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DUTIABLE COMMODITIES (AMENDMENT) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Secretary for the Treasury

Clause

Amendment Proposed

New

By adding -

“2A. Regulations

Section 6(4) is repealed and the following substituted -

“(4) Any regulation made -

(a) on the matter stated in subsection (1) (i); or

(b) in exercise of the powers conferred by
subsection (3),

shall be subject to the approval of the Legislative Council.”.

New By adding -

“3A. Restrictions on dealing with and possession of certain goods

Section 17(4) is amended by repealing “No” and substituting “Subject to section 64A, no”.”.

4 By deleting paragraph (b) of the Clause.

New By adding -

“5A. Section added

The following is added after section 46 -

“46AA. Disqualification order for hydrocarbon oil offences

(1) This section applies to any offence -

(a) under section 17(1) or (6) of this Ordinance in respect of hydrocarbon oil; or

(b) under regulation 5A, 5B or 9 of the Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations (Cap. 109 sub. leg.),

if the person concerned commits the offence in respect of hydrocarbon oil in the fuel tank of a vehicle used by the person or if the person

concerned uses a vehicle in the course of commission of the offence. An offence to which this section applies is referred to in this section as a “disqualifiable offence”.

(2) The court or magistrate, on convicting a person of a disqualifiable offence, shall order the person to be disqualified for a period of not less than 6 months if the person has previously been convicted of any disqualifiable offence. This subsection does not apply to a previous conviction of an offence that was committed before the commencement of section 5A of the Dutiable Commodities (Amendment) Ordinance 1999 (No. [] of 1999).

(3) An order of disqualification under this section may be taken into account in determining any other penalty for the offence.

(4) The court or magistrate may deal with an offence as a first offence if a period of 5 years has elapsed since the person’s last conviction of any disqualifiable offence.

(5) If satisfied that there are special reasons for doing so, the court or magistrate may order that a person to which subsection (2) applies to be disqualified for a period

shorter than 6 months or that the person not be disqualified.

(6) The following provisions apply to disqualification under this section as they apply to disqualification under the Road Traffic Ordinance (Cap. 374), namely -

- (a)
 - (i) section 44 (Offence of obtaining licence, or driving, while disqualified);
 - (ii) section 71 (Notification and effect of, and appeal against, disqualification);
 - (iii) section 72 (Removal of disqualification) (except that a reference in subsection (5) of that section to the Commissioner of Police shall be treated as a reference to the Commissioner of Customs and Excise); and
 - (iv) section 111 (Forgery of documents),
of the Road Traffic Ordinance (Cap. 374); and
- (b)
 - (i) regulation 6 (Restrictions on

issue of driving licence);

(ii) regulation 10 (Applications for full driving licences);

(iii) regulation 12B (Application to take a motor cycle driving test);

(iv) regulation 31 (Application to take a driving test);

(v) regulation 35 (Procedure on disqualification);

(vi) regulation 37 (Visiting drivers from abroad);

(vii) regulation 38 (Application of other provisions to visiting drivers);

(viii) regulation 39 (Record of driving licences and permits);

(ix) regulation 45 (Appeals); and

(x) Schedule 7 (Particulars of Record),

of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg.).

(7) The power to order disqualification under this section is in addition to the power to order disqualification under any other Ordinance.

(8) A certificate stating -

- (a) that the person named in it was convicted of the disqualifiable offence specified in it and whether the person committed the offence in respect of hydrocarbon oil in the fuel tank of a vehicle used by the person or the person concerned used a vehicle in the course of commission of the offence;
- (b) the date on which the person was so convicted; and
- (c) the date of the commission of that offence,

and purporting to be signed by or on behalf of the Commissioner shall be admitted in evidence for the purpose of this section on its production without further proof; and -

- (i) until the contrary is proved, the court or magistrate shall presume that the certificate is so signed; and
- (ii) the certificate shall be prima facie evidence of the facts stated therein.

(9) In this section -

“disqualified” (取消駕駛資格) means disqualified from holding or obtaining a driving licence and “disqualification” (駕駛資格取消) shall be construed accordingly;

“driving licence”(駕駛執照) means a driving licence issued under the Road Traffic Ordinance (Cap. 374);

“special reasons” (特別理由) means -

- (a) special reasons that relate to the offence; or
- (b) in exceptional circumstances, special reasons that relate to the offender or to such other circumstance as the court or magistrate may consider relevant.”.”.

9 In paragraph (b), in the proposed new regulation 12(1) (ea) (ii), delete “may determine and publish in the Gazette” and substitute “may, by notice published in the Gazette, determine”.

New By adding -

“9A. Exemption

Regulation 12 is amended

- (a) in paragraph (1) (e), by repealing “may determine and publish in the Gazette” and substituting “ may, by notice published in the Gazette, determine”;

(b) by adding -

“(1A) For the avoidance of doubt, it is declared that a notice under subregulation (1) (e) or (ea) (ii) is subsidiary legislation.”.”.