

香港特別行政區政府  
The Government of the Hong Kong Special Administrative Region

政府總部  
運輸及房屋局  
運輸科  
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16 December 2011

Mr Yick Wing-kin  
Legislative Council Secretariat  
Legal Service Division  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong  
(By Fax : 2877 5029)

Dear Mr Yick,

**Road Traffic (Amendment)(No. 2) Bill 2011 ('the Bill')**

Thank you for your letter under reference (LS/B/22/10-11). Our responses to the questions raised in your letter are provided below.

**Clause 7 – new section 67A of the Road Traffic Ordinance (Cap. 374) ('RTO') proposed under clause 7 of the Bill**

We would like to clarify that the new section 67A will not apply to all motor vehicles with an electronic data recording device (EDRD) but specified Public Light Buses (PLBs) only. Section 67A(1) states that the section applies to a motor vehicle with a fitted EDRD. "Fitted EDRD" is a term defined under section 67A(7), which has the meaning given by regulation 2 of the Road Traffic (Construction and Maintenance of Vehicles) Regulations (Cap. 374 sub. leg. A) ('CMV Regulations'). The proposed definition of "fitted EDRD" under regulation 2 of the CMV Regulations is "an approved EDRD fitted to a motor vehicle to which regulation 24C applies". Since new regulation 24C applies to specified PLBs only (see regulation 24C(1)), the term "fitted EDRD" will cover those EDRDs fitted to specified PLBs only (i.e. PLBs specified in the new Schedule 18).

## **Clause 8 – new section 102I of RTO**

Pursuant to existing section 88K(5)(b) and section 102B(8) of RTO, the Commissioner for Transport (C for T) may, on the application of the proprietor of a driving school or driving improvement school<sup>1</sup> at least 3 months before the date of its expiration, renew the designation. Under the established practice, the Transport Department (TD) will liaise with the relevant proprietor at least 3 months in advance before the expiry of the designation for the renewal application. Hence, if a proprietor of such school chooses not to renew or fails to renew the designation, TD, being the regulator of the school should know at least 3 months in advance, and it would take necessary actions to prepare for the changeover if required.

Revocation or termination are however proactive actions that may be taken by the C for T or initiated by the proprietor himself during the designation period under unusual circumstances such as the proprietor has not operated in compliance with the code of practice or other conditions specified in respect of the designation; or the proprietor charged fee for the course at a level exceeding the maximum fee determined by the C for T, or the proprietor is being wound up, etc. As the circumstances for revocation and termination may be entirely different from ‘not renew’ on expiration of designation, under existing provisions for driving school and for driving improvement school, there is a ‘refund’ provision to safeguard the interests of the participants in that the proprietor shall refund a person the fee he has paid for taking a course at the school for any part of the course which has not been completed.

The above arrangements work satisfactorily over the years, and the same approach is suggested to be adopted for the pre-service training school proposed under the Bill. If the proprietor of a pre-service training school chooses not to renew or fails to renew at least 3 months before expiry of the designation, TD will liaise with the school closely to ensure that participants who have paid for attending the pre-service course would have the opportunity to attend the pre-service course; and that the school has duly settled with those who have pre-paid courses to be held beyond the expiry period. Hence, we do not consider it necessary to make provisions under the ‘not renew’ scenario to require the proprietor to make refunds of any fee paid for taking a pre-service training course or for the part of the course which has not been given; or to make provisions for the consequences of the expiration of a designation.

As regards your question on whether the Commissioner will consider any late application from a proprietor of a pre-service training school who could show good

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<sup>1</sup> The driving improvement schools are designated to provide driving improvement course mainly to persons who have accumulated 10 Driving Offence Points within two years; and those who have been convicted of serious traffic offences.

cause for it, our intention is that we will not accept such an application. Under the proposed section 102I(9)(b), C for T may renew any designation on the application of the proprietor of the school at least 3 months before the designation expires. The proprietor should be well aware of the 3-month requirement. To ensure the continued provision of pre-service course, a 3-month notification period is needed for TD to prepare for the changeover if required, if the proprietor does not apply for renewal of the designation.

#### **Clause 8 – new section 102J of RTO**

You asked whether it would be necessary to specify in the Bill the mode of service of the notice of intention to revoke and the notice of decision to revoke. We consider the current draft of 'serving the notice' adequate to meet TD's operational need. This is because the number of proprietors designated for operating pre-service schools will be small. Being the regulator of pre-service training schools, TD will have regular contacts with the proprietors. In the event that a notice is to be served, TD will serve it by hand / fax / mail, and will make sure that receipt of the notice is duly acknowledged by the proprietor concerned.

#### **Clause 14 – new regulation 121(6) of the CMV Regulations**

Similar to our response above, "fitted EDRD" has the meaning defined under regulation 2 of the CMV Regulations and thus covers those EDRDs fitted to specified PLBs only. The new regulation 121(6) will not be applicable to other motor vehicles with which an EDRD has been installed voluntarily.

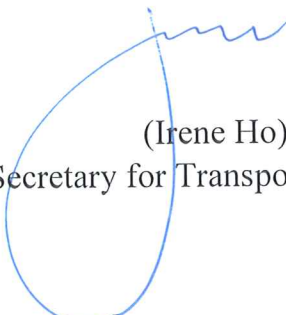
#### **New Schedule 18 to the CMV Regulations**

The Administration's current plan is to mandate EDRD on newly registered PLBs within 12 months after the Bill is passed by the Legislative Council and the Ordinance is gazetted. This is to allow adequate time for the manufacturers to design and produce the device; and for TD to approve complying models of EDRD for installation onto the PLBs. The description of the relevant PLBs will be specified in the new Schedule 18 by an amendment regulation nearer the time when the availability of the device is confirmed.

### **New Schedule 19 to the CMV Regulations**

On the possibility of loss of data in the event of a traffic accident, you may wish to note that in section 2 of the new Schedule 19, it is specified that 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. Before each model of EDRD is approved by TD, proof of compliance with these requirements (e.g. test reports which cover impact and vibration, etc.) would have to be submitted. We consider these provisions sufficient to guard against data loss as a result of accidents.

Yours sincerely,



(Irene Ho)  
for Secretary for Transport and Housing