

Road Traffic (Amendment) (No. 2) Bill 2011

Committee Stage

Amendments to be moved by the Secretary for Transport and Housing

<u>Clause</u>	<u>Amendment Proposed</u>
7	<p>(a) Before the proposed section 67A(1), by adding—</p> <p>“(1A) In this section—</p> <p><i>fitted EDRD</i> (已裝配電子數據記錄儀) has the meaning given to it by regulation 2 of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg. A).”.</p> <p>(b) By deleting the proposed section 67A(7).</p>
8	<p>(a) In the proposed section 102I(2)(b), by deleting “not valid except” and substituting “only valid”.</p> <p>(b) In the proposed section 102I(7)(a), by deleting “a designation” and substituting “the designation of a pre-service training school”.</p> <p>(c) In the proposed section 102I(10)(b), by deleting “not valid except” and substituting “only valid”.</p> <p>(d) In the Chinese text, in the proposed section 102J(6)(b), by deleting “人”.</p>
15	<p>In the Chinese text, in the proposed Schedule 19—</p> <p>(a) in section 2, by deleting “等性” and substituting “特性”;</p> <p>(b) in section 12, by deleting “準確性” and substituting “的操作”。</p>

Proposed section 67A

67A. Power to retrieve electronic data

(1A) In this section—

fitted EDRD (已裝配電子數據記錄儀) has the meaning given to it by regulation 2 of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg. A).

- (1) This section applies to a motor vehicle with a fitted EDRD.
- (2) The Commissioner may cause any data stored in the fitted EDRD to be retrieved by a vehicle examiner during any examination of a motor vehicle carried out under section 78 or, under an examination order served or caused to be served by the Commissioner, under section 79.
- (3) If a police officer has reasonable cause to believe that a motor vehicle has been involved in an accident or any offence under this Ordinance, the police officer may—
 - (a) if there is a driver or any other person inside the vehicle—
 - (i) direct the driver to drive it to the vehicle examination centre or police station specified by the police officer; or
 - (ii) direct the driver and any other person to leave the vehicle and himself or herself drive or remove the vehicle or cause it to be driven or removed to any vehicle examination centre or police station; or
 - (b) if there is no person inside the vehicle, drive or remove the vehicle or cause it to be driven or removed to any vehicle examination centre or police station.
- (4) The police officer referred to in subsection (3) may—

- (a) cause the vehicle to be detained at a vehicle examination centre or police station for not more than 72 hours; and
 - (b) during the detention, cause any data stored in the fitted EDRD to be retrieved by a vehicle examiner or any person authorized by the Commissioner of Police.
- (5) In any criminal proceedings, a document purporting to be a record of the data retrieved under subsection (4)(b) is admissible as evidence of the matters appearing from the record without further proof.
- (6) Any person who without reasonable excuse fails to comply with any direction of a police officer under subsection (3)(a) commits an offence and is liable to a fine at level 2.

~~(7) In this section—~~

~~*fitted EDRD* (已裝配電子數據記錄儀) has the meaning given to it by regulation 2 of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg. A).”~~

Proposed sections 102I and 102J

102I. Commissioner may designate pre-service training schools

- (1) The Commissioner may, in writing, designate any place as a pre-service training school for drivers of public service vehicles and may impose any conditions relating to the designation which the Commissioner considers appropriate.
- (2) If a place is designated as a pre-service training school, the designation—
 - (a) authorizes the person specified in the designation as the proprietor to operate that place as a pre-service training school to provide pre-service courses to drivers of public service vehicles; and

- (b) is ~~not valid except~~ only valid on payment of the fee payable under subsection (5)(a) for the designation.
- (3) The proprietor of a pre-service training school must ensure that—
- (a) the school is operated in compliance with—
 - (i) Schedule 13;
 - (ii) the code of practice; and
 - (iii) the conditions specified under subsection (1) in respect of the designation;
 - (b) pre-service courses are provided at the school in accordance with the code of practice—
 - (i) to a person who has applied to take a driving test in respect of public light buses, private light buses, public buses, private buses or franchised buses, or a test in respect of any combination of such types of vehicle;
 - (ii) to a person who has passed a driving test in respect of public light buses, private light buses, public buses, private buses or franchised buses, or a test in respect of any combination of such types of vehicle;
 - (iii) to a holder of a full driving licence to drive a public light bus, private light bus, public bus, private bus or franchised bus; and
 - (iv) to a person holding any other driving licence who has been permitted by the Commissioner in writing to take the course; and
 - (c) if a person attends and completes a pre-service course at the school—
 - (i) an attendance certificate in a form specified by the Commissioner is issued for the school to the person immediately afterwards, indicating that the person has attended and completed the course; and

- (ii) a course certificate in a form specified by the Commissioner is issued for the school, on the Commissioner's direction, to the person, indicating that the person has attended and completed the course in accordance with the code of practice.
- (4) The Secretary may by order published in the Gazette amend subsection (3)(b).
- (5) The Commissioner may from time to time determine—
 - (a) the fees payable for the designation, or the renewal of the designation, of a pre-service training school; and
 - (b) the maximum fees that may be charged by the proprietor of a pre-service training school for a pre-service course and the issue of an attendance certificate or course certificate.
- (6) The fees charged by the proprietor of a pre-service training school for a pre-service course and the issue of an attendance certificate or course certificate must not exceed the maximum fees as determined under subsection (5)(b).
- (7) The Commissioner must cause notice of—
 - (a) ~~a-the designation of a pre-service training school~~;
 - (b) the fees determined under subsection (5)(a); or
 - (c) the maximum fees determined under subsection (5)(b),to be published in the Gazette.
- (8) A notice under subsection (7) is not subsidiary legislation.
- (9) Subject to sections 102J and 102K, the designation of a pre-service training school—
 - (a) is valid for a maximum period of 3 years from the date specified in the designation; and
 - (b) may, on the application of the proprietor of the school made to the Commissioner at least 3 months

before the date of its expiration, be renewed in writing by the Commissioner.

- (10) If a designation is renewed under subsection (9)(b), the renewed designation—
 - (a) is valid for a maximum period of 3 years from the date specified in the renewed designation; and
 - (b) is ~~not valid except~~ only valid on payment of the fee payable under subsection (5)(a) for the renewal of the designation.
- (11) The Commissioner may waive in whole or in part the payment of a fee payable under subsection (5)(a) if the Commissioner considers that it is in the public interest to do so.

102J. Revocation of designation

- (1) If in respect of a pre-service training school it appears to the Commissioner that—
 - (a) the proprietor has contravened section 102I(3) or (6);
 - (b) the proprietor has issued any attendance certificate or course certificate improperly;
 - (c) the proprietor has entered any incorrect particulars on an attendance certificate or course certificate for fraudulent purposes;
 - (d) the proprietor has ceased to have the conduct or control of the school; or
 - (e) the proprietor is being wound up or grounds exist for a creditor to present a bankruptcy petition against the proprietor,the Commissioner may serve a notice in writing on the proprietor.
- (2) A notice served under subsection (1) must—

- (a) state the Commissioner’s intention to revoke the designation of the school and the ground for the intention; and
 - (b) state that the proprietor may make representations in writing, within 28 days after the service of the notice, why the designation should not be revoked.
- (3) If—
 - (a) a notice has been served on the proprietor of a pre-service training school under subsection (1); and
 - (b) either—
 - (i) the proprietor does not make any representations in writing why the designation should not be revoked within the period specified in subsection (2)(b); or
 - (ii) the Commissioner, having considered any representations made by the proprietor, is of the opinion that the proprietor has not shown good cause why the designation should not be revoked,

the Commissioner may, by notice in writing served on the proprietor, revoke the designation with effect from the date specified in the notice, being a date later than 14 days after the service of the notice.
- (4) The proprietor of a pre-service training school aggrieved by a decision of the Commissioner under subsection (3) may appeal to a Transport Tribunal against the decision within 14 days after the service of the notice of the decision.
- (5) If a decision of the Commissioner is appealed against under subsection (4)—
 - (a) a Transport Tribunal may on the appeal affirm, amend or reverse the decision; and
 - (b) the decision does not have effect pending the determination of the appeal.

- (6) If the designation of a pre-service training school is revoked—
 - (a) the Commissioner must cause notice of the revocation to be published in the Gazette as soon as practicable after the revocation has come into effect;
 - (b) no compensation is payable to the proprietor of the school in respect of the revocation; and
 - (c) no fee paid under section 102I(2)(b) or (10)(b) is to be refunded.
- (7) Within 28 days after the revocation of the designation of a pre-service training school has come into effect, the last proprietor of the school must refund a person the fee that person has paid for taking a pre-service course at the school for any part of the course which has not been given.
- (8) The revocation of the designation of a pre-service training school does not affect the validity of attendance certificates or course certificates which have been issued lawfully for the school.

Proposed Schedule 19

Schedule 19 [regs. 2 and 24C]

**Installation and Performance Requirements for
Electronic Data Recording Devices**

1. In this Schedule—
 - (a) *sensor* (感應器) means the component of an EDRD which senses running data of a motor vehicle;
 - (b) *on-board device* (車載記錄器) means the component of an EDRD which serves to transmit running data and any other data as electronic signals to the recording medium;

- (c) **recording medium** (記錄媒介) means the component of an EDRD which records and stores running data digitally by a solid state electronic method;
 - (d) **analysis system** (分析系統) means the component of an EDRD which comprises analysis software, reader, analyzer, electronic file storage unit and, if available, printer.
2. An EDRD must be strong, durable and capable of withstanding frequent use. All the constituent parts of an EDRD must be made of materials with sufficient durability and mechanical strength and stable electrical and magnetic characteristics.
3. An EDRD must be capable of recording and storing the following data of a motor vehicle during at least the latest 30 days, except for the period when the internal combustion engine or electric motor of the vehicle is not in operation—
- (a) time data from a real-time digital clock including date and time;
 - (b) actual speed of the vehicle at intervals not exceeding 1 second, recorded in km/h;
 - (c) the latest 15 records of vehicle activity with an acceleration or deceleration identical to or exceeding $0.4g$ (where g means the standard acceleration due to gravity) or 3.92 m/s^2 ;
 - (d) all records of vehicle activity when the actual speed of the vehicle exceeds an over-speed threshold stored in the EDRD for a continuous period of more than 3 seconds; and
 - (e) the latest 30 records of the following data of the vehicle during the last 20 seconds before its actual speed comes to zero, sampled at a rate of not less than 5 sample data per 1 second—
 - (i) actual speed;

- (ii) status of the headlamps and direction indicators; and
 - (iii) status of the service braking system.
- 4. An EDRD must be capable of recording and storing the following data of the EDRD during at least the latest 30 days—
 - (a) the power status (i.e. “ON” or “OFF”);
 - (b) the date and time when a data retrieval or download is performed;
 - (c) the date and time, and a description of the setting altered, when there is any alteration to a setting, such as the over-speed threshold, calibration constant factor or time clock, of the EDRD; and
 - (d) the date and time when a common fault, such as a power supply failure, input signal fault or memory fault, is detected by the system of the EDRD.
- 5. For the purposes of sections 3 and 4 of this Schedule—

date (日期) includes day, month and year;

time (時間) includes second, minute and hour.
- 6. An EDRD must at any time automatically collect, record and store the running data.
- 7. The on-board device and recording medium must be so constructed that—
 - (a) all data recorded on the recording medium will not be lost or changed as a result of ordinary electromagnetic interference found on a motor vehicle; and
 - (b) even when the necessary power for recording is turned off, all data already stored on the recording medium will not be lost or changed.
- 8. The analysis system must be so constructed that—

- (a) all data recorded on the recording medium can be accurately read by a reader and displayed in a legible form using a special purpose analyzer or a general purpose computer;
 - (b) the functions of data retrieval, enquiry, statistics, chart or table generation and system operation management are included; and
 - (c) all data stored on the recording medium are encrypted.
- 9. Any malfunction of an EDRD must not affect the normal vehicular performance.
- 10. An EDRD must operate satisfactorily in its electromagnetic environment without unacceptable electromagnetic disturbance to any other device or system in that environment.
- 11. The following telltales, being easily visible to the driver but not necessarily steady, must be provided—
 - (a) a coloured signal lamp which will light up when any data is stored on the recording medium;
 - (b) a coloured signal lamp which will light up when the EDRD is defective, operating abnormally or not in a functional state.
- 12. An EDRD must be so designed to prevent tampering of its operation.”.