

ROAD TRAFFIC LEGISLATION (AMENDMENT) BILL 2008

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A BILL

To

Amend the Road Traffic Ordinance, the Road Traffic (Driving Licences) Regulations and other subsidiary legislation under that Ordinance and the Road Traffic (Driving-offence Points) Ordinance so as to—

- (a) increase the term of imprisonment of the offence of causing death by dangerous driving under section 36 of the Road Traffic Ordinance;
- (b) increase the penalties on offences under sections 39, 39A, 39B and 39C of the Road Traffic Ordinance, and provide police officers with a general power to conduct screening breath tests;
- (c) introduce a pre-screening device for the purposes of the new section 39B(1)(a) of the Road Traffic Ordinance;
- (d) provide that certain traffic offenders are required to attend driving improvement courses;
- (e) extend the probationary driving licence scheme to novice drivers of private cars and light goods vehicles;
- (f) provide for the review by a Transport Tribunal of certain decisions made by the Commissioner for Transport to refuse to issue, reissue or renew driving licences or driving instructor's licences or to cancel those licences; and
- (g) make related, consequential and other minor amendments.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Road Traffic Legislation (Amendment) Ordinance 2008.

2. Commencement

(1) This Ordinance, other than this Part and sections 4, 5(1), 46, 47 and 63, shall come into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

(2) This Part and sections 4, 5(1), 46, 47 and 63 shall come into operation on the day on which this Ordinance is published in the Gazette.

PART 2

AMENDMENTS TO ROAD TRAFFIC ORDINANCE

3. Interpretation

(1) Section 2 of the Road Traffic Ordinance (Cap. 374) is amended, in the definition of “screening breath test”, by adding “, but does not include a test of a specimen of breath by an approved pre-screening device” after “39B”.

(2) Section 2 is amended, in paragraph (b) of the definition of “special reasons”, by repealing “to such other circumstance that the court” and substituting “such other circumstance that the court or magistrate”.

(3) Section 2 is amended by adding—

““approved pre-screening device” (認可預檢設備) means a device of a type approved by the Commissioner of Police under section 39F for indicating whether a person has any alcohol in his body;

“learner’s driving licence” (學習駕駛執照) means a learner’s driving licence issued under regulation 12 or 12A of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B);

“probationary driving licence” (暫准駕駛執照) means a probationary driving licence to drive a motor cycle, motor tricycle, private car or light goods vehicle issued under regulation 12G of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B);

“temporary driving licence” (臨時駕駛執照) means a temporary driving licence issued under regulation 13 of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B);”.

4. Regulation of driving licences

(1) Section 8(1)(a) is amended by adding “, reissue” after “issue”.

(2) Section 8(1) is amended by adding—

“(aa) the review by a Transport Tribunal of any decision of the Commissioner to refuse to issue, to reissue, to renew or to cancel a driving licence or a driving instructor’s licence;”.

5. Causing death by dangerous driving

(1) Section 36(1)(a) is amended by repealing “5 years” and substituting “10 years”.

(2) Section 36(2) is repealed and the following substituted—

“(2) If a court or magistrate convicts a person of an offence under subsection (1), the court or magistrate shall order that the person be disqualified in accordance with subsection (2A) or (2B) unless the court or magistrate for special reasons orders that the person be disqualified for a shorter period or that the person not be disqualified.

(2A) Subject to subsection (2B), the person is to be disqualified—

- (a) in the case of a first conviction, for a period of not less than 2 years; and
- (b) in the case of a second or subsequent conviction, for a period of not less than 3 years.

(2B) If the court or magistrate has ordered the person to attend and complete a driving improvement course under section 72A(1A), the person is to be disqualified—

- (a) in the case of a first conviction, for a period of not less than 2 years, or until the person has attended and completed the course at his own cost, whichever is the later; and
- (b) in the case of a second or subsequent conviction, for a period of not less than 3 years, or until the person has attended and completed the course at his own cost, whichever is the later.

(2C) For the purposes of subsection (2), a person to whom subsection (2B) applies is disqualified for a shorter period if he is disqualified—

- (a) in the case of a first conviction, for a period of less than 2 years, or until the person has attended and completed the driving improvement course at his own cost, whichever is the later; and
- (b) in the case of a second or subsequent conviction, for a period of less than 3 years, or until the person has attended and completed the driving improvement course at his own cost, whichever is the later.”.

(3) Section 36(3) is repealed and the following substituted—

“(3) The court or magistrate may deal with the conviction of an offence as a first conviction if, as at the date on which the offence was committed, at least 5 years have elapsed since the person’s last conviction under subsection (1).”.

6. Dangerous driving

(1) Section 37(2) is repealed and the following substituted—

“(2) If a court or magistrate convicts a person of an offence under subsection (1), the court or magistrate shall order that the person be disqualified in accordance with subsection (2A) or (2B) unless the court or magistrate for special reasons orders that the person be disqualified for a shorter period or that the person not be disqualified.

(2A) Subject to subsection (2B), the person is to be disqualified—

- (a) in the case of a first conviction, for a period of not less than 6 months; and
- (b) in the case of a second or subsequent conviction, for a period of not less than 18 months.

(2B) If the court or magistrate has ordered the person to attend and complete a driving improvement course under section 72A(1A), the person is to be disqualified—

- (a) in the case of a first conviction, for a period of not less than 6 months, or until the person has attended and completed the course at his own cost, whichever is the later; and
- (b) in the case of a second or subsequent conviction, for a period of not less than 18 months, or until the person has attended and completed the course at his own cost, whichever is the later.

(2C) For the purposes of subsection (2), a person to whom subsection (2B) applies is disqualified for a shorter period if he is disqualified—

- (a) in the case of a first conviction, for a period of less than 6 months, or until the person has attended and completed the driving improvement course at his own cost, whichever is the later; and
- (b) in the case of a second or subsequent conviction, for a period of less than 18 months, or until the person has attended and completed the driving improvement course at his own cost, whichever is the later.”.

(2) Section 37(3) is repealed and the following substituted—

“(3) The court or magistrate may deal with the conviction of an offence as a first conviction if, as at the date on which the offence was committed, at least 5 years have elapsed since the person’s last conviction under subsection (1).”.

7. Driving a motor vehicle under the influence of drink or drugs

(1) Section 39(2) is repealed and the following substituted—

“(2) If a court or magistrate convicts a person of an offence under subsection (1), the court or magistrate shall order that the person be disqualified in accordance with subsection (2A) or (2B) unless the court or magistrate for special reasons orders that the person be disqualified for a shorter period or that the person not be disqualified.

(2A) Subject to subsection (2B), the person is to be disqualified—

- (a) in the case of a first conviction, for a period of not less than 3 months; and
- (b) in the case of a second or subsequent conviction, or a conviction subsequent to a conviction under section 39A, 39B or 39C, for a period of not less than 2 years.

(2B) If the court or magistrate has ordered the person to attend and complete a driving improvement course under section 72A(1A), the person is to be disqualified—

- (a) in the case of a first conviction, for a period of not less than 3 months, or until the person has attended and completed the course at his own cost, whichever is the later; and
- (b) in the case of a second or subsequent conviction, or a conviction subsequent to a conviction under section 39A, 39B or 39C, for a period of not less than 2 years, or until the person has attended and completed the course at his own cost, whichever is the later.

(2C) For the purposes of subsection (2), a person to whom subsection (2B) applies is disqualified for a shorter period if he is disqualified—

- (a) in the case of a first conviction, for a period of less than 3 months, or until the person has attended and completed the driving improvement course at his own cost, whichever is the later; and
- (b) in the case of a second or subsequent conviction, or a conviction subsequent to a conviction under section 39A, 39B or 39C, for a period of less than 2 years, or until the person has attended and completed the driving improvement course at his own cost, whichever is the later.”.

(2) Section 39(3) is repealed and the following substituted—

“(3) The court or magistrate may deal with the offence as a first offence, or the conviction of an offence as a first conviction if, as at the date on which the offence was committed, at least 5 years have elapsed since the person’s last conviction under subsection (1) or section 39A, 39B or 39C.”.

8. Driving, attempting to drive or being in charge of a motor vehicle with alcohol concentration above prescribed limit

(1) Section 39A(2) is repealed and the following substituted—

“(2) If a court or magistrate convicts a person of an offence under subsection (1), the court or magistrate shall order that the person be disqualified in accordance with subsection (2A) or (2B) unless the court or magistrate for special reasons orders that the person be disqualified for a shorter period or that the person not be disqualified.

(2A) Subject to subsection (2B), the person is to be disqualified—

- (a) in the case of a first conviction, for a period of not less than 3 months; and
- (b) in the case of a second or subsequent conviction, or a conviction subsequent to a conviction under section 39, 39B or 39C, for a period of not less than 2 years.

(2B) If the court or magistrate has ordered the person to attend and complete a driving improvement course under section 72A(1A), the person is to be disqualified—

- (a) in the case of a first conviction, for a period of not less than 3 months, or until the person has attended and completed the course at his own cost, whichever is the later; and
- (b) in the case of a second or subsequent conviction, or a conviction subsequent to a conviction under section 39, 39B or 39C, for a period of not less than 2 years, or until the person has attended and completed the course at his own cost, whichever is the later.

(2C) For the purposes of subsection (2), a person to whom subsection (2B) applies is disqualified for a shorter period if he is disqualified—

- (a) in the case of a first conviction, for a period of less than 3 months, or until the person has attended and completed the driving improvement course at his own cost, whichever is the later; and

- (b) in the case of a second or subsequent conviction, or a conviction subsequent to a conviction under section 39, 39B or 39C, for a period of less than 2 years, or until the person has attended and completed the driving improvement course at his own cost, whichever is the later.”.
- (2) Section 39A(3) is repealed and the following substituted—
- “(3) The court or magistrate may deal with the offence as a first offence, or the conviction of an offence as a first conviction if, as at the date on which the offence was committed, at least 5 years have elapsed since the person’s last conviction under subsection (1) or section 39, 39B or 39C.”.

9. Screening breath tests

- (1) Section 39B(1) is repealed and the following substituted—
- “(1) A police officer in uniform may require any of the following persons to provide a specimen of breath for a screening breath test—
- (a) a person who is driving or attempting to drive, or is in charge of, a motor vehicle on a road;
- (b) a person whom the police officer has reasonable cause to suspect of—
- (i) having been driving or attempting to drive, or been in charge of, a motor vehicle on a road with alcohol in his body, and still having alcohol in his body; or
- (ii) having been driving or attempting to drive, or been in charge of, a motor vehicle on a road, and having committed a traffic offence while the vehicle was in motion.
- (1A) Subsection (1)(a) does not apply to a person if, immediately before the police officer requires him to provide the specimen of breath—
- (a) the person has, at the request of the police officer, provided a specimen of breath to be tested by an approved pre-screening device; and
- (b) the test does not indicate that the person has any alcohol in his body.”.
- (2) Section 39B(7) is repealed and the following substituted—
- “(7) If a court or magistrate convicts a person of an offence under subsection (6), the court or magistrate shall order that the person be disqualified in accordance with subsection (7A) or (7B)

unless the court or magistrate for special reasons orders that the person be disqualified for a shorter period or that the person not be disqualified.

(7A) Subject to subsection (7B), the person is to be disqualified—

- (a) in the case of a first conviction, for a period of not less than 3 months; and
- (b) in the case of a second or subsequent conviction, or a conviction subsequent to a conviction under section 39, 39A or 39C, for a period of not less than 2 years.

(7B) If the court or magistrate has ordered the person to attend and complete a driving improvement course under section 72A(1A), the person is to be disqualified—

- (a) in the case of a first conviction, for a period of not less than 3 months, or until the person has attended and completed the course at his own cost, whichever is the later; and
- (b) in the case of a second or subsequent conviction, or a conviction subsequent to a conviction under section 39, 39A or 39C, for a period of not less than 2 years, or until the person has attended and completed the course at his own cost, whichever is the later.

(7C) For the purposes of subsection (7), a person to whom subsection (7B) applies is disqualified for a shorter period if he is disqualified—

- (a) in the case of a first conviction, for a period of less than 3 months, or until the person has attended and completed the driving improvement course at his own cost, whichever is the later; and
- (b) in the case of a second or subsequent conviction, or a conviction subsequent to a conviction under section 39, 39A or 39C, for a period of less than 2 years, or until the person has attended and completed the driving improvement course at his own cost, whichever is the later.”.

(3) Section 39B(8) is repealed and the following substituted—

“(8) The court or magistrate may deal with the offence as a first offence, or the conviction of an offence as a first conviction if, as at the date on which the offence was committed, at least 5 years have elapsed since the person’s last conviction under subsection (6) or section 39, 39A or 39C.”.

10. Provision of specimens for analysis

(1) Section 39C(16) is repealed and the following substituted—

“(16) If a court or magistrate convicts a person of an offence under subsection (15), the court or magistrate shall order that the person be disqualified in accordance with subsection (16A) or (16B) unless the court or magistrate for special reasons orders that the person be disqualified for a shorter period or that the person not be disqualified.

(16A) Subject to subsection (16B), the person is to be disqualified—

- (a) in the case of a first conviction, for a period of not less than 3 months; and
- (b) in the case of a second or subsequent conviction, or a conviction subsequent to a conviction under section 39, 39A or 39B, for a period of not less than 2 years.

(16B) If the court or magistrate has ordered the person to attend and complete a driving improvement course under section 72A(1A), the person is to be disqualified—

- (a) in the case of a first conviction, for a period of not less than 3 months, or until the person has attended and completed the course at his own cost, whichever is the later; and
- (b) in the case of a second or subsequent conviction, or a conviction subsequent to a conviction under section 39, 39A or 39B, for a period of not less than 2 years, or until the person has attended and completed the course at his own cost, whichever is the later.

(16C) For the purposes of subsection (16), a person to whom subsection (16B) applies is disqualified for a shorter period if he is disqualified—

- (a) in the case of a first conviction, for a period of less than 3 months, or until the person has attended and completed the driving improvement course at his own cost, whichever is the later; and
- (b) in the case of a second or subsequent conviction, or a conviction subsequent to a conviction under section 39, 39A or 39B, for a period of less than 2 years, or until the person has attended and completed the driving improvement course at his own cost, whichever is the later.”.

- (2) Section 39C(17) is repealed and the following substituted—
“(17) The court or magistrate may deal with the offence as a first offence, or the conviction of an offence as a first conviction if, as at the date on which the offence was committed, at least 5 years have elapsed since the person’s last conviction under subsection (15) or section 39, 39A or 39B.”.

11. Approval of instruments and operators

Section 39F(1) is amended—

- (a) in paragraph (b), by repealing the full stop and substituting a semicolon;
- (b) by adding—
 - “(c) an approved pre-screening device for the purpose of indicating whether a person has any alcohol in his body.”.

12. Speed limit

- (1) Section 40(5)(d) is repealed and the following substituted—
“(d) motor cycle, motor tricycle, private car or light goods vehicle driven by a person who is authorized to drive it by a probationary driving licence,”.
- (2) Section 40(7) is repealed.

13. Driving in excess of speed limit

(1) Section 41(3)(a) is amended by repealing “a person is convicted” and substituting “a court or magistrate convicts a person”.

(2) Section 41(3) is amended by repealing “person shall be disqualified for a period of not less than 6 months,” and substituting “court or magistrate shall order that the person be disqualified in accordance with subsection (4)”.

(3) Section 41 is amended by adding—

“(4) The person is to be disqualified—

- (a) subject to paragraph (b), for a period of not less than 6 months; or
- (b) if the court or magistrate has ordered the person to attend and complete a driving improvement course under section 72A(1A), for a period of not less than 6 months, or until the person has attended and completed the course at his own cost, whichever is the later.

(5) For the purposes of subsection (3), a person to whom subsection (4)(b) applies is disqualified for a shorter period if he is disqualified for a period of less than 6 months, or until the person has attended and completed the driving improvement course at his own cost, whichever is the later.”.

14. Offence of obtaining licence, or driving, while disqualified

Section 44(2) is repealed and the following substituted—

“(2) If a court or magistrate convicts a person of an offence under subsection (1), the court or magistrate shall order that the person be disqualified—

- (a) in the case of a first conviction, for a period of not less than 12 months; and
- (b) in the case of a second or subsequent conviction, or a conviction subsequent to a conviction under section 25 of the repealed Ordinance, for a period of not less than 3 years,

unless the court or magistrate for special reasons orders that the person be disqualified for a shorter period or that the person not be disqualified.”.

15. Restriction on motor racing and speed trials

Section 55(2) is repealed and the following substituted—

“(2) If a magistrate convicts a person of an offence under subsection (1), the magistrate shall order that the person be disqualified in accordance with subsection (2A) unless the magistrate for special reasons orders that the person be disqualified for a shorter period or that the person not be disqualified.

(2A) The person is to be disqualified—

- (a) subject to paragraph (b), for a period of 12 months; or
- (b) if the magistrate has ordered the person to attend and complete a driving improvement course under section 72A(1A), for a period of 12 months, or until the person has attended and completed the course at his own cost, whichever is the later.

(2B) For the purposes of subsection (2), a person to whom subsection (2A)(b) applies is disqualified for a shorter period if he is disqualified for a period of less than 12 months, or until the person has attended and completed the driving improvement course at his own cost, whichever is the later.”.

16. Disqualification on conviction of certain offences

Section 69(1) is amended by adding “or magistrate” after “court” where it twice appears.

17. Re-testing of drivers

(1) Section 70(2) is amended by adding “or magistrate” after “court”.

(2) Section 70(2) is amended, in the Chinese text, by repealing “取得合格” and substituting “及格”.

(3) Section 70(2) is amended, in the Chinese text, by repealing “合格” and substituting “及格”.

(4) Section 70(3) is amended, in the Chinese text, by repealing “合格” and substituting “及格”.

18. Notification and effect of, and appeal against, disqualification

Section 71(1), (2) and (4) is amended by adding “or magistrate” after “court” wherever it appears.

19. Removal of disqualification

Section 72(1) and (6) is amended by adding “or magistrate” after “court” wherever it appears.

20. Power of court to order persons to attend driving improvement courses

(1) Section 72A is amended by adding—

“(1A) Subject to subsection (1B), where a court convicts a person of an offence under section 36, 37, 39, 39A, 39B, 39C or 55, or convicts an applicable person of an offence under section 41(1), it shall order the person to attend and complete a driving improvement course, unless the court for special reasons decides not to make such an order.

(1B) If a person, on being convicted of an offence in any proceedings, is ordered under subsection (1)(b) or (1A) to attend and complete a driving improvement course, the person is not to be ordered under that subsection to attend and complete a driving improvement course in respect of any other offence of which he is convicted in those proceedings.”.

(2) Section 72A is amended by adding—

“(3A) A person who is ordered to attend and complete a driving improvement course under subsection (1A) shall, within the period specified in subsection (3B), at his own cost, attend and complete a driving improvement course.

(3B) The period specified for the purposes of subsection (3A) is—

(a) in the case where, under section 36(2), 37(2), 39(2), 39A(2), 39B(7), 39C(16), 41(4) or 55(2), the court orders the person be disqualified for a fixed period of more than 12 months, or until the person has attended and completed the driving improvement course at his own cost, whichever is the later, the period of 3 months ending on the date on which that fixed period expires; or

(b) in any other case, the period of 3 months after the date of making the order.”.

(3) Section 72A(4) is amended by adding “or (3A)” before “with reasonable excuse”.

(4) Section 72A(4) is amended by adding “, or the period specified in subsection (3B) for the purposes of subsection (3A),” before “be extended”.

(5) Section 72A(5)(a), (b) and (c) is amended by adding “or (1A)” after “(1)(b)”.

(6) Section 72A(7) and (8) is repealed.

(7) Section 72A(9) is amended by adding “or (3A)” after “(3)”.

(8) Section 72A(9) is amended by repealing “of \$3,000” and substituting “at level 2”.

(9) Section 72A is amended by adding—

“(9A) If a court convicts a person of an offence under subsection (9), the court shall order the person to attend and complete a driving improvement course at his own cost within the period specified in the order, unless the court for special reasons decides not to make such an order.

(9B) A person who, without reasonable excuse, fails to comply with the order made under subsection (9A) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 2 months.

(9C) If a court convicts a person of an offence under subsection (9B), and the person is not disqualified, the court shall order that the person be disqualified for a period of not less than 3 months, or until the person has attended and completed a driving improvement course

at his own cost, whichever is the later, unless the court for special reasons orders that the person be disqualified for a shorter period or that the person not be disqualified.

(9D) If a person is ordered to attend and complete a driving improvement course under subsection (1)(b), (1A) or (9A), he may appeal against the order in like manner as if it were an order made against him for the payment of a fine.

(9E) If a person appeals against an order under subsection (9D), the compliance period does not commence or continue to run, as the case may be, until the appeal is withdrawn or dismissed.”.

(10) Section 72A(11) is amended, in the Chinese text, in the definition of “法庭”, by repealing the full stop and substituting a semicolon.

(11) Section 72A(11) is amended by adding—

““compliance period” (遵從期間) means—

- (a) in relation to an order made under subsection (1)(b), the period of 3 months referred to in subsection (3), or that period as extended under subsection (4);
- (b) in relation to an order made under subsection (1A), the period specified in subsection (3B) for the purposes of subsection (3A), or that period as extended under subsection (4);
- (c) in relation to an order made under subsection (9A), the period specified in the order within which the person is required to attend and complete a driving improvement course;”.

(12) Section 72A is amended by adding—

“(12) For the purposes of subsection (1A), a person is, in relation to an offence under section 41(1), an applicable person if it is proved or admitted that, at the time of the offence, the person was driving the vehicle at a speed exceeding the relevant speed limit as described in that section by more than 45 km an hour.

(13) For the purposes of subsection (9C), a person is disqualified for a shorter period if he is disqualified for a period of less than 3 months, or until the person has attended and completed a driving improvement course at his own cost, whichever is the later.”.

21. Commissioner may designate driving improvement schools

(1) Section 102B(3)(a) is repealed and the following substituted—

“(a) driving improvement courses are provided by the school in accordance with the code of practice—

- (i) to a holder of a driving licence other than—
 - (A) a learner’s driving licence;
 - (B) a temporary driving licence; or
 - (C) a driving licence to drive Government vehicles;
- (ii) to a person who is ordered under section 72A(1)(b), (1A) or (9A), or is required under section 8AA(1) of or ordered under section 8AA(6) of the Road Traffic (Driving-offence Points) Ordinance (Cap. 375), to attend and complete a driving improvement course; and
- (iii) to a person who is disqualified until he has attended and completed a driving improvement course at his own cost; and”.

(2) Section 102B(4) is amended by repealing “any of subparagraphs (i), (ii) and (iii) in subsection (3)(a)” and substituting “subsection (3)(a)(i)(A), (B) or (C)”.

22. Offences specified for the purposes of section 72A

(1) Schedule 11 is amended by repealing “5” and substituting “1, 2, 4, 4A, 4B, 4C, 5, 5B, 6”.

(2) Schedule 11 is amended by repealing “12,”.

PART 3

AMENDMENTS TO ROAD TRAFFIC (DRIVING LICENCES) REGULATIONS

23. Interpretation

(1) Regulation 2 of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B) is amended, in the definition of “applicant”, by adding “reissue or” before “renewal”.

(2) Regulation 2 is amended by repealing the definitions of “learner’s driving licence”, “probationary driving licence” and “temporary driving licence”.

(3) Regulation 2 is amended by repealing the definition of “probationary driving period” and substituting—

““probationary driving period” (暫准駕駛期), in relation to an application for a full driving licence, means the probationary driving period for the purpose of that application as provided in regulation 12F;”.

(4) Regulation 2 is amended, in the Chinese text, in the definition of “整體式車輛”, by repealing the semicolon and substituting a full stop.

(5) Regulation 2 is amended by adding—

““relevant date” (有關日期) means the date on which section 28 of the Road Traffic Legislation (Amendment) Ordinance 2008 (of 2008) comes into operation;

“relevant motor vehicle” (有關汽車), in relation to a person who holds a probationary driving licence to drive a class of motor vehicle, means—

(a) a motor vehicle of the class; or

(b) if the person holds a probationary driving licence to drive another class of motor vehicle and has not completed the probationary driving period for the purpose of his application for a full driving licence to drive that other class of motor vehicle, a motor vehicle of that other class;”.

24. Regulation substituted

Regulation 6 is repealed and the following substituted—

“6. Restrictions on issue of driving licences

(1) Without prejudice to regulation 35, if—

(a) a person applies to the Commissioner under these regulations for the issue, reissue or renewal of a driving licence to drive a class of motor vehicle; and

(b) the person is disqualified to drive the class of motor vehicle, the Commissioner shall not issue, reissue or renew the driving licence to the person.

(2) Without prejudice to regulation 35, if—

(a) a person applies to the Commissioner under these regulations for the issue, reissue or renewal of a driving licence;

(b) the person is ordered under section 72A(1)(b), (1A) or (9A) of the Ordinance, or is required under section 8AA(1) of or ordered under section 8AA(6) of the Road Traffic (Driving-offence Points) Ordinance (Cap. 375), to attend and complete a driving improvement course; and

(c) the person has not complied with the order or requirement, the Commissioner shall not issue, reissue or renew the driving licence to the person.”.

25. Previous experience and driving record

(1) Regulation 8(1) is amended by repealing everything after “application for such” and substituting “licence, the person satisfies the conditions set out in paragraph (1A).”.

(2) Regulation 8 is amended by adding—

“(1A) The conditions referred to in paragraph (1) are—

(a) the person is a holder of a valid full driving licence to drive a private car or light goods vehicle;

(b) subject to paragraph (1B), the person has held the licence—

(i) if the licence was issued to him before the relevant date, for at least 3 years immediately preceding his application;

(ii) if the licence was issued to him pursuant to regulation 11(1B)(a) or (1C)(a), for at least 2 years immediately preceding his application; or

(iii) if the licence was issued to him pursuant to regulation 11(1B)(b) or (c), (1C)(b), (c) or (d), (2), (3) or (3A), for at least 3 years immediately preceding his application; and

(c) the person has subsequently passed the appropriate driving test.

(1B) The Commissioner may, in relation to a person’s application for a full driving licence referred to in paragraph (1), exempt, in writing, the person from the condition set out in paragraph (1A)(b).”.

(3) Regulation 8(2)(b) is amended, in the Chinese text, by repealing “取得合格” and substituting “及格”.

26. Physical fitness

(1) Regulation 9(1) is amended by adding “reissue or” before “renewal”.

(2) Regulation 9(2) is amended by adding “, reissue” before “or renew”.

(3) Regulation 9(2) is amended, in the Chinese text, in paragraph (b) of the proviso, by repealing “合格” and substituting “及格”.

(4) Regulation 9(2A) is amended by adding “, reissue” before “or renewal”.

(5) Regulation 9(2C) is amended, in the Chinese text, by repealing “取得合格” and substituting “及格”.

(6) Regulation 9(3) is amended, in the Chinese text, by repealing “測驗合格” and substituting “測驗及格”.

(7) Regulation 9(3) is amended, in the Chinese text, in the proviso, by repealing “取得合格” and substituting “及格”.

(8) Regulation 9(6) is amended by adding “, reissue” before “or renew”.

27. Applications for full driving licences

Regulation 10(2)(c) is amended by adding “or reissue” after “issue”.

28. Issue of full driving licences

(1) Regulation 11(1) is repealed and the following substituted—

“(1) Subject to regulations 6, 7, 8 and 9, the Commissioner shall issue a full driving licence (other than a full driving licence to drive a motor cycle, motor tricycle, private car or light goods vehicle) to an applicant if he has passed, within 3 years prior to the date of his application for the full driving licence, a driving test in respect of the class of motor vehicle to which his application relates.”.

(2) Regulation 11(1A) is repealed and the following substituted—

“(1A) Subject to regulations 6, 7, 8 and 9, the Commissioner shall issue a full driving licence to drive a motor cycle or motor tricycle to an applicant if he has completed, within 3 years prior to the date of his application for the full driving licence, the probationary driving period for the purpose of the application.

(1B) Subject to regulations 6, 7, 8 and 9, the Commissioner shall issue a full driving licence to drive a private car to an applicant if—

- (a) he has completed, within 3 years prior to the date of his application for the full driving licence, the probationary driving period for the purpose of the application;
- (b) he—
 - (i) has applied, before the relevant date, for a driving test in respect of private cars; and
 - (ii) has passed, within 3 years prior to the date of his application for the full driving licence, the test; or
- (c) he—
 - (i) has applied for a driving test in respect of private cars;
 - (ii) has been issued with a temporary driving licence to drive a private car pending the test; and
 - (iii) has passed, within 3 years prior to the date of his application for the full driving licence, the test.

(1C) Subject to regulations 6, 7, 8 and 9, the Commissioner shall issue a full driving licence to drive a light goods vehicle to an applicant if—

- (a) he has completed, within 3 years prior to the date of his application for the full driving licence, the probationary driving period for the purpose of the application;
- (b) he—
 - (i) has applied, before the relevant date, for a driving test in respect of light goods vehicles; and
 - (ii) has passed, within 3 years prior to the date of his application for the full driving licence, the test;
- (c) he—
 - (i) has applied for a driving test in respect of light goods vehicles;
 - (ii) has been issued with a temporary driving licence to drive a light goods vehicle pending the test; and
 - (iii) has passed, within 3 years prior to the date of his application for the full driving licence, the test; or
- (d) he—
 - (i) is a holder of a valid full driving licence to drive a private car;
 - (ii) has held the licence—
 - (A) if the licence was issued to him before the relevant date, for at least 3 years immediately preceding his application for the full driving licence to drive a light goods vehicle;
 - (B) if the licence was issued to him pursuant to paragraph (1B)(a), for at least 2 years immediately preceding his application for the full driving licence to drive a light goods vehicle; or
 - (C) if the licence was issued to him pursuant to paragraph (1B)(b) or (c), (2), (3) or (3A), for at least 3 years immediately preceding his application for the full driving licence to drive a light goods vehicle; and
 - (iii) has subsequently passed, within 3 years prior to the date of his application for the full driving licence to drive a light goods vehicle, a driving test in respect of light goods vehicles.”.

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

(4) Regulation 11(3) is amended by repealing “, the Commissioner may” and substituting “and regulations 6, 7, 8 and 9, the Commissioner may also”.

(5) Regulation 11(3A) is amended by repealing “, the Commissioner may” and substituting “and regulations 6, 7, 8 and 9, the Commissioner may also”.

(6) Regulation 11(4) is amended by adding “or (3A)” after “paragraph (3)”.

(7) Regulation 11(6) is repealed and the following substituted—

“(6) A full driving licence to drive any class of motor vehicle may, subject to paragraph (6A), be issued on payment of the fee prescribed in the Second Schedule.”.

(8) Regulation 11(6A) is amended by repealing everything after “licence” and substituting—

“—

- (a) issued to a disabled person; or
- (b) issued to a person to drive a class of motor vehicle if he holds a valid full driving licence to drive another class of motor vehicle.”.

(9) Regulation 11 is amended by adding—

“(6B) A full driving licence issued to an applicant to drive a class of motor vehicle shall be valid for—

(a) subject to subparagraph (b)—

(i) if, on the date of application, the applicant is at or less than the age of 60, a period of 10 years from the date of issue of the licence;

(ii) if, on the date of application, the applicant is over the age of 60 but less than the age of 70—

(A) a period from the date of issue of the licence up to the day before he attains the age of 70; or

(B) a period of 3 years from the date of issue of the licence,

whichever is the longer; or

(iii) if, on the date of application, the applicant is at or over the age of 70, a period of one year or 3 years from the date of issue of the licence as the applicant chooses; or

(b) if, on the date of application, the applicant holds a valid full driving licence to drive another class of motor vehicle, a period that expires at the end of the expiry date of that licence.”.

29. Application for and issue of learners' driving licences

(1) Regulation 12(3) is repealed and the following substituted—

“(3) Subject to paragraphs (5) and (6) and regulations 6, 7 and 9, the Commissioner shall on receipt of—

(a) an application under paragraph (1); and

(b) subject to regulation 12E, the fee prescribed in the Second Schedule,

issue to the applicant a learner's driving licence to drive the class of motor vehicle the subject of his application.”.

(2) Regulation 12 is amended by adding—

“(5) The Commissioner shall refuse to issue a learner's driving licence to drive a public light bus or private light bus, a public bus or private bus, a medium goods vehicle, a heavy goods vehicle or a special purpose vehicle unless, on the date of his application for such licence, the applicant—

(a) is a holder of a valid full driving licence to drive a private car or light goods vehicle; and

(b) subject to paragraphs (7) and (8), has held the licence—

(i) if the licence was issued to him before the relevant date, for at least 3 years immediately preceding his application;

(ii) if the licence was issued to him pursuant to regulation 11(1B)(a) or (1C)(a), for at least 2 years immediately preceding his application; or

(iii) if the licence was issued to him pursuant to regulation 11(1B)(b) or (c), (1C)(b), (c) or (d), (2), (3) or (3A), for at least 3 years immediately preceding his application.

(6) The Commissioner shall refuse to issue a learner's driving licence to drive an articulated vehicle unless, on the date of his application for such licence, the applicant is a holder of a valid full driving licence to drive a medium goods vehicle or heavy goods vehicle.

(7) The Commissioner may, in relation to a person's application for a learner's driving licence under paragraph (1), exempt, in writing, the person from the condition set out in paragraph (5)(b).

(8) The Commissioner may in his discretion take into consideration driving experience gained other than under a driving licence issued in Hong Kong.

(9) A learner's driving licence issued to an applicant to drive a class of motor vehicle shall be valid for—

- (a) subject to subparagraph (b), 12 months from the date of issue of the licence; or
- (b) if, on the date of application, the applicant holds a valid learner's driving licence to drive another class of motor vehicle, a period that expires at the end of the expiry date of that licence.”.

30. Regulation added

The following is added—

“12DA. Cancellation of learners' driving licences

(1) Without prejudice to regulation 20, if—

- (a) the Commissioner cancels under regulation 12L(1) a full driving licence issued to a person to drive a private car or light goods vehicle; and
- (b) the Commissioner has previously issued to the person, as a holder of the full driving licence to drive a private car or light goods vehicle, as the case may be, pursuant to regulation 12(5) a learner's driving licence to drive a public light bus or private light bus, a public bus or private bus, a medium goods vehicle, a heavy goods vehicle or a special purpose vehicle,

the Commissioner shall also cancel that learner's driving licence.

(2) Without prejudice to regulation 20, if—

- (a) the Commissioner cancels under regulation 12L(1B) a full driving licence issued to a person to drive a medium goods vehicle or heavy goods vehicle; and
- (b) the Commissioner has previously issued to the person, as a holder of the full driving licence to drive a medium goods vehicle or heavy goods vehicle, as the case may be, pursuant to regulation 12(6) a learner's driving licence to drive an articulated vehicle,

the Commissioner shall also cancel that learner's driving licence.

(3) If a full driving licence is cancelled under regulation 12L which causes the cancellation of a learner's driving licence under this regulation, such cancellation of the learner's driving licence shall not take effect until the cancellation under regulation 12L takes effect.

(4) On cancellation of a learner's driving licence under this regulation, the Commissioner shall give to the licence holder notice of such cancellation, and the licence holder shall, within 72 hours after receipt of the notice, surrender the learner's driving licence to the Commissioner.”.

31. No fee payable in respect of certain learners' driving licences

Regulation 12E is amended—

- (a) in paragraph (a), by repealing “or” at the end;
- (b) in paragraph (b), by repealing the full stop and substituting “; or”;
- (c) by adding—
 - “(c) issued to a person to drive a class of motor vehicle if he holds a valid learner's driving licence to drive another class of motor vehicle.”.

32. Regulation substituted

Regulation 12F is repealed and the following substituted—

“12F. Probationary driving period

- (1) A probationary driving period for the purpose of a person's application for a full driving licence to drive a class of motor vehicle—
 - (a) commences on the date on which the probationary driving licence to drive the class of motor vehicle is issued to the person; and
 - (b) subject to paragraph (3), lasts for a period of such length as specified in paragraph (2).
- (2) For the purpose of paragraph (1)(b), the period—
 - (a) is 12 months; and
 - (b) is to be extended by 6 months if—
 - (i) the person is convicted of one offence mentioned in the Twelfth Schedule; and
 - (ii) the offence was committed by him during those 12 months while driving—
 - (A) subject to sub-sub-subparagraph (B), a relevant motor vehicle; or

(B) in the case of a probationary driving licence to drive a motor cycle or motor tricycle that was issued to him before the relevant date, a motor cycle or motor tricycle.

(3) In calculating the length of the period, the following is excluded—

- (a) a period during which the person does not hold a valid probationary driving licence to drive the class of motor vehicle;
- (b) if the person's probationary driving licence to drive the class of motor vehicle is cancelled under regulation 12I, a period commencing on the issue of the licence and ending on the cancellation of it."

33. Issue of probationary driving licences to drive motor cycles and motor tricycles

(1) The heading of regulation 12G is repealed and the following substituted—

“Application for and issue of probationary driving licences”.

(2) Regulation 12G(1) is amended by repealing “or motor tricycle” and substituting “, motor tricycle, private car or light goods vehicle”.

(3) Regulation 12G(3) is repealed and the following substituted—

“(3) Subject to paragraph (4) and regulations 6, 7 and 9, the Commissioner shall on receipt of—

- (a) an application under paragraph (1); and
- (b) subject to regulation 12J(a) or (b), the fee prescribed in the Second Schedule,

issue to the applicant a probationary driving licence to drive the class of motor vehicle the subject of his application.

(3A) On issuing a probationary driving licence to a person under paragraph (3) to drive a class of motor vehicle, the Commissioner may, subject to regulation 12J(c), if—

- (a) the fact that the person has passed the relevant driving test is accepted by the Commissioner as evidence of the person's competence to drive a motor vehicle of another class; and
- (b) the person does not hold a probationary, temporary or full driving licence to drive that other class of motor vehicle,

at the same time issue to the person a probationary driving licence to drive that other class of motor vehicle.

(3B) A probationary driving licence issued to an applicant to drive a class of motor vehicle shall be valid for—

- (a) subject to subparagraph (b), 12 months from the date of issue of the licence; or
- (b) if, on the date of application, the applicant holds a valid probationary driving licence to drive another class of motor vehicle, a period that expires at the end of the expiry date of that licence.”.

(4) Regulation 12G(4) is repealed and the following substituted—

“(4) The Commissioner shall refuse to issue a probationary driving licence to drive a class of motor vehicle unless the applicant—

- (a) has passed, within 3 years prior to the date of his application, the relevant driving test; and
- (b) has not previously been issued with a probationary driving licence to drive the class of motor vehicle after passing that relevant driving test.

(5) In this regulation, “relevant driving test” (有關駕駛測驗)—

- (a) in relation to a probationary driving licence to drive a motor cycle or motor tricycle, means a motor cycle driving test;
- (b) in relation to a probationary driving licence to drive a private car or light goods vehicle, means a driving test in respect of private cars or light goods vehicles, as the case may be.”.

34. Cancellation of probationary driving licences

Regulation 12I(1) is repealed and the following substituted—

“(1) Without prejudice to regulation 20, the Commissioner shall cancel a probationary driving licence to drive a class of motor vehicle if—

- (a) the licence holder—
 - (i) has more than once been convicted of an offence mentioned in the Twelfth Schedule;
 - (ii) has been convicted of 2 or more offences mentioned in the Twelfth Schedule; or
 - (iii) is convicted of an offence in respect of which 10 or more points shall be incurred under section 4 of the Road Traffic (Driving-offence Points) Ordinance (Cap. 375); and

- (b) the offence was committed, during the probationary driving period for the purpose of the application for a full driving licence to drive the class of motor vehicle, by the licence holder while driving—
- (i) subject to sub-subparagraph (ii), a relevant motor vehicle; or
 - (ii) in the case of a probationary driving licence to drive a motor cycle or motor tricycle that was issued to him before the relevant date, a motor cycle or motor tricycle.

(1A) On cancellation of a probationary driving licence under paragraph (1), the Commissioner shall give to the licence holder notice of such cancellation, and the licence holder shall, within 72 hours after receipt of the notice, surrender the probationary driving licence to the Commissioner.”.

35. No fee payable in respect of certain probationary driving licences

Regulation 12J is amended by repealing everything after “licence” and substituting—

“—

- (a) issued or reissued to or renewed for a disabled person;
- (b) issued or reissued to a person to drive a class of motor vehicle if he holds a valid probationary driving licence to drive another class of motor vehicle;
- (c) issued under regulation 12G(3A); or
- (d) reissued under regulation 12M(3).”.

36. Regulation substituted

Regulation 12K is repealed and the following substituted—

“12K. Driving under probationary driving licences

(1) The holder of a probationary driving licence shall not drive a motor vehicle of a class specified in the licence unless—

- (a) in the case of a probationary driving licence to drive a private car or light goods vehicle, the motor vehicle has—
 - (i) a Small Plate securely fixed at the front of the motor vehicle, or on the left-hand side of the front windscreen of the motor vehicle, in such a manner that the Plate is clearly visible from the front of the motor vehicle; and

- (ii) a Small Plate securely fixed at the rear of the motor vehicle, or on the left-hand side of the rear windscreen of the motor vehicle, in such a manner that the Plate is clearly visible from the rear of the motor vehicle;
 - (b) in the case of a probationary driving licence to drive a motor cycle or motor tricycle that is issued on or after the relevant date, the motor vehicle has a Small Plate securely fixed at the front and rear of the motor vehicle; or
 - (c) in the case of a probationary driving licence to drive a motor cycle or motor tricycle that was issued before the relevant date or is reissued or renewed within 12 months from the relevant date, the motor vehicle has—
 - (i) a Large Plate securely fixed at the front and rear of the motor vehicle; or
 - (ii) a Small Plate securely fixed at the front and rear of the motor vehicle.
- (2) The holder of a probationary driving licence to drive a motor cycle or motor tricycle shall not drive the motor cycle or motor tricycle with any passenger on it.
- (3) In this regulation—
- “Large Plate” (大字牌) means a white plate—
- (a) the size of which is 225 mm by 150 mm;
 - (b) on which the letter “P”, appearing in red, occupies an area stated in the diagram in Part II of the Thirteenth Schedule; and
 - (c) which is made of reflex-reflecting material;
- “Small Plate” (小字牌) means a white plate—
- (a) the size of which is 150 mm by 150 mm;
 - (b) on which the letter “P”, appearing in red, occupies an area stated in the diagram in Part I of the Thirteenth Schedule; and
 - (c) which is made of reflex-reflecting material.”.

37. Cancellation of full driving licences to drive motor cycles and motor tricycles

(1) The heading of regulation 12L is amended by repealing “**to drive motor cycles and motor tricycles**” and substituting “**issued to holders of probationary driving licences, etc.**”.

- (2) Regulation 12L(1) is repealed and the following substituted—
- “(1) Without prejudice to regulation 20, the Commissioner shall cancel a full driving licence to drive a motor cycle, motor tricycle, private car or light goods vehicle if—

- (a) the licence holder is, after the probationary driving period for the purpose of the application for the full driving licence, convicted of—
 - (i) an offence mentioned in the Twelfth Schedule; or
 - (ii) an offence in respect of which 10 or more points shall be incurred under section 4 of the Road Traffic (Driving-offence Points) Ordinance (Cap. 375); and
- (b) the offence was committed, during that probationary driving period, by the licence holder while driving—
 - (i) subject to sub-subparagraph (ii), a relevant motor vehicle; or
 - (ii) in the case of a probationary driving licence to drive a motor cycle or motor tricycle that was issued to him before the relevant date, a motor cycle or motor tricycle.

(1A) Without prejudice to regulation 20, if—

- (a) the Commissioner cancels under paragraph (1) a full driving licence issued to a person to drive a private car; and
- (b) the Commissioner has previously issued to the person pursuant to regulation 11(1C)(d) a full driving licence to drive a light goods vehicle as a holder of the full driving licence to drive a private car,

the Commissioner shall also cancel the full driving licence to drive a light goods vehicle.

(1B) Without prejudice to regulation 20, if—

- (a) the Commissioner cancels under paragraph (1) a full driving licence issued to a person to drive a private car or light goods vehicle; and
- (b) the Commissioner has previously issued to the person pursuant to regulation 11(1) a full driving licence to drive a motor vehicle of another class for which the person is eligible under regulation 8(1) as a holder of the full driving licence to drive a private car or light goods vehicle, as the case may be,

the Commissioner shall also cancel the full driving licence to drive a motor vehicle of that other class.

(1C) Without prejudice to regulation 20, if—

- (a) the Commissioner cancels under paragraph (1B) a full driving licence issued to a person to drive a medium goods vehicle or heavy goods vehicle; and

(b) the Commissioner has previously issued to the person pursuant to regulation 11(1) a full driving licence to drive an articulated vehicle for which the person is eligible under regulation 8(2) as a holder of the full driving licence to drive a medium goods vehicle or heavy goods vehicle, as the case may be,
the Commissioner shall also cancel the full driving licence to drive an articulated vehicle.

(1D) Without prejudice to regulation 20, if—

(a) the Commissioner cancels under paragraph (1), (1B) or (1C) a full driving licence issued to a person to drive a motor vehicle of a class; and

(b) the Commissioner has previously—

(i) accepted the full driving licence as evidence of the person's competence to drive a motor vehicle of another class; and

(ii) issued to the person pursuant to regulation 11(2) a full driving licence to drive a motor vehicle of that other class,

the Commissioner shall also cancel the full driving licence to drive a motor vehicle of that other class.

(1E) On cancellation of a full driving licence under this regulation, the Commissioner shall give to the licence holder notice of such cancellation, and the licence holder shall, within 72 hours after receipt of the notice, surrender the full driving licence to the Commissioner.”.

(3) Regulation 12L is amended by adding—

“(3) If a full driving licence is cancelled under paragraph (1) which causes the cancellation of another full driving licence under this regulation, such cancellation of that other full driving licence shall not take effect until the cancellation under that paragraph takes effect.”.

38. Regulation added

The following is added—

“12M. Reissue of probationary driving licences

(1) If a person's full driving licence to drive a class of motor vehicle is cancelled under regulation 12L(1) because the person is convicted of

one offence mentioned in the Twelfth Schedule, the person may, for the purpose of regulation 12F(2)(b), within 3 years after the cancellation, apply to the Commissioner in a form specified by the Commissioner for the reissue to him of the probationary driving licence to drive the class of motor vehicle that was held by him before the issue of the full driving licence.

(2) Subject to regulations 6 and 9, the Commissioner shall, for the purpose of regulation 12F(2)(b), on receipt of—

- (a) an application under paragraph (1) signed by the applicant;
- (b) the applicant's identity document; and
- (c) subject to regulation 12J(a) or (b), the fee prescribed in the Second Schedule,

reissue to the applicant the probationary driving licence to drive the class of motor vehicle the subject of his application.

(3) On reissuing a probationary driving licence to a person under paragraph (2) to drive the class of motor vehicle the subject of his application under paragraph (1), the Commissioner may, subject to regulation 12J(d), at the same time reissue to the person the probationary driving licence to drive a motor vehicle of another class, if—

- (a) the probationary driving licence to drive that other class of motor vehicle—
 - (i) was issued to him under regulation 12G(3A) on issuing the probationary driving licence to drive the class of motor vehicle the subject of his application; and
 - (ii) was held by him before the issue of the full driving licence to drive that other class of motor vehicle which was cancelled under regulation 12L(1) because he is convicted of one offence mentioned in the Twelfth Schedule; and
- (b) he does not hold a probationary, temporary or full driving licence to drive that other class of motor vehicle.

(4) A probationary driving licence reissued under this regulation to an applicant to drive a class of motor vehicle shall be valid for—

- (a) subject to subparagraph (b), 6 months from the date of reissue of the licence; or
- (b) if, on the date of application, the applicant holds a valid probationary driving licence to drive another class of motor vehicle, a period that expires at the end of the expiry date of that licence.

(5) If a probationary driving licence is reissued under this regulation, the licence shall, for the purposes of these regulations, be treated as a licence renewed under regulation 12H.”.

39. Variation of licence on change of particulars

Regulation 18A(2) is amended by adding “reissue or” before “renewal”.

40. Issue of driving instructors’ licences

(1) Regulation 22(1) is repealed and the following substituted—

“(1) Subject to paragraph (2), the Commissioner may on receipt of—

- (a) an application under regulation 21 or 21A; and
- (b) subject to paragraph (1B), the fee prescribed in the Second Schedule,

issue to the applicant a driving instructor’s licence in respect of any group of motor vehicles the subject of his application subject to the conditions set out in the Fifth Schedule and to any further conditions which the Commissioner may impose.”.

(2) Regulation 22 is amended by adding—

“(1B) No fee shall be payable in respect of a driving instructor’s licence in respect of a group of motor vehicles issued to a person if he holds a valid driving instructor’s licence in respect of another group of motor vehicles.”.

(3) Regulation 22(2)(b) is amended, in the Chinese text, by repealing “取得合格” and substituting “及格”.

(4) Regulation 22(3) is repealed and the following substituted—

“(3) A driving instructor’s licence in respect of a group of motor vehicles shall be valid for—

- (a) subject to subparagraph (b), 12 months from the date of issue of the licence; or
- (b) if, on the date of application, the applicant holds a valid driving instructor’s licence in respect of another group of motor vehicles, a period that expires at the end of the expiry date of that licence.”.

41. Conduct of driving test

(1) Regulation 32(1) is amended, in the Chinese text, by repealing “取得合格” and substituting “及格”.

(2) Regulation 32(3) is amended, in the Chinese text, by repealing “取得經授權考牌主任主持的駕駛測驗合格” and substituting “在經授權考牌主任主持的駕駛測驗及格”.

42. Re-testing of driving licence holders

Regulation 34(1) is amended by adding “or magistrate” after “court”.

43. Procedure on disqualification

(1) Regulation 35(1) is amended by adding “or magistrate” after “court”.

(2) Regulation 35(1)(c) is amended, in the Chinese text, by repealing “取得合格” and substituting “及格”.

44. Application of other provisions to visiting drivers

Regulation 38 is amended by adding “or magistrate” after “court”.

45. Power of Commissioner to require proof of address

Regulation 44B(a) is amended by adding “, reissue” before “or renewal”.

46. Regulation substituted

Regulation 45 is repealed and the following substituted—

“45. Right of review

A person aggrieved by—

- (a) the refusal of the Commissioner to issue, reissue or renew a driving licence or driving instructor’s licence; or
- (b) the cancellation by the Commissioner of a driving licence or driving instructor’s licence,

may within 14 days of being notified of the refusal or cancellation apply in writing to the Commissioner for a review by a Transport Tribunal of the refusal or cancellation.”.

47. Regulations added

The following are added—

“45A. Practice and procedure on review

(1) On receiving an application for a review made under regulation 45, the Commissioner shall—

- (a) fix a date, time and place for the review;

- (b) give the applicant not less than 14 days' notice in writing informing the applicant—
 - (i) the date, time and place for the review; and
 - (ii) that if he or his authorized representative does not appear at the hearing and makes no written representations, the application shall be treated as withdrawn.
- (2) A Transport Tribunal may postpone a review if it thinks fit.
- (3) Where a review is postponed, the Commissioner shall, by a notice in writing, inform the applicant—
 - (a) the date to which the review has been postponed; and
 - (b) that if he or his authorized representative does not appear at the hearing and makes no written representations, the application for a review shall be treated as withdrawn.
- (4) If—
 - (a) an applicant or his authorized representative does not appear before the Transport Tribunal on the date of the review notified to him in a notice under paragraph (1) or (3); and
 - (b) the applicant or his authorized representative makes no written representations,the application for a review is deemed to have been withdrawn.
- (5) Where an application for a review is deemed to have been withdrawn under paragraph (4), the Commissioner shall, by a notice in writing, inform the applicant that the application is deemed to have been withdrawn.

45B. Determination of review

- (1) On a review a Transport Tribunal shall consider—
 - (a) any evidence received by it, whether tendered on behalf of the applicant or otherwise, which it considers relevant to the review;
 - (b) any representations made by or on behalf of the applicant, whether orally or in writing;
 - (c) any representations made by or on behalf of the Commissioner, whether orally or in writing.
- (2) The Transport Tribunal may confirm or reverse the refusal or cancellation of the Commissioner referred to in regulation 45(a) or (b).
- (3) The Commissioner shall notify the applicant by notice in writing of the Transport Tribunal's decision under paragraph (2).
- (4) The decision of the Transport Tribunal under paragraph (2) shall be final.

45C. Service of notices

A notice required to be served on or given to an applicant under regulation 45A(1)(b), (3) or (5) or 45B(3) shall be served on or given to the applicant either personally or by registered post.”.

48. Offences

Regulation 46(1) is amended by adding “12DA(4), 12I(1A), 12L(1E),” before “13(9)”.

49. Fees

(1) The Second Schedule is amended, within the square brackets at the beginning, by repealing “, 12H(1)” and substituting “& (3), 12H(1), 12M(2)”.

(2) The Second Schedule is amended, in item 2(k), by adding “or reissue” after “Renewal”.

50. Offences

The Twelfth Schedule is amended, within the square brackets at the beginning, by repealing “& 12L” and substituting “, 12L & 12M”.

51. Thirteenth Schedule substituted

The Thirteenth Schedule is repealed and the following substituted—

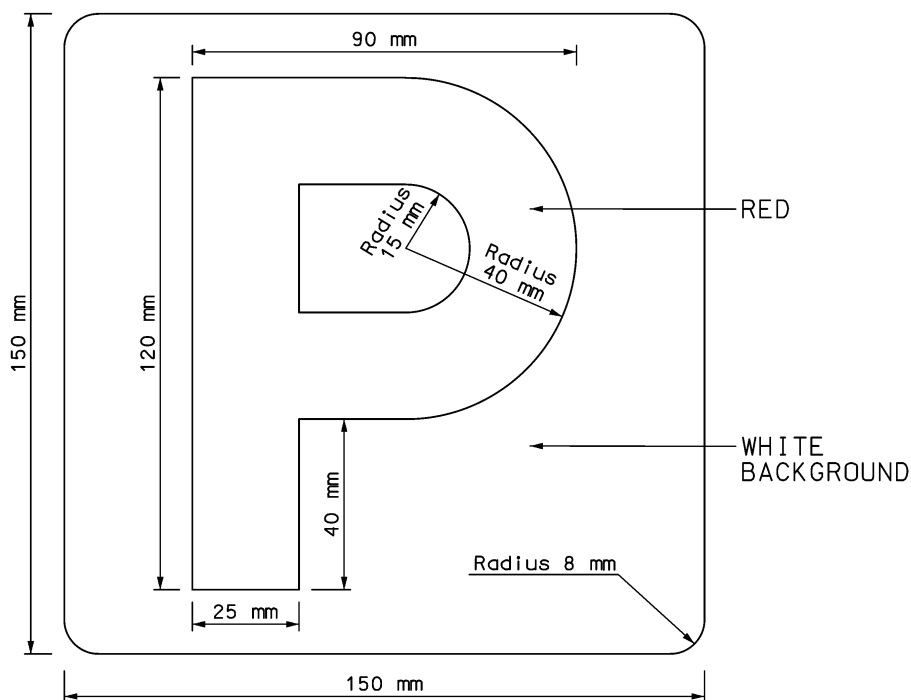
“THIRTEENTH SCHEDULE

[reg. 12K]

PLATE TO BE FIXED ON MOTOR VEHICLES DRIVEN BY
HOLDERS OF PROBATIONARY DRIVING LICENCES

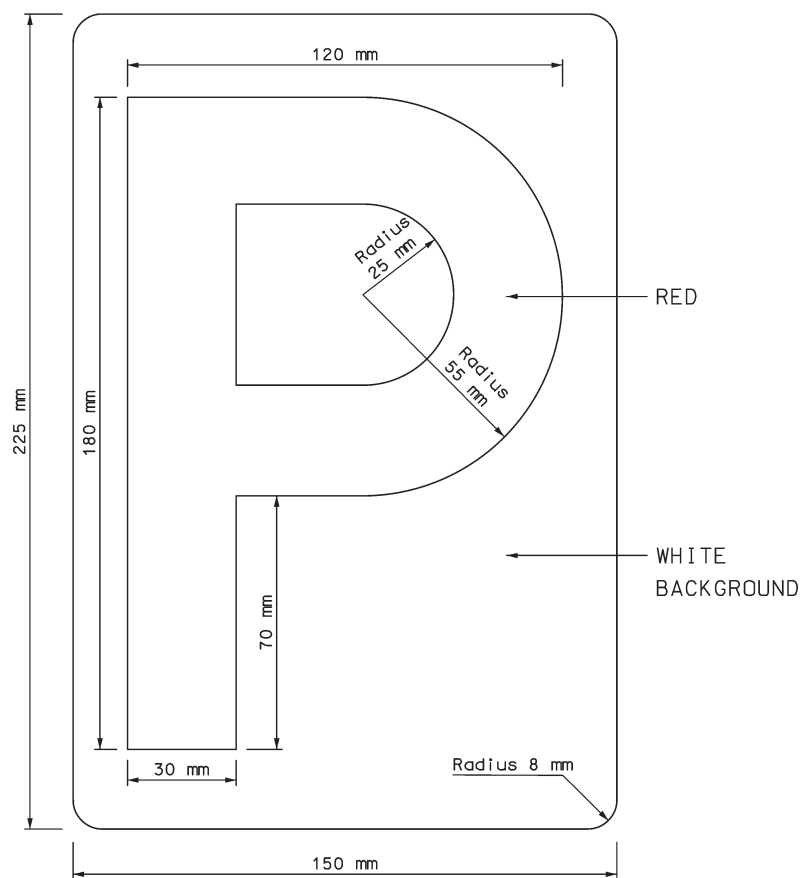
PART I

SMALL PLATE



PART II

LARGE PLATE



52. “及格” substituted for “取得合格”

The following provisions are amended, in the Chinese text, by repealing “取得合格” wherever it appears and substituting “及格”—

- (a) regulation 12A(4);
- (b) regulation 12C(1) and (4);
- (c) regulation 13(8);
- (d) regulation 24(1) and (4);
- (e) regulation 25(4);
- (f) regulation 28(1)(c);
- (g) Part I of the Sixth Schedule;
- (h) paragraph 4 of the Tenth Schedule.

53. “及格” substituted for “合格”

(1) The following provisions are amended, in the Chinese text, in the heading, by repealing “合格” wherever it appears and substituting “及格”—

(a) regulation 12D;

(b) regulation 33.

(2) The following provisions are amended, in the Chinese text, by repealing “合格” wherever it appears and substituting “及格”—

(a) regulation 12D;

(b) regulation 33(1).

PART 4

**AMENDMENTS TO OTHER SUBSIDIARY LEGISLATION
UNDER ROAD TRAFFIC ORDINANCE**

Road Traffic (Parking) Regulations

54. Interpretation

Regulation 2(1) of the Road Traffic (Parking) Regulations (Cap. 374 sub. leg. C) is amended by repealing the definition of “learner’s driving licence”.

Road Traffic (Village Vehicles) Regulations

55. Restriction on vehicle use

Regulation 18(7A)(a) of the Road Traffic (Village Vehicles) Regulations (Cap. 374 sub. leg. N) is amended by repealing “as defined in regulation 2 of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg.)”.

Road Traffic (Expressway) Regulations

56. Vehicles driven by learner drivers prohibited

Regulation 5 of the Road Traffic (Expressway) Regulations (Cap. 374 sub. leg. Q) is amended by repealing “issued under regulation 12 or 12A of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg.)”.

57. Restriction on vehicles using offside lane

- (1) Regulation 11(1)(i) is repealed and the following substituted—
 - “(i) a motor cycle, motor tricycle, private car or light goods vehicle driven by a person who is authorized to drive it by a probationary driving licence.”.
- (2) Regulation 11(4) is repealed.

PART 5

AMENDMENTS TO ROAD TRAFFIC (DRIVING-OFFENCE
POINTS) ORDINANCE

58. Long title amended

The long title to the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) is amended by adding “, or the obligatory attendance of driving improvement courses by,” after “the disqualification from driving of”.

59. Section added

The following is added before section 8A—

**“8AA. Obligatory attendance of driving
improvement courses**

- (1) Subject to sections 4A, 5 and 6, where a person incurs 10 or more points in respect of offences that were committed during a period of 2 years, the person shall attend and complete a driving improvement course at his own cost—
 - (a) within 3 months after the date of a notice served on him under subsection (2); or
 - (b) if the Commissioner has fixed a longer period under subsection (3), within the period after the date of a notice served on him under subsection (2).
- (2) For the purposes of subsection (1), the Commissioner shall serve on the person a notice—
 - (a) specifying—
 - (i) the number of points incurred by him; and
 - (ii) the offence in respect of which the points have been incurred; and
 - (b) informing him that he shall attend and complete a driving improvement course at his own cost in accordance with subsection (1)(a) or (b).

(3) If the Commissioner, on an application by the person, considers that the person is not able to, or has failed to, attend and complete a driving improvement course at his own cost within 3 months after the date of the notice with reasonable excuse, the Commissioner—

- (a) may fix a longer period within which the person shall attend and complete the course for the purposes of subsection (1); and
- (b) shall, as soon as practicable after fixing the period, notify the person of his decision.

(4) An application for the purposes of subsection (3) is to be made by the person in writing to the Commissioner before the end of the period of 3 months.

(5) A person who, without reasonable excuse, contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 1 month.

(6) If a court or magistrate convicts a person of an offence under subsection (5), the court or magistrate shall order the person to attend and complete a driving improvement course at his own cost within the period specified in the order, unless the court or magistrate for special reasons decides not to make such an order.

(7) A person who, without reasonable excuse, fails to comply with the order made under subsection (6) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 2 months.

(8) If a court or magistrate convicts a person of an offence under subsection (7), and the person is not disqualified, the court or magistrate shall order that the person be disqualified for a period of not less than 3 months, or until the person has attended and completed a driving improvement course at his own cost, whichever is the later, unless the court or magistrate for special reasons orders that the person be disqualified for a shorter period or that the person not be disqualified.

(9) If a person is ordered to attend and complete a driving improvement course under subsection (6), he may appeal against the order in like manner as if it were an order made against him for the payment of a fine.

(10) If a person appeals against an order under subsection (9), the period specified in the order within which the person is required to attend and complete a driving improvement course does not commence or continue to run, as the case may be, until the appeal is withdrawn or dismissed.

(11) For the purposes of subsection (8), a person is disqualified for a shorter period if he is disqualified for a period of less than 3 months, or until the person has attended and completed a driving improvement course at his own cost, whichever is the later.”.

60. Calculation of points

(1) Section 8A is amended by renumbering it as section 8A(1).

(2) Section 8A(1) is amended by repealing “and 8” and substituting “, 8 and 8AA”.

(3) Section 8A is amended by adding—

“(2) If a person, on being convicted of an offence in any proceedings, is ordered under section 72A(1)(b) or (1A) of the Road Traffic Ordinance (Cap. 374) to attend and complete a driving improvement course, that offence, or any scheduled offence of which he is convicted in those proceedings, is not to be taken into account in calculating the number of points incurred by the person for the purposes of section 8AA.

(3) Subsection (4) applies—

(a) if—

- (i) a person, on having incurred 10 or more points, is required to attend and complete a driving improvement course under section 8AA(1);
- (ii) a notice is served on the person under section 8AA(2) on the requirement; and
- (iii) the person has attended and completed a driving improvement course;

(b) if—

- (i) a person, on having incurred 10 or more points, is required to attend and complete a driving improvement course under section 8AA(1); and
- (ii) the person has, on his own initiative, attended and completed a driving improvement course before a notice is served on him under section 8AA(2) on the requirement; or

(c) if a person has, on his own initiative, attended and completed a driving improvement course before he is required to do so under section 8AA(1).

(4) In calculating the number of points incurred by the person for the purposes of section 8AA as at the date of completion of the driving improvement course—

(a) the person under subsection (3)(a) or (b) no longer incurs the number of points specified in the notice served on him under section 8AA(2); and

(b) the person under subsection (3)(c) no longer incurs any number of points that was incurred immediately before the date of completion of the course.”.

61. Service

Section 14 is amended by repealing “registered post or recorded mail to him at” and substituting “post or registered post to”.

62. Offence

Items 50 and 55 of the Schedule are amended, in the Chinese text, by repealing “圖型” and substituting “圖形”.

PART 6

CONSEQUENTIAL AMENDMENTS

Dutiable Commodities Ordinance

**63. Disqualification order for hydrocarbon
oil offences**

Section 46AA(6)(b)(ix) of the Dutiable Commodities Ordinance (Cap. 109) is amended by repealing “appeals” and substituting “right of review”.

Eastern Harbour Crossing Road Tunnel By-laws

64. Vehicles prohibited

By-law 17(1)(g) of the Eastern Harbour Crossing Road Tunnel By-laws (Cap. 215 sub. leg. E) is amended by repealing “(Driving Licences) Regulations (Cap. 374 sub. leg. B)” and substituting “Ordinance (Cap. 374)”.

Traffic Accident Victims (Assistance Fund) Ordinance

65. Levy on licence holders

Section 6(2A) of the Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229) is amended by adding “reissued or” before “renewed”.

Ocean Park Bylaw

66. Interpretation

Section 2 of the Ocean Park Bylaw (Cap. 388 sub. leg. B) is amended, in the definition of “learner’s driving licence”, by repealing everything after “as in” and substituting “section 2 of the Road Traffic Ordinance (Cap. 374);”.

Tate’s Cairn Tunnel By-laws

67. Vehicles prohibited

By-law 17(1)(q) of the Tate’s Cairn Tunnel By-laws (Cap. 393 sub. leg. B) is amended by repealing “(Driving Licences) Regulations (Cap. 374 sub. leg.)” and substituting “Ordinance (Cap. 374)”.

Western Harbour Crossing Bylaw

68. Vehicles prohibited

Section 20(1)(q) of the Western Harbour Crossing Bylaw (Cap. 436 sub. leg. D) is amended by repealing “(Driving Licences) Regulations (Cap. 374 sub. leg.)” and substituting “Ordinance (Cap. 374)”.

Tai Lam Tunnel and Yuen Long Approach Road Bylaw

69. Vehicles prohibited

Section 20(1)(b)(xiii) of the Tai Lam Tunnel and Yuen Long Approach Road Bylaw (Cap. 474 sub. leg. C) is amended by repealing “(Driving Licences) Regulations (Cap. 374 sub. leg.)” and substituting “Ordinance (Cap. 374)”.

Discovery Bay Tunnel Link Bylaw

70. Vehicles prohibited

Section 19(1)(q) of the Discovery Bay Tunnel Link Bylaw (Cap. 520 sub. leg. B) is amended by repealing “(Driving Licences) Regulations (Cap. 374 sub. leg.)” and substituting “Ordinance (Cap. 374)”.

Explanatory Memorandum

The main purposes of this Bill are to—

- (a) increase the term of imprisonment of the offence of causing death by dangerous driving under section 36 of the Road Traffic Ordinance (Cap. 374) (“the Ordinance”);
- (b) increase the penalties on offences under sections 39, 39A, 39B and 39C of the Ordinance, and give police officers a general power to conduct screening breath tests;
- (c) introduce a pre-screening device to facilitate the implementation of the new section 39B(1)(a) of the Ordinance;
- (d) provide that repeat traffic offenders or persons convicted of serious traffic offences are required to attend and complete driving improvement courses;
- (e) extend the probationary driving licence scheme to novice drivers of private cars and light goods vehicles; and
- (f) provide for the review by a Transport Tribunal of certain decisions made by the Commissioner for Transport (“the Commissioner”) in relation to driving licences and driving instructor’s licences.

2. The following are the main provisions of the Bill.

Amendment to increase penalties for causing death by dangerous driving

3. Clause 5(1) amends section 36 of the Ordinance so that the maximum term of imprisonment on conviction of the offence of causing death by dangerous driving is increased from 5 years to 10 years.

Amendments to increase penalties on certain offences

4. Sections 39, 39A, 39B and 39C of the Ordinance provide for, among other offences, alcohol-related offences. Currently, only persons who are convicted more than once are to be disqualified. Clauses 7(1), 8(1), 9(2) and 10(1) amend those sections so that persons who are convicted for the first time are to be disqualified for not less than 3 months.

**Amendments to empower police officers to conduct
screening breath tests generally**

5. Under the existing section 39B(1) of the Ordinance, only when a police officer has reasonable cause to suspect that a specified circumstance has taken place that he may require a person to provide a specimen of breath for a screening breath test. Clause 9(1) amends that section so that a police officer is empowered generally to require a person who is driving or attempting to drive, or is in charge of, a motor vehicle on a road to provide such a specimen.

**Amendments to introduce pre-screening device for purposes
of new section 39B(1)(a) of Road Traffic Ordinance**

6. Clause 11 amends section 39F of the Ordinance so that the Commissioner of Police may approve types of instruments as an approved pre-screening device for the purpose of indicating whether a person has any alcohol in his body. Accordingly, a definition of “approved pre-screening device” is added to section 2 of the Ordinance in clause 3(3).

7. In clause 9(1), a new subsection (1A) is added to section 39B of the Ordinance. After the amendment, if a person to whom section 39B(1)(a) of the Ordinance applies has provided a specimen of breath to be tested by an approved pre-screening device, and the test does not indicate that the person has any alcohol in his body, the person is not to be required to provide a specimen of breath for a screening breath test.

**Amendments relating to mandatory attendance of
driving improvement courses**

8. Under the existing section 72A(1) of the Ordinance, the court has a discretion to order a person who is convicted of an offence specified in Schedule 11 to the Ordinance to attend and complete a driving improvement course. Clause 20 amends section 72A of the Ordinance so that a person who is convicted of a more serious traffic offence is to be ordered to attend and complete a driving improvement course. Apart from fine and imprisonment, a failure to comply with the order will result in the person being disqualified.

9. Also, clause 20(8) amends section 72A(9) of the Ordinance so that the maximum fine for failing to attend and complete a driving improvement course when ordered to do so under section 72A(1)(b) or (1A) of the Ordinance is increased from \$3,000 to \$5,000.

10. Similarly, clause 59 adds a new section 8AA to the Road Traffic (Driving-offence Points) Ordinance (Cap. 375). Under the new section, a person who incurs 10 or more driving-offence points within 2 years is required to attend and complete a driving improvement course, failing which fine, imprisonment and even disqualification are to be ordered against him.

Amendments relating to probationary driving licences

11. Clause 12 amends section 40 of the Ordinance to provide that the holder of a probationary driving licence to drive a private car or light goods vehicle can only drive it at a maximum speed of 70 km per hour (proposed section 40(5)(d)).

12. Clause 3 amends section 2 of the Ordinance by adding the amended definition of “probationary driving licence” and 2 other definitions which currently appear in regulation 2 of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B) (“the Regulations”). Clause 23 amends the definition of “probationary driving period” in regulation 2 of the Regulations to take into account the wider application of the probationary driving licence scheme. It also adds 2 new definitions to regulation 2 of the Regulations.

13. Clause 25 amends regulation 8 of the Regulations so that if a person has held, for at least 2 years, a valid full driving licence to drive a private car or light goods vehicle issued to him after he has completed the probationary driving period, he is eligible to apply for a full driving licence in respect of certain commercial vehicles after passing the appropriate driving tests (proposed regulation 8(1A)).

14. Clause 28 amends regulation 11 of the Regulations so that subject to certain exceptions a person must complete a probationary driving period before being issued a full driving licence to drive a private car or light goods vehicle (proposed regulation 11(1B)(a) and (1C)(a)).

15. Clause 32 amends regulation 12F of the Regulations to provide that the 12-month probationary driving period is to be extended by 6 months if the person is convicted of certain traffic offences committed by him during that period while driving a class of motor vehicle under a probationary driving licence (proposed regulation 12F(2)(b)).

16. Clause 33 amends regulation 12G of the Regulations to—

- (a) provide for the application for a probationary driving licence to drive a private car or light goods vehicle (proposed regulation 12G(1)); and

- (b) empower the Commissioner, on issuing a probationary driving licence to a person to drive a class of motor vehicle, to issue to the person a probationary driving licence to drive another class of motor vehicle (proposed regulation 12G(3A)).

17. Clause 34 amends regulation 12I of the Regulations so that the Commissioner shall cancel a probationary driving licence to drive a class of motor vehicle if the licence holder has been convicted of certain traffic offences committed by him during the probationary driving period while driving a class of motor vehicle under a probationary driving licence (proposed regulation 12I(1)).

18. Clause 36 amends regulation 12K of the Regulations to require the holder of a probationary driving licence for any class of motor vehicle to display a “P” plate on the vehicle and to provide a more flexible requirement on display of a “P” plate (proposed regulation 12K(1)).

19. Clause 37 amends regulation 12L of the Regulations so that—

- (a) the Commissioner shall cancel a full driving licence to drive a class of motor vehicle if the licence holder is convicted of certain traffic offences committed by him during the probationary driving period for that class of motor vehicle while driving a class of motor vehicle under a probationary driving licence (proposed regulation 12L(1)); and
- (b) the Commissioner shall also, as a result of the cancellation under subparagraph (a), cancel other full driving licences (proposed regulation 12L(1A), (1B), (1C) and (1D)).

20. Clause 38 adds a new regulation 12M to the Regulations to provide for reissue of a probationary driving licence under certain circumstances.

21. Clause 51 amends the Thirteenth Schedule to the Regulations by showing the diagrams of “P” plates to be fixed on motor vehicles driven by holders of probationary driving licences.

**Amendments relating to review Commissioner for Transport’s
decisions in relation to driving licences and driving
instructors’ licences by Transport Tribunal**

22. Clause 4 amends section 8(1) of the Ordinance by empowering the Secretary for Transport and Housing to make regulations to provide for the review by a Transport Tribunal of any decision made by the Commissioner to refuse to issue, to reissue, to renew or to cancel a driving licence or driving instructor’s licence (proposed section 8(1)(aa)).

23. Clause 46 amends regulation 45 of the Regulations by repealing the existing right of appeal by petition to the Chief Executive in Council against the Commissioner's decision to refuse to issue, renew or cancel a driving licence or driving instructor's licence and substituting a right of review of such decision by a Transport Tribunal.

24. Clause 47 adds new provisions for procedural matters of review to the Regulations (proposed regulations 45A, 45B and 45C).

Other amendments to Road Traffic (Driving Licences) Regulations

25. Clause 24 amends regulation 6 of the Regulations to clarify under what circumstances the Commissioner shall not issue a driving licence to a person.

26. Clauses 28(8), 31, 35 and 40(2) amend regulations 11(6A), 12E, 12J and 22 of the Regulations respectively to provide that under what circumstances a full driving licence, learner's driving licence, probationary driving licence and driving instructor's licence can be issued without payment of fees.

27. Clause 29 amends regulation 12 of the Regulations to provide for the requirements to be fulfilled for the issuing of a learner's driving licence to drive certain commercial vehicles (proposed regulation 12(5) and (6)).

28. Clause 30 adds a new regulation 12DA to the Regulations to provide for cancellation of certain learner's driving licences.

29. Clause 48 amends regulation 46(1) of the Regulations to make it an offence if a person fails to surrender the cancelled driving licence to the Commissioner under the proposed regulation 12DA(4), 12I(1A) or 12L(1E) of the Regulations.

30. Clauses 49 and 50 make consequential amendments to the Second Schedule and the Twelfth Schedule to the Regulations respectively.

31. Clauses 41, 52 and 53 make formal alterations to the Chinese text of various provisions in the Regulations.

Consequential amendments

32. Clauses 54 and 55 make consequential amendments to the Road Traffic (Parking) Regulations (Cap. 374 sub. leg. C) and the Road Traffic (Village Vehicles) Regulations (Cap. 374 sub. leg. N) respectively.

33. Clauses 56 and 57 make consequential and related amendments to the Road Traffic (Expressway) Regulations (Cap. 374 sub. leg. Q).

34. Clauses 63, 64, 65, 66, 67, 68, 69 and 70 make consequential amendments respectively to—

- (a) the Dutiable Commodities Ordinance (Cap. 109);
- (b) the Eastern Harbour Crossing Road Tunnel By-laws (Cap. 215 sub. leg. E);
- (c) the Traffic Accident Victims (Assistance Fund) Ordinance (Cap. 229);
- (d) the Ocean Park Bylaw (Cap. 388 sub. leg. B);
- (e) the Tate's Cairn Tunnel By-laws (Cap. 393 sub. leg. B);
- (f) the Western Harbour Crossing Bylaw (Cap. 436 sub. leg. D);
- (g) the Tai Lam Tunnel and Yuen Long Approach Road Bylaw (Cap. 474 sub. leg. C); and
- (h) the Discovery Bay Tunnel Link Bylaw (Cap. 520 sub. leg. B).