

For information

**Bills Committee on
Road Traffic Legislation (Amendment) Bill 2008**

Breath Test Using Pre-screening Device

Introduction

In response to the Bills Committee's suggestions at its meeting on 2 May 2008, we have examined the proposed provisions in relation to the breath test using the pre-screening device, and existing provisions relating to specimens of breath which the court shall use as evidence of the proportion of alcohol in the breath. Our response to the suggestions is set out below.

Breath Test Using Pre-Screening Device

Breath test by a pre-screening device

2. With a view to reducing delay and inconvenience to motorists during random breath test (RBT) operations, the Police are actively examining the use of a quick and simple hand-held pre-screening device to speed up the RBT checking process. This pre-screening breath test can take as short as 10 seconds or so to complete, compared with the existing screening breath test (SBT) process which normally takes about four minutes to complete. For the purpose of introducing the pre-screening device, proposed provisions are made in the Bill as follows –

- (a) Clause 11 amends section 39F of Cap. 374 so that the Commissioner of Police may approve types of instruments as an approved pre-screening device for the purpose of indicating whether a person has any alcohol in his body.

- (b) In Clause 9(1), a new subsection (1A) is added to section 39B of Cap, 374. This provides that if a person has provided a specimen of breath to be tested by an approved pre-screening device, and the test does not indicate that the person has any alcohol in his body, the person is not to be required to provide a specimen of breath for an SBT.

3. The Bills Committee supported the introduction of the pre-screening device to reduce inconvenience to motorists during RBT operations, but considered that a driver should not be required to conduct an SBT just because he was found to have any alcohol in his body irrespective of the level of alcohol concentration in his breath specimen detected by the pre-screening device.

4. We have carefully taken into account Members' views when finalising the proposed arrangement for conducting RBT operations. We propose that the pre-screening device be calibrated to activate a positive signal if 20 or more micrograms (mcg) of alcohol in 100 millilitres (ml) of breath is detected. The reasons for setting the calibration at this level is that it is close to the prescribed limit¹ and does form a basis for the Police to establish reasonable suspicion that the person's alcohol concentration in his body is likely to exceed the prescribed limit, and the driver should then be required to conduct an SBT.

5. Under the above proposal, the pre-screening device would be calibrated such that two distinct signals would be produced as follows –

- (a) a signal (a green light) to indicate less than 20 mcg of alcohol in 100 ml of breath; and
- (b) another signal (a red light) to indicate 20 or more mcg of alcohol in 100 ml of breath.

¹ The existing "prescribed limit" is 22 micrograms of alcohol in 100 millilitres of breath, as defined in Section 2 of Cap. 374. It is an offence for a person to drive or attempting to drive a motor vehicle on a road with the proportion of alcohol in his breath exceeding the prescribed limit.

6. We wish to point out that unlike SBT and evidential breath test (EBT)² devices, the pre-screening device provides colour signals only, and does not provide numerical readings of the detected alcohol concentration level. If a red signal shows after a test, the driver will be required to conduct an SBT. If a green signal shows, he will not be required to conduct an SBT. If he refuses to conduct a pre-screening test, he is required to conduct an SBT. Likewise, if a driver is showing obvious signs that the alcohol concentration in his body is likely to exceed the prescribed limit when he is stopped for RBT operation, he will be required to undergo an SBT right away. This is in line with the present practice under the powers provided in the existing law.

7. Together with the other proposed arrangements for RBT, the Police will keep in view the implementation experience. We will consult the Legislative Council Panel on Transport if we propose to make any changes to the proposed calibration level for the pre-screening device for the purpose of requiring a driver to conduct an SBT.

Proposed Committee Stage Amendments (CSAs)

8. We propose to introduce CSAs to amend Clauses 3, 9(1) and 11 of Bill to reflect the proposal above. Details are shown in the **Annex**. We will make formal submissions of these proposed CSAs shortly.

Evidence of the Proportion of Alcohol in the Breath Used by the Court

9. The Bills Committee noted that as far as breath specimens are concerned, the existing section 39D(1) of Cap. 374 provide that the court shall use the specimens taken under section 39C(3)(a) for evidence of the proportion of alcohol concentration in the breath, i.e. specimens taken under EBT. However, a Member expressed concern that the breath specimen taken by the pre-screening device during RBT alone may be submitted as evidence to the court.

² An evidential breath test is a breath test conducted in police stations, hospitals or other designated breath test centres. Currently, if the SBT shows a reading of 23 mcg of alcohol or above in 100 ml of breath, the Police will arrest the driver and take him to the nearest breath test centre for an evidential breath test.

10. To address this concern, and as set out in paragraph 8, we propose to move CSAs to amend Clauses 3, 9(1) and (11) of the Bill to make it clear that the purpose of the approved pre-screening device is to provide an indication as to whether or not the proportion of alcohol in a person's breath reaches such a level that it is reasonable to suspect such proportion is likely to exceed the prescribed limit, and therefore should be required to conduct the SBT. The proposed CSAs, together with the fact that the pre-screening device will be calibrated below the prescribed limit (at 20 mcg of alcohol per 100 ml of breath) and will not provide a numerical reading or statement as to the proportion of alcohol in the breath, puts it beyond doubt that the result of the pre-screening test cannot be used as evidence to show that the proportion of alcohol in the breath specimen of a driver has exceeded the prescribed limit.

Transport and Housing Bureau
19 May 2008

Proposed Amendments to Clauses 3, (9)(1) and 11 of the Bill³

Clause 3 – to amend the definition of “approved pre-screening device” at Section 2 of Cap. 374

3. Interpretation

The definition of “approved pre-screening device” at Section 2 is amended to read -
“approved pre-screening device” means a device –

- (a) of a type approved by the Commissioner of Police under section 39F; and
- (b) for indicating whether or not the proportion of alcohol in a person’s breath reaches such a level that it would be reasonable to suspect such proportion to be likely to exceed the prescribed limit;”

Clause 9(1) – to amend the new Section 39B(1A) of Cap. 374 about test by pre-screening device

9. Screening breath tests

The new Section 39B(1A) is amended to read -

- “(1A) Subsection (1)(a) does not apply to a person if, immediately before the police officer requires him to provide the specimen of breath –
- (a) the person has, at the request of the police officer, provided a specimen of breath to be tested by an approved pre-screening device; and
 - (b) the test does not indicate that the proportion of alcohol in the person’s breath reaches such a level that it would be reasonable to suspect such proportion to be likely to exceed the prescribed limit.”.

³ The proposed wordings of the amended legislative provisions in this Annex are provisional. We will make formal submission of the proposed CSAs shortly.

Clause 11 – to amend the new section 39F(1)(c) of Cap. 374 on pre-screening device

11. Approval of instruments and operators

The new Section 39F(1)(c) is amended to read -

- “(c) an approved pre-screening device for indicating whether or not the proportion of alcohol in a person’s breath reaches such a level that it would be reasonable to suspect such proportion to be likely to exceed the prescribed limit.”.