
Road Traffic (Amendment) (Autonomous Vehicles) Ordinance 2023

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 11 OF 2023



John KC LEE
Chief Executive
1 June 2023

An Ordinance to amend the Road Traffic Ordinance to provide for a flexible regulatory regime for the pilot use of autonomous vehicles and to facilitate attaining the object of researching into, testing and evaluating autonomous vehicle technology and the wider use of autonomous vehicles in Hong Kong (including empowering the Secretary for Transport and Logistics to make relevant regulations); and to make related amendments.

[]

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Road Traffic (Amendment) (Autonomous Vehicles) Ordinance 2023.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Transport and Logistics by notice published in the Gazette.

2. Road Traffic Ordinance amended

The Road Traffic Ordinance (Cap. 374) is amended as set out in sections 3 to 7.

3. Section 2 amended (interpretation)

- (1) Section 2, definition of *driver operated village vehicle*, after “only”—

Add

“, but does not include one that is an AV”.

- (2) Section 2, definition of *golf cart*, after “driver”—

Add

“, but does not include one that is an AV”.

- (3) Section 2, definition of *pedestrian controlled village vehicle*, after “passenger”—

Add

“, but does not include one that is an AV”.

- (4) Section 2—

Add in alphabetical order

“*autonomous mode* (自動模式), in relation to an AV, means the mode under which the AV is being operated by its AV system;

autonomous vehicle (自動駕駛車輛)—

- (a) means a motor vehicle that is autonomous within the meaning of Schedule 14; but
- (b) does not include one that is constructed or adapted for use primarily on a road, or any part of a road, that is intended for use by pedestrians (including those parts for pedestrian crossing);

AV (自動車) means an autonomous vehicle;

AV system (自動車系統) means a system (including hardware, software and computer programmes) that enables the operation of a motor vehicle without the monitoring by, or control of, a natural person;”.

4. Section 2A added

After section 2—

Add

“2A. AV falling within classes of vehicle specified in Schedule 1

If, but for this section, an AV would not fall within a class of vehicle specified in Schedule 1 solely because the AV is not constructed, adapted or intended for the carriage of a driver, then for the purposes of this Ordinance and any other Ordinances, the AV is taken to be a vehicle of that class.”.

5. Part 15 added

After Part 14—

Add

“Part 15

Pilot Use of AVs

Division 1—Interpretation

132. Interpretation of Part 15

In this Part—

AV certificate (自動車證書) means a certificate issued under a provision of the Pilot Regulation made pursuant to section 139(1)(a)(ii);

AV equipment (自動車裝備) means any equipment (including hardware, software and computer programmes) that relates to the operation of an AV (whether or not installed in or on the AV);

AV scheme (自動車計劃) means a scheme under which AVs are operated on roads;

backup operator (後備操作員), in relation to an AV, means an in-vehicle backup operator or remote backup operator;

disapplication notice (改變效力公告) means a notice made under section 146(1)(a), (b) or (c);

in-vehicle backup operator (車上後備操作員), in relation to an AV, means a natural person in or on the AV who—

- (a) monitors the AV and its surrounding with a view to, if necessary, overriding the AV system of the AV by taking control (in whole or in part) of the AV; or
- (b) when the AV ceases to operate in autonomous mode, manually operates the AV;

non-pilot use (非先導使用), in relation to an AV, means a use of the AV that is not a pilot use;

passenger (乘客), in relation to an AV, means a person in or on the AV who has no role in monitoring or operating the AV other than summoning the AV or inputting a destination;

pilot AV (先導自動車) means an AV for which there is a valid AV certificate;

pilot licence (先導牌照) means a licence issued under a provision of the Pilot Regulation made pursuant to section 139(1)(a)(i);

pilot matter (先導事宜) means—

- (a) a pilot scheme or type of pilot scheme;
- (b) a pilot participant or type of pilot participant;

- (c) a pilot AV or type of pilot AV;
- (d) a trailer towed or to be towed by a pilot AV or type of such a trailer;
- (e) a passenger in or on a pilot AV or type of such a passenger;
- (f) an AV system of a pilot AV or type of such an AV system; or
- (g) any AV equipment or type of AV equipment;

pilot object (先導目標) means the object of researching into, testing and evaluating—

- (a) technologies that relate to the design, construction or operation of AVs; and
- (b) the use of AVs on roads;

pilot participant (先導參與者) means—

- (a) a pilot proprietor; or
- (b) any other person participating in a pilot scheme, such as—
 - (i) the manufacturer of a pilot AV under the scheme or the manufacturer of the AV system of such a pilot AV; or
 - (ii) a backup operator of a pilot AV under the scheme;

pilot proprietor (先導營辦人)—

- (a) in relation to a pilot licence, means the person who is issued the licence; and
- (b) in relation to—
 - (i) a pilot scheme; or

(ii) a pilot AV under a pilot scheme or an AV certificate for such a pilot AV,

means the person who is issued the pilot licence to carry out the scheme;

Pilot Regulation (《先導規例》) means regulations made under section 138;

pilot scheme (先導計劃) means an AV scheme for which there is a valid pilot licence;

pilot use (先導使用)—see section 135;

remote backup operator (遙距後備操作員), in relation to an AV, means a natural person who—

- (a) is not in or on the AV; but
- (b) remotely monitors the AV and its surrounding with a view to, if necessary, overriding the AV system of the AV by taking control (in whole or in part) of the AV;

road (道路) includes a private road;

traffic provision (交通條文) means a provision of this Ordinance or any of the following Ordinances—

- (a) the Tramway Ordinance (Cap. 107);
- (b) the Public Bus Services Ordinance (Cap. 230);
- (c) the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237);
- (d) the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240);
- (e) the Road Tunnels (Government) Ordinance (Cap. 368);
- (f) the Road Traffic (Driving-offence Points) Ordinance (Cap. 375);

- (g) the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474);
- (h) the Tsing Ma Control Area Ordinance (Cap. 498);
- (i) the Discovery Bay Tunnel Link Ordinance (Cap. 520);
- (j) the Mass Transit Railway Ordinance (Cap. 556);
- (k) the Tsing Sha Control Area Ordinance (Cap. 594);

use (使用), in relation to an AV—see section 134.

133. Amendment of Schedule 14

- (1) The Secretary may by notice published in the Gazette amend Schedule 14, only for the purpose of updating the meaning of autonomous by reference to international or regional standards.
- (2) A notice under subsection (1) may contain incidental, consequential, supplemental, transitional or savings provisions that are necessary or expedient in consequence of an amendment made by the notice.

134. Use of AVs

- (1) An AV is being used when it is in operation—
 - (a) whether by a backup operator or its AV system, or both; and
 - (b) whether in autonomous mode or not.
- (2) If there is a backup operator for an AV that is being used, the operator is taken to be using the AV.

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- (3) If an AV is used, in addition to the person who actually permitted the use, for the purposes of section 136(1)(b), the use is also taken to have been permitted by the following person—
- (a) for a pilot AV—
 - (i) the pilot proprietor; or
 - (ii) if the pilot proprietor is not the registered owner of the AV—both the pilot proprietor and the registered owner;
 - (b) for an AV that is not a pilot AV—its owner (whether a registered owner or not).
- (4) However—
- (a) a person in or on an AV is not taken to be using the AV if the person is a passenger in or on the AV and is not a backup operator of the AV;
 - (b) a person is not taken to be using an AV only because the person is the owner of the place in which the AV is used; and
 - (c) a person is not taken to have permitted the use of an AV only because the person is—
 - (i) a passenger in or on the AV; or
 - (ii) the owner of the place in which the AV is used.

135. What is pilot use

- (1) The use of an AV is a pilot use if—
- (a) the AV is a pilot AV under a pilot scheme; and
 - (b) the use conforms with—
 - (i) the pilot licence of the scheme and the conditions of the licence; and

- (ii) the AV certificate of the AV and the conditions of the certificate.
- (2) However, a pilot use does not include the towing of a trailer by a pilot AV unless—
 - (a) the registration mark of the trailer is specified in a condition of the AV certificate of the AV; and
 - (b) the towing conforms with—
 - (i) the pilot licence of the relevant pilot scheme and the conditions of the licence; and
 - (ii) the AV certificate and the conditions of the certificate.

Division 2—Use of AVs

136. Restriction on use of AVs

- (1) No person may—
 - (a) use an AV; or
 - (b) permit the use of an AV, on a road, unless the use is a pilot use.
- (2) Despite subsection (1), a person may use an AV on a road if—
 - (a) a movement permit is issued under regulation 53 of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E) for the AV; and
 - (b) the use conforms with the movement permit and the conditions of the permit.

- (3) If a person contravenes subsection (1)(a) or (b), the person commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 2 years.

137. Defence for pilot proprietors or owners of AVs

- (1) If a pilot proprietor of a pilot AV or the owner (whether a registered owner or not) of an AV (*defendant*)—
 - (a) is taken to have permitted a non-pilot use of the AV because of section 134(3)(a) or (b); and
 - (b) is charged with an offence under section 136(3) for contravening section 136(1)(b),it is a defence for the defendant to show that the defendant had a specified excuse for the contravention.
- (2) A defendant is taken to have shown that the defendant had a specified excuse for contravening section 136(1)(b) if—
 - (a) sufficient evidence is adduced to raise an issue that the defendant had such an excuse; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (3) For the purposes of this section, a defendant had a specified excuse for contravening section 136(1)(b) if—
 - (a) the defendant exercised all due diligence to prevent the non-pilot use of the relevant AV; and
 - (b) the non-pilot use happened without the defendant's consent or connivance.

Division 3—Pilot Regulation

138. Secretary may make regulations

The Secretary may make regulations to—

- (a) regulate the carrying out of AV schemes on a pilot basis;
- (b) provide for matters that would facilitate attaining the pilot object; and
- (c) provide for any other matters related to paragraph (a) or (b).

139. Pilot licences and AV certificates

(1) The Pilot Regulation may provide for—

- (a) the application, issue, renewal, replacement, variation, transfer, suspension or cancellation of—
 - (i) licences to carry out AV schemes; and
 - (ii) certificates for AVs under such AV schemes; and

(b) the conduct of pilot participants.

(2) The Pilot Regulation may provide for the publication of notices to notify the public of information about pilot licences.

(3) A notice mentioned in subsection (2) is not subsidiary legislation.

140. Registration, licensing, etc.—special provisions for AVs

(1) The Pilot Regulation may—

- (a) exempt an AV from a specified provision;

- (b) disapply a specified provision to or in relation to an AV; or
 - (c) provide for the application of a specified provision to or in relation to an AV with exceptions, modifications or adaptations.
- (2) Without limiting subsection (1), a provision of the Pilot Regulation made pursuant to that subsection may empower the Commissioner, in relation to a particular AV or a particular type of AV, to—
- (a) waive or modify any requirement under this Ordinance for registration or licensing; or
 - (b) refuse, suspend or cancel registration or licensing under specified circumstances.
- (3) In this section—

specified provision (指明條文) means a provision of this Ordinance relating to registration or licensing of vehicles or limits of the number of vehicles.

141. References to driver

- (1) Without affecting section 146(1), the Pilot Regulation may provide for how a reference to a driver in any provision of this Ordinance or of any other Ordinance is to be interpreted for an AV.
- (2) An interpretative provision may specify that a reference to a driver is taken to be a reference to any one or more of the following—
- (a) no person;
 - (b) a backup operator;
 - (c) a pilot proprietor;
 - (d) the owner of the relevant AV;

- (e) any other person specified in the provision.
- (3) 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 in respect of the provision.
- (4) An interpretative provision may specify different persons for different circumstances, and may be made—
 - (a) generally; or
 - (b) in relation to any particular case, including in relation to (whether in whole or in part) a particular pilot matter.
- (5) Unless the Secretary makes an interpretative provision that provides otherwise—
 - (a) a reference to a driver in a provision of this Ordinance or any other Ordinance (*driver provision*) is, for an AV for which there is a backup operator, taken to be a reference to the backup operator; and
 - (b) the backup operator of an AV is, when the AV is in operation, taken to be driving the AV for the purposes of the driver provision.
- (6) If the Secretary makes an interpretative provision—
 - (a) a reference to a driver in the subject provision is to be interpreted in accordance with the interpretative provision; and
 - (b) a person who is the driver of an AV because of the interpretative provision is, when the AV is in operation, taken to be driving the AV for the purposes of the subject provision.

(7) In this section—

interpretative provision (釋義條文) means a provision of the Pilot Regulation made pursuant to subsection (1);

reference to a driver (對司機的提述), in relation to a vehicle, includes a reference to the driver of the vehicle or a reference similar to a reference to the driver of the vehicle;

subject provision (關涉條文) means a provision containing a reference to a driver that is interpreted by an interpretative provision.

142. Disapplication provisions

(1) Without affecting section 146(1), if the Secretary is satisfied that the requirements in subsection (2) are met, the Pilot Regulation may, with or without conditions—

- (a) exempt a pilot matter from a provision of this Ordinance or any other Ordinance;
- (b) disapply a provision of this Ordinance or any other Ordinance to or in relation to a pilot matter; or
- (c) provide for the application of a provision of this Ordinance or any other Ordinance to or in relation to a pilot matter with exceptions, modifications or adaptations (***modified application***).

(2) The requirements are that—

- (a) the exemption, disapplication or modified application would not undermine the safety of the pilot matter and would not endanger any person or thing;

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- (b) if the provision concerns safety—there is an alternative measure that would, as regards achieving safety, be at least as effective as the requirements in the provision; and
 - (c) taking into account the scope and nature of the relevant pilot scheme or the nature or technical capabilities of the relevant AV, any of the following circumstances exists—
 - (i) compliance with, or application of, the provision would hinder the attainment of the pilot object or is not necessary;
 - (ii) without the exemption, disapplication or modified application, compliance with, or application of, the provision would be impractical.
 - (3) 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 a disapplication provision for the provision.
 - (4) A disapplication provision may be made—
 - (a) generally; or
 - (b) in relation to any particular case, including in relation to (whether in whole or in part) a particular pilot matter.
 - (5) If a person fails to comply with a condition in a disapplication provision, the relevant exemption, disapplication or modified application does not, while the non-compliance continues, operate in the person's favour.

(6) If, because of subsection (5), the person commits an offence because of the non-compliance, the person may be proceeded against for that offence.

(7) In this section—

disapplication provision (改變效力條文) means a provision of the Pilot Regulation made pursuant to subsection (1)(a), (b) or (c).

143. General provisions of Pilot Regulation

The Pilot Regulation may provide for the following matters—

- (a) the general control of the use of AVs;
- (b) the conduct of any persons (whether pilot participants or not) in relation to the use of AVs;
- (c) the construction and maintenance of AVs, AV systems and AV equipment;
- (d) the protection of third parties against risks of personal injury or property damage arising out of the use of AVs;
- (e) the prohibition of interference with AVs, AV systems and AV equipment;
- (f) the maintenance of records relating to AVs, AV systems and AV equipment;
- (g) the reporting and investigation of incidents or accidents that involve AVs, AV systems and AV equipment;
- (h) the review by a Transport Tribunal of decisions made under the Pilot Regulation.

144. Fees

- (1) The Pilot Regulation may—
 - (a) prescribe the fees that may be charged for—
 - (i) the application for and the issue, renewal and replacement of pilot licences and AV certificates; and
 - (ii) any matter arising under the Pilot Regulation; and
 - (b) authorize the Commissioner to waive, exempt, reduce or refund the whole or any part of such fees.
- (2) For the purposes of subsection (1)(a)—
 - (a) different fees may be prescribed for different types of pilot licences or different types of AV certificates; and
 - (b) different fees may be prescribed for different circumstances.
- (3) A fee—
 - (a) may be prescribed at levels which provide for the recovery of expenditure incurred or likely to be incurred by the Government in relation generally to the administration of matters relating to the pilot object; and
 - (b) need not be limited by reference to the amount of administrative or other costs incurred or likely to be incurred for any particular matter.

145. Penalties for offences

The Pilot Regulation may provide that a contravention of any provision of the Regulation is an offence punishable by a fine not exceeding level 4 and imprisonment not exceeding 2 years.

Division 4—Disapplication Notices (Traffic Provisions)**146. Commissioner may make disapplication notices**

- (1) If the Commissioner is satisfied that the requirements in subsection (2) are met, the Commissioner may by notice, with or without conditions—
 - (a) exempt a pilot matter from a traffic provision;
 - (b) disapply a traffic provision to or in relation to a pilot matter; or
 - (c) provide for the application of a traffic provision to or in relation to a pilot matter with exceptions, modifications or adaptations (*modified application*).
- (2) The requirements are that—
 - (a) the exemption, disapplication or modified application would not undermine the safety of the pilot matter and would not endanger any person or thing;
 - (b) if the provision concerns safety—there is an alternative measure that would, as regards achieving safety, be at least as effective as the requirements in the provision; and

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- (c) taking into account the scope and nature of the relevant pilot scheme or the nature or technical capabilities of the relevant AV, any of the following circumstances exists—
- (i) compliance with, or application of, the provision would hinder the attainment of the pilot object or is not necessary;
 - (ii) without the exemption, disapplication or modified application, compliance with, or application of, the provision would be impractical.
- (3) If the Secretary is charged with responsibility for the traffic provision, the Commissioner must consult the Secretary before making a disapplication notice for the provision.
- (4) If the Secretary is not charged with responsibility for the traffic provision, the Commissioner must, through the Secretary, consult the Director of Bureau charged with responsibility for the provision before making a disapplication notice for the provision.
- (5) A disapplication notice may only be made in relation to a particular case, including in relation to (whether in whole or in part) a particular pilot scheme or a particular pilot matter under a pilot scheme.
- (6) To avoid doubt, the Commissioner's power under this section is in addition to and does not affect the Commissioner's power under any other traffic provision to disapply any provision or to grant any exemption.

147. Variation, suspension or revocation of disapplication notices

- (1) The Commissioner may vary, suspend or revoke a disapplication notice for any reason, including a reason specified in subsection (2).
- (2) The reasons are that—
 - (a) the safety of the pilot matter would be undermined or it would endanger any person or thing if the disapplication notice is not so varied, suspended or revoked; and
 - (b) a condition in the disapplication notice has not been complied with.
- (3) A variation or revocation of a disapplication notice under subsection (1) includes varying or revoking a condition in the notice or attaching any new condition to the notice.

148. Failure to comply with conditions in disapplication notices

- (1) If a person fails to comply with a condition in a disapplication notice, the relevant exemption, disapplication or modified application does not, while the non-compliance continues, operate in the person's favour.
- (2) If, because of subsection (1), the person commits an offence because of the non-compliance, the person may be proceeded against for that offence.

149. Publication of disapplication notices

- (1) A disapplication notice must be published on the website of the Transport Department.

- (2) If the Commissioner varies, suspends or revokes a disapplication notice (other than varying or revoking a condition in the notice)—
 - (a) the Commissioner must publish a notice of the variation, suspension or revocation (***notification notice***) on the website of the Transport Department; and
 - (b) in the case of a variation—the notification notice must state the details of variation.
- (3) A disapplication notice and a notification notice are not subsidiary legislation.

Division 5—Codes of Practice

150. Commissioner may issue codes of practice

- (1) The Commissioner may issue a code of practice, direction, guideline or standard for providing practical guidance for any matters under this Part or the Pilot Regulation (collectively be referred to as ***code of practice***).
- (2) A code of practice may refer to, apply or incorporate a document that has been formulated, published or specified by the Commissioner either—
 - (a) as in force at the time when the document is referred to, applied or incorporated; or
 - (b) as amended, formulated, published or specified from time to time.
- (3) If a code of practice is issued, the Commissioner must by notice published in the Gazette—
 - (a) identify the code of practice; and

- (b) specify the date on which the code of practice is to take effect.
- (4) The Commissioner may from time to time revise or revoke the whole, or any part, of a code of practice issued under subsection (1).
- (5) If a code of practice is revised or revoked under subsection (4), the Commissioner must by notice published in the Gazette—
 - (a) identify the code of practice, or any part so revised or revoked; and
 - (b) specify the date on which the revision or revocation is to take effect.
- (6) A code of practice must be made available for public inspection on the website of the Transport Department.
- (7) Different codes of practice may be issued for different matters under this Part or the Pilot Regulation.
- (8) The following are not subsidiary legislation—
 - (a) an instrument by which a code of practice is issued;
 - (b) a notice mentioned in subsection (3) or (5).

151. Use of codes of practice in legal proceedings

- (1) A failure by a person to observe a provision of a code of practice does not of itself make the person liable to any civil or criminal proceedings.
- (2) Despite subsection (1), if in any legal proceedings the court is satisfied that a code of practice or any part of a code of practice is relevant to determining a matter that is in issue in the proceedings—

- (a) the code of practice or part is admissible in evidence in the proceedings; and
- (b) proof that the person contravened or did not contravene a relevant provision of the code of practice may be relied on by a party to the proceedings as tending to establish or negate that matter.

(3) In this section—

code of practice (實務守則) means a code of practice, direction, guideline or standard issued under section 150(1);

court (法院) means—

- (a) a court as defined by section 3 of the Interpretation and General Clauses Ordinance (Cap. 1);
- (b) a magistrate; or
- (c) a Transport Tribunal;

legal proceedings (法律程序) includes the proceedings of a Transport Tribunal.”.

6. Schedule 1 amended (classes of vehicle)

Schedule 1, after “[ss.”—

Add

“2A,”.

7. Schedule 14 added

After Schedule 13—

Add

“Schedule 14

[ss. 2 & 133]

Meaning of Autonomous

1. Interpretation

In this Schedule—

GB Level (國標級) means a level of driving automation as defined in GB Taxonomy;

Note without legislative effect—

The levels of driving automation as defined in GB Taxonomy are as follows—

- (a) Level 0: emergency assistance;
- (b) Level 1: partial driver assistance;
- (c) Level 2: combined driver assistance;
- (d) Level 3: conditionally automated driving;
- (e) Level 4: highly automated driving;
- (f) Level 5: fully automated driving.

GB Taxonomy (《國標分級》) means China National Standards GB/T 40429-2021: Taxonomy of driving automation for vehicles, issued on 20 August 2021;

SAE Level (SAE 級) means a level of driving automation as defined in SAE Standard J3016;

Note without legislative effect—

The levels of driving automation as defined in SAE Standard J3016 are as follows—

- (a) Level 0: no driving automation;
- (b) Level 1: driver assistance;
- (c) Level 2: partial driving automation;
- (d) Level 3: conditional driving automation;

- (e) Level 4: high driving automation;
- (f) Level 5: full driving automation.

SAE Standard J3016 (《SAE J3016 標準》) means SAE International Standard J3016: Taxonomy and Definitions for Terms Related to On-Road Motor Vehicle Automated Driving Systems, issued on 16 January 2014 (as amended as at 30 April 2021).

2. Meaning of autonomous

For the purposes of paragraph (a) of the definition of ***autonomous vehicle*** in section 2, a motor vehicle is autonomous if the motor vehicle is equipped with an AV system that is capable of being operated at—

- (a) GB Level 3, 4 or 5; or
- (b) SAE Level 3, 4 or 5,

irrespective of whether any operation of the vehicle is being performed by the AV system.”.