

**Bills Committee on
Road Traffic (Amendment) Bill 2010**

Introduction

At the meeting of the Bills Committee on 5 October 2010, Members requested the Administration to consider the Bills Committee's suggestion to delete the words "to such an extent as to be incapable of having proper control of the motor vehicle" of the proposed Committee Stage Amendments (CSAs) to Clauses 6(5), 7 and 8(5) of the Bill. Members also asked for the timetable for introducing the legislative proposals on combating drug driving, information on drug driving cases successfully prosecuted, and training of police and manpower requirement for implementation of preliminary test for drug driving offences.

Revised draft CSAs

2. In LC Paper No. CB(1)2941/09-10(01), we proposed a draft CSA to the effect that, if at the time of committing the dangerous driving offence, a driver is under the influence of a specified illicit drug to such an extent as to be incapable of having proper control of the vehicle, he will be caught by the aggravating circumstance. Under this proposal, only the person whose driving ability is influenced by a specified illicit drug to an extent that he is incapable of controlling his vehicle properly will be caught by the aggravating circumstance and subject to higher penalties in terms of fine, imprisonment, and the minimum disqualification period for the offence concerned (i.e. each to be increased by 50%).

3. Taking into account Members' comments at the last meeting, public sentiments against driving with illicit drugs, and that a person who drives after taking the specified illicit drugs is a potential hazard to road safety¹, we agree to revise the proposed CSA by deleting the words "to such an extent as to be incapable of having proper control of the motor vehicle" and to revise the

¹ The six illicit drugs are heroin (or its metabolites 6-acetylmorphine or morphine); ketamine; methylamphetamine (Ice); cannabis (or its active ingredient tetrahydro-cannabinol); cocaine (or its metabolite benzoylecgonine); and 3,4-methylenedioxymethamphetamine (MDMA). These drugs could have serious adverse influence on a person's ability to control a vehicle properly, such as body coordination, vision and judgment of distance and speed. Hence, a driver who takes any of them and drive will be a potential hazard to road safety.

relevant CSAs to reinforce the “zero-tolerance control” against specified illicit drugs as follows –

A person commits an offence in circumstance of aggravation if at the time of committing the dangerous driving offence, any amount of a drug specified in Schedule 1A is present in the person’s blood or urine.

4. The relevant CSAs (Clauses 6(5), 7, 8(5), 14 and 21A) are marked up at the Annex.

Timetable for introducing the legislative proposals on combating drug driving

5. We are very concerned about the trend of traffic accidents caused by driving under the influence of illicit drugs, and are determined to introduce measures as soon as possible to vigorously combat drug driving. We have drawn up initial proposals to combat drug driving and have recently completed public consultations on these proposals. Various views have been received on the proposed new offences and preliminary tests from medical and pharmaceutical professionals, transport trades and members of the public. While there is general support to combat drug driving, some have expressed concerns on implementation arrangements. Notably, concerns were expressed about the conduct of impairment test e.g. its procedures, where to conduct the test, time required and checks and balances available.

6. We are refining the detailed legislative proposals with due regard to the consultation feedback. We aim to report to the LegCo Transport Panel on these matters in November 2010. If our legislative proposals are supported by the Transport Panel, we will commence law drafting work immediately. Complex legal issues are involved and the whole process involving drafting and consideration of, and consultation on, drafts would need at least several months. We would endeavour, however, to introduce the Amendment Bill into LegCo in the second half of the 2010-11 legislative session.

Prosecution of Drug Driving Cases

7. According to the Police, there were 65 cases involving drug driving during the period from 1 January to 26 October 2010. Out of these cases, 86% involved ketamine. Depending on circumstances and strength of direct and circumstantial evidence of individual cases, the drivers are liable to be prosecuted under section 39 of the Road Traffic Ordinance (Cap. 374) for drug driving and other offences, e.g. possession of dangerous drugs under the Dangerous Drugs Ordinance (Cap. 134).

8. Up to 26 October 2010, prosecutions were instituted against 41 drivers involved in the above 65 cases under section 39 of the Road Traffic Ordinance (Cap. 374), of which 23 cases were prosecuted without the evidence of blood sample. Among these 23 cases, 21 cases were convicted on the drivers' own pleas, and the remaining 2 cases were pending trial. As regards the other 18 cases that were prosecuted with the evidence of blood sample, 14 cases were convicted on the drivers' own pleas, 3 cases were pending trial and 1 case was pending court result.

The Police training and manpower requirement for carrying out preliminary test

9. To combat drug driving, it is necessary to empower the Police to screen out drivers who are impaired by drugs through preliminary tests, namely impairment test or oral fluid test or both. These preliminary tests will be an objective method to help police officers establish a prima facie case before the suspected driver is required to give blood or/and urine for laboratory analysis to ascertain whether he has taken any drugs.

10. As the impairment test is new to the Police, they will have to look to overseas experts for advice and training. The testing procedures will be suitably adapted for situations in Hong Kong. Training will be conducted by accredited experts. Initially, the Police intend to train a team of trainers, who will then provide in-house training for existing front-line traffic police officers to operate the rapid oral fluid tests and to conduct impairment tests. More police officers will be trained if necessary. The police officers will be trained to an internationally comparable standard, and only trained officers will be tasked to carry out the preliminary tests.

Advice Sought

11. Members are requested to note the contents of this paper.

**Transport and Housing Bureau
November 2010**

**Marked Up Version of Proposed Committee Stage Amendments (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) any amount of a drug specified in Schedule 1A is present in the person’s blood or urine.

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) any amount of a drug specified in Schedule 1A is present in the person’s blood or urine.

x x x

8. Dangerous driving

X X X

(5) Section 37 is amended by adding –

“(2D) If an offence under subsection (1) is committed in circumstances of aggravation, the maximum fine and term of imprisonment for the offence as set out in subsection (1), and the minimum disqualification periods for the offence as set out in subsections (2A) and (2B), are each increased by 50% and subsection (2C) must be construed accordingly.

(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) any amount of a drug specified in Schedule 1A is present in the person’s blood or urine.

X X X

14. Sections 39H and 39I added

The following ~~is~~are added –

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

21A. Schedule 1A added

The following is added –

“SCHEDULE 1A

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

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)”.