

Road Traffic Legislation (Amendment) Bill 2008

**Responses to the points raised in the letter dated 2 April 2008 from
the Legal Service Division of the Legislative Council Secretariat**

L.N. 3 and 55 of 2008

(Paragraph 1 of the Appendix to the letter)

1. The Road Traffic (Driving Licences) (Amendment) Regulation in 2008 (L.N. 3 and 55 of 2008), which amends the Road Traffic (Driving Licences) Regulations (Cap. 374B), has come into effect on 10 March 2008. While the amendments made therein do not affect the content of the Road Traffic Legislation (Amendment) Bill 2008 (“the Bill”), there are some technical inconsistencies between clause 28 of the Bill and the amended Cap. 374B. We will introduce Committee Stage Amendments (CSAs) to rectify the inconsistencies. A separate paper on the proposed CSAs will be submitted to the Bills Committee shortly.

Clause 20

The “court” and “magistrate”

(Paragraph 2 of the Appendix to the letter)

2. Currently, subsection (11) of section 72A defines "court" to include "magistrate". It is therefore unnecessary to add "magistrate" after references to "court" in clause 20 which amends section 72A.

“applicable person”

(Paragraph 3 of the Appendix to the letter)

3. The existing section 72A(11) provides for definitions that generally apply to the entire section 72A. However, the meaning of "applicable person" is only relevant to the interpretation of subsection (1A), hence we consider it appropriate to separate it from other definitions for the sake of clarity.

Reissue of Driving Licence

Regulation 20 of Cap. 374B – Cancellation of driving licences

(Paragraph 4 of the Appendix to the letter)

4. If a person's driving licence has been cancelled by the Commissioner for Transport under regulation 20 of Cap. 374B, and he subsequently applies for a full driving licence upon passing of the relevant driving test, he has to complete the probationary driving period under the new regulation 11 of Cap. 374B (clause 28 of the Bill). The new full driving licence is regarded as issued to that person.

Policy intention of “reissue” of a driving licence

(Paragraph 5 of the Appendix to the letter)

5. “Reissue” of a driving licence only applies to the case of probationary driving licence under the new regulation 12M of Cap. 374B (clause 38 of the Bill). Under the probationary driving licence scheme, on conviction of a minor traffic offence, the driver's probationary driving period should be extended for six months. The purpose of this new regulation is to provide for the scenario under which a person had committed a minor traffic offence during the probationary driving period but was convicted only after the period came to an end and was already issued with a full driving licence. Upon conviction, his full driving licence would be cancelled and he would be reissued with a probationary driving licence for the extended period.

Clause 47

Regulation 45A

(Paragraph 6 of the Appendix to the letter)

6. The proposed regulation 45A is modelled on the existing regulation 55A of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374D) where “authorized representative” is adopted without defining the same.

7. We note that “counsel, solicitor or agent” is adopted in section 20(2) of the Road Traffic Ordinance (Cap. 374) in relation to the practice and procedure of the Transport Tribunal. However, we consider the term

“authorized representative” is more appropriate, as the proper test is whether a representative is authorized or not. The applicant may choose to authorize any person, including but not limited to “counsel, solicitor or agent”.

Regulation 45C

(Paragraph 7 of the Appendix to the letter)

8. By virtue of section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), section 76 of Cap. 374 also applies to service under the proposed regulation 45C as the term “Ordinance” includes any subsidiary legislation made under an Ordinance. Therefore, it is not necessary to repeat the provision regarding address of service.

Chinese Text

(Paragraph 8 of the Appendix to the letter)

9. According to “XianDai HanYu CiDian” (<<現代漢語詞典>>), “及格” means (examination result) achieving the minimum required standards. On the other hand, “合格” means complying with standards. We consider that “及格” is more appropriate in the context of driving tests. If references to “合格” in other ordinances are adopted in the context of examination result achieving the minimum required standards, the Department of Justice will advise the relevant policy bureaux to consider similar amendments when suitable opportunities arise.

Transport and Housing Bureau
April 2008