

Road Traffic (Amendment) Bill 2010 (“the Bill”)

Proposed Committee Stage Amendments to the Bill

Purpose

We would like to propose some Committee Stage Amendments (CSAs) to the Road Traffic (Amendment) Bill 2010 to respond to the request of the Bills Committee, and to make technical amendments to clarify certain terms and arrangements proposed in the Bill. The proposed amendments are explained in the ensuing paragraphs.

CSAs on drug driving

2. At the Bills Committee meeting on 21 June 2010, the Administration was requested to consider proposing CSAs to the Bill to include a list of illicit drugs under the ‘zero tolerance’ control, notably heroin, ketamine and Methylamphetamine (ice), which would constitute a circumstance of aggravation in all dangerous driving offences if the driver concerned was found to have taken such drugs, so as to provide deterrence against drug driving in addition to drink driving.

3. In order to deter drug driving and dangerous driving offences, we propose CSAs to the Bill (Clauses 6 (5), 7(7), 8(5), 14 and proposed new clause 21A are relevant) to seek to amend the Road Traffic Ordinance to provide for the following :-

- (a) At the time of committing the dangerous driving offences a person is under the influence of a specified illicit drug to such an extent as to be incapable of having proper control of the vehicle, the person commits an offence under the circumstances of aggravation;
- (b) For the purpose of (a), six illicit drugs will be specified in a Schedule, which may be amended by STH by way of subsidiary

- legislation (negative vetting)¹; these six illicit drugs are –
- Heroin (or its metabolites² 6-acetylmorphine or morphine)
 - Ketamine
 - Methylamphetamine (Ice)
 - Cannabis (or its active ingredient tetrahydro-cannabinol)
 - Cocaine (or its metabolite² benzoylecgonine)
 - 3,4-methylenedioxymethamphetamine (MDMA)

The six illicit drugs above are the same as those we propose to be covered under the zero-tolerance drug driving offence in our initial proposals to combat drug driving;

- (c) For persons who are caught by the circumstance of aggravation in (a), the maximum penalty in terms of fine, imprisonment and disqualification for the dangerous driving offences concerned are each increased by 50%.

Technical CSAs on the term “released from custody”

4. Clause 18 of the Bill, which provides for the consecutive implementation of imprisonment and driving disqualification for offenders on subsequent conviction of serious traffic offences, states the following :-

“The court or magistrate must direct that the disqualification period is not to start to run until the person is released from custody, unless the court or magistrate for special reasons decides not to make such a direction.”

5. The term “released from custody” is used in the Bill. In a number of circumstances, persons who are ordered by the court to have a disqualification period that commences after an imprisonment term might be released from custody before the expiration of their imprisonment terms. For instance, a prisoner may be granted leave of absence during the imprisonment period to attend a family marriage, funeral, examinations or job interviews.

¹ As the common drugs of abuse change with time, the illicit drugs are to be specified in a Schedule to facilitate further updating.

² Heroin and cocaine metabolize quickly in the body. Hence, the Government Laboratory also needs to analyze their respective metabolites to ascertain that a person has taken them.

Persons participating in Release under Supervision Scheme, Pre-release Employment Scheme, or undergoing training in Rehabilitation Centres are also released for employment at approved places under supervision by the Correctional Services Department. They may reside at their own residence, or stay in a designated half-way house for night accommodation. They are actually out on the street during the release periods and are able to drive. For avoidance of doubt and to make the requirements clearer, the following changes are proposed to be made to the Bill :-

- (a) a person who is released from prison or detention before the expiration of his or her term of imprisonment or detention under specified circumstances (such circumstances will be listed out in the Bill) must be taken to be disqualified when he is on the street and able to drive; and
- (b) the days when they are out on the street should be deducted from the period of disqualification to be served by the person.

Examples are attached at the Annex A for reference.

6. Separately, as a person may be charged and convicted of other offences together with a traffic offence, we propose to set out precisely in the Bill that disqualification will only start to run after the person has served all imprisonment terms.

7. The proposed CSAs to relevant clauses of the Bill are marked up at Annex B.

Advice Sought

8. Members are requested to give their views on the proposed CSAs set out in the paper.

**Transport and Housing Bureau
September 2010**

Examples to show the implementation of the new section 69A of Road Traffic Amendment Bill (2010)

Case details	A person is convicted of tier 3 drink driving offence. He has a previous conviction record of refusing to provide breath specimen within 5 years	
Imprisonment term sentenced	2 years from 1.4.2011	
Disqualification period sentenced	5 years after expiration of term of imprisonment	
Circumstances when the prisoner is released from custody	Leave of absence on 3 days: <ul style="list-style-type: none"> • 30.4.2011 • 15.6.2011 • 16.6.2011 	Pre-release Employment Scheme under section 7(2) of Cap.325 from 1.2.2012, i.e. 6 months before the expiry of his imprisonment
Date imprisonment term ends	31.7.2012 ³	31.7.2012 ³
Date disqualification starts to run	31.7.2012	31.7.2012
Date disqualification ends	5 years from 31.7.2012 minus 3 days	5 years from 31.7.2012 minus 6 months

³ The date is worked out based on the assumption that a prisoner is normally granted 1/3 remission, subject to industry and good conduct.

**Marked Up Version of Proposed CSAs to
Relevant Clauses of the Road Traffic (Amendment) Bill 2010**

6. Causing death by dangerous driving

X X X

(5) Section 36 is amended by adding –

X X X

(2E) A person commits an offence under subsection (1) in circumstances of aggravation if at the time of committing the offence –

(a) the proportion of alcohol in the person’s breath, blood or urine is tier 3; or

(b) the person is under the influence of a drug specified in Schedule 1A to such an extent as to be incapable of having proper control of the motor vehicle.

X X X

7. Section 36A added

The following is added –

“36A. Causing grievous bodily harm by dangerous driving

X X X

(7) A person commits an offence under subsection (1) in circumstances of aggravation if at the time of committing the offence –

(a) the proportion of alcohol in the person’s breath, blood or urine is tier 3; or

(b) the person is under the influence of a drug specified in Schedule 1A to such an extent as to be incapable of having proper control of the motor vehicle.;

X X X

8. Dangerous driving

X X X

(5) Section 37 is amended by adding –

X X X

(2E) A person commits an offence under subsection (1) in circumstances of aggravation if at the time of committing the offence =

(a) the proportion of alcohol in the person's breath, blood or urine is tier 3; or

(b) the person is under the influence of a drug specified in Schedule 1A to such an extent as to be incapable of having proper control of the motor vehicle.;

X X X

14. Sections 39H and 39I added

The following ~~is~~are added –

X X X

39I. Amendment of Schedule 1A

(1) The Secretary for Transport and Housing may by notice in the Gazette amend Schedule 1A.

(2) A notice under subsection (1) is not to come into operation until after the time provided for the Legislative Council to debate the

notice under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) has expired.

X X X

18. Section 69A added

The following is added –

“69A. Start of disqualification period

(1) This section applies if –

(a) a court or magistrate convicts a person of a relevant scheduled offence;

(b) the conviction is the person’s second or subsequent conviction of a relevant scheduled offence, regardless of whether that conviction is for the same or for a different relevant scheduled offence;

~~and~~

(c) the court or magistrate ~~orders that the person be disqualified for a fixed period in addition to sentencing~~sentences the person him or her to undergo a term of imprisonment or detention and the sentence is not suspended; and

(d) the court or magistrate orders that the person be disqualified for a fixed period.

(2) The court or magistrate must direct that the disqualification period is not to start to run until the expiration of the term of imprisonment or detention, or of any other term of imprisonment or detention which the person is undergoing at that expiration, or has been previously sentenced to undergo (whichever is the later)~~person is released from custody~~, unless the court or magistrate for special reasons decides not to make such a direction.

(3) The court or magistrate may deal with the conviction of a relevant scheduled offence as a first conviction if, as at the date on which the offence was committed, at least 5 years have passed since the person's last conviction of a relevant scheduled offence.

(3A) Subject to subsection (3B), a person is disqualified by this section for the whole of any day during which or during part of which the person is released from custody before the disqualification period is to start to run by virtue of a direction given under subsection (2) and any such day must be deducted from the period of disqualification to be served by the person.

(3B) The court or magistrate may direct that a person is not disqualified by this section during any period of release from custody of a kind referred to in subsection (3E)(a) (admission to bail pending sentence or appeal).

(3C) Subsection (3A) ceases to operate if the period of disqualification becomes exhausted because of deductions made under that subsection. In such a case the disqualification period does not start to run in accordance with the direction of the court or magistrate and must be taken for all purposes to have been served.

(3D) For the purpose of subsection (3C), each 30 days deducted under subsection (3A) is to be treated as being equal to a month.

(3E) Without limiting subsection (3A), a person must be taken to be released from custody for the purposes of this section during any period that he or she –

(a) is, following his or her conviction of the relevant scheduled offence, admitted to bail pending sentence or appeal;

(b) is released from prison or detention on leave of absence granted under –

- (i) section 12A of the Prisons Ordinance (Cap. 234);
- (ii) rule 17(1) of the Prison Rules (Cap. 234 sub. leg. A);
- (iii) regulation 14(1) of the Detention Centres Regulations (Cap. 239 sub. leg. A);
- (iv) regulation 13(1) of the Drug Addiction Treatment Centres Regulations (Cap. 244 sub. leg. A);
- (v) regulation 18(1) of the Training Centres Regulations (Cap. 280 sub. leg. A); or
- (vi) section 17(1) of the Rehabilitation Centres Regulation (Cap. 567 sub. leg. A);
- (c) is released from imprisonment under section 7(1) or (2) of the Prisoners (Release under Supervision) Ordinance (Cap. 325);
- (d) is released under an order made under section 15(1)(b) of the Long-term Prison Sentences Review Ordinance (Cap. 524); or
- (e) while undergoing a period of residence at a rehabilitation centre referred to in section 3(b) of the Rehabilitation Centres Ordinance (Cap. 567), is engaged in activities outside that centre under permission granted under section 5(1) of that Ordinance.

(4) In this section “relevant scheduled offence” (有關表列罪行) means an offence mentioned in the Schedule to the Road Traffic

(Driving-offence Points) Ordinance (Cap. 375) for which the number of points set out opposite that offence in that Schedule is 10.”.

X X X

21A.Schedule 1A added

The following is added –

“SCHEDULE 1A

[ss. 36, 36A &
37&39I]

DRUGS

1. Heroin (or its metabolites 6-acetylmorphine or morphine)
2. Ketamine
3. Methylamphetamine
4. Cannabis (or its active ingredient tetrahydro-cannabinol)
5. Cocaine (or its metabolite benzoylecgonine)
6. 3,4-methylenedioxymethamphetamine (MDMA)”.

X X X