

For information

Bills Committee on Road Traffic (Amendment) (No.2) Bill 2011

Purpose

This paper provides the Administration's responses to the questions raised by Members relating to the proposed new section of 67A(5) during the clause-by-clause examination of the Road Traffic (Amendment) (No.2) Bill 2011 (the Bill) by the Bills Committee on 24 February 2012.

Section 67(A)(5)

2. In examining the proposed new section of 67A(5), Members enquired about the rationale for providing the power for the Police to use data collected by an electronic data recording device (EDRD) as evidence in any criminal proceedings. Members noted that the circumstances under which the Police might retrieve data from EDRD were confined to when there was reasonable belief of the vehicle having been involved in an accident or any offence under the Road Traffic Ordinance (Cap. 374) (RTO). They asked the Administration to consider, for example, confining the use of the data to proceedings relating to offences under RTO only.

3. According to the Prosecutions Division of the Department of Justice (DoJ), the proposed new section 67A(5) provides that in any criminal proceedings, a document purporting to be a record of the data retrieved under subsection (4)(b) (i.e. data retrieved from EDRD by the Police) is admissible as evidence of the matters appearing from the record without further proof. It does not in itself set a scope for or limit to the use of data retrieved from EDRD. It only provides for "technical convenience" such that the EDRD data may be admissible (there are tight security and anti-tampering measures provided for under the proposed legislation to ensure the accuracy of the data), as evidence in criminal proceedings. The data as evidence will still be subject to challenge and the court would decide how much weight to give to the data as evidence. The subsection is actually a

common provision used in legislation to provide for admissibility of data as evidence such that it will not be necessary for the prosecution to establish, in each and every prosecution, the admissibility of certain kind of evidence (see for example, section 6A of the Money Lenders Ordinance (Cap. 163), section 33 of the Control of Obscene and Indecent Articles Ordinance (Cap. 390) and section 44(1) of the Amusement Ride (Safety) Ordinance (Cap. 449)). Without the provision, it would be a much more onerous and long process, and much resources would be taken up for the prosecution to establish just the general admissibility of the EDRD data.

4. Without the proposed new section 67A(5), data retrieved from EDRD may still be used in criminal proceedings relating to any offences (whether under the RTO or not), if the data are relevant to the offences in question, but the prosecution will have to prove that the data recorded in the EDRD are accurate, that there are appropriate measures to prevent unauthorized interference of the EDRD (the prosecution may have to adduce evidence from witnesses to prove that each and every driver who has driven the Public Light Bus (PLB) in question did not tamper with the EDRD after its installation and sealing), that the EDRD was functioning properly at the material time, etc. before the data may be admissible as evidence in court. If, for instance, there are no witnesses to prove the EDRD was functioning properly at the material time (which may not be available in some cases), or that there is no evidence to prove the data are accurate but the data are key evidence, the data stored in the EDRD would unlikely be admissible in any proceedings, including the proceedings on RTO offences and that it is likely that no prosecution would be instituted against the suspect, because of the missing from the proceedings of the EDRD data as crucial evidence. This will defeat one of the main purposes of requiring PLBs to have EDRD, i.e. accident investigation.

5. Given the above analysis, the Administration considers section 67A(5) essential and appropriate.

Transport and Housing Bureau
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