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Bills Committee on Road Traffic (Amendment) Bill 2010

Background brief

Purpose

This paper sets out the background to the Administration's proposal to amend the Road Traffic Ordinance (Cap. 374). It also provides a summary of views and concerns expressed by Members on related issues.

Background

2. To step up efforts in combating drink driving, the Road Traffic Legislation (Amendment) Ordinance 2008 was enacted in 2008 to implement measures including raising penalties on drink driving offences by disqualifying the offenders from driving for not less than three months on first conviction and requiring them to attend a driving improvement course on a mandatory basis, and empowering the Police to conduct random breath tests. Since the implementation of the above measures on 9 February 2009, there has been a significant drop of 67% in the number of traffic accidents¹ involving drink driving.

3. Nevertheless, drink driving is still a matter of serious concern as it can bring about grave consequences not only to the drivers of the vehicles concerned but also to other road users. From time to time, there are calls for increased penalties on drink driving and dangerous driving offences, so that sentences handed down by the court would better reflect the serious injuries and damage caused by traffic accidents, particularly those involving drink driving. Taking into account the public sentiment arising from the Lok Ma Chau fatal accident in January 2009² and overseas practices, the Administration proposes to introduce heavier penalties

¹ The number of drink driving accidents from 9 February 2009 to 31 December 2009 compared with that in the same period in 2008.

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.

to further deter drink driving offences and other inappropriate driving behaviour.

The Road Traffic (Amendment) Bill 2010 (the Bill)

4. The Bill seeks to amend the Road Traffic Ordinance by introducing the following measures to further deter drink driving and other inappropriate driving behaviour –

- (a) providing for minimum driving disqualification periods on conviction according to three tiers of driver's alcohol concentration;
- (b) introducing a new offence of causing grievous bodily harm by dangerous driving;
- (c) bringing in drink driving as a circumstance of aggravation in all dangerous driving offences;
- (d) providing for the consecutive implementation of imprisonment and driving disqualification for offenders on subsequent conviction of serious traffic offences;
- (e) increasing the minimum period of driving disqualification of certain offences; and
- (f) introducing other related or textual amendments.

Discussion by the Panel on Transport

The proposed sliding scale

5. At the meeting of the Panel on Transport (the Panel) held on 17 July 2009, the Administration briefed members on the legislative proposals to further combat drink driving. Panel members generally expressed support for the legislative proposals. However, some members expressed reservations about the proposed scale of penalties according to different levels of blood alcohol concentration (BAC) (the proposed sliding scale). These members were worried that the proposed sliding scale might send out a wrong message that slightly exceeding the prescribed limit was not a serious offence since low BAC would be imposed only lenient penalties. They considered that all drivers involved in drink driving regardless of their BAC levels should be penalized. The Administration advised that the proposed sliding scale was put forward in response to strong support of the public, who considered it fair to impose penalties according to the seriousness of the offence as indicated by the BAC level. The relevant proposed categorizations were modelled on the legislation of Australia, which was one of the most proactive countries in combating drink driving.

6. Some Panel members considered that the proposed driving disqualification period of six months for first conviction of drink driving at a BAC level of 50 mg to less than 80 mg in 100 ml of blood should be increased to one year. The Administration advised that it had made reference to overseas legislation and that the above proposed six-month disqualification period was already one of the longest among the countries studied.

Consecutive implementation of the imprisonment and disqualification terms

7. Some Panel members considered that if public opinions were supportive of consecutive implementation of the imprisonment and disqualification terms, the legislation should clearly stipulate that in serious traffic offences, the court had to order consecutive implementation of the imprisonment and disqualification terms instead of giving the court the discretion to do so. Some other members, however, considered that to ensure that the relevant provision would not be too stringent, the conditions under which consecutive implementation of the imprisonment and disqualification terms would be ordered might need to be specified.

Proposed penalties for dangerous driving

8. Noting that the proposed maximum fine for the new offence of dangerous driving causing grievous bodily harm was \$50,000, some Panel members opined that the maximum fine for the more serious offence of dangerous driving causing death, which at present was also \$50,000, should be increased to \$100,000. Some Panel members considered the proposed minimum disqualification periods upon first and subsequent conviction of dangerous driving too short to achieve any sufficient deterrent effect. They suggested that the periods upon first and subsequent conviction should be lengthened to two years and five years respectively. On the proposed offence of dangerous driving causing grievous bodily harm, some members suggested that the minimum disqualification periods upon first and subsequent conviction should be five years and ten years respectively. As regards the offence of dangerous driving causing death, some members considered that the minimum disqualification periods upon first and subsequent conviction should be ten years and life ban from driving respectively.

Other concerns

9. Some Panel members expressed concern that since drug abuse could similarly affect a person's ability to drive, the Administration might need to consider conducting random tests in this regard on top of random breath tests. The Administration explained that since methods for conducting quick and accurate drug tests had yet to be developed, there would be difficulty in conducting drug tests with drivers. According to the current statistics, there was no cause for alarm regarding the effect of drug abuse on driving. This might be due to the fact that drug abuse was more popular among young people who were below the legal age for driving.

The Bills Committee

10. At the House Committee meeting on 14 May 2010, members agreed that a Bills Committee should be formed to study the Bill.

Relevant papers

Report of the Bills Committee on Road Traffic Legislation (Amendment) Bill 2008
<http://www.legco.gov.hk/yr07-08/english/bc/bc06/reports/bc060625cb1-1948-e.pdf>

Information paper provided by the Administration for the Panel on Transport meeting on 17 July 2009
<http://www.legco.gov.hk/yr08-09/english/panels/tp/papers/tp0717cb1-2237-1-e.pdf>

Background brief on drink driving offences prepared by the Legislative Council Secretariat for the Panel on Transport meeting on 17 July 2009
<http://www.legco.gov.hk/yr08-09/english/panels/tp/papers/tp0717cb1-2238-e.pdf>

Minutes of the Panel on Transport meeting on 17 July 2009
<http://www.legco.gov.hk/yr08-09/english/panels/tp/minutes/tp20090717.pdf>

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