

中華人民共和國
香港特別行政區政府
The Government of the Hong Kong Special Administrative Region
of the People's Republic of China

政府總部
運輸及物流局

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31 March 2023

Miss Evelyn LEE
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road, Central
Hong Kong

Dear Miss LEE,

Road Traffic (Amendment) (Autonomous Vehicles) Bill 2022

Thank you for your letter under reference dated 24 February 2023 concerning the Road Traffic (Amendment) (Autonomous Vehicles) Bill 2022 ("the Bill"). Please find in the Annex our responses to the various matters raised in your letter.

Yours sincerely,

A handwritten signature in blue ink, appearing to be "Vivien LI", written over a horizontal line.

(Ms Vivien LI)
for Secretary for Transport and Logistics

cc. Department of Justice (Attn: Ms Leonora IP)
(Attn: Miss Celia HO)
(Attn: Mr Adam TANG)
Transport Department (Attn: Ms Janet LAM)
Clerk to Bills Committee

Similar overseas legislation

1. It is noted that the Administration has made reference to overseas legislation such as those of New South Wales (“NSW”), South Australia, Canada (Ontario), and Singapore when drafting the Bill. It is also noted that the Bill seeks to, among others, facilitate attaining the object of researching into, testing and evaluating autonomous vehicle (“AV”) technology. In the light of the above, please clarify the reason for not having provisions in the Bill for deterring the interference, obstruction and/or hinderance of an AV trial or an AV equipment (“deterrence provisions”) with reference to overseas legislation such as section 6E of the Road Traffic Act 1961 of Singapore, section 134I of the Motor Vehicles Act 1959 of South Australia (“South Australia Act”) and section 148T of the Road Transport Act 2013 No. 18 of NSW (“NSW Act”), and consider whether deterrence provisions should be provided for in the Bill.

As the details of the provisions relating to the prohibition of interference, obstruction and/or hinderance of trial of autonomous vehicles (“AVs”) or AV equipment are relatively technical and are likely to be amended in the light of the development of AV technology, we intend to set out the relevant provisions in the subsidiary legislation viz. the Pilot Regulation to be made under the power to be introduced by the Road Traffic (Amendment) (Autonomous Vehicles) Bill 2022 (“the Bill”). In this connection, the proposed section 143(e) in the Bill provides that the Pilot Regulation may provide for “prohibition of interference with AVs, AV systems and AV equipment”.

2. It is noted that there are provisions in similar overseas legislation relating to the insurance in respect of, and the provision and handling of information relating to, AVs/AV trials (e.g. sections 148P and 148R of the NSW Act, and sections 134H and 134L of the South Australia Act). Some members of the Bills Committee have also asked about the issues of insurance and journey data relating to AVs/AV trials at the meeting held on 1 February 2023. Although it is mentioned in paragraph 9 of the Legislative Council Brief that matters including insurance coverage, record keeping of journey data and reporting of incidents or accidents would be provided for in the Pilot Regulation to be made, in the light of the overseas legislation mentioned above and the members’ concerns, please consider whether the aforesaid matters should be provided for in the Bill instead of the Pilot Regulation to be made.

The existing vehicle registration and licensing system will equally apply to AVs. On this premise, the existing legal liability of registered owners and licensees stipulated under various Ordinances, including the requirement to purchase insurance for licensed vehicles, will also apply in the case of AVs. The proposed section 143(d) in the Bill also provides that the Pilot Regulation may provide for “the protection of third parties against risks of personal injury or property damage arising out of the use of AVs”.

In addition, as the requirement for vehicle data recording is relatively technical, we consider it more appropriate to set out the relevant provisions in the Pilot Regulation. In this connection, the proposed sections 143(f) and (g) in the Bill have provided for “the maintenance of records relating to AVs, AV systems and AV equipment” and “the reporting and investigation of incidents or accidents that involve AVs, AV systems and AV equipment” in the Pilot Regulation.

3. It is noted that there are some reporting requirements to the Parliament regarding AV trials or insurance in respect of AVs in some overseas legislation (e.g. section 134M of the South Australia Act and section 7 of the Automated and Electric Vehicles Act 2018 of the United Kingdom). Please consider whether similar reporting requirements should be provided for in the Bill.

According to the proposed amendments in the Bill, the Secretary for Transport and Logistics (“the Secretary”) will be required to inform the Legislative Council (“LegCo”) in accordance with the procedures for subsidiary legislation when exercising the powers conferred on him in relation to AV pilot matters (including making interpretation provisions, disapplication provisions and the Pilot Regulation).

The proposed section 149(1) in the Bill provides that a disapplication notice made by the Commissioner for Transport (“the Commissioner”) shall be published on the website of the Transport Department (“TD”). The proposed section 149(2) provides that if the Commissioner “varies, suspends or revokes a disapplication notice”, the Commissioner must also publish a notice on the website of TD. We will be pleased to, in future, consolidate information and progress on the trial and application of AVs in Hong Kong (including how disapplication provisions are implemented) and timely report to the LegCo Panel on Transport.

Powers sought to be conferred on the Secretary for Transport and Logistics under the proposed new sections 141 and 142 of the Road Traffic Ordinance (Cap. 374)

Pilot Regulation to be made under the proposed new sections

4. According to the last paragraph of the Administration's response in paragraph 6(a) of the Reply, disapplication provisions made pursuant to the proposed new section 142(1) of the Road Traffic Ordinance (Cap. 374) (which could include exemptions from, disapplications of and modifications to, a provision) would modify the effect of the relevant provision only in relation to the relevant pilot matter. As such disapplication provisions could be made in relation to any provision of any Ordinance pursuant to the proposed new section, it appears that a person would need to refer to numerous disapplication provisions and make cross references to provisions which have been disapplied or modified so as to completely understand and comply with the law. Similar situation may also arise in relation to the interpretative provisions which could be made pursuant to the proposed new section 141 of Cap. 374. In the light of the above, please clarify:

- (a) the reason for not seeking to empower the Secretary for Transport and Logistics ("Secretary") to make a set of self-contained provisions setting out clearly each specific requirement applicable to AVs/AV trials under the AV regulatory regime; and
- (b) whether and how the Administration would assist members of the public to familiarize with the relevant interpretations, disapplications, and/or modifications made pursuant to the said proposed new sections.

4(a) & 4(b)

Pursuant to the powers conferred by the Bill, the Secretary will exempt, disapply or modify a provision in different circumstances to achieve the purpose of providing a flexible regulatory regime for trials of AVs and to facilitate the research, trial and evaluation of AV technology and the wider use of AVs in Hong Kong.

To enable the public to have a better understanding of the disapplication provisions made by the Secretary as well as the disapplication notices made by the Commissioner, TD is considering setting up a dedicated page on its website in the future to consolidate all relevant information

and list out each disapplication provision relating to AVs for public inspection.

Provision for prevailing effect over certain provisions

5. It is noted that there are provisions providing for the prevailing effect of certain provisions (see, for example, section 36(3)(c) of the Airport Authority Ordinance (Cap. 483) and section 228(7) of the Highway Traffic Act R.S.O. 1990, Chapter H.8 of Ontario, Canada (“Canada Act”)).¹ If it is intended that the following provisions should have a prevailing effect, please consider stating it expressly in the Bill:

- (a) the interpretative provisions made pursuant to the proposed new section 141 of Cap. 374; and
- (b) the disapplication/modification provisions made pursuant to the proposed new section 142 of Cap. 374.

5(a) & 5(b)

The proposed section 141(1) in the Bill provides that the Pilot Regulation may provide for how a reference to a driver in any provision “is to be interpreted for an AV”. Such a specific interpreted provision is for an AV only. The proposed section 141(6)(a) further makes it clear that “if the Secretary makes an interpretative provision, a reference to a driver in the interpreted provision is to be interpreted in accordance with the interpretative provision”.

A disapplication provision made under the proposed section 142 may only be made in relation to a pilot matter. On making a specific disapplication provision, the Secretary will describe the relevant pilot matter and the following clearly so that pilot participants and the public will have a clear understanding:

- (a) the exempted provision;
- (b) the disappplied provision; or
- (c) the provision that is applied with exceptions, modifications or adaptations and the relevant exceptions, modifications or adaptations.

¹ Section 228(7) of the Canada Act provides for the prevailing effect of a regulation made under section 228 of the said Act over certain pieces of legislation mentioned under that subsection.

Given that the above consideration and the “specific-over-general” legal principle, it is our view that there is no need to add the wording “prevailing effect”.

Applicability of existing liabilities, offences, and penalties in respect of “drivers” to backup operators of AVs

6. In relation to the Administration’s response in paragraphs 7 and 8 of the Reply:

- (a) while the Secretary and/or the Commissioner for Transport has a duty to consult in accordance with the proposed new section 141(3), 142(3) or 146(4) of Cap. 374, please clarify whether and how the consultation would be done in cases where the relevant provision is pertinent to the key policy responsibilities of more than one policy bureau concerned;
- (b) as the Administration has explained in paragraph 8(b) of the Reply that in determining which Director of Bureau would be considered as “charged with responsibility for the provision”, it would depend on whether the relevant provision is pertinent to the key policy responsibilities of the policy Bureaux concerned, please consider whether this criterion should be expressly provided for in the provision/definition of the Bill; and

6(a) & 6(b)

As provided in the proposed sections 141(3), 142(3) and 146(4) in the Bill, if the Secretary is not charged with responsibility for the relevant provision, the Secretary must consult the Director of Bureau charged with responsibility for the provision before making an interpretative provision or before the Commissioner makes a disapplication notice. Which Secretary is to be consulted will depend on the policy areas of the provisions concerned, and policy bureaux have their own division of labour and relevant handling mechanisms for different policy areas. If there is more than one Director of Bureau responsible for the policies covered by the relevant legislative provisions, we will also consult them together. If necessary, we will consider inviting representatives from different bureaux to participate in the meetings of TD’s internal vetting committee and advise on the relevant issues before the Secretary and the Commissioner make the disapplication.

Besides, as mentioned in the Administration's reply to the letter of the Assistant Legal Adviser of the LegCo of 10 January 2023, "the Director of Bureau charged with responsibility for the provision" in the proposed sections 141(3), 142(3) and 146(4) in the Bill refers to the Secretary of the policy bureau who is responsible for the policy areas of the concerned provisions in the piece of legislation. Insofar as the above proposed provisions are concerned, to determine which Director of Bureau would be considered as "charged with responsibility for the provision" depends on whether the relevant provision is pertinent to the key policy responsibilities of the policy bureau(x) concerned. It is our view that, in the above proposed provisions, the meaning of "the Director of Bureau charged with responsibility for the provision" is clear, and hence, there is no need to further specify in the Bill.

- (c) while the Administration considers that the current definition of "driver" could also apply to an operator in a remote control room operating an AV (as stated in the Administration's response in paragraph 7(b) of the Reply), please clarify how the relevant provisions (such as sections 39 and 39B of Cap. 374 which concern driving a motor vehicle under the influence of drink and screening breath tests respectively) could be effectively enforced against a remote backup operator of an AV.

We plan to require, as a condition of the issuance of a pilot licence, that the pilot proprietor submit the information of the designated backup operator for each of the AV for vetting. We also plan to require, when making the Pilot Regulation, that each pilot AV be equipped with a journey recorder with detailed records of relevant journey data, operation records and video footages. The pilot proprietor will also be required to provide such records upon request by the Commissioner or his/her authorized persons. In the event of an incident, the law enforcement agencies may use these records to trace the cause of the incident and determine who should be held responsible. TD will follow up in detail with the Police on the actual operational arrangements.