

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2238/08-09

Ref. : CB1/PL/TP

**Panel on Transport**  
**Meeting on 17 July 2009**

**Background brief on drink driving offences**

**Purpose**

This paper provides information on the existing penalties on drink driving offences and new proposals being considered by the Administration to tighten up such penalties. This paper also summarizes the major concerns on drink driving offences expressed by the former Bills Committee on Road Traffic Legislation (Amendment) Bill 2008. The Bill contained a package of proposals to combat and deter drink driving and other inappropriate driving behaviour to enhance road safety.

**Background**

Accident on 23 January 2009 arousing wide public concern about existing penalties

2. A serious traffic accident in which six men were killed occurred in Lok Ma Chau on 23 January 2009. It was reported by the media that a medium goods vehicle (MGV) travelling along Castle Peak Road towards Lok Ma Chau rammed into a taxi which was travelling on the opposite lane. The MGV driver was arrested for drink driving and dangerous driving causing death.

3. The traffic accident has aroused wide public concern about the need to increase penalties on drink driving offences for punitive purposes and a stronger deterrent effect.

Consultations with key stakeholders on legislative measures

4. In response to public concern and demand for imposing heavier punishments on drink driving offenders, the Secretary for Transport and Housing (STH) conducted consultation with all the key stakeholders on 6 February 2009. After the consultation, the Administration announced that it was considering the following –

- (a) introducing a scale of penalties according to different extent of drink driving;
- (b) introducing a new offence of “dangerous driving causing serious bodily harm”; and
- (c) introducing "aggravating factors" to all dangerous driving offences.

The Administration indicated that it would conduct a public consultation after formulating the specific proposals.

#### Strengthening education and publicity

5. On education and publicity, the Administration has displayed the message of ‘If you drink, don’t drive’ on major trunk roads, tunnels, flyovers and electronic message signs over the territory as a reminder to drivers. The Administration has also publicized the new measure on random breath tests (RBTs) through the media to combat drink driving. The Administration has pledged to continue to enhance education and publicity against drink driving in collaboration with the Road Safety Council.

#### **Existing penalties**

6. To further combat drink driving and other inappropriate driving behaviour, the Government introduced the Road Traffic Legislation (Amendment) Bill 2008 into the Legislative Council (LegCo) on 6 February 2008. The Bill sought to raise the maximum imprisonment term for the offence on causing death by dangerous driving; to introduce new penalties for drink driving offences; to empower police officers in uniform to conduct screening breath tests at random; and to impose a mandatory requirement for repeat traffic offenders and offenders of serious traffic offences to attend driving improvement courses. The Bill was passed by LegCo on 26 June 2008.

7. Penalties for dangerous driving causing death offences and dangerous driving offences are respectively provided under sections 36 and 37 of the Road Traffic Ordinance (Cap. 374). An extract of the relevant provisions is at **Appendix I**.

8. With effect from 9 February 2009, the Police was also empowered to conduct RBTs to deter drink driving. Police officers are empowered to stop a driver at any place and at any time, without the need for a reasonable suspicion. The Police reported the result and effectiveness of RBTs to the Panel at its meeting on 26 June 2009. The Panel noted that between February and May 2009, drink driving cases decreased by 37% and traffic accidents involving

drink driving decreased by 65% compared with the same period in 2008. Details are at **Appendix II**.

9. According to the Administration, the level of fines and imprisonment terms for drink driving offences in Hong Kong are generally comparable with those overseas.

### **Major views on drink driving offences expressed by the former Bills Committee on Road Traffic Legislation (Amendment) Bill 2008**

10. The House Committee agreed at its meeting on 22 February 2008 to form a Bills Committee to scrutinize the Road Traffic Legislation (Amendment) Bill 2008. In the course of deliberation, members raised questions on the appropriateness of the proposed penalties for the offences of drink driving and dangerous driving causing death, and compared the proposed penalties in the Bill with those in overseas countries. They also reviewed the proposed arrangements to be adopted by the Police for conducting RBTs.

11. The Bills Committee supported the idea of disqualifying a drink driving offender from driving on first conviction, and requiring him to attend a driving improvement course on a mandatory basis so as to enhance road safety. Hon Andrew CHENG was of the view that given the seriousness of drink driving offences, the disqualification period upon first conviction of drink driving should be lengthened so as to achieve sufficient deterrent effect.

12. The Administration advised that the proposed three-month disqualification period was a minimum rather than a maximum penalty. The court might, if it saw fit having considered all the relevant circumstances of a case, hand down a sentence of disqualification of any duration longer than three months. The Administration requested members to note that judgments on drink driving offences indicated that the court considered many factors when handing down a sentence. These included, e.g. level of alcohol concentration, whether there was a traffic accident, whether there were and, if so, the number of persons injured, the circumstances behind a guilty plea, etc.

13. In the light that the proposed disqualification for not less than three months on first conviction was but one deterrent out of a proposed package of other additional measures to deter drink driving, and having regard to the decisions of the appellate courts on the relevance of alcohol concentration in addition to other relevant factors in determining the appropriate sentence, the Administration suggested that the proposed package of deterrent measures should first be introduced. The Administration undertook that it would closely monitor the effectiveness of the new legislation upon its enactment, including the trends on the hit rate of RBTs, and accident and prosecution statistics, and consider introducing heavier penalties on drink driving offences as necessary.

14. On the appropriateness of introducing different levels of penalties for different alcohol concentration levels into the Bill, the Administration advised that there were many factors affecting the level of impairment to a person. A driver with lower alcohol concentration in his blood might not necessarily be impaired to a lesser extent than another driver with a higher alcohol concentration. A graded level of penalties might also send a wrong message that slightly exceeding the prescribed limit was not a serious offence. The Administration considered that as court cases were available to provide reference for imposing different levels of penalties for different alcohol concentration levels above the prescribed limit, it might be more appropriate to leave it to the court to decide on the sentence depending on the circumstances of each case.

15. Hon Andrew CHENG moved Committee Stage amendments to lengthen the disqualification period on first conviction of the offence of drink driving or failure to provide samples of blood, urine or breath for testing under specified circumstances from not less than three months to not less than six months. Mr CHENG's amendment was negatived at the Council meeting on 26 June 2008.

16. The Bills Committee also examined the sentencing statistics on the convicted cases of causing death by dangerous driving from 2003 to 2007. The Bills Committee noted that among the 81 convicted drivers, 63 (78%) were sentenced to imprisonment with periods ranging from 20 days to 5 years. The period of disqualification from driving ranged from 3 months to 12 years. 93% of the cases involved a disqualified period of two years or more.

17. The Administration advises that judges usually took into account the maximum penalty and all relevant circumstances before imposing a sentence. Hence, if the maximum penalty for a certain offence was raised, it would demonstrate the view of the legislature and the community on the seriousness of the offence. This would be drawn upon as reference by the court in handing down a sentence. By doubling the maximum sentence of dangerous driving causing death from 5 years to 10 years as proposed under the Bill, cases of this kind would more likely be tried in the High Court and the District Courts, instead of the magistrate courts, and heavier penalties would more likely be imposed.

### **Latest developments**

18. The Administration has formulated specific legislative proposals on drink driving offences and has proposed to consult the Panel on the proposals at its meeting on 17 July 2009.

**Relevant papers**

19. A list of relevant papers is in **Appendix III**.

Council Business Division 1  
Legislative Council Secretariat  
14 July 2009

## Contents of Section

Chapter:	374 	Title:	ROAD TRAFFIC ORDINANCE	Gazette Number:	L.N. 256 of 2008
Section:	36	Heading:	<b>Causing death by dangerous driving</b>	Version Date:	09/02/2009

## PART V

## TRAFFIC OFFENCES

- (1) A person who causes the death of another person by driving a motor vehicle on a road dangerously commits an offence and is liable-
- (a) on conviction on indictment to a fine at level 5 and to imprisonment for 10 years; (Amended 2 of 2008 s. 5)
  - (b) on summary conviction to a fine at level 4 and to imprisonment for 2 years.
- (2) If a court or magistrate convicts a person of an offence under subsection (1), the court or magistrate shall order that the person be disqualified in accordance with subsection (2A) or (2B) unless the court or magistrate for special reasons orders that the person be disqualified for a shorter period or that the person not be disqualified. (Replaced 23 of 2008 s. 5)
- (2A) Subject to subsection (2B), the person is to be disqualified-
- (a) in the case of a first conviction, for a period of not less than 2 years; and
  - (b) in the case of a second or subsequent conviction, for a period of not less than 3 years. (Added 23 of 2008 s. 5)
- (2B) If the court or magistrate has ordered the person to attend and complete a driving improvement course under section 72A(1A), the person is to be disqualified-
- (a) in the case of a first conviction, for a period of not less than 2 years, or until the person has attended and completed the course at his own cost, whichever is the later; and
  - (b) in the case of a second or subsequent conviction, for a period of not less than 3 years, or until the person has attended and completed the course at his own cost, whichever is the later. (Added 23 of 2008 s. 5)
- (2C) For the purposes of subsection (2), a person to whom subsection (2B) applies is disqualified for a shorter period if he is disqualified-
- (a) in the case of a first conviction, for a period of less than 2 years, or until the person has attended and completed the driving improvement course at his own cost, whichever is the later; and
  - (b) in the case of a second or subsequent conviction, for a period of less than 3 years, or until the person has attended and completed the driving improvement course at his own cost, whichever is the later. (Added 23 of 2008 s. 5)
- (3) The court or magistrate may deal with the conviction of an offence as a first conviction if, as at the date on which the offence was committed, at least 5 years have elapsed since the person's last conviction under subsection (1). (Replaced 23 of 2008 s. 5)
- (4) A person is to be regarded as driving dangerously within the meaning of subsection (1) if-
- (a) the way he drives falls far below what would be expected of a competent and careful driver; and
  - (b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.
- (5) A person is also to be regarded as driving dangerously within the meaning of subsection (1) if it would be obvious to a competent and careful driver that driving the motor vehicle concerned in its current state would be dangerous.

(6) For the purposes of subsections (4) and (5), "dangerous" refers to danger either of injury to any person or of serious damage to property.

(7) For the purposes of subsections (4) and (5), in determining what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be had to all the circumstances of the case including-

- (a) the nature, condition and use of the road concerned at the material time;
- (b) the amount of traffic which is actually on the road concerned at the material time or which might reasonably be expected to be on the road concerned at the material time; and
- (c) the circumstances (including the physical condition of the accused) of which the accused could be expected to be aware and any circumstances (including the physical condition of the accused) shown to have been within the knowledge of the accused.

(8) In determining for the purposes of subsection (5) the state of the motor vehicle, regard may be had to anything attached to or carried on or in it and to the manner in which it is attached or carried.

(9) If on the trial of any person charged with an offence under subsection (1) the prosecution proves that the person charged drove dangerously but not that he caused the death of another person by so driving, the person charged shall be acquitted of the offence under subsection (1) and be found guilty of an offence under section 37.

(10) On the trial of any person charged with an offence under subsection (1), the person charged may be acquitted of the offence under subsection (1) and be found guilty of one or more offences under section 38, 39 or 39A.

(Replaced 33 of 2000 s

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Chapter:	374 	Title:	ROAD TRAFFIC ORDINANCE	Gazette Number:	L.N. 256 of 2008
Section:	37	Heading:	<b>Dangerous driving</b>	Version Date:	09/02/2009

- (1) A person who drives a motor vehicle on a road dangerously commits an offence and is liable-
- (a) on conviction on indictment to a fine at level 4 and to imprisonment for 3 years;
  - (b) on summary conviction to a fine at level 3 and to imprisonment for 12 months.
- (2) If a court or magistrate convicts a person of an offence under subsection (1), the court or magistrate shall order that the person be disqualified in accordance with subsection (2A) or (2B) unless the court or magistrate for special reasons orders that the person be disqualified for a shorter period or that the person not be disqualified. (Replaced 23 of 2008 s. 6)
- (2A) Subject to subsection (2B), the person is to be disqualified-
- (a) in the case of a first conviction, for a period of not less than 6 months; and
  - (b) in the case of a second or subsequent conviction, for a period of not less than 18 months. (Added 23 of 2008 s. 6)
- (2B) If the court or magistrate has ordered the person to attend and complete a driving improvement course under section 72A(1A), the person is to be disqualified-
- (a) in the case of a first conviction, for a period of not less than 6 months, or until the person has attended and completed the course at his own cost, whichever is the later; and
  - (b) in the case of a second or subsequent conviction, for a period of not less than 18 months, or until the person has attended and completed the course at his own cost, whichever is the later. (Added 23 of 2008 s. 6)
- (2C) For the purposes of subsection (2), a person to whom subsection (2B) applies is disqualified for a shorter period if he is disqualified-
- (a) in the case of a first conviction, for a period of less than 6 months, or until the person has attended and completed the driving improvement course at his own cost, whichever is the later; and
  - (b) in the case of a second or subsequent conviction, for a period of less than 18 months, or until the person has attended and completed the driving improvement course at his own cost, whichever is the later. (Added 23 of 2008 s. 6)
- (3) The court or magistrate may deal with the conviction of an offence as a first conviction if, as at the date on which the offence was committed, at least 5 years have elapsed since the person's last conviction under subsection (1). (Replaced 23 of 2008 s. 6)
- (4) A person is to be regarded as driving dangerously within the meaning of subsection (1) if-
- (a) the way he drives falls far below what would be expected of a competent and careful driver; and
  - (b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.
- (5) A person is also to be regarded as driving dangerously within the meaning of subsection (1) if it would be obvious to a competent and careful driver that driving the motor vehicle concerned in its current state would be dangerous.
- (6) For the purposes of subsections (4) and (5), "dangerous" refers to danger either of injury to any person or of serious damage to property.
- (7) For the purposes of subsections (4) and (5), in determining what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be had to all the circumstances of the case including-
- (a) the nature, condition and use of the road concerned at the material time;



(b) the amount of traffic which is actually on the road concerned at the material time or which might reasonably be expected to be on the road concerned at the material time; and  
(c) the circumstances (including the physical condition of the accused) of which the accused could be expected to be aware and any circumstances (including the physical condition of the accused) shown to have been within the knowledge of the accused.

(8) In determining for the purposes of subsection (5) the state of the motor vehicle, regard may be had to anything attached to or carried on or in it and to the manner in which it is attached or carried.

(9) On the trial of any person charged with an offence under subsection (1), the person charged may be acquitted of that offence under subsection (1) and be found guilty of one or more offences under section 38, 39 or 39A.

(Replaced 33 of 2000 s

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**Number of Drink Driving Cases**  
**(February to May 2008 and 2009)**

<b>Drink Driving Cases (SBT &gt; 22 mcg or refused to give sample for SBT)</b>			
	<b>2008</b>	<b>2009</b>	<b>Difference</b>
<b>February</b>	131	70	-46.6%
<b>March</b>	112	73	-34.8%
<b>April</b>	104	68	-34.6%
<b>May</b>	126	89	-29.4%
<b>Total</b>	473	300	-36.6%

**Number of Traffic Accidents Involving Drink Driving**  
**(February to May 2008 and 2009)**

<b>Traffic Accidents Involving Drink Driving</b>			
	<b>2008</b>	<b>2009</b>	<b>Difference</b>
<b>February</b>	52	21	-59.6%
<b>March</b>	55	18	-67.3%
<b>April</b>	60	18	-70.0%
<b>May</b>	62	23	-62.9%
<b>Total</b>	229	80	-65.1%

## Drink driving offences

### List of relevant papers

Date of meeting	Committee	Minutes/Paper	LC Paper No.
9.1.98	Panel on Transport	Minutes of the meeting	PLC Paper No. CB(1)1094 <a href="http://www.legco.gov.hk/yr97-98/english/panels/tp/minutes/tp090198.htm">http://www.legco.gov.hk/yr97-98/english/panels/tp/minutes/tp090198.htm</a>
		Administration's paper on the review of drink driving legislation	PLC Paper No. CB(1)730(01) <a href="http://www.legco.gov.hk/yr97-98/english/panels/tp/papers/tp0901-4.htm">http://www.legco.gov.hk/yr97-98/english/panels/tp/papers/tp0901-4.htm</a>
12.3.99	Bills Committee on Road Traffic (Amendment) Bill 1998 (the Bills Committee)	Report of the Bills Committee to the House Committee	CB(1)991/98-99 <a href="http://www.legco.gov.hk/yr98-99/english/hc/papers/h1203991.pdf">http://www.legco.gov.hk/yr98-99/english/hc/papers/h1203991.pdf</a>
		Legislative Council brief on the Road Traffic (Amendment) Bill 1998	File Ref.: TRAN 1/12/126 <a href="http://www.legco.gov.hk/yr98-99/english/bc/bc07/general/27_brf.pdf">http://www.legco.gov.hk/yr98-99/english/bc/bc07/general/27_brf.pdf</a>
12.11.03	Council meeting	Hon Miriam LAU raised a written question on the drink driving legislation	<a href="http://www.legco.gov.hk/yr03-04/english/counmtg/hansard/cm1112ti-translate-e.pdf">http://www.legco.gov.hk/yr03-04/english/counmtg/hansard/cm1112ti-translate-e.pdf</a>
9.6.04	Council meeting	Hon LI Fung-ying raised a written question on drink driving	<a href="http://www.legco.gov.hk/yr03-04/english/counmtg/hansard/cm0609ti-translate-e.pdf">http://www.legco.gov.hk/yr03-04/english/counmtg/hansard/cm0609ti-translate-e.pdf</a>
17.12.04	Panel on Transport	Minutes of the meeting	CB(1)679/04-05 <a href="http://www.legco.gov.hk/yr04-05/english/panels/tp/minutes/tp041217.pdf">http://www.legco.gov.hk/yr04-05/english/panels/tp/minutes/tp041217.pdf</a>

		Administration's paper on review of measures to combat inappropriate driving behaviour	CB(1)466/04-05/(03) <a href="http://www.legco.gov.hk/yr04-05/english/panels/tp/papers/tp1217cb1-466-3e.pdf">http://www.legco.gov.hk/yr04-05/english/panels/tp/papers/tp1217cb1-466-3e.pdf</a>
		Administration's supplementary information on overseas sanction on drink-driving	CB(1)1008/05-06/(01) <a href="http://www.legco.gov.hk/yr05-06/english/panels/tp/papers/tpcb1-1008-1e.pdf">http://www.legco.gov.hk/yr05-06/english/panels/tp/papers/tpcb1-1008-1e.pdf</a>
24.2.06	Panel on Transport	Minutes of the meeting	CB(1)1234/05-06 <a href="http://www.legco.gov.hk/yr05-06/english/panels/tp/minutes/tp060224.pdf">http://www.legco.gov.hk/yr05-06/english/panels/tp/minutes/tp060224.pdf</a>
		Administration's paper on measures to combat drink driving and the use of hand-held mobile phone while driving	CB(1)932/05-06(11) <a href="http://www.legco.gov.hk/yr05-06/english/panels/tp/papers/tp0224cb1-932-11e.pdf">http://www.legco.gov.hk/yr05-06/english/panels/tp/papers/tp0224cb1-932-11e.pdf</a>
		Administration's supplementary paper providing statistics on penalties for drink driving	CB(1)2230/05-06(01) <a href="http://www.legco.gov.hk/yr05-06/english/panels/tp/papers/tp0224cb1-2230-1e.pdf">http://www.legco.gov.hk/yr05-06/english/panels/tp/papers/tp0224cb1-2230-1e.pdf</a>
24.5.06	Council meeting	Hon LAU Wong-fat raised an oral question on measures against drink driving	Hansard (Chinese version only) <a href="http://www.legco.gov.hk/yr05-06/chinese/counmtg/floor/cm0524ti-confirm-c.pdf">http://www.legco.gov.hk/yr05-06/chinese/counmtg/floor/cm0524ti-confirm-c.pdf</a>
14.6.06	Council meeting	A motion moved by Hon LAU Kong-wah as amended by Hon Andrew CHENG on measures to combat drink driving was carried	Hansard (Chinese version only) <a href="http://www.legco.gov.hk/yr05-06/chinese/counmtg/floor/cm0614ti-confirm-c.pdf">http://www.legco.gov.hk/yr05-06/chinese/counmtg/floor/cm0614ti-confirm-c.pdf</a>

23.6.06	Panel on Transport	Minutes of the meeting	CB(1)2225/05-06 <a href="http://www.legco.gov.hk/yr05-06/english/panels/tp/minutes/tp060623.pdf">http://www.legco.gov.hk/yr05-06/english/panels/tp/minutes/tp060623.pdf</a>
15.12.06	Panel on Transport	Administration's paper on measures to enhance road safety	CB(1)453/06-07(04) <a href="http://www.legco.gov.hk/yr06-07/english/panels/tp/papers/tp1215cb1-453-4-e.pdf">http://www.legco.gov.hk/yr06-07/english/panels/tp/papers/tp1215cb1-453-4-e.pdf</a>
		Background brief on measures to combat drink driving prepared by the Secretariat	CB(1)462/06-07 <a href="http://www.legco.gov.hk/yr06-07/english/panels/tp/papers/tp1215cb1-462-e.pdf">http://www.legco.gov.hk/yr06-07/english/panels/tp/papers/tp1215cb1-462-e.pdf</a>
		Minutes of meeting	CB(1)763/06-07 <a href="http://www.legco.gov.hk/yr06-07/english/panels/tp/minutes/tp061215.pdf">http://www.legco.gov.hk/yr06-07/english/panels/tp/minutes/tp061215.pdf</a>
16.1.08	Council Question	Hon James TIEN raised a question on crackdown on dangerous driving	Hansard (Chinese version only) <a href="http://www.legco.gov.hk/yr07-08/chinese/counmtg/floor/cm0116-confirm-ec.pdf">http://www.legco.gov.hk/yr07-08/chinese/counmtg/floor/cm0116-confirm-ec.pdf</a>
26.6.09	Panel on Transport	Administration's paper on review of the results from random breath testing	CB(1)1982/08-09(06) <a href="http://www.legco.gov.hk/yr08-09/english/panels/tp/papers/tp0626cb1-1982-6-e.pdf">http://www.legco.gov.hk/yr08-09/english/panels/tp/papers/tp0626cb1-1982-6-e.pdf</a>