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

Purpose

This paper reports on the deliberations of the Bills Committee on Road Traffic Legislation (Amendment) Bill 2001 (the Bill).

Background

2. Analysis of traffic accidents attributable to driver behaviour consistently identifies tailgating, negligently cutting lanes and manoeuvring turns without due care as the principal causes of traffic accidents. According to statistics, about 10% of the drivers who were convicted of the offence of careless driving were repeated offenders. The above studies suggest that improper driving attitude, rather than a lack of skills, is the source of the problem. Punishment therefore may not be the only effective means to rectify problematic driving behaviour. Whilst the Administration has, in the past two years, introduced a series of legislative amendments to raise the deterrent effect of irresponsible driving behaviour by increasing penalties and tightening up enforcement, it believes that a more positive and educational scheme could be introduced to improve driving behaviour. The Administration therefore set up a Working Group in 1998 to examine the feasibility of introducing a Driver Improvement Scheme (DIS) in Hong Kong to educate drivers on the proper driving attitude.

The Bill

3. The main purpose of the Bill is to amend the Road Traffic Ordinance (Cap. 374) (RTO) and the Road Traffic (Driving-offence Points) Ordinance (Cap. 375):

- (a) to introduce a DIS and to provide for deduction of 3 driving-offence points (DOPs) on a person's satisfactory completion of a driving improvement course; and
- (b) to adapt the RTO and its subsidiary legislation and the Road Traffic

(Driving-offence Points) Ordinance to bring them into conformity with the Basic Law and with Hong Kong's status as a Special Administrative Region of the People's Republic of China.

The Bills Committee

4. The House Committee agreed at its meeting on 22 June 2001 to form a Bills Committee to study the Bill. Chaired by Hon CHENG Kar-foo, the Bills Committee held a total of seven meetings. The membership list of the Bills Committee is in **Appendix I**.

5. The Bills Committee has received views from six organizations. The list of the organizations is in **Appendix II**.

Deliberations of the Bills Committee

6. The Bills Committee is in support of the proposal to introduce a DIS to educate drivers on the proper driving attitude and behaviour with a view to enhancing road safety. In the course of deliberation, the Bills Committee has examined the eligibility criteria for the DIS, the penalty options open to the court to order a person to attend and complete a driving improvement course under the new section 72A, the mechanism in respect of the determination of the maximum fees for a driving improvement course and the fees payable for designation, or renewal of designation of a driving improvement school, the general requirements in respect of a driving improvement school and the implementation details of the DIS as contained in the code of practice. The Bills Committee has taken on board the views expressed by the deputations which are generally in support of the proposed implementation of the DIS. The Bills Committee has also made reference to the DIS in other overseas countries in refining the proposed scheme for Hong Kong.

7. The deliberations of the Bills Committee are summarized below.

Eligibility criteria for the DIS

8. The Bills Committee has divergent views on the eligibility criteria for the DIS. Some members have suggested that the DIS should be restricted to drivers with a driving-offence point (DOP) balance of 10 points or less. They consider that for those drivers whose DOP balance is approaching the 15-point threshold, their greatest incentive to join the DIS is to delay disqualification rather than rectifying their own driving behaviour. Some others however are of the view that as the objective of the DIS is to bring about an improvement in driving behaviour, all drivers irrespective of their DOP balance should be allowed to join the DIS. They also consider that pre-storage of DOPs to offset DOPs incurred for future offences should be allowed.

9. The Administration explains that the objective of introducing the DIS is to bring in an educational element to complement the existing punitive approach in the deterrence of road traffic offences. There would be two avenues for joining the scheme. The first would be for any driver to join on a voluntary basis, and the second would be for the court to order drivers who have been convicted of traffic offences covered by the Road Traffic (Driving-offence Points) Ordinance to join. In order to encourage drivers to attend the DIS, any driver who successfully completes the DIS would have three DOPs deducted from the total number of DOPs he has previously incurred. The Administration considers that all drivers, regardless of the number of DOPs accumulated, should be treated in a similar manner under the proposed DIS to ensure fairness. According to statistics, the total number of drivers with 11-14 DOPs as at 6 October 2001 is 48,036. Such drivers are more likely to be repeated offenders who should benefit more from schemes such as the DIS to rectify their problematic driving behaviour. If the incentive of deduction of 3 DOPs for such drivers were to be removed, this could have the unfortunate effect of discouraging voluntary participation, hence defeating the objective of the proposed scheme. To ensure that there would be no abuse of the Scheme, DOPs could only be deducted at most once every two years for attendance of the Scheme and that DOPs must not be pre-stored to offset DOPs of future offences. The proposed conditions are similar to those adopted overseas.

10. Notwithstanding the above, the Administration agrees to extend the DIS to probationary driving licence holders as suggested by the Bills Committee. As for holders of driving licences to drive Government vehicles, the Bills Committee accepts the Administration's explanation that there is no strong need to extend the application of the DIS to such drivers. The Bills Committee notes that these drivers are mainly responsible for driving special types of vehicles, and most of which are police vehicles and fire engines. As the skills required for driving special types of vehicles are different from those for ordinary vehicles, DIS courses would not be able to cater for the need of these drivers. As an alternative, tailor-made training courses for these drivers have been provided by the respective departments.

Penalty options open to the court.

11. Under the Bill, the Court is empowered to order a driver who has committed a scheduled offence under the Road Traffic (Driving-offence Points) Ordinance to attend and complete a driving improvement course, in addition to or instead of imposing any penalty that may be imposed for the offence. The Bills Committee is concerned that this may constitute a case of double penalty, particularly for offenders of minor traffic offences (i.e. offences which would lead to 5 DOPs or less).

12. Having regard to the views of the Bills Committee, the Administration agrees to amend the new section 72A(1) of the RTO to the effect that the court will only be empowered to order a driver who is convicted of a traffic offence that leads to 5 DOPs or more to attend and complete a driving improvement course, either in addition to or in lieu of any other penalty that may be imposed for that offence. The

Administration will move a Committee Stage amendment (CSA) to clearly specify the "scheduled offences" under the Road Traffic (Driving-offence points) Ordinance that are to be covered by the new section 72A(1). The Administration also accepts the Bills Committee's view to move another CSA to the new section 72A such that a court may impose a lighter penalty on a person who has been ordered to attend and complete a driving improvement course, taking into account the DIS in other overseas countries.

Penalty for failure to attend and complete a driving improvement course

13. The new section 72A(8) of the RTO stipulates that a person who, upon the court's order, fails to attend and complete a driving improvement course within 3 months, commits an offence and is liable on conviction to a fine of \$3,000 and to imprisonment for 1 month. The Bills Committee has examined whether an offence of this kind warrants an imprisonment penalty.

14. The Administration advises that failure to attend and complete a driving improvement course as ordered by a court could be treated as contempt of court, in which case the penalty level would not be specified but would be determined by the judge. To give the driver in question a clearer idea of what penalty the offence may entail, the Administration has drawn reference to the existing arrangement for offences of similar nature and severity. The offences considered include section 71(2) of the RTO and section 10 of the Road Traffic (Driving-offence Points) Ordinance. Both of them deal with persons who have been disqualified by the court from holding a driving licence but failed to comply with the court's order to deposit the licence with the court within a specified period of time. These two offences are relevant references as both of them involve the non-compliance with a court order to perform an action arising from traffic offences. As such, the Administration is of the view that the penalty level now proposed in section 72A(8) is reasonable and is in line with the existing arrangement for offences of similar nature and gravity.

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

15. The Bills Committee has examined the measures to safeguard the interest of the course participants in cases of revocation or termination of the designation of driving improvement schools. Under the new sections 102C(9) and 102D(3) of the RTO, 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. 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 conditions relating to 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 new section 102C(9) or 102D(3).

16. The Bills Committee also notes that 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 part of the course.

17. In order to set out more clearly the protection provided for the course participants regarding the issue of attendance or course certificates, the Administration will move a CSA to add a new sub-clause under the new section 102E of the RTO stipulating that the Commissioner for Transport (the Commissioner) 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.

Fee determination mechanism

18. The new section 102B(5)(a) of the RTO provides that the Commissioner may from time to time determine the maximum fees that may be charged by the proprietor of a driving improvement school for a driving improvement course and the issue of an attendance certificate or course certificate. The newly added Schedule 11 also provides that the Commissioner may from time to time determine the fees payable for designation, or renewal of designation, of a driving improvement school.

19. The Bills Committee has examined whether there is a need to introduce a mechanism to regulate the fees so determined by the Commissioner. The Bills Committee notes that in considering the maximum fee that may be charged by the course providers, the Commissioner 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 3 to 5 DOPs (i.e. about \$1,000), the operating environment of the course providers and their profit margins, etc. The proposed maximum fee of \$1,000 for a 8-hour course is the estimated ceiling taking into account all the above factors and is roughly in line with similar schemes overseas. The empowering provision would allow the Commissioner to adjust the maximum fee chargeable having regard to changing circumstances in a responsive manner. By stipulating only a maximum fee, participants of DIS will be able to compare prices offered by different course providers and competition between the course providers should keep the fees at a reasonable level. To this end, the Administration advises that four to five driving improvement schools will be operated during the initial stage of the DIS.

20. Regarding the determination of fees payable for designation, or renewal of designation, of a driving improvement school, the Bills Committee notes that the fees will be calculated on a cost recovery basis. The estimated fees would be around \$4,000 per year.

21. At the request of the Bills Committee, the Administration undertakes to state clearly during the Second Reading debate on the Bill that the Transport Panel will be briefed on any future changes that the Commissioner may make to the above fees.

Code of practice

22. The Bill provides that the Commissioner may issue, and from time to time revise, a code of practice setting out, inter alia, the following:

- (a) the requirements, procedures and standards in respect of the content and duration of driving improvement courses;
- (b) the requirements and procedures for providing information by a driving improvement school to the Commissioner in respect of a person's completion of driving improvement courses;
- (c) the facilities to be provided, the safety measures to be adopted and the equipment to be used in a driving improvement school;
- (d) the requirements and procedures for issuing an attendance certificate or course certificate to a person who has attended and completed a driving improvement course; and
- (e) any other matter the Commissioner considers appropriate.

23. The Bills Committee has examined the draft code of practice and made various suggestions to improve its content. The Bills Committee has given comments on the following areas:

- (a) the conditions and requirements which a person needs to be satisfied in order to obtain an authorization from the Commissioner to give a driving improvement course, particularly whether working experience in lieu of academic qualification would be accepted and whether the requirement of no previous conviction record of careless driving could be relaxed;
- (b) the factors to be considered by the Commissioner in determining the amount of the bankers guarantee;
- (c) the teaching languages of driving improvement courses;
- (d) the evaluation mechanism to assess the performance of the participants of the DIS and the provision of an appeal channel to enable participants to lodge a complaint against the result of the assessment;
- (e) the mechanism in which the Commissioner handles disputes and complaints; and
- (f) the need for the proprietor of a driving improvement school to forward

the list of registered course participants and completion, and the overdue cases on daily basis.

The Bills Committee is pleased to note that the Administration will consider the views expressed by members and consult the trade before reverting to the Panel on Transport to brief members further on the subject matter.

Committee Stage amendments

24. After discussion with the Bills Committee, the Administration has accepted a number of suggestions from members and agreed to move CSAs accordingly. These CSAs cover technical amendments and improvements to various provisions in the Bill. The major ones include the proposed amendments to the new section 72A(1) to the effect that the court will be empowered to order a driver who is convicted of a traffic offence that leads to 5 DOPs or more to attend and complete a driving improvement course, either in addition to or in lieu of any other penalty that may be imposed for that offence. Another CSA is the inclusion of an express provision to provide that a court may impose a lighter penalty on a person who has been ordered to attend a DIS. A full set of the CSAs from the Administration is in **Appendix III**. The Bills Committee has not proposed any CSAs.

Recommendation

25. The Bills Committee supports the Bill and recommends the resumption of the Second Reading debate on the Bill on 27 February 2002.

Consultation with the House Committee

26. The House Committee at the meeting on 1 February 2002 supported the recommendation of the Bills Committee in paragraph 25 above.

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

Membership list

| | |
|----------------------|---|
| Chairman | Hon Andrew CHENG Kar-foo |
| Members | Hon Cyd HO Sau-lan Hon CHAN Kwok-keung Hon Miriam LAU Kin-yee, JP Dr Hon TANG Siu-tong, JP Hon Tommy CHEUNG Yu-yan, JP Hon Michael MAK Kwok-fung Hon LEUNG Fu-wah, MH, JP |
| | (Total : 8 Members) |
| Clerk | Mr Andy LAU |
| Legal Adviser | Miss Connie FUNG |
| Date | 9 November 2001 |

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

List of organizations submitted views on the Bill

- *1. Urban Taxi Drivers Association Joint Committee Co. Ltd
- *2. Institute of Advanced Motorists Hong Kong
- *3. Hong Kong Public & Maxicab Light Bus United Association
- *4. Hong Kong Automobile Association
- 5. Goods Vehicle Fleet Owners Association Limited
- 6. Public and Private Light Buses Driving Instructors' Society

*Organizations which have appeared before the Bills Committee to give views on the Bill.

ROAD TRAFFIC LEGISLATION (AMENDMENT) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for Transport

| <u>Clause</u> | <u>Amendments Proposed</u> |
|---------------|--|
| 4 | <p>In the proposed section 72A –</p> <p>(a) by deleting subsection (1) and substituting –</p> <p>"(1) Where a court convicts a person of an offence specified in Schedule 10A, it may do either or both of the following –</p> <p>(a) impose any penalty that may be imposed for the offence;</p> <p>(b) order the person to attend and complete a driving improvement course.</p> <p>(1A) Where a court makes an order under subsection (1)(b) in addition to imposing a penalty under subsection (1)(a), the</p> |

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".

5

(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".