

For discussion

**Bills Committee on
Road Traffic Legislation (Amendment) Bill 2008**

Proposed Committee Stage Amendments

Introduction

Further to the paper submitted in April 2008 on two sets of proposed Committee Stage Amendments (“CSAs”) to the Road Traffic Legislation (Amendment) Bill 2008 (“the Bill”), which are technical in nature (LC Paper No. CB(1)1320/07-08(01), this paper sets out in full all the proposed CSAs intended to be moved by the Administration.

The proposed Committee Stage Amendments

2. The proposed CSAs are at the **Annex**. The reasons for moving the CSAs are set out in the ensuing paragraphs.

Breath test by an approved pre-screening device

3. The Bills Committee supported the introduction of a pre-screening device to reduce inconvenience to motorists during random breath test (RBT) operations, but considered that a driver should not be required to conduct a screening breath test (SBT) just because he was found to have any alcohol in his body irrespective of the level of alcohol concentration in his breath specimen as detected by the pre-screening device. Having regard to the views of the Bills Committee, we propose to introduce CSAs to the effect that –

- (a) an approved pre-screening device is clearly defined to mean a device for indicating whether or not the proportion of alcohol in a person’s breath reaches such a level that it would be reasonable to suspect that such proportion is likely to exceed the prescribed limit, both at sections 2 and 39F(1) of the Road Traffic Ordinance (Cap. 374) (see amendments to clauses 3 and 11 of the Bill at Annex); and

- (b) if a person has provided a specimen of breath to be tested by an approved pre-screening device, the driver should then be required to conduct SBT only when the test indicates that the proportion of alcohol in the person's breath reaches such a level that it would be reasonable to suspect that such proportion is likely to exceed the prescribed limit (see amendment to clause 9 of the Bill at Annex).

Reference to “court or magistrate” at section 72A of Cap. 374

4. We have suggested to insert “or magistrate” after the reference to “court” in a number of provisions in Cap. 374 in the Bill but have not suggested similar amendments to section 72A. Having regard to the Bills Committee's views that a consistent approach should be taken, CSAs are proposed to amend section 72A to achieve consistency by removing the definition of “court”, and adding “or magistrate” after each reference to “court” in this section (see amendments to clause 20 of the Bill at Annex).

L.N. 3 and 55 of 2008 and Clause 28 of the Bill¹

5. The Road Traffic (Driving Licences) (Amendment) Regulation in 2008 (L.N. 3 and 55 of 2008) (“Amendment Regulation”), which amends the Road Traffic (Driving Licences) Regulations (Cap. 374B), has come into effect in March 2008, after the introduction of the Bill. Certain references in clause 28 of the Bill (which seek to amend regulation 11 of Cap. 374B) are now inconsistent with regulation 11 of Cap. 374B as amended by the Amendment Regulation. CSAs are therefore proposed to rectify these inconsistencies, mostly by renumbering the paragraphs in regulation 11 (see amendments to clauses 25, 28, 29 and 37(2)(b), (c), (d) and (e) of the Bill at Annex).

Alterations to Chinese Text¹

6. The Road Traffic (Driving-offence Points) Ordinance (Cap. 375) (《道路交通(違例駕駛記分)條例》(第 375 章)) provides the statutory framework for the operation of a driving-offence point system. In the English version of Cap. 375, “incurring of points” refers to the accumulation of

¹ The proposed CSAs were included in an earlier paper submitted to the Bills Committee in April 2008 (LC Paper No. CB(1)1320/07-08(01)).

appropriate number of driving-offence points if a person is convicted, or becomes liable to a fixed penalty, of a scheduled offence. In the Chinese text of Cap. 375, the term “扣分” is used. To enhance the clarity of the Chinese text and to make it consistent with the title of Cap. 375, we propose to –

- (a) substitute the term “記分” for “扣分” in the Chinese text wherever it appears in Cap. 375 and in Regulations 12I and 12L of Cap. 374B (see amendments to clauses 34, 37(2)(a), 50, 59, 60 of the Bill and the newly added clause 62A at Annex); and
- (b) substitute “扣減” for “補回” to better reflect the meaning of the terms “deducted” or “deduction” used in the English version of Cap. 375 (the newly added clause 62B at Annex).

Advice Sought

7. Members’ agreement is sought to the proposed CSAs to be moved by the Administration as set out in this paper.

Transport and Housing Bureau
29 May 2008

ROAD TRAFFIC LEGISLATION (AMENDMENT) BILL 2008

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Transport and Housing

Clause

Amendment Proposed

- 3(3) By deleting the proposed definition of "approved pre-screening device" and substituting -
- "approved pre-screening device" (認可預檢設備)
- means a device -
- (a) of a type approved by the Commissioner of Police under section 39F; and
- (b) for indicating whether or not the proportion of alcohol in a person's breath reaches such a level that it would be reasonable to suspect that such proportion is likely to exceed the prescribed limit;".
- 9(1) In the proposed section 39B(1A)(b), by deleting "person has any alcohol in his body" and substituting "proportion of alcohol in the person's breath reaches such a level that it would be reasonable to suspect that such proportion is likely to exceed the prescribed limit".

11(b) In the proposed section 39F(1)(c), by deleting "the purpose of indicating whether a person has any alcohol in his body" and substituting "indicating whether or not the proportion of alcohol in a person's breath reaches such a level that it would be reasonable to suspect that such proportion is likely to exceed the prescribed limit".

20 By adding immediately before subclause (1) -
"(1A) The heading of section 72A is amended by adding "**or magistrate**" after "**court**".

(1B) Section 72A(1) is amended by adding "or magistrate" after "court".

(1C) Section 72A(1) is amended, in the English text, by repealing "it" and substituting "the court or magistrate".

20(1) (a) In the proposed section 72A(1A), by adding "or magistrate" after "court" where it twice appears.

(b) In the proposed section 72A(1A), in the English text, by deleting "it" and substituting "the court or magistrate".

20 By adding immediately after subclause (1) -

"(1AA) Section 72A(2) is amended by adding "or magistrate" after "court".

(1AB) Section 72A(2) is amended by

repealing "it" and substituting "the court or magistrate".".

20(2) In the proposed section 72A(3B)(a), by adding "or magistrate" after "court".

20(9) (a) In the proposed section 72A(9A), by adding "or magistrate" after "court" wherever it appears.

(b) In the proposed section 72A(9C), by adding "or magistrate" after "court" wherever it appears.

20 By deleting subclause (10) and substituting -
"(10) Section 72A(11) is amended by
repealing the definition of "court".".

25(2) (a) In the proposed regulation 8(1A)(b)(ii), by deleting "regulation 11(1B)(a) or (1C)(a)" and substituting "regulation 11(1AA)(a) or (1AB)(a)".

(b) In the proposed regulation 8(1A)(b)(iii), by deleting "regulation 11(1B)(b) or (c), (1C)(b)" and substituting "regulation 11(1AA)(b) or (c), (1AB)(b)".

28(1) By deleting everything after "repealed" and substituting a full stop.

28(2) (a) By renumbering the proposed regulation 11(1B) as regulation 11(1AA).

(b) By renumbering the proposed regulation 11(1C) as regulation 11(1AB).

(c) In the proposed regulation 11(1AB)(d)(ii)(B) and (C), by deleting "(1B)" and substituting "(1AA)".

28(3) In the Chinese text, by deleting "申請人如" and substituting "申請關於".

28 By adding -

"(3A) Regulation 11(2A) is amended by repealing "The" and substituting "Subject to regulations 6, 7, 8 and 9, the".".

28 By deleting subclause (6).

29(2) (a) In the proposed regulation 12(5)(b)(ii), by deleting "regulation 11(1B)(a) or (1C)(a)" and substituting "regulation 11(1AA)(a) or (1AB)(a)".

(b) In the proposed regulation 12(5)(b)(iii), by deleting "regulation 11(1B)(b) or (c), (1C)(b)" and substituting "regulation 11(1AA)(b) or (c), (1AB)(b)".

34 In the proposed regulation 12I(1)(a)(iii), in the Chinese text, by deleting "扣" and substituting "記".

- 37(2) (a) In the proposed regulation 12L(1)(a)(ii), in the Chinese text, by deleting “扣” and substituting “記”.
- (b) In the proposed regulation 12L(1A)(b), by deleting “regulation 11(1C)(d)” and substituting “regulation 11(1AB)(d)”.
- (c) In the proposed regulation 12L(1B)(b), by deleting “regulation 11(1)” and substituting “regulation 11(1B)”.
- (d) In the proposed regulation 12L(1C)(b), by deleting “regulation 11(1)” and substituting “regulation 11(1B)”.
- (e) In the proposed regulation 12L(1D)(b)(ii), by adding “or (2A)” after “regulation 11(2)”.
- 50 (a) By renumbering the clause as clause 50(1).
- (b) By adding -
- “(2) The Twelfth Schedule is amended, in the Chinese text, in item 1, by repealing “扣” and substituting “記”.”.
- 59 (a) In the proposed section 8AA(1), in the Chinese text, by deleting “扣” and substituting “記”.
- (b) In the proposed section 8AA(2)(a)(i) and (ii), in the Chinese text, by deleting “扣” and substituting “記”.
- 60 By adding -
- “(2A) Section 8A(1) is amended, in the

Chinese text, by repealing “扣” where it twice appears and substituting “記”.

- 60(3)
- (a) In the proposed section 8A(2), in the Chinese text, by deleting “扣” and substituting “記”.
 - (b) In the proposed section 8A(3)(a)(i) and (b)(i), in the Chinese text, by deleting “扣” and substituting “記”.
 - (c) In the proposed section 8A(4), in the Chinese text, by deleting “扣” wherever it appears and substituting “記”.

New

By adding immediately after clause 62 -

“62A. “記” substituted for “扣”

The following provisions are amended, in the Chinese text, by repealing “扣” wherever it appears and substituting “記” -

- (a) the definition of “分”、 “分數” in section 2(1);
- (b) section 3(1)(a), (b), (c), (d), (e), (ea) and (eb) and (3);
- (c) section 4(1);
- (d) section 4A(2);
- (e) section 5(1), (2), (3) and (4);
- (f) section 6(1) and (2)(a) and (b);
- (g) section 6A(1), (2)(a)(i) and (ii) and (b) and (4)(b);
- (h) section 7(1) and (3);

- (i) section 8(1) and (2);
- (j) section 9(1)(d) and (f).

62B. “扣減” substituted for “補回”

(1) The following provisions are amended, in the Chinese text, by repealing “補回” wherever it appears and substituting “扣減” -

- (a) section 3(1)(eb);
- (b) section 6A(1), (2), (3) and (4);
- (c) section 7(3);
- (d) section 8(4A);
- (e) section 9(1)(f).

(2) The heading of section 6A is amended, in the Chinese text, by repealing “補回” and substituting “扣減”.