

LEGISLATIVE COUNCIL BRIEF

The Secretary for Transport submits the following note for Members' information

Title of the note

Date of Gazette

Road Traffic (Driving Licences)
(Amendment) Regulation 2001

18 May 2001

15 May 2001

Transport Bureau

LEGISLATIVE COUNCIL BRIEF

Road Traffic (Driving Licences) (Amendment) Regulation 2001

INTRODUCTION

By virtue of section 8(1) of the Road Traffic Ordinance (Cap. 374) and section 28(1)(c) of the Interpretation and General Clauses Ordinance (Cap. 1), the Secretary for Transport is empowered to make and amend the Road Traffic (Driving Licences) Regulations (Cap. 374, sub. leg. B).

2. In exercise of the aforesaid power, the Secretary for Transport has made the Road Traffic (Driving Licences) (Amendment) Regulation 2001 at **Annex A**.

BACKGROUND

3. The Government has all along adopted a two-pronged approach in respect of driver training. We promote off-street driver training through the establishment of driving schools whilst maintaining a sufficient supply of private driving instructors (PDIs) for on-street driver training. In pursuance of this approach and following a review in 1999, the Government has developed a package of proposals which aims at ensuring a good supply of PDIs, streamlining the operation of PDI licences and better management of on-street driver training activities. The trade was consulted in November 1999 on the proposals and expressed strong support. The Legislative Council Panel on Transport was also consulted in April 2000 and urged for its early implementation. LC Paper No. CB (1) 1234/99-00(05), which was considered by the Panel Members on 28 April 2000, is at **Annex B** for Members' reference.

4. With effect from 1 September 2000, legislative amendments have been effected to re-organise seven types of PDI licences into three

groups in order to allow PDIs greater flexibility and efficiency in their work. The current proposed Amendment Regulation on the issue of new PDI licences is the remaining part of the legislative process agreed by the trade and Panel Members for implementation.

ARGUMENT

5. As from 1 September 2000, the seven types of PDI licences have been re-organised into three groups. The current number of valid driving instructor's licences (DILs) after re-organisation is as follows:

Group 1	private car and light goods vehicle (1,036 licences)
Group 2	light bus (public and private) and bus (public and private) (124 licences)
Group 3	medium/ heavy goods vehicle and articulated vehicle (221 licences)

6. Under the proposed mechanism, the Commissioner for Transport (the Commissioner) will conduct a review at two-year intervals on the number of DILs for PDIs before he determines the number of new licences to be issued each time. For Group 1 licences, if it is found that the number of valid licences falls below the level of 1,050 by 10 %, as agreed by the trade and the LegCo Transport Panel, the Commissioner may, after taking into account all relevant factors including the impact on traffic conditions and the demand, invite applications for new licences to fill up the difference. For Group 2 and Group 3 licences, a similar mechanism will be used for the issue of new licences. However, there is substantial over-supply of Group 2 and Group 3 driving instructors. Both the trade and the LegCo Transport Panel therefore agreed that new DILs for PDIs of these two groups shall not be issued in the coming four years. As the number of valid DILs for PDIs fluctuates, the average number of valid DILs for PDIs for a period of six-months prior to the review will be used to compare with the stated level of 1,050 for Group 1 licences, and an agreed level for Group 2 and 3 licences upon a review in four years' time.

7. Against the above background, we propose to amend Cap. 374 sub. leg. B to put the current practice adopted for issuing of DILs in clear statutory provisions and to provide the procedures for issue of such licences. The proposals are set out below.

(A) Issue of new PDI licences

8. The term “driving instructor” is stipulated in Cap. 374, sub. leg. B but not for “private driving instructor”. The opportunity is taken in this legislative amendment to define “private driving instructor” (PDI) in clear statutory provisions, as against “restricted driving instructor” (RDI) employed by specified organisation such as driving school or other organisation. The issue of new licences to PDIs will be subject to a balloting arrangement. If the Commissioner thinks fit to issue new PDI licences and decides to invite applications, a notice of such invitation shall be published by the Commissioner in newspapers to inform the public of the type and number of instructor’s licences to be issued. It is envisaged that the number of applications for such licences would be greater than the number of licences which the Commissioner would like to issue. We propose to amend Cap. 374, sub. leg. B to provide the Commissioner with the power to decide the priority of handling those applications by ballot.

(B) Exemption of driving instructors’ test

9. In accordance with regulation 22(2) of Cap. 374, sub. leg. B, an applicant has to pass a driving instructor’s test before he is issued with a DIL. The test consists of three parts, i.e., written test, interview and road test. Exemption from part of the driving instructor’s test has been considered for applicants from specified organisations if their previous experience is considered adequate in that part. We intend to exempt applicants for new DILs for PDIs if:

- (a) the applicant is currently a RDI, or is within 3 years of his previous employment with a specified organisation; and
- (b) the application is made during his possession of a valid DIL of

the relevant group, or within 3 years of his previous possession of a valid DIL of the relevant group.

10. To state clearly the current practice in respect of the conduct of driving instructor's test, we propose to amend regulation 24 to provide that the Commissioner may exempt the applicant from taking any part of a driving instructor's test where he considers the applicant's previous experience is adequate in that part.

(C) Cancellation of PDI's DIL

11. Under regulation 28(1) of Cap. 374 sub. leg. B, the Commissioner has the power to cancel DILs under certain circumstances. It is our intention that a PDI will not be required to go through the balloting procedure if his DIL has been cancelled under regulation 28(1) but applies for a DIL in respect of the same group of motor vehicles as his cancelled DIL after he resumes his full driving licence. Under such circumstances, the procedure for assessing his fitness for the issue of a DIL will continue to be governed by the provisions of Part III of Cap. 374 sub. leg. B as before the enactment of the amendment regulation.

12. The above proposals make no changes to the existing rules relating to qualification required for applying for a DIL, renewal or cancellation of the licence.

AMENDMENT REGULATION

13. The proposed Amendment Regulation is to:

- (a) provide for the issue of new private driving instructors' licences;
- (b) state the current practice adopted for the issue of driving instructors' licences in clear statutory terms; and
- (c) state that in the case where the driving instructor's licence of a private driving instructor has been cancelled under regulation 28(1) of Cap. 374 sub. leg. B and the instructor

subsequently applies for a private driving instructor's licence in respect of the same group of motor vehicles as that which has been cancelled, the procedure for the issue of private driving instructors' licences introduced under section 4 of the Regulation does not apply to the instructor.

PUBLIC CONSULTATION

14. The driving instruction trade was consulted and there was strong support for the proposed method of issue of new DILs by ballot. The Legislative Council Panel on Transport and Transport Advisory Committee were consulted at their meetings in April 2000 and also rendered strong support.

HUMAN RIGHTS IMPLICATIONS

15. The Department of Justice advises that the proposed Amendment Regulation is consistent with the human rights provisions of the Basic Law.

BASIC LAW IMPLICATIONS

16. The Department of Justice advises that the proposed Amendment Regulation does not conflict with those provisions of the Basic Law carrying no human rights implications.

BINDING EFFECT

17. The proposed Amendment Regulation will not affect the current binding effects of the Road Traffic Ordinance and the Road Traffic (Driving Licences) Regulations.

FINANCIAL AND STAFFING IMPLICATIONS

18. There are no financial and staffing implications.

ECONOMIC IMPLICATIONS

19. There are no economic implications.

LEGISLATIVE TIME TABLE

20. The proposed Amendment Regulation will come into effect on 1 July 2001.

PUBLICITY

21. The proposed Amendment Regulation will be gazetted on 18 May 2001.

ENQUIRIES

22. Any enquiries regarding this brief should be directed to the following officer:

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Transport Bureau
May 2001
(TRAN 3/07/18)

ROAD TRAFFIC (DRIVING LICENCES) (AMENDMENT) REGULATION 2001

(Made under section 8(1) of the Road Traffic
Ordinance (Cap. 374))

1. Commencement

This Regulation shall come into operation on 1 July 2001.

2. Interpretation

Regulation 2 of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg.) is amended by adding -

"private driving instructor" (私人駕駛教師) means a driving instructor whose driving instructor's licence is not subject to a condition imposed under regulation 22(1A);

"private driving instructor's licence" (私人駕駛教師執照) means the driving instructor's licence of a private driving instructor;

"restricted driving instructor" (受限制駕駛教師) means a driving instructor whose driving instructor's licence is subject to a condition imposed under regulation 22(1A);".

**3. Application for driving instructors'
licences for restricted driving
instructors**

Regulation 21 is amended -

- (a) by adding "of a restricted driving instructor"

after "licence";

(b) in paragraph (c), by repealing "印" and substituting "有".

4. Regulation added

The following is added -

"21A. Application for private driving instructors' licences

(1) If the Commissioner considers that it is desirable to issue private driving instructors' licences in respect of any group of motor vehicles, he may -

- (a) determine the number of licences to be issued for that group;
and
- (b) by a notice published once in at least 1 English and 2 Chinese newspapers circulating in Hong Kong, invite applications for the issue of licences of that group.

(2) The Commissioner may not publish a notice under paragraph (1) (b) unless he is satisfied that the issue of private driving instructors' licences in respect of any particular group of motor vehicles is desirable having regard to -

- (a) prevailing traffic conditions;
- (b) policy adopted for driver training for the time being; and
- (c) the demand for learner drivers to receive

driving instruction from private driving instructors in respect of that group of motor vehicles.

- (3) A notice published under paragraph (1) (b) must specify -
 - (a) the number of licences that the Commissioner proposes to issue for any group of motor vehicles in respect of that invitation; and
 - (b) a date by which applications are to be received by the Commissioner ("the specified date").

(4) A person who wishes to obtain a private driving instructor's licence shall deliver to the Commissioner by the specified date an application signed by the person in a form specified by the Commissioner together with -

- (a) the person's identity document; and
- (b) a full driving licence held by the person in respect of all classes of motor vehicles in that group.

(5) If the total number of the applications received by the Commissioner by the specified date exceeds the number of licences that he proposes to issue, the Commissioner may cause the applications and the order in which they are to be dealt with to be determined by lot."

5. Issue of driving instructors' licences

Regulation 22 is amended -

- (a) in paragraph (1) -
 - (i) by repealing "shall" and substituting "may";
 - (ii) by adding "or 21A" after "21";
- (b) by adding -

"(1A) Without prejudice to the general power of the Commissioner to impose conditions under paragraph (1), if an applicant is employed by a driving school or other organization as a driving instructor, or is otherwise required under a contract to give driving instruction on behalf of a driving school or other organization, the Commissioner, in relation to an application made under regulation 21, may issue a driving instructor's licence subject to a condition that the applicant shall only give driving instruction on behalf of the driving school or other organization.";
- (c) in paragraph (2)(b), by adding "in relation to which the application is made or has been exempted by the Commissioner from attending all parts of the driving instructor's test" after "test";
- (d) in paragraph (4), by adding at the end -

"A driving instructor's licence issued under this paragraph shall be subject to the conditions set out in the Fifth Schedule and

to any further conditions which the Commissioner may impose.".

6. Regulation substituted

Regulation 24 is repealed and the following substituted -

"24. Driving instructors' tests

(1) A driving instructor's test may be divided into parts, and, subject to paragraph (5), no part of a driving instructor's test shall be taken until the applicant has passed any preceding part.

(2) The Commissioner may appoint in writing any authorized examiner to conduct driving instructor's tests.

(3) The fee prescribed in the Second Schedule shall be payable for a driving instructor's test.

(4) An applicant shall pass a driving instructor's test if the applicant satisfies the authorized examiner conducting the test of his ability and fitness to give driving instruction assessed in accordance with Part I of the Sixth Schedule.

(5) The Commissioner may exempt an applicant from any part of a driving instructor's test where he considers the applicant's previous experience is adequate in that part.".

7. Cancellation of driving instructors' licences

Regulation 28 is amended by adding -

"(4) Where the driving instructor's licence of a private driving instructor has been cancelled under paragraph (1),

the Commissioner may, if that instructor applies for a private driving instructor's licence in respect of the same group of motor vehicles as that of the licence which has been cancelled, issue to that instructor a private driving instructor's licence for that same group of motor vehicles in accordance with such of the provisions of this Part that applied to the issue of such licences prior to the commencement of regulation 21A, as if the Road Traffic (Driving Licences) (Amendment) Regulation 2001 (L.N. of 2001) had not been enacted."

**8. Conditions of issue of a driving
instructor's licence**

The Fifth Schedule is amended within the square brackets by repealing "(1)".

Secretary for Transport

May 2001

Explanatory Note

This Regulation amends the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg.) ("the principal Regulations") to -

- (a) provide for the issue of new private driving instructors' licences (sections 2 and 4);
- (b) state the current practice adopted for the issue of driving instructors' licences in clear statutory terms (sections 3, 5 and 6); and
- (c) state that in the case where the driving instructor's licence of a private driving instructor has been cancelled under regulation 28(1) of the principal Regulations and the instructor subsequently applies for a private driving instructor's licence in respect of the same group of motor vehicles as that which has been cancelled, the procedure for the issue of private driving instructors' licences introduced under section 4 of the Regulation does not apply to the instructor (section 7).

Legislative Council Panel on Transport

Driver Training

PURPOSE

The purpose of this paper is -

- (i) to report the views of the driving instructor trade on the package of proposals on driver training as set out in the consultation paper issued in November 1999; and
- (ii) to outline the proposed plan for issuing "group licences" for existing private driving instructors and issuing new licences.

BACKGROUND

2. In 1999, the Administration conducted a review on driver training policy. It concluded that the existing 'two-pronged' approach should be maintained: to promote off-street driver training through the establishment of driving schools and to maintain a sufficient supply of private driving instructors (PDIs) for on-street driver training.

3. In pursuance of the 'two-pronged' approach, we developed a package of proposals to ensure a good supply of PDIs, to streamline the operation of PDI licences and to better manage on-street driver training activities.

4. The package of proposals was issued to the driving instructor trade in the form of a consultation paper on 19 November 1999 with the consultation period ending on 1 March 2000.

5. This Panel was briefed at the meeting on 26 November 1999 of the outcome of the review on driver training policy and the package of proposals as set out in the consultation paper.

CONSULTATION PROCESS

6. The consultation paper was sent to 11 private driving instructor

associations, the 2 designated driving schools and the ex-HKSM Driving Instructors in November 1999. Three briefing sessions and informal discussions were held with the trade. The 11 PDI associations also circulated the consultation paper to individual members.

VIEWS RECEIVED

7. All 11 PDI associations, the 2 driving schools and the ex-HKSM Driving Instructors responded to the consultation paper. Another 82 individual PDIs submitted their views.

8. The views received are summarised as follows:

(i) Grouping of the Private Driving Instructor (PDI) Licences

- Of the 11 PDI associations, 10 gave their full support to the Grouping proposal and strongly urged for early implementation. The Hong Kong & Kowloon Goods Vehicle Omnibuses and Minibuses Instructor's Association was the only PDI association objecting to the proposal. The Association has 86 members, and represents mainly the interest of Bus PDIs. They considered that licences should be issued through examination rather than by direct endorsement.
- Of the 82 individual PDIs who submitted written views, 54 (66%) were in support of the proposal while 28 (34%) did not render support. Of the 28 not in support, 20 were Bus PDIs.
- The Hong Kong School of Motoring (HKSM) supported Grouping of Groups 1 and 2 but not Group 3 as it considered the driving techniques for Articulated Vehicles to be different from that for heavy and medium goods vehicles.
- Two Legislative Council Members and one Kwai Tsing District Council Member also wrote in support of the proposal and urged for early implementation.

The ex-HKSM Driving Instructors objected to the Grouping proposal. They were of the view that PDI licences should be issued through examination and not by direct endorsement.

(ii) Issue of new PDI licences

- All were in support of the issue of new PDI licences and there was no suggestion for early issue.
- As regards the benchmark figure for issue of new licences, the majority accepted maintaining the existing level of supply and the figure 1050, based on the average number of valid PDI licences in 1999, was considered reasonable.
- The ex-HKSM Driving Instructors did not support a benchmark figure, and considered that if a figure was to be set, it should be increased from 1050 to 1500 to include all ex-HKSM Driving Instructors. They also suggested that designated driving schools should employ ex-school instructors before approaching TD for the issue of school instructor licences to new recruits.

(iii) Method for issue of new PDI licences

- All are in support of Option 1 - i.e.:
- Application should be open to all.
- Sufficient number of eligible candidates will be selected by ballot to take the instructor tests for filling the PDI vacancies.
- All candidates who passed the test will be issued with the licence.
- Once all the vacancies are filled, the exercise will stop.

(iv) Off-street practice site for Private Driving Instructors

- Only one PDI association suggested that if such a site is to be provided, it should be equipped with a driving test centre to attract PDIs and learner drivers to use the practice site.

Driving Instruction Standards

9. To ensure that the driving instruction standards will be maintained, we have advised the trade during the briefing sessions that TD would run seminars on the techniques, driving test requirements and special features of the different classes of vehicles prior to the issue of group licences. All PDIs would be encouraged to attend. According to our experience in organising seminars for PDIs to update them on driving test requirements, we can reasonably expect all active PDIs with the intention to practise instruction for the newly acquired instruction entitlement to attend the seminar.

Benchmark figure of PDIs

10. Given majority support for maintaining the existing level of supply, i.e. 1,050 for Group 1 licences, we propose adopting this figure as the benchmark in our review for the issue of new PDI licences. As stated in the consultation paper, the supply of PDIs will be reviewed every two years on a group-by-group basis. New licences will be issued to replenish the loss through natural wastage over time.

GROUPING OF LICENCES

11. To effect the grouping of licences, amendments to Road Traffic (Driving Licences) Regulations are required. We propose to issue a new "group licence" to existing PDIs upon expiry of the existing licences or if they choose to obtain a group licence before the expiry date of existing licences. The new "group licence" shall be issued after the holding of driving instruction seminars in July and August 2000. An existing PDI will be entitled to give instructions to all classes of vehicles in the same group if he holds the driving licence for not less than 3 years for all these classes of vehicles. If not, a restricted group licence will be issued instead. This restricted group licence will prohibit the PDI from giving instructions to other classes of vehicles which he is not entitled to.

PROPOSED IMPLEMENTATION PLAN

Grouping

12. With strong support from the trade on the grouping of PDI licences, the

Administration proposes to amend the Road Traffic (Driving Licences) Regulations as soon as possible to effect the issuance of "group licences" to replace existing licences. The computer system will be upgraded to match with the target implementation of grouping from 1 September 2000 onwards:

<u>Date</u>		<u>Actions</u>
April 2000	-	Drafting of legislative amendments
	-	Enhancement of the Computer System (VALID) for issue of group licences
mid May	-	Gazetting of amendments to Road Traffic (Driving Licences) Regulations and tabling in the Legislative Council for negative vetting
end-June 2000	-	Announcement of details for issue of new Group licences
July/Aug 2000	-	Conduct seminars
September 2000	-	Issue of new Group licences

Issue of New PDI Licence

13. The Administration is currently examining the legislative amendments required for the issue of new PDI licences under a balloting arrangement. The aim is to implement all necessary legislative amendments within the current legislative session, where possible.

ADVICE SOUGHT

14. Members are invited to comment on the proposed implementation plan.

Transport Bureau
April 2000