

立法會

Legislative Council

LC Paper No. LS46/07-08

**Paper for the House Committee Meeting
on 22 February 2008**

Legal Service Division Report on Road Traffic Legislation (Amendment) Bill 2008

I. SUMMARY

- 1. Objects of the Bill** To make various amendments to the Road Traffic Ordinance (Cap. 374), the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B) and the Road Traffic (Driving-offence Points) Ordinance (Cap. 375).
- 2. Comments** The main amendments seek to –
 - (a) increase the penalties for causing death by dangerous driving, and drink driving;
 - (b) give police officers a general power to conduct screening breath tests and to introduce a pre-screening device to facilitate the tests;
 - (c) require repeated traffic offenders or persons convicted of serious traffic offences to attend and complete driving improvement courses;
 - (d) extend the probationary driving licence scheme to novice drivers and light goods vehicles; and
 - (e) provide for the review by a Transport Tribunal of certain decisions of the Commissioner for Transport.
- 3. Public Consultation** Motoring associations, driver associations and public transport trades have been consulted. They have no strong views on the proposals in general.
- 4. Consultation with LegCo Panel** The Panel on Transport was consulted on 18 December 2007. While Members were generally supportive but they have expressed different views on the various proposals.
- 5. Conclusion** As the Bill involves wide-ranging proposals affecting drivers in general, it is recommended that a Bills Committee be formed to study the Bill in detail.

II. REPORT

Objects of the Bill

The objects of the Bill are to make various amendments to the Road Traffic Ordinance (Cap. 374) (RTO), the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B) (RTDLR) and the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) (RTDPO).

LegCo Brief Reference

2. THB(T)CR 1/14/3231/00 issued by the Transport and Housing Bureau dated 4 February 2008.

Date of First Reading

3. 20 February 2008.

Comments

4. The main amendments seek to –
- (a) increase the penalties for causing death by dangerous driving, and drink driving;
 - (b) give police officers a general power to conduct screening breath tests and to introduce a pre-screening device to facilitate the tests;
 - (c) require repeated traffic offenders or persons convicted of serious traffic offences to attend and complete driving improvement courses (DIC);
 - (d) extend the probationary driving licence (PDL) scheme to novice drivers and light goods vehicles; and
 - (e) provide for the review by a Transport Tribunal of certain decisions of the Commissioner for Transport (the Commissioner); and
 - (f) make other and consequential amendments.

Amendments to Increase the Penalties of certain Traffic Offences

5. The Bill proposes to –
- (a) increase the maximum term of imprisonment of "causing death by dangerous driving" under section 36 of RTO from 5 years imprisonment to 10 years imprisonment (clause 5);
 - (b) introduce a period of disqualification from driving for not less than 3 months in the case of first conviction for the following offences –
 - (i) "driving a motor vehicle under the influence of drink or drugs" under section 39 (clause 7);
 - (ii) "driving, attempting to drive or being in charge of a motor vehicle with alcohol concentration above prescribed limit" under section 39A (clause 8);
 - (iii) failure to provide a specimen of breath under section 39B(6) (screening breath test) and section 39C(15) of RTO (clauses 9 and 10).

Amendments relating to Screening Breath Tests

6. Clause 9 introduces amendments relating to screening breath test by introducing provisions for the use of an approved pre-screening device so as to empower a police officer to require a person who is driving or attempting to drive, or is in charge of, a motor vehicle on a road to provide specimen for random breath tests. Clause 11 empowers the Commissioner of Police to approve the type of pre-screening device by notice in the Gazette.

Amendments relating to Mandatory Attendance of Driving Improvement Courses

7. The Bill proposes to require the court to order a person to attend and complete DIC on a mandatory basis within a specified period at his own costs if –
- (a) the person is convicted of any one of the following offences under RTO (clause 20) –
 - (i) causing death by dangerous driving under section 36;
 - (ii) dangerous driving under section 37;
 - (iii) alcohol-related driving offences under sections 39, 39A, 39B and 39C;

- (iv) driving in excess of the speed limit by more than 45 km per hour under section 41; and
 - (v) motor racing and speed trials under section 55;
- (b) the person has incurred 10 or more driving-offence points within 2 years under RTDPO (clause 59).

8. Clause 20 increases the maximum fine for failing to attend and complete DIC when ordered without reasonable excuse from \$3,000 to a fine at level 2 (\$5,000). Further, the court may order that person to attend and complete DIC. If that person again fails to comply with the order, it is an offence and is liable on conviction to a fine at level 3 (\$10,000), to imprisonment for 2 months and to a period of disqualification of not less than 3 months or such other period ordered by the court.

Amendments Relating to Probationary Driving Licences

9. The Bill proposes to extend PDL scheme to drivers of private cars and light goods vehicle by amending RTO and to make related amendments on PDL in RTDLR. After an applicant has passed the road test, he can only apply for PDL for private car and light goods vehicle. During the 12 months probationary driving period, drivers are subject to the following conditions –

- (a) prohibited from driving in excess of 70 km per hour under section 40 of RTO (clause 12);
- (b) displaying "P" plates on both the front and the rear of the vehicle under regulation 12K of RTDLR (clause 36); and
- (c) prohibited from driving on the offside lane of expressways where there are three or more lanes under regulation 11 of the Road Traffic (Expressway) Regulations (clause 57).

10. The probationary driving period will be extended for six months if a probationary driver is convicted of certain minor traffic offences specified in the Twelfth Schedule to RTDLR (clause 32). PDL may be cancelled if the driver is convicted of two or more such minor road traffic offences during the probationary driving period (clause 34). Upon cancellation of his PDL, a driver is required to retake the driving test, and to start a fresh probationary driving period upon passing the driving test.

Amendments Relating to Review of the Decision of the Commissioner in relation to Driving Licences and Driving Instructors' Licences by the Transport Tribunal

11. Clause 4 amends section 8(1) of RTO to empower the Secretary for Transport and Housing to make regulations for the review by a Transport Tribunal of

the decision of the Commissioner to refuse to issue, to reissue, to renew or to cancel a driving licence or a driving instructor's licence.

12. Currently, appeal against such decisions may be made by petition to the Chief Executive in Council under regulation 45 of RTDLR. Clause 46 repeals this procedure and substitutes a procedure of review by a Transport Tribunal. Clause 47 makes provisions for procedural matters for the Transport Tribunal.

Other and Consequential Amendments

13. The Bill also makes provisions for other amendments, such as –

- (a) clause 24 amends regulation 6 of RTDLR to clarify the circumstances under which the Commissioner shall not issue a driving licence to a person. Such circumstances include the person has not attended or completed DIC as required;
- (b) clause 48 amends regulation 46 of RTDLR to make it an offence if a person fails to surrender the cancelled driving licence to the Commissioner under the proposed sections 12DA(4), 12I(1A) or 12L(1E); and
- (c) amendments to Chinese text of various provisions.

14. The Bill also makes consequential amendments to other ordinances, such as the Dutiable Commodities Ordinance (Cap. 109), the Eastern Harbour Crossing Road Tunnel By-laws (Cap. 215 sub. leg. E), etc.

Public Consultation

15. According to the Administration, motor associations like the Road Safety Council, Transport Advisory Committee as well as goods vehicle, public light bus and taxi trades and related driver associations have been consulted on the proposed measures to enhance road safety. The organisations have no strong views on the proposals in general. Some trades expressed support to the proposed power to conduct screening breath tests at random, and the disqualification for first offender for drink driving offence.

16. Concerning DIC, the trades supported the proposals regarding serious traffic offences but they have shown concern regarding imposing the same on repeated traffic offenders.

17. On PDL scheme, there were concerns that it might affect the business and employment opportunities of new light goods vehicle drivers.

Consultation with LegCo Panel

18. The Panel on Transport was consulted on 18 December 2007 on the legislative proposal for implementing a package of measures to enhance road safety. Members were generally in support of the proposed measures. However, some considered that the proposed period of disqualification of not less than three months for drink driving offenders on first conviction should be increased. Some others took the view that the Administration should consider cancelling instead of suspending the driving licences of repeated offenders of causing death by dangerous driving, and requiring those repeated traffic offenders to retake the road test.

19. The Panel was also briefed by the Administration on measures to ensure proper exercise of Police power when conducting random breath tests. The Panel reviewed the effectiveness of the proposed mandatory driving improvement course requirements, and measures to enhance safety of drivers holding an international driving permit or a domestic driving permit issued in a place outside Hong Kong, and other inexperienced drivers who have been issued a driving licence for a long time but seldom drive.

Conclusion

20. The Bill involves wide-ranging proposals affecting drivers in general, it is recommended that a Bills Committee be formed to securitize the Bill in detail.

21. Scrutinizing of the legal and drafting aspects of the Bill is continuing.

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