any one time, we do not consider it necessary to stipulate these factors in the Bill. In addition, it would be desirable to allow C for T the flexibility to adjust the maximum fee chargeable having regard to changing circumstances in a responsive manner. This will allow the participants of the course to compare prices and keep the fees at a reasonable level. |
| <p><i>Clause 6</i> <i>Sections 3, 4 & 5 of proposed Schedule 11 to Cap. 374</i></p> <p>Determination of fees payable for designation, or renewal of designation, of a driving improvement school</p> | <p>Rationale for proposing that the fees payable for designation and renewal of designation of driving improvement schools are to be determined by C for T administratively instead of subject to LegCo's scrutiny. Under the existing Road Traffic Ordinance, the fees payable for designation and renewal of designation of car testing centres, driving schools and vehicle emission testing centres and any subsequent fee variations are subject to LegCo's scrutiny.</p> | <ul style="list-style-type: none"> ● The existing fees for designation and renewal of designation of car testing centres and driving schools are basically calculated on a cost recovery basis. In essence, it means that the fees are decided having regard to the average level of resources required on the part of the Government in considering and vetting the applications. While the calculation is largely arithmetical and does not involve policy decisions, any revision of the fees to reflect the adjustments in staff costs would require a legislative exercise that takes up valuable resources and time of both the legislature and the Administration. ● As such, while we are going to adopt the same cost recovery basis for determining the fees payable for designation or re-designation of a driving improvement school, we consider it a more flexible and more efficient use of resources if C for T is given the discretion to determine such fees. Hence our proposed approach in the Bill. |

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| <p><i>Clause 6</i> <i>Section 2(b) of proposed Schedule 11 to Cap. 374 -</i></p> <p>Drafting matters</p> | <p>The meaning of "notice in writing to the proprietor" in the English text has not been fully reflected in the Chinese text</p> | <p>The phrase “向東主發出的” should be added before “書面通知” in the Chinese text of section 2(b) of proposed Schedule 11 so as to better reflect the meaning of “notice in writing to the proprietor” in the English text. The Administration is prepared to move a CSA to this effect.</p> |
| <p><i>Schedule 1 to the Bill</i></p> <p>Adaptation of the Road Traffic Ordinance (Cap. 374) and its subsidiary legislation</p> | <p>Please explain why no adaptation amendments are proposed to the following:</p> <p>(a) Form 2 of the Ninth Schedule to the Road Traffic (Driving Licences) Regulations²;</p> <p>(b) paragraph (b) of the definition of "visitor's registration document" in the Road Traffic (Registration and Licensing of Vehicles) Regulations³; and</p> <p>(c) Forms 1 and 2 of Schedule 8 to the Road Traffic (Registration and Licensing of Vehicles) Regulations⁴.</p> | <p>Both the 1926 International Convention relating to motor traffic and the 1931 International Convention regarding the taxation of foreign motor vehicles no longer apply to Hong Kong. We hence see no need to adapt Form 2 of the Ninth Schedule to the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg.), paragraph (b) of the definition of “visitor’s registration document” in and Forms 1 and 2 of Schedule 8 to the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg.). The Administration plans to repeal the Forms and references in our legislation relating to these two Conventions under a separate exercise.</p> |

Prepared by
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² Form 2 of the Ninth Schedule to the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg.) is the form of international driving permit issued by the Commissioner for Transport under the 1926 Convention.

³ According to paragraph (b) of the definition of "visitor's registration document" in the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg.), "visitor's registration document" means "a certificate in accordance with Form 2 of Schedule 8 issued under the law of a country outside Hong Kong which is a party to the 1926 Convention".

⁴ Form 1 of Schedule 8 to the Road Traffic (Registration and Licensing of Vehicles) Regulations is the form of fiscal permit issued under the 1931 Convention relating to taxation of foreign motor vehicles. Form 2 of Schedule 8 is the form of international certificate for motor vehicles issued under the 1926 Convention relating to the use of motor vehicles in a place outside Hong Kong.