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Report of the Bills Committee on Road Traffic Legislation (Amendment) Bill 2008

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Random Breath Tests

16. The Bills Committee agrees that drink driving has increasingly been regarded as a serious offence that can bring about grave consequences not only to the drivers of the vehicle concerned but also to other road users. As such, the Bills Committee agrees that the proposal to empower the Police to require drivers to conduct RBTs without the need for reasonable suspicion would be a strong deterrent. To give more confidence to the public that the police will discharge the added power in the most responsible manner, the Bills Committee has examined in detail the arrangements for conducting RBTs. In this regard, the Administration has advised that:

- (a) RBT will initially be restricted to traffic officers already trained in handling drink-driving cases in considering that they have the requisite knowledge and experience to conduct such checks whilst ensuring both their own and the public's safety;
- (b) RBT will not normally be targeted against vehicles in motion. For the safety of the officers concerned, and to ensure that the check can be carried out with the minimum of inconvenience to the driver and other motorists, RBT will normally be conducted during roadblock operations or as part of other traffic enforcement checks;
- (c) limitations on RBT checks by time or location will not be applied as this would defeat the 'random' nature of the checks; and
- (d) no rank restrictions will be placed on the use of RBT power as currently, all police officers are vested with considerable powers which they exercise in a responsible manner.

17. In order to allay the concerns raised by the transport trade that the Police may

target certain drivers during RBT operations, the Bills Committee is assured by the Police that a full record of all RBTs conducted would be kept including details such as driving licence numbers, vehicle registration numbers, times and locations of the tests conducted, etc. This will facilitate the Police to look into complaints raised by aggrieved parties through the present police complaints mechanism.

Breath test by a pre-screening device

18. With a view to reducing delay and inconvenience to motorists during RBT operations, the Bills Committee notes that 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 SBT process which normally takes about four minutes to complete. For the purpose of introducing the pre-screening device, the Administration originally proposes 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 will not be required to provide a specimen of breath for a SBT.

19. Whilst the Bills Committee supports the introduction of the pre-screening device to reduce inconvenience to motorists during RBT operations, it considers that a driver should not be required to conduct a SBT simply because he is 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.

20. Taking into account members' views, the Administration proposes that the pre-screening device be calibrated to activate a signal if 20 or more micrograms (mg) of alcohol in 100 milliliters (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 a SBT.

21. The Administration advises that 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 mg of alcohol in 100 ml of breath; and
- (b) another signal (a red light) to indicate 20 or more mg 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 RTO. 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.

If a red signal shows after a test, the driver will be required to conduct a SBT. If a green signal shows, he will not be required to conduct a SBT. If he refuses to conduct a pre-screening breath test, the Police may require the driver to conduct a 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 a SBT right away. This is in line with the present practice under the powers provided in the existing law.

22. The Bills Committee is also concerned about the accuracy and reliability of the pre-screening device used for RBT operations and the procedures to be adopted before gazettal of the approved type of pre-screening device. The Administration advises that the Police are now exploring with different manufacturers for types of devices that may be able to meet the proposed specifications for trial and testing purposes. When the suitable devices are available, the Police will arrange tests to be conducted on their accuracy and reliability by the Government Laboratory or an independent laboratory. The ultimate choice of the device to be used will be subject to test results and the outcome of a tender exercise.

23. The Bills Committee has also examined the procedures for approving the type of pre-screening device and is assured by the Administration that each piece of the equipment will be subject to regular service and maintenance checks in accordance with the manufacturer's recommendations. Periodic checks will also be conducted by an independent organization to ensure accuracy and reliability.

24. The Administration also assures the Bills Committee that the Police will keep in view the implementation experience of RBT operations. The Administration will consult the Panel if it proposes to make any changes to the proposed arrangements for RBT operations as well as the calibration level for the pre-screening device for the purpose of requiring a driver to conduct a RBT. The Secretary for Transport and Housing has been requested to include in her speech the above undertakings at the resumption of the Second Reading debate on the Bill

CSAs to be moved by the Administration

46. Other than the divergent views expressed by members in respect of the proposed penalty levels for the offence of drink driving, the Bills Committee generally supports the Administration's proposed CSAs to the Bill. The Administration's CSAs are set out below.

Breath test by an approved pre-screening device

47. The Bills Committee supports the introduction of a pre-screening device to reduce inconvenience to motorists during RBT operations, but considers that a driver should not be required to conduct a SBT just because he is found to have any alcohol in his body irrespective of the level of alcohol concentration in his breath specimen as

detected by the pre-screening device. Having regard to the views of the Bills Committee, the Administration agrees to introduce CSAs to the effect that –

- (a) an approved pre-screening device is clearly defined to mean a 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 that such proportion is likely to exceed the prescribed limit, both at sections 2 and 39F(1) of RTO; and
- (b) if a person has provided a specimen of breath to be tested by an approved pre-screening device, only when the test indicates that the proportion of alcohol in the person's breath reaches such a level that it would be reasonable to suspect that such proportion is likely to exceed the prescribed limit then the driver should be required to conduct SBT.

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