

立法會 *Legislative Council*

LC Paper No. LS65/09-10

**Paper for the House Committee Meeting
on 14 May 2010**

Legal Service Division Report on Road Traffic (Amendment) Bill 2010

I. SUMMARY

- 1. Objects of the Bill** To amend the Road Traffic Ordinance (Cap. 374) (RTO) to introduce various measures to further deter drink driving offences and other inappropriate driving behaviour.
- 2. Comments** The Bill proposes to amend RTO by –
 - (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 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.
- 3. Public Consultation** According to the LegCo Brief, the Administration has consulted the Transport Advisory Committee, the Road Safety Council, the transport trades and their drivers' unions/associations. They generally supported heavier penalty for drink drivers but some unions expressed concerns about the new offence.
- 4. Consultation with LegCo Panel** The Panel on Transport was consulted on 17 July 2009. Members expressed diverse views.
- 5. Conclusion** In the light of the views of the Members of the Panel on Transport and some of the unions, Members may wish to examine the Bill in detail.

II. REPORT

Objects of the Bill

To amend the Road Traffic Ordinance (Cap. 374) (RTO) 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) to introduce other related or textual amendments.

LegCo Brief

2. THB(T)CR3/14/3231/00 issued by the Transport and Housing Bureau on 28 April 2010.

Date of First Reading

3. 12 May 2010.

Comments

Three Tiers of Alcohol Concentration

4. Clause 10 of Bill proposes to amend section 39A of RTO¹ to specify three tiers of alcohol concentration above the prescribed limit with corresponding minimum periods of driving disqualification. A summary of the proposal in

¹ Provision on "Driving, attempting to drive or being in charge of a motor vehicle with alcohol concentration above prescribed limit".

comparison with the present minimum period of driving disqualification for exceeding the prescribed limit are shown in the table below –

	Prescribed Limit (PL)	Proposed Tier 1	Proposed Tier 2	Proposed Tier 3
<u>Alcohol Concentration in</u>		Over PL but less than	Over Tier 1 but less than	Over Tier 2
microgram / 100 millilitres (ml) of Breath	22	35	66	
milligram (mg)/100 ml of Blood	50	80	150	
mg/100 ml of Urine	67	107	201	
<u>Minimum Period of Driving Disqualification</u>				
First Conviction	3 months*	6 months	12 months	2 years
Second or Subsequent Conviction	2 years*	2 years	3 years	5 years

* Proposed to be replaced by the three tiers

5. The Administration also proposes to preserve the integrity and effectiveness of the drink driving laws by prolonging the minimum driving disqualification periods for the following offences to those for tier 3. A summary of the proposed and existing minimum periods of driving disqualification are shown in the table below –

Offences	Existing Minimum Period of Driving Disqualification (First conviction/ Second or Subsequent Conviction)	Proposed Minimum Period of Driving Disqualification (First Conviction/ Second or Subsequent Conviction)
Driving a Motor Vehicle under the Influence of Drink or Drugs		
Failure to Provide Specimens of Breath for Screening Breath Tests without Reasonable Excuse	3 months/2 years	2 years/5 years
Failure to Provide Specimens for analysis without Reasonable Excuse		

6. Clause 14 proposes that the Secretary for Transport and Housing may by notice in the Gazette vary the proportion of alcohol that constitutes tier 1, tier 2 and tier 3.

New Offence of Causing Grievous Bodily Harm by Dangerous Driving

7. Clause 7 of the Bill proposes to introduce a new offence of causing grievous bodily harm by dangerous driving. The meaning of the expression "dangerous driving" is the same as the existing provisions on causing death by dangerous driving and dangerous driving as provided in sections 36 and 37 of RTO. According to the Administration, instead of defining the expression "grievous bodily harm", the Administration intends to rely on its common law meaning² to minimize the possibility of acquittals based on sheer technicalities. Further, the penalties of the new offence are set between dangerous driving and causing death by dangerous driving. The penalties of the 3 offences are shown in the table below –

	Causing Death by Dangerous Driving	Proposed Offence of Causing Grievous Bodily Harm by Dangerous Driving	Dangerous Driving
<u>Fine</u>			
Conviction on Indictment	\$50,000	\$50,000	\$25,000
Summary Conviction	\$25,000	\$25,000	\$10,000
<u>Imprisonment</u>			
Conviction on Indictment	10 years	7 years	3 years
Summary Conviction	2 years	2 years	12 months
<u>Minimum Period of Driving Disqualification</u>			
First Conviction	2 years	2 years	6 months
Second or Subsequent Conviction	3 years (Proposed to be increased to 5 years)	5 years	18 months (Proposed to be increased to 2 years)

² ""Grievous bodily harm" should be given its ordinary and natural meaning of really serious bodily harm,..." paragraph 20-222, Archbold Hong Kong 2010.

Circumstances of Aggravation in Dangerous Driving Offences

8. Clauses 6, 7 and 8 propose that if a person commits the offence of causing death by dangerous driving, causing grievous bodily harm by dangerous driving or dangerous driving and the person's alcohol concentration is at tier 3, the alcohol concentration is an aggravating circumstance. In such a case, the maximum fine and term of imprisonment for the offences and the minimum period of driving disqualification, as set out in the table at paragraph 7, are each increased by 50%.

Consecutive Implementation of Imprisonment and Disqualification

9. Under the existing provisions, if a court or magistrate convicts a person for a driving offence like dangerous driving, the person is to be disqualified from driving for a minimum period unless the court or magistrate for special reasons orders otherwise. However, the Court of Appeal has observed that under the existing provisions, the disqualification period has to run concurrently with any term of imprisonment. If the period of disqualification is short, the disqualification serves no real purpose.³

10. Clause 18 of the Bill proposes to introduce a new section 69A to RTO which is applicable if –

- (a) a court or magistrate convicts a person of a relevant scheduled offence, which is defined as an offence mentioned in the Schedule to the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) of which 10 points will be incurred by the person upon conviction, such as dangerous driving;
- (b) the conviction is the person's second or subsequent conviction of any relevant scheduled offence; and
- (c) the court or magistrate sentences the person to a term of imprisonment, in addition to a fixed period of driving disqualification.

11. If the proposed section 69A is applicable, the court or magistrate must direct that the driving disqualification runs consecutively to the term of imprisonment unless the court or magistrate for special reasons orders otherwise.

Commencement

12. The Bill, upon enactment, will come into operation on the day of gazettal.

³ HKSAR v HUNG Ling-kwok, unreported, CAAR7/2009, at paragraphs 9 and 14.

Public Consultation

13. According to the LegCo Brief, the Administration has consulted the Transport Advisory Committee and the Road Safety Council. They generally supported the proposals. The Administration also consulted the transport trades and their drivers' unions/associations. Broadly speaking, they supported heavier penalties against drink drivers. However, some unions expressed concerns about the new offence of causing grievous bodily harm by dangerous driving. They are of the view that this is not directly related to drink driving and it may be misused against professional drivers.

Consultation with LegCo Panel

14. The Panel on Transport was consulted on the legislative proposals at its meeting on 17 July 2009. Some members expressed reservations about the proposed introduction of a scale of penalties according to different levels of alcohol concentration. Members expressed diverse views on the penalties under the proposed sliding scale, as well as on the length of minimum driving disqualification periods and the fine level for the proposed new offence of causing grievous bodily harm by dangerous driving. Members also expressed concern about the conditions under which consecutive implementation of the imprisonment and disqualification terms would be ordered. Members may wish to refer to the minutes of the Panel meeting on 17 July 2009 (LC Paper No. CB(1) 200/09-10) for details of the Panel's deliberation.

Conclusion

15. In the light of the views expressed by Members of the Transport Panel, and that of the transport trades, Members may wish to examine the legislative proposals in detail.

16. The scrutiny of the Bill is continuing.

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