

ROAD TRAFFIC (AMENDMENT) BILL 2010**CONTENTS**

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A BILL

To

Amend the Road Traffic Ordinance to increase the minimum disqualification periods for certain offences, create a new offence of causing grievous bodily harm by dangerous driving, increase the penalties for dangerous driving offences in certain circumstances, enable the start of a disqualification period to be delayed and make consequential and other minor amendments and to make related amendments to the Road Traffic (Driving-offence Points) Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Road Traffic (Amendment) Ordinance 2010.

2. Interpretation

Section 2 of the Road Traffic Ordinance (Cap. 374) is amended by adding—

““tier 1” (第1級), “tier 2” (第2級) and “tier 3” (第3級) have the meaning given by section 39A(1A);”.

3. Application of Ordinance to trams

Section 4(1) is amended by adding “36A,” after “36,”.

4. Application of Ordinance to village vehicles

Section 4A(2) is amended by adding “36A(1), (9) and (10),” after “(4),”.

5. Regulation of public service vehicles

Section 7(1C) is amended, in the Chinese text, by repealing “規則” and substituting “規例”.

6. Causing death by dangerous driving

(1) Section 36(2) is amended, in the Chinese text, by repealing “否則須按照第 (2A) 或 (2B) 款，命令” and substituting “否則須命令按照第 (2A) 或 (2B) 款”.

(2) Section 36(2A)(b) is amended by repealing “3 years” and substituting “5 years”.

(3) Section 36(2B)(b) is amended by repealing “3 years” and substituting “5 years”.

(4) Section 36(2C)(b) is amended by repealing “3 years” and substituting “5 years”.

(5) Section 36 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 the proportion of alcohol in the person’s breath, blood or urine is tier 3.

(2F) To avoid doubt and despite anything to the contrary in section 113C of the Criminal Procedure Ordinance (Cap. 221), the maximum fine for an offence under subsection (1) committed in circumstances of aggravation is the monetary amount derived by multiplying by 1.5 the maximum fine for the offence as set out in subsection (1).”.

(6) Section 36(4) is amended, in the Chinese text, by repealing everything after “如——” and substituting—

“(a) 某人駕駛汽車的方式，遠遜於一個合格而謹慎的駕駛人會被期望達到的水平；及

(b) 對一個合格而謹慎的駕駛人而言，該人以該方式駕駛汽車會屬危險，會是顯然易見的，
該人須視為屬第 (1) 款所指的危險駕駛。”.

(7) Section 36(5) is amended, in the Chinese text, by repealing everything after “如” and substituting “對一個合格而謹慎的駕駛人而言，駕駛處於當時狀況的有關汽車會屬危險，會是顯然易見的，則該人亦須視為屬第(1)款所指的危險駕駛。”。

(8) Section 36(6) is amended, in the Chinese text, by repealing “損害” and substituting “損壞”。

(9) Section 36(7) is amended, in the Chinese text, by repealing everything before “；及” and substituting—

“(7) 就第(4)及(5)款而言，斷定在某個案中，對合格而謹慎的駕駛人有何預期，或斷定在某個案中，對合格而謹慎的駕駛人而言甚麼是顯然易見，須顧及該個案的整體情況，包括——

(a) 在關鍵時間有關道路的性質、狀況及使用情況；

(b) 在關鍵時間在有關道路上的實際交通流量，或按理可預期的在關鍵時間在該道路上的交通流量”。

(10) Section 36 is amended by adding—

“(9A) If on the trial of any person charged with an offence under subsection (1) the prosecution proves that the person charged drove dangerously and caused grievous bodily harm to, but not the death of, another person by so driving, the person charged must be acquitted of the offence under subsection (1) and be found guilty of an offence under section 36A.”。

7. Section 36A added

The following is added—

“36A. Causing grievous bodily harm by dangerous driving

(1) A person who causes grievous bodily harm to 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 7 years;

(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 must order that the person be disqualified in accordance with subsection (3) or (4) 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.

(3) Subject to subsection (4), the period for which the person is to be disqualified is—

- (a) for a first conviction, a period of not less than 2 years; and
- (b) for a second or subsequent conviction, a period of not less than 5 years.

(4) If the court or magistrate has ordered the person to attend and complete a driving improvement course under section 72A(1A), the period for which the person is to be disqualified is—

- (a) for a first conviction, a period of not less than 2 years, or until the person has attended and completed the course at his or her own cost, whichever is the later; and
- (b) for a second or subsequent conviction, a period of not less than 5 years, or until the person has attended and completed the course at his or her own cost, whichever is the later.

(5) For the purposes of subsection (2), a person to whom subsection (4) applies is disqualified for a shorter period if the period for which he or she is disqualified is—

- (a) for a first conviction, a period of less than 2 years, or until the person has attended and completed the driving improvement course at his or her own cost, whichever is the later; and
- (b) for a second or subsequent conviction, a period of less than 5 years, or until the person has attended and completed the driving improvement course at his or her own cost, whichever is the later.

(6) 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 (3) and (4), are each increased by 50% and subsection (5) must be construed accordingly.

(7) A person commits an offence under subsection (1) in circumstances of aggravation if at the time of committing the offence the proportion of alcohol in the person's breath, blood or urine is tier 3.

(8) To avoid doubt and despite anything to the contrary in section 113C of the Criminal Procedure Ordinance (Cap. 221), the maximum fine for an offence under subsection (1) committed in circumstances of aggravation is the monetary amount derived by multiplying by 1.5 the maximum fine for the offence as set out in subsection (1).

(9) 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 passed since the person's last conviction under subsection (1).

(10) A person is to be regarded as driving dangerously within the meaning of subsection (1) if—

- (a) the way he or she 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.

(11) 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.

(12) For the purposes of subsections (10) and (11), “dangerous” refers to danger either of injury to any person or of serious damage to property.

(13) For the purposes of subsections (10) and (11), in determining what would be expected of, or obvious to, a competent and careful driver in a particular case, regard must 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.

(14) In determining for the purposes of subsection (11) 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.

(15) 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 or she caused grievous bodily harm to another person by so driving, the person charged must be acquitted of the offence under subsection (1) and be found guilty of an offence under section 37.

(16) 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.”.

8. Dangerous driving

(1) Section 37(2) is amended, in the Chinese text, by repealing “否則須按照第(2A)或(2B)款，命令” and substituting “否則須命令按照第(2A)或(2B)款”。

(2) Section 37(2A)(b) is amended by repealing “18 months” and substituting “2 years”.

(3) Section 37(2B)(b) is amended by repealing “18 months” and substituting “2 years”.

(4) Section 37(2C)(b) is amended by repealing “18 months” and substituting “2 years”.

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

(2F) To avoid doubt and despite anything to the contrary in section 113C of the Criminal Procedure Ordinance (Cap. 221), the maximum fine for an offence under subsection (1) committed in circumstances of aggravation is the monetary amount derived by multiplying by 1.5 the maximum fine for the offence as set out in subsection (1).”.

(6) Section 37(4) is amended, in the Chinese text, by repealing everything after “如——” and substituting—

“(a) 某人駕駛汽車的方式，遠遜於一個合格而謹慎的駕駛人會被期望達到的水平；及

(b) 對一個合格而謹慎的駕駛人而言，該人以該方式駕駛汽車會屬危險，會是顯而易見的，

該人須視為屬第(1)款所指的危險駕駛。”。

(7) Section 37(5) is amended, in the Chinese text, by repealing everything after “如” and substituting “對一個合格而謹慎的駕駛人而言，駕駛處於當時狀況的有關汽車會屬危險，會是顯而易見的，則該人亦須視為屬第(1)款所指的危險駕駛。”。

(8) Section 37(6) is amended, in the Chinese text, by repealing “損害” and substituting “損壞”。

(9) Section 37(7) is amended, in the Chinese text, by repealing everything before “；及” and substituting—

“(7) 就第 (4) 及 (5) 款而言，斷定在某個案中，對合格而謹慎的駕駛人有何預期，或斷定在某個案中，對合格而謹慎的駕駛人而言甚麼是顯然易見，須顧及該個案的整體情況，包括——

- (a) 在關鍵時間有關道路的性質、狀況及使用情況；
- (b) 在關鍵時間在有關道路上的實際交通流量，或按理可預期的在關鍵時間在該道路上的交通流量”。

9. Driving a motor vehicle under the influence of drink or drugs

(1) Section 39(2) is amended, in the Chinese text, by repealing “否則須按照第 (2A) 或 (2B) 款，命令” and substituting “否則須命令按照第 (2A) 或 (2B) 款”。

(2) Section 39(2A)(a) is amended by repealing “3 months” and substituting “2 years”。

(3) Section 39(2A)(b) is amended by repealing “2 years” and substituting “5 years”。

(4) Section 39(2B)(a) is amended by repealing “3 months” and substituting “2 years”。

(5) Section 39(2B)(b) is amended by repealing “2 years” and substituting “5 years”。

(6) Section 39(2C)(a) is amended by repealing “3 months” and substituting “2 years”。

(7) Section 39(2C)(b) is amended by repealing “2 years” and substituting “5 years”。

10. Driving, attempting to drive or being in charge of a motor vehicle with alcohol concentration above prescribed limit

(1) The heading of section 39A is amended, in the Chinese text, by repealing “限制” and substituting “限度”。

(2) Section 39A(1) is amended, in the Chinese text, by repealing “限制” and substituting “限度”。

(3) Section 39A is amended by adding—

“(1A) The proportion of alcohol in a person’s breath, blood or urine is—

- (a) tier 1 if it exceeds the prescribed limit but is less than—
 - (i) for breath, 35 micrograms of alcohol in 100 millilitres of breath;
 - (ii) for blood, 80 milligrams of alcohol in 100 millilitres of blood; or

- (iii) for urine, 107 milligrams of alcohol in 100 millilitres of urine;
- (b) tier 2 if it exceeds tier 1 but is less than—
 - (i) for breath, 66 micrograms of alcohol in 100 millilitres of breath;
 - (ii) for blood, 150 milligrams of alcohol in 100 millilitres of blood; or
 - (iii) for urine, 201 milligrams of alcohol in 100 millilitres of urine;
- (c) tier 3 if it exceeds tier 2.”.

(4) Section 39A(2) is amended, in the Chinese text, by repealing “否則須按照第 (2A) 或 (2B) 款，命令” and substituting “否則須命令按照第 (2A) 或 (2B) 款”.

(5) Section 39A(2A) is repealed and the following substituted—

“(2A) Subject to subsection (2B), the period for which the person is to be disqualified is—

- (a) for a first conviction, a period of not less than—
 - (i) 6 months if the proportion of alcohol in the person’s breath, blood or urine is tier 1;
 - (ii) 12 months if the proportion of alcohol in the person’s breath, blood or urine is tier 2;
 - (iii) 2 years if the proportion of alcohol in the person’s breath, blood or urine is tier 3; and
- (b) for a second or subsequent conviction (regardless of the proportion of alcohol in the person’s breath, blood or urine on any previous conviction), or a conviction subsequent to a conviction under section 39, 39B or 39C, a period of not less than—
 - (i) 2 years if the proportion of alcohol in the person’s breath, blood or urine is tier 1;
 - (ii) 3 years if the proportion of alcohol in the person’s breath, blood or urine is tier 2;
 - (iii) 5 years if the proportion of alcohol in the person’s breath, blood or urine is tier 3.”.

(6) Section 39A(2B)(a) is amended by repealing “3 months” and substituting “that specified in subsection (2A)(a) according to the proportion of alcohol in the person’s breath, blood or urine”.

(7) Section 39A(2B)(b) is amended by repealing “2 years” and substituting “that specified in subsection (2A)(b) according to the proportion of alcohol in the person’s breath, blood or urine”.

(8) Section 39A(2C)(a) is amended by repealing “3 months” and substituting “that specified in subsection (2A)(a) according to the proportion of alcohol in the person’s breath, blood or urine”.

(9) Section 39A(2C)(b) is amended by repealing “2 years” and substituting “that specified in subsection (2A)(b) according to the proportion of alcohol in the person’s breath, blood or urine”.

11. Screening breath tests

(1) Section 39B(7) is amended, in the Chinese text, by repealing “否則須按照第(7A)或(7B)款，命令” and substituting “否則須命令按照第(7A)或(7B)款”.

(2) Section 39B(7A)(a) is amended by repealing “3 months” and substituting “2 years”.

(3) Section 39B(7A)(b) is amended by repealing “2 years” and substituting “5 years”.

(4) Section 39B(7B)(a) is amended by repealing “3 months” and substituting “2 years”.

(5) Section 39B(7B)(b) is amended by repealing “2 years” and substituting “5 years”.

(6) Section 39B(7C)(a) is amended by repealing “3 months” and substituting “2 years”.

(7) Section 39B(7C)(b) is amended by repealing “2 years” and substituting “5 years”.

12. Provision of specimens for analysis

(1) Section 39C(16) is amended, in the Chinese text, by repealing “否則須按照第(16A)或(16B)款，命令” and substituting “否則須命令按照第(16A)或(16B)款”.

(2) Section 39C(16A)(a) is amended by repealing “3 months” and substituting “2 years”.

(3) Section 39C(16A)(b) is amended by repealing “2 years” and substituting “5 years”.

(4) Section 39C(16B)(a) is amended by repealing “3 months” and substituting “2 years”.

(5) Section 39C(16B)(b) is amended by repealing “2 years” and substituting “5 years”.

(6) Section 39C(16C)(a) is amended by repealing “3 months” and substituting “2 years”.

(7) Section 39C(16C)(b) is amended by repealing “2 years” and substituting “5 years”.

13. Choice of specimens of breath

Section 39D(2), (3) and (4) is repealed.

14. Section 39H added

The following is added—

“39H. Amendment of tier 1, tier 2 or tier 3

(1) The Secretary for Transport and Housing may by notice in the Gazette amend section 39A(1A) by varying the proportion of alcohol that constitutes tier 1, tier 2 or tier 3.

(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.”.

15. Driving in excess of speed limit

Section 41(3) is amended, in the Chinese text, by repealing “否則須按照第(4)款，命令” and substituting “否則須命令按照第(4)款”.

16. Restriction on motor racing and speed trials

Section 55(2) is amended, in the Chinese text, by repealing “否則須按照第(2A)款，命令” and substituting “否則須命令按照第(2A)款”.

17. Notice of intention to prosecute for certain offences

(1) Section 68(1) is amended by adding “36A,” after “36,”.

(2) Section 68(1) is amended by adding “causing grievous bodily harm by dangerous driving,” after “causing death by dangerous driving,”.

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 him or her to undergo a term of imprisonment.

(2) 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.

(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.

(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."

19. Power of court or magistrate to order persons to attend driving improvement courses

(1) Section 72A(1A) is amended by adding "36A," after "36,".

(2) Section 72A(3B)(a) is amended by adding "36A(2)," after "36(2),".

(3) Section 72A(3B)(a) is amended, in the Chinese text, by repealing "訂明" where it twice appears and substituting "指定".

20. Application of Ordinance to private roads

Section 117 is amended by adding "36A," after "36,".

21. Defence

Section 120(1) is amended by adding "36A," after "36,".

22. Offences specified for the purposes of section 72A

Schedule 11 is amended by adding "1A," after "1,".

Related Amendments

23. Road Traffic (Driving-offence Points) Ordinance

(1) The Schedule to the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) is amended by adding—

“1A Section 36A(1) Causing grievous bodily harm 10”
by dangerous driving

(2) The Schedule is amended, in the Chinese text, in item 4A, by repealing “限制” and substituting “限度”.

Explanatory Memorandum

The object of this Bill is to amend the Road Traffic Ordinance (Cap. 374) (“the Ordinance”)—

- (a) to increase the minimum disqualification periods on conviction of certain traffic offences;
- (b) for an offence under section 39A of the Ordinance (driving, attempting to drive or being in charge of a motor vehicle with alcohol concentration above prescribed limit), to provide for 3 tiers of minimum disqualification periods on conviction according to the proportion of alcohol in the person’s breath, blood or urine;
- (c) to create a new offence of causing grievous bodily harm by dangerous driving;
- (d) to make driving with more than a specified proportion of alcohol in the person’s breath, blood or urine a circumstance of aggravation in all dangerous driving offences resulting in increased penalties (a circumstance of aggravation is to be distinguished from aggravating factors that are taken into account on sentencing); and
- (e) to enable the start of a disqualification period to be delayed in certain circumstances until the driver is released from custody.

2. The Bill makes a related amendment to the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) to provide that the new offence of causing grievous bodily harm by dangerous driving carries 10 points under that Ordinance.

3. Clause 1 provides for the short title of the Bill when enacted.

4. Clause 2 adds a definition of “tier 1”, “tier 2” and “tier 3” to section 2 of the Ordinance.
5. Clauses 3 and 4 respectively amend sections 4(1) and 4A(2) of the Ordinance consequentially on the creation of the new offence of causing grievous bodily harm by dangerous driving.
6. Clause 6 amends section 36 of the Ordinance (causing death by dangerous driving) to increase the minimum disqualification periods on a second or subsequent conviction, to generally increase penalties by 50% if at the time of committing the offence the proportion of alcohol in the person’s breath, blood or urine is tier 3 and to make the new offence of causing grievous bodily harm by dangerous driving a possible alternative conviction on a trial of an offence under that section.
7. Clause 7 adds a new section 36A to the Ordinance providing for an offence of causing grievous bodily harm by dangerous driving. The drafting of that section is modelled on the 2 existing dangerous driving offences, as proposed to be amended by the Bill.
8. Clause 8 makes amendments to section 37 of the Ordinance (dangerous driving) similar to those made to section 36 of the Ordinance by clause 6.
9. Clause 9 amends section 39 of the Ordinance (driving a motor vehicle under the influence of drink or drugs) to increase the minimum disqualification periods on conviction.
10. Clause 10 amends section 39A of the Ordinance (driving, attempting to drive or being in charge of a motor vehicle with alcohol concentration above prescribed limit) to link the minimum disqualification periods on conviction to the proportion of alcohol in the person’s breath, blood or urine.
11. Clause 11 amends section 39B of the Ordinance (screening breath tests) to increase the minimum disqualification periods on conviction.
12. Clause 12 amends section 39C of the Ordinance (provision of specimens for analysis) to increase the minimum disqualification periods on conviction.
13. Clause 13 amends section 39D of the Ordinance (choice of specimens of breath) by repealing subsections (2), (3) and (4) of that section so as to remove the option for a person to replace his or her breath specimens with a specimen of blood or urine.
14. Clause 14 adds a new section 39H to the Ordinance to enable the Secretary for Transport and Housing to amend the new section 39A(1A) being added by clause 10(3) so as to vary the proportion of alcohol that constitutes tier 1, tier 2 or tier 3. The drafting of the new section 39H is modelled on section 39G of the Ordinance.

15. Clause 17 amends section 68(1) of the Ordinance consequentially on the creation of the new offence of causing grievous bodily harm by dangerous driving.

16. Clause 18 adds a new section 69A to the Ordinance to enable the start of a disqualification period to be delayed on a second or subsequent conviction of 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. The new section applies where the driver is sentenced to imprisonment and enables the start of the disqualification period to be delayed until the driver is released from custody. The court or magistrate must delay the start of the disqualification period until then unless there are special reasons not to do so. The court or magistrate may deal with a conviction as a first conviction if at least 5 years have passed since the person was last convicted of an offence that carries 10 points.

17. Clauses 19, 20 and 21 respectively amend sections 72A, 117 and 120(1) of the Ordinance consequentially on the creation of the new offence of causing grievous bodily harm by dangerous driving.

18. Clause 22 amends Schedule 11 to the Ordinance consequentially on the amendments made to section 72A of the Ordinance by clause 19.

19. Clause 23 amends the Schedule to the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) to provide that the new offence of causing grievous bodily harm by dangerous driving carries 10 points under that Ordinance.

20. Clauses 5, 6(1), (6), (7), (8) and (9), 8(1), (6), (7), (8) and (9), 9(1), 10(1), (2) and (4), 11(1), 12(1), 15, 16, 19(3) and 23(2) make textual amendments to the Chinese text of certain sections of the Ordinance and of the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) to improve their accuracy.