

## **LEGISLATIVE COUNCIL BRIEF**

### **Road Traffic Ordinance (Chapter 374)**

## **ROAD TRAFFIC (AMENDMENT) BILL 1998**

### **INTRODUCTION**

At the meeting of the Executive Council on 10 November 1998, the Council ADVISED and the Chief Executive ORDERED that the Road Traffic (Amendment) Bill 1998, at Annex A, should be introduced into the Legislative Council to -

- (a) tighten the statutory limit for alcohol concentration and streamline the procedures in enforcing the controls on drink driving;
- (b) place private school light buses under the Passenger Service Licence Scheme (the Scheme); and
- (c) rectify the existing payment arrangements to operators of parking meters and the New Kowloon Bay Vehicle Examination Centre and allow similar payment arrangement to be adopted in the future.

### **BACKGROUND AND ARGUMENT**

#### **(A) Drink Driving**

2. In December 1995, a new set of drink driving legislation (Section 39A - 39G of the Road Traffic Ordinance) was introduced to -

- (a) prescribe a statutory limit of alcohol concentration in a driver's blood (80 mg of alcohol in 100 ml of blood), urine (107 mg of alcohol in 100 ml of urine) and breath (35 µg of alcohol in 100 ml of breath); and

- (b) impose a legal obligation on drivers to provide samples of blood, urine or breath for testing under specified circumstances.

3. The implementation of the new drink driving legislation has put across the essential message to the public that drinking and driving should be separated. Statistics show that there was a 7% reduction over a two-year period (1996 and 1997) in the number of night-time accidents involving fatalities and serious injuries.

4. Notwithstanding the above, drink driving remains one of the main contributory factors to road accidents. Three out of every ten drivers killed in traffic accidents in 1997 had consumed alcohol. Drunken drivers have also posed serious threats to pedestrians and passengers. In the last two-and-a-half years, six non-drinking drivers, 19 passengers and 13 pedestrians were killed in accidents involving drink driving. We consider that further tightening of the prescribed alcohol concentration limits are necessary to deter drink driving.

5. It is recommended that we should lower the statutory limit of blood alcohol concentration from 80mg to 50mg of alcohol in 100ml of blood, and correspondingly lower the limits of breath-alcohol concentration from 35 $\mu$ g to 22 $\mu$ g of alcohol in 100ml of breath and urine-alcohol concentration from 107mg to 67mg of alcohol in 100ml of urine. This is in line with international trend. Overseas research have borne out the effectiveness of the proposed legal limit. (details at Annex B)

6. A brief description of the current enforcement procedures is set out in Annex C. We have reviewed these procedures and recommend that the efficiency of the enforcement procedures should be enhanced as follows-

- (a) apart from medical practitioners, nurses will be allowed to take blood specimens from drink driving suspects;
- (b) the requirement for, and refusal of, providing blood specimen can be made at police stations and breath test centres in addition to hospitals; and
- (c) breath specimen can be taken at traffic police offices and mobile vehicles which are designated as "breath test centres"

by the Commissioner of Police in addition to police stations and hospitals.

Details of these proposals are set out in Annex D.

**(B) Extending the Passenger Service Licence Scheme to School Private Light Buses**

7. At present, all public and private buses are under the control of the Scheme, which empowers the Commissioner for Transport (C for T) to introduce new terms and conditions to enhance safety of public and private bus operations. However, private light buses providing school transport services are not covered by the Scheme. Transport Department can only rely on section 21(10) of the Road Traffic (Registration and Licensing) Regulations which allows C for T to impose any licensing condition on individual motor vehicle he thinks fit. This controlling mechanism is not efficient as licensing conditions are attached to individual vehicles. Such conditions can only be changed when the licenses expire and the owners apply for renewal. New safety measures can only be introduced to individual school light bus when their licences are due for renewal.

8. The extension of the Scheme to school private light buses will establish a more uniform controlling mechanism and bring it in line with other bus services regulated under the Scheme. A new class of services will be created under the Scheme in which a uniform set of licensing conditions will apply to all school private light buses. After consulting the licensees, C for T is empowered to amend the terms or conditions of any such licence by giving three months' notice. This will provide C for T the flexibility in introducing changes to the licencing conditions for promoting the safe operation of school private light buses.

**(C) Rectification of the Payment Arrangement for Management Agreements**

9. To improve efficiency, it has been an established practice for Government to engage in management agreements with private operators to manage certain Government facilities. Under such agreements, private operators are responsible for the operation and management of the

facilities, including the collection of fees from users of the facilities. In return, Government will pay the operators an agreed sum of remuneration.

10. Government is currently engaged in two separate management agreements, one for parking meters and one for the New Kowloon Bay Vehicle Examination Centre. Under the conditions set out in the management agreements, the statutory fees for vehicle examination and metered parking are first collected for and on behalf of the Government by the operators. The operators may retain a portion of those fees that is equivalent to their remuneration and reimbursement under the management agreement and the balance is then remitted to Government.

11. We have recently conducted a review on the remittance arrangement and found that such arrangement is technically at variance with the Public Finance Ordinance (PFO). Unless otherwise provided in the PFO or any other enactment, statutory fees collected by the private operators, being moneys raised or received for the purposes of Government, form part of the general revenue under section 3(1) of the PFO. No portion of the general revenue should be retained by those operators without going through the statutory procedures provided under the PFO.

12. To rectify this technical difficulty, we propose to amend the Road Traffic Ordinance by adding a new provision that, where the terms of a parking meter or vehicle examination centre management agreement has been approved by the Financial Secretary, such portion of the moneys raised or received for the purposes of the Government under the agreement, which the operator is entitled to retain by way of remuneration or reimbursement, shall not form part of the general revenue. The amendments will also enable Government to adopt similar payment arrangement in future management agreements for parking meters and vehicle examination centres.

## **THE BILL**

13. The Bill comprises three sets of legislative amendments. **Part II** of the Bill tightens the current controls on drink driving by prescribing more stringent limits for various alcohol concentration and makes various improvements to the enforcement procedures.

14. **Part III** of the Bill extends the Scheme to cover school private light buses, while **Part IV** provides that such portion of the

moneys raised or received under the parking meter or vehicle examination centre management agreement, which the operator is entitled to retain by way of remuneration or reimbursement, shall not form part of the general revenue.

## COMMENCEMENT

15. **Part II** and **Part III** of the Bill, which deal with drink driving and school private light buses respectively, will come into effect on **1 May 1999**. A transitional provision has been incorporated in the Bill which requires school private light bus operators to apply for the Passenger Service Licences when their existing licences expired within the 16 month-period from 1 May 1999 to 30 August 2000.

16. **Part IV** of the Bill will take effect **as soon as it is enacted**.

## PUBLIC CONSULTATION

17. The drink driving proposals were put to the Transport Advisory Committee in December 1997 and the Provisional Legislative Council Panel on Transport in January 1998 and received their support. They were also supported by concerned groups such as the Hong Kong Medical Association and the Road Safety Council.

18. The extension of the Scheme to school private light bus was part of the package of measures to enhance the safety of school transport, which was endorsed by the previous Legislative Council Panel on Transport in December 1996. The trade was informed of the proposed safety package in 1996. In June 1998, the trade was advised of the intention of Government to implement the change in 1999 and they did not raise any objection.

19. An information paper on the Bill was submitted to the Legislative Council Panel on Transport in September 1998. No adverse comments have been received from the legislators, the public or the mass media.

## HUMAN RIGHTS IMPLICATIONS

20. The Department of Justice advises that the proposed legislative amendments are consistent with the human right provisions of the Basic Law.

## **FINANCIAL AND STAFFING IMPLICATIONS**

21. The Police and Transport Department will absorb the additional workload generated from the proposed legislative amendments. There are no other additional financial and staffing implications.

## **ECONOMIC IMPLICATIONS**

22. The proposed legislative amendments have no significant economic implications.

## **LEGISLATIVE TIMETABLE**

23. The legislative timetable of the Bill will be -

Publication in the Gazette	20 November 1998
First Reading and commencement of Second Reading debate	2 December 1998
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

## **PUBLICITY**

24. A press release will be issued on 13 November 1998 and a spokesman will be available for answering media enquiries.

**Transport Bureau**  
**12 November 1998**  
**(TRAN 1/12/126)**

**ROAD TRAFFIC (AMENDMENT) BILL 1998**

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A BILL

To

Amend the Road Traffic Ordinance.

Enacted by the Legislative Council.

PART I

PRELIMINARY

**1. Short title and commencement**

(1) This Ordinance may be cited as the Road Traffic (Amendment) Ordinance 1998.

(2) Parts I and IV shall come into operation on the day this Ordinance is published in the Gazette.

(3) Parts II and III shall come into operation on 1 May 1999.

PART II

AMENDMENTS RELATED TO DRINK DRIVING

**2. Interpretation**

Section 2 of the Road Traffic Ordinance (Cap. 374) is amended

(a) in the definition of “prescribed limit”, by repealing “35”, “80” and “107” and substituting “22”, “50” and “67” respectively;

(b) by adding -

““breath test centre” (呼氣測試中心) means a place or vehicle

designated by the

Commissioner of Police as a breath test centre under section 39C(20);”.

### **3. Screening breath tests**

Section 39B is amended -

- (a) in subsection (2), by repealing “車輛” where it first appears and substituting “汽車”;
- (b) in subsection (4), by repealing “police station or hospital” and substituting “breath test centre, a police station or a hospital”;
- (c) in subsection (6), by adding “呼氣” before “樣本”.

### **4. Provision of specimens for analysis**

Section 39C is amended -

- (a) in subsection (1) -
  - (i) by repealing “在無合理辯解下”;
  - (ii) by adding “而有合理辯解” after “作檢查呼氣測試”;
- (b) in subsection (2)(b), by adding “the breath test centre,” before “the police”;
- (c) in subsection (4), by repealing everything after “with his consent” and substituting “by a medical practitioner, a registered nurse or an enrolled nurse may be given by the production of a document certifying that fact and purporting to be signed by the medical practitioner, the registered nurse or the enrolled nurse, as the case may be.”;
- (d) in subsection (6) -

- (i) by repealing “police station or at a hospital” and substituting “breath test centre, a police station or a hospital”;
- (ii) by repealing “呼吸” and substituting “呼氣”;
- (e) in subsection (7), by repealing “hospital” and substituting “breath test centre, a police station or a hospital”;
- (f) in subsection (8), by repealing “police station or at a hospital” where it twice appears and substituting “breath test centre, a police station or a hospital”;
- (g) in subsection (10), by adding “, registered nurse or enrolled nurse” after “practitioner”;
- (h) in subsection (11), by repealing “by a medical practitioner”;
- (i) by adding -

“(20) The Commissioner of Police may by notice in the Gazette designate a place or vehicle to be a breath test centre.

(21) For the purposes of this section, “registered nurse” (註冊護士) and “enrolled nurse” (登記護士) have the respective meanings assigned to them by section 2 of the Nurses Registration Ordinance (Cap. 164).”.

## **5. Choice of specimens of breath**

Section 39D(2) is amended by repealing “50” and substituting “37”.

PART III

AMENDMENTS RELATED TO PRIVATE LIGHT BUSES

**6. Interpretation**

Section 2 is amended -

(a) by repealing the definition of “private light bus” and substituting -

““private light bus” (私家小巴) means -

- (a) a school private light bus; or
- (b) a light bus (other than a school private light bus)

used or intended for use -

- (i) otherwise than for hire or reward; or
- (ii) exclusively for the carriage of persons who are disabled persons and persons assisting them, whether or not for hire or reward;”;

(b) by adding -

““school private light bus” (學校私家小巴) means a light bus used or intended for use primarily for the carriage of persons who are the students of an educational institution, persons accompanying or in charge of such students, teachers or

employees of the institution, to or from the institution,  
whether or not for hire or reward;”.

**7. Regulation of public service vehicles**

Section 7(1)(1) is amended by repealing “private buses and public light buses” and substituting “public light buses, private buses and school private light buses”.

**8. Power to refuse or cancel licence and to impose conditions in respect of taxis**

Section 25(1)(vii) is amended by adding “school private light bus,” after “private bus;”.

**9. Passenger service licence**

Section 27 is amended -

- (a) in subsection (1), by repealing “private buses or public light buses” and substituting “public light buses, private buses or school private light buses”;
- (b) in subsection (3) -
  - (i) in paragraph (b), by repealing “or”;
  - (ii) in paragraph (c), by repealing the full stop and substituting “; or”;
  - (iii) by adding -
    - “(d) a school private light bus service.”.

**10. Restriction on the use of vehicles**

Section 52 is amended -

- (a) in subsection (3) -
  - (i) in paragraph (ii) -
    - (A) by repealing “or private light bus”;
    - (B) by repealing “or” at the end;
  - (ii) by adding -
    - “(iia) the vehicle is licensed as a private light bus and is used -
      - (A) as a school private light bus; or
      - (B) exclusively for the carriage of persons who are disabled persons and persons assisting them; or”;
- (b) in subsection (4)(a), by adding “a school private light bus” after “a private bus,”.

## **11. Transitional**

If immediately before the commencement of this Part, a licence issued under section 21 of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg.) is in force in respect of a private light bus, this Part shall not apply in relation to the private light bus until -

- (a) the licence expires; or
- (b) (if the licence expires on a date after 1 September 2000) 1 September 2000.

## **Related Amendments**

### **Road Traffic (Construction and Maintenance of Vehicles) Regulations**

#### **12. Signs on school private light buses**

Regulation 51 of the Road Traffic (Construction and Maintenance of Vehicles)

Regulations (Cap. 374 sub. leg.) is amended -

(a) in paragraph (1) -

(i) by repealing everything before subparagraph (a) and substituting -

“(1) A school private light bus providing a service for hire or reward -”;

(ii) in subparagraph (d), by repealing “the students, teachers or employees” and substituting “the passengers of the school private light bus”;

(b) in paragraph (3), by adding “school” before “private light bus”.

### **Road Traffic (Public Service Vehicles) Regulations**

#### **13. Application for passenger service licence**

Regulation 4(1) of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374 sub. leg.) is amended by repealing “or a public light bus service” and substituting “, a public light bus service or a school private light bus service”.



**14. Fees**

Schedule 1 is amended -

(a) in Part A, by adding -

“3A. School private light bus  
 service ..... \$396  
 per  
 annum”;

(b) in Part B, by adding -

“3A. School private light bus ..... \$160  
 per  
 vehicle  
 per  
 annum”.

**PART IV**

**AMENDMENTS RELATED TO REMUNERATION, ETC.**

**UNDER MANAGEMENT AGREEMENTS**

**15. Section added**

The Road Traffic Ordinance (Cap. 374) is amended by adding in Part XII -

**“115A. Remuneration, etc. under management agreements**

(1) Where there is a parking meter management agreement or vehicle examination centre management agreement between the Government and any person, and the terms of the agreement have been approved by the Financial Secretary for the purposes of this section, those parts or percentages of any moneys raised or received for the purposes of the Government under

the agreement which that person is entitled under the agreement to retain by way of remuneration or reimbursement shall not form part of the general revenue for the purposes of section 3(1) of the Public Finance Ordinance (Cap. 2).

(2) Subsection (1) applies in relation to a parking meter management agreement or vehicle examination centre management agreement entered into before the commencement of Part IV of the Road Traffic (Amendment) Ordinance 1998 (of 1998) as it applies in relation to such an agreement entered into on or after that commencement, but nothing in this section shall be construed as applying to any moneys raised or received for the purposes of the Government before the date of the approval of the Financial Secretary under subsection (1).

(3) In this section -

“parking meter management agreement” (停車收費錶管理協議) means an agreement entered into by any person with the Government authorizing that person to undertake such functions relating to parking meters as are specified by the Commissioner and on such terms and conditions as are imposed by the Commissioner;

“vehicle examination centre management agreement” (驗車中心管理協議) means an agreement under section 88(3) authorizing a person to operate a place as a vehicle examination centre.”.

### Explanatory Memorandum

The main purposes of this Bill are -

- (a) to tighten the statutory limits for alcohol concentration permitted in drivers' blood, urine and breath and to modify the relevant specimen taking procedures;
- (b) to put private light buses providing a transport service for students under the control of the existing passenger service licence scheme; and
- (c) to provide that such portion of the moneys raised or received for the purposes of the Government under the parking meter management agreement or vehicle examination centre management agreement which the operator is entitled under the agreement to retain by way of remuneration or reimbursement shall not form part of the general revenue.

2. Clause 2 -

- (a) amends the definition of "prescribed limit" by reducing the proportions of alcohol in breath, blood and urine that constitute the prescribed limit;
- (b) adds the definition of "breath test centre".

3. Clause 3 amends section 39B to enable screening breath tests to be taken at breath test centres.

4. Clause 4 amends section 39C to enable -

- (a) requirements for providing a specimen of breath or urine to be made at breath test centres (paragraphs (d) and (f));
- (b) requirements for providing a specimen of blood to be made at police stations and breath test centres (paragraph (e));

- (c) nurses to take blood specimens (paragraph (g));
- (d) the Commissioner of Police to designate a place or vehicle to be a breath test centre (paragraph (i)).

5. Clause 5 provides for an amendment consequent on the tightening of the statutory limit for alcohol concentration permitted in drivers' breath.

6. Clause 6 amends the definition of "private light bus" and adds the definition of "school private light bus".

7. Clauses 7 to 10 and 12 to 14 amend the existing provisions applicable to vehicles currently under the control of the passenger service licence scheme so that such provisions will also be applicable to school private light buses.

8. Clause 11 is a transitional provision which provides that a private light bus with a valid vehicle licence immediately before the commencement of Part III of this Ordinance will not be subject to that Part until the licence expires or 1 September 2000, whichever is earlier.

9. Clause 15 adds a new provision which provides that where the terms of a parking meter management agreement or vehicle examination centre management agreement have been approved by the Financial Secretary for the purposes of the provision, such portion of the moneys raised or received for the purposes of the Government under the agreement which the operator is entitled under the agreement to retain by way of remuneration or reimbursement shall not form part of the general revenue for the purposes of section 3(1) of the Public Finance Ordinance (Cap. 2).

**International Trend and Overseas Researches In Drink Driving**

The current alcohol concentration limits and our proposed limits are illustrated in Table A.

**Table A - Prescribed Legal Limits of Alcohol Content**

	<b><u>Current prescribed limits of permitted alcohol content</u></b>	<b><u>Proposed prescribed limits of permitted alcohol content</u></b>
In blood	80 mg/100 ml	50 mg/100 ml
In breath	35 µg/100 ml	22 µg/100 ml
In urine	107 mg/100 ml	67 mg/100 ml

2. The existing Blood Alcohol Concentration (BAC) of 80mg for most people equates to about three to four cans of mild beer or 3 small glasses of wine in the first hour. The more stringent 50mg threshold for most people equates to about two cans of mild beer or 1<sup>1</sup>/<sub>2</sub> small glasses of wine in the first hour.

3. The two most commonly adopted limits in overseas countries are 50mg/100ml and 80mg/100ml of blood -

- (a) Countries adopting the 80 mg/100 ml limit : Austria, Belgium, Denmark, Germany, Ireland, Italy, Malaysia, Singapore, Spain, Switzerland, United Kingdom, USA (13 states).
- (b) Countries adopting the 50 mg/100 ml limit : Australia, Finland, France, Greece, Japan, Korea, Netherlands, Norway, Portugal.

4. A note comparing drink-driving statistics elsewhere with Hong Kong is shown at Enclosure A. It is noted that the drink driving is

less of a problem amongst Asian countries, but Hong Kong has a relatively high percentage of alcohol-related driver fatalities (13%) than other Asian countries like Singapore and Japan.

5. The world-wide trend is towards tightening the BAC limit, as one way of separating drinking and driving. Furthermore, overseas medical bodies and road safety authorities, such as the World Medical Association and the European Commission, strongly recommend a lower BAC limit of 50mg. The World Medical Association also adopted the BAC limit of 50mg as an international standard. Thirteen States of the USA have tightened their BAC legal limit from 100mg to 80mg. Australia, Portugal, Belgium and France have changed their limit from 80mg to 50mg.

6. Research in Australia indicates that the risk of being involved in a crash gradually increases at each BAC level, but rises sharply after a driver reaches or exceeds the 80mg level compared to drivers at zero level:

<u>BAC level</u> <u>(mg/100ml of blood)</u>	<u>Risk of being involved in a crash</u> <u>(times higher than normal)</u>
50	1
80	3.5
100	7

The research also indicates that a change in the legal limit from 80 to 50 mg/100ml of blood in the provinces of New South Wales and Queensland resulted in a 4% reduction in fatalities and 8% reduction in injuries in night-time accidents.

7. Imposing a more stringent standard will also deter potentially dangerous drink driving behaviour. The research in Australia indicates that, with a lower BAC limit, drivers are more likely to keep a mental count of the number of drinks consumed and thereby stay within the limit. This would help moderate their drinking behaviour and promote safe driving. The 50mg limit is hence a stronger preventive measure than the 80mg limit.

## **Drink Driving Enforcement Procedures**

A brief description of the testing procedure is set out below :

- (a) A suspect usually undergoes a screening breath test conducted at the roadside.
- (b) If the result of the screening breath test indicates that the suspect has consumed alcohol beyond the legal limit, he will be taken to a Police Regional Office for a further breath test with breath analyser, the result of which can be used as evidence in court.
- (c) If the suspect has an evidential test reading of :
  - (i) 0-35 $\mu$ g - he/she has alcohol level below the prescribed limit;
  - (ii) 35-40 $\mu$ g - he/she would be warned then discharged (to allow for the accuracy of the equipment);
  - (ii) 40-50 $\mu$ g - he/she will be given the option to provide a further specimen for testing and in that event the Police will decide if it should be blood or urine. Urine sample may be provided at the police station or at a hospital. Blood sample can only be taken at a hospital by a registered medical practitioner; and
  - (iv) above 50 $\mu$ g - the Police would press charges against the suspect for having alcohol level above the prescribed limit. Further urine/blood tests would not be necessary.

**Measures to Improve the Efficiency  
of Drink Driving Enforcement**

**I. Allow nurses to take blood specimens**

The current legislation stipulates that a blood sample can only be taken at a hospital by a registered doctor. Experience has shown that it usually takes 30-60 minutes for the Police to obtain the service of a doctor in a hospital for this procedure. As the alcohol content in the body decreases with time, it is important that blood samples are taken as early as possible. One simple way to achieve efficiency is to allow nurses to take blood samples. Accordingly, it is recommended to amend the law to allow nurses (both registered and enrolled nurses) to take blood samples at the hospital from suspects of drink driving.

**II. *Allow refusal of providing blood specimen be made at a police station***

Under the current legislation, the Police can only put the request for a blood sample to a suspect at a hospital. Thus, the suspect must be brought to a hospital to confirm his refusal to provide a specimen, even though he may have refused to give a blood sample at the scene or police station. To streamline procedures, it is recommended to amend the law so that the request to provide a specimen of blood and the refusal to do so can also be made at a police station and breath test centre. The actual taking of blood, if the suspect agrees, will still have to be done at a hospital.

**III. *Allow breath specimen to be taken at designated centres***

Under the current legislation, the requirement to provide breath specimens for evidential analysis has to be made at a police station or a hospital. Due to the geographical constraints of some regions, it would improve efficiency if some evidential breath analysing instruments can be installed at Traffic Police Offices or police vehicles to facilitate enforcement action. Department of Justice, however, has advised that Traffic Police Office and mobile vehicles do not fall within the definition of “Police Stations”. It is recommended to amend the law to empower the Commissioner of Police to designate these offices and mobile vehicles as approved “breath test centres” by notice in the Gazette.