

**For discussion
2 November 2011**

**Bills Committee on
Road Traffic (Amendment) Bill 2011**

Response to Members' Request for Information

Purpose

This paper provides the Administration's response to the questions raised by Members at the meeting of the Bills Committee (BC) on Road Traffic (Amendment) Bill 2011 (the Bill) on 19 October 2011.

Parameters for the court or magistrate on the ordering of life disqualification

2. Under the proposed sections 36(2BA) and 39J(4) in clauses 6(3) and 14 of the Bill, we propose that parameters be set for a court or magistrate to consider, on convicting a person under the two very serious offences of dangerous driving causing death (DDCD) and driving under the influence of specified illicit drug (DUISID), ordering driving disqualification for life, if –

- (a) the person has been convicted of the same offence previously; and
- (b) having regard to the circumstances in which the offence was committed and the behaviour of the person, the court or magistrate is of the opinion that it is undesirable for the person to continue to be allowed to drive a motor vehicle.

In LC Paper No. LS1/11-12, Assistant Legal Adviser (ALA) points out that section 69(1) of the Road Traffic Ordinance (Cap.374)(RTO) confers power on a court or magistrate to order a person convicted of any offence prescribed under section 69(1)(a) to (h) (section 69 is at Annex A) to be disqualified for such period as the court or magistrate thinks fit. ALA is of the view that, for

disqualification orders made upon convictions of offences in RTO other than DDCD and DUISID, the court or magistrate can rely on section 69(1) without being bound. ALA also considers that the mere absence of provisions similar to section 36(2BA) or 39J(4) in other legislation on road traffic offences may not, in itself, affect the general power of court or magistrate to order life disqualification. She suggests that if Members wish to make it abundantly clear that sections 36(2BA) and 39J(4) should not affect the imposition of life-disqualification on any other traffic offences that are provided in other ordinances, these sections may be amended by adding words to the effect that each subsection is not to be construed as limiting the power of the court or magistrate to impose life-disqualification under other road traffic legislation. The Administration is requested to consider the suggestion.

3. The Department of Justice's (DoJ) view is that, while the parameters in sections 36(2BA) and 39J(4) in the RTO may be relevant to construing other RTO provisions, absent a clear intention in other legislation, the parameters are not relevant in construction of provisions in other legislation. There is therefore no need to adopt the suggestion mentioned in paragraph 2 above, which may not clarify the position any further.

Penalties imposed on drivers convicted of traffic offences

4. As requested by Members at the last BC meeting, we provide at Annex B the information on the highest and lowest penalties imposed on drivers convicted of major traffic offences since 2007. Subject to circumstances of each case, the court or magistrate would order a period of driving disqualification longer than the statutory minimum. Some cases are set out at Annex C for Members' reference.

Prosecution policy in relation to the newly proposed driving under the influence of a drug offence

5. According to the Prosecutions Division of DoJ, when considering whether to prosecute a suspect of the offence of driving under the influence of a drug, the first question to be considered is the sufficiency of evidence. The test is whether, in view of the evidence, there is a reasonable prospect of

conviction. If it is satisfied that there is sufficient evidence to support the charge, the prosecution will consider whether the public interest requires a prosecution. As far as public interest is concerned, the prosecution will take into account factors including the seriousness of the offence, the facts of the case including whether any casualties or damages have been caused, whether the suspect has previous convictions and the information, if any, which the suspect has provided to the Police.

6. If it is believed that the suspect had taken drugs for medical purposes whilst in the Mainland, that is a factor, which, together with other relevant factors, the prosecution will consider as to whether or not to prosecute the suspect for drug driving. According to the Police, in dealing with a case involving driving under the influence of a drug, the Police will conduct thorough investigation and collect evidence from the driver involved and other witnesses. The evidence will also include preliminary test reports, laboratory test results and medical expert's advice. In the process of evidence collection, the Police would remain objective and be open-minded to information provided by the driver, including information that the driver has taken drugs bought over-the-counter or prescribed by medical professional outside Hong Kong, and has followed the advice concerned. It is recognized that it is not always feasible to verify the authenticity of the information provided by the driver. If necessary, the Police will seek advice from the Prosecutions Division of DoJ on whether the case should proceed.

The Impairment Test

7. The Impairment Test (IT) is designed to assist a police officer to form an opinion as to whether or not a person's ability to drive properly is impaired by the consumption of drug. The IT will comprise Eye Examination Test, Modified Romberg Balance Test, Walk and Turn Test, One Leg Stand Test, and Finger to Nose Test. The IT has long been and widely adopted in overseas countries. According to the Road Safety Research Report No. 63 on Monitoring the Effectiveness of UK Field Impairment Tests¹, drugs were confirmed in 94% of all cases in which the drivers were judged to be impaired due to the effects of a drug (i.e. positive predictive value²). Based on 334 field

¹ The report was published by Department for Transport: London in March 2006.

² The proportion of drivers with positive test results that are correctly diagnosed.

impairment tests conducted along the roadside, the specificity³, sensitivity⁴ and positive predictive value of the IT were 77%, 64% and 94% respectively. According to the enforcement authority of Victoria in Australia, the positive predictive value of the IT is about 95%. It does not have the specificity and sensitivity rates in respect of the IT.

8. The IT provides a scientific and objective means for a police officer to decide whether a driver should be required to provide blood and/or urine specimens for laboratory analysis. As the IT will be set at a high threshold, a particular driver who has consumed a specified illicit drug but not showing obvious signs of impairment may not be identified at the preliminary Drug Influence Recognition Observation or IT. Nevertheless, what is more of significance to enforcement is the positive predictive value, which is defined as the proportion of drivers with positive test results that are correctly diagnosed. High positive predictive value represents high correlation between impairment and the presence of drugs and thus a more effective enforcement and a lower chance that a drug-negative driver is required by the Police to provide blood and / or urine specimen for laboratory analysis.

Application of new drug driving offences to cyclists

9 The drug driving offences proposed under the Bill are applicable to drivers of motor vehicles only. Presently, under section 47 of the RTO, a person who, when using or riding a bicycle on a road or in a public place, is unfit to ride or drive through drink or drugs commits an offence and is liable in the case of a first conviction to a fine of \$500, and in the case of a subsequent conviction, to a fine of \$1,000 and to imprisonment for 3 months.

The need to amend the Chinese version of sections 39A(4), 39A(5), and 39B(10)(b),

10. The proposed amendments to the Chinese text of existing sections 39A(4), 39A(5) and 39B(10)(b) are to make the text reflect the legislative intent as expressed by the corresponding English text more accurately. They are also

³ The proportion of drug negative cases that are correctly identified by the test.

⁴ The proportion of drug positive cases that are correctly identified by the test.

proposed for consistency with similar provisions to be added by the Bill.

11. The proposed amendments to section 39A(4) and 39A(5) are necessary because in the existing Chinese version, the element of "circumstances" (i.e. "按當時情況" in the proposed new version) is missing and the degree of likelihood expressed is not accurate ("相當可能不會" in the existing Chinese version is equivalent to "unlikely" but "no likelihood" is a threshold higher than "unlikely"). Taking into account Members' view on the readability of the proposed new version, we propose to amend the Chinese version of sections 39A(4), 39A(5) to read:

- "(4) 任何人如證明以下情況，即當作未有掌管汽車：在關鍵時間，按當時情況，只要該人的呼氣、血液或尿液中的酒精比例，仍相當可能超過訂明限度，該人當時便不可能駕駛該汽車。
- (5) 法庭或裁判官在裁定上述的人是否如第(4)款所述當時不可能駕駛有關汽車時，可不理會該人所受的任何損傷及該車輛所受的任何損害。"

12. For section 39B(10)(b), the proposed amendment is necessary because in the existing Chinese version, it is stated that "提供的方式能達到使該測試之目的而令人滿意". The construction is not that the "way" can achieve the objective, but that the "way" enables the objective to be achieved. Taking into account Members' view on the readability of the proposed new version, we propose to amend that to read:

- "(10) 任何人為檢查呼氣測試而提供的樣本，除非—
 - (a)；及
 - (b) 其提供的方式，使該測試得以令人滿意地達到其目的，否則該人即屬沒有提供該樣本。"

13. In view of the above proposed amendments, for consistency, similar provisions proposed to be amended or added by the Bill will be amended accordingly.

Advice Sought

14. Members are requested to note and comment on the Administration's responses set out in this paper.

**Transport and Housing Bureau
October 2011**

Chapter:	374	Title:	ROAD TRAFFIC ORDINANCE	Gazette Number:	L.N. 256 of 2008
Section:	69	Heading:	Disqualification on conviction of certain offences	Version Date:	09/02/2009

- (1) Without prejudice to any other provision relating to the penalty that may be, or is required to be, imposed for an offence, a court or magistrate before which a person is convicted of any of the following offences may order him to be disqualified for such period as the court or magistrate thinks fit- (Amended 23 of 2008 s. 16)
 - (a) any offence under this Ordinance in connection with the driving of a motor vehicle; (Amended 43 of 1986 s. 3)
 - (b) an offence under section 63(6);
 - (c) stealing a motor vehicle;
 - (d) an offence under section 14(1) of the Theft Ordinance (Cap 210) in respect of a motor vehicle;
 - (e) an offence under section 27 of the Theft Ordinance (Cap 210) committed with reference to the theft or taking of motor vehicles;
 - (f) a contravention of any of the following provisions of the Road Traffic (Public Service Vehicles) Regulations (Cap 374 sub. leg. D), namely regulation 37(a), (b), (c) and (d) (relating to the obligations of taxi drivers) and regulation 47 (relating to prescribed taxi fares); (Replaced 66 of 1984 s. 9)
 - (g) any offence under any regulation made under section 9 of using or causing or permitting the use on a road of any motor vehicle or trailer in contravention of any provision or requirement of any such regulation as to brakes, tyres or steering gear, except where the convicted person proves that he did not know and had no reasonable cause to suspect that the facts of the case were such that the offence would have been committed;
 - (h) any offence during the course of which, or in order to escape apprehension for which, he uses a motor vehicle.
- (2) A disqualification-
 - (a) imposed in respect of an offence specified in subsection (1)(f), shall be limited to the driving of a taxi; and
 - (b) imposed in respect of any other offence specified in subsection (1) shall be a disqualification from holding or obtaining any driving licence. (Replaced 43 of 1986 s. 3)
- (3) When a person is convicted of aiding, abetting, counselling or procuring or inciting the commission of an offence under Part V or section 52(1), and it is proved that he was present in the vehicle at the time of the commission of the offence, the offence of which he is convicted shall, for the purposes of this Ordinance, be deemed to be an offence in connection with the driving of a motor vehicle.

The highest and lowest penalties imposed on drivers convicted of major traffic offences

Year the offence was committed	Penalties	Drink driving ¹		Driving under the influence of drugs		Dangerous Driving		Dangerous Driving Causing Death	
		Highest	Lowest	Highest	Lowest	Highest	Lowest	Highest	Lowest
2007	Imprisonment (month)	8	14 (days)	4	-	20	14 (days)	20	3
	Suspended Imprisonment (month)	6	14 (days)	-	-	6	14 (days)	6	3
	Fine (\$)	20,000	1,000	7,000	1,000	10,000	1,000	20,000	-
	Community service order (hour)	240	80	180	-	240	80	240	200
	Driving Disqualification (month)	36	1	24	12	36	3	60	18
2008	Imprisonment (month)	4	14 (days)	-	-	24	14 (days)	42	6 (weeks)
	Suspended Imprisonment (month)	4	14 (days)	-	-	4	1	-	-
	Fine (\$)	15,000	100	3,000	500	12,000	1,000	-	-
	Community service order (hour)	240	40	-	-	240	60	-	-
	Driving Disqualification (month)	60	1	12	6	84	1	72	24
2009	Imprisonment (month)	8	14 (days)	2	-	36	14 (days)	20	5
	Suspended Imprisonment (month)	4	14 (days)	2	-	4	4 (weeks)	-	-
	Fine (\$)	15,000	500	4,000	2,000	8,000	500	-	-
	Community service order (hour)	240	60	-	-	200	30	-	-
	Driving Disqualification (month)	40	2	24	3	120	2	72	24

Year the offence was committed	Penalties	Drink driving ¹		Driving under the influence of drugs		Dangerous Driving		Dangerous Driving Causing Grievous Bodily Harm ²		Dangerous Driving Causing Death	
		Highest	Lowest	Highest	Lowest	Highest	Lowest	Highest	Lowest	Highest	Lowest
2010	Imprisonment (month)	3	12 (days)	20	20 (days)	20	14 (days)	2	-	44	6
	Suspended Imprisonment (month)	6	14 (days)	8	2	4	14 (days)	-	-	-	-
	Fine (\$)	15,000	1,000	7,000	1,000	10,000	300	-	-	-	-
	Community service order (hour)	240	60	160	-	240	60	-	-	-	-
	Driving Disqualification (month)	36	3	60	3	60	2	-	24	72	24
2011 (Jan to Aug)	Imprisonment (month)	4	2 (weeks)	4	3	22	2 (weeks)	4	-	-	34
	Suspended Imprisonment (month)	4	1(week)	-	2	6	2	4	-	-	-
	Fine (\$)	20,000	1,000	-	-	7,500	1,000	-	-	-	-
	Community service order (hour)	240	80	-	160	160	80	180	-	-	-
	Driving Disqualification (month)	60	3	60	24	48	6	-	24	-	48

Notes :

- 1 Drink driving offences include driving a motor vehicle with an alcohol concentration exceeding the prescribed limit and related offences such as refusing to take a breath test or refusing to provide a specimen of breath, etc.
- 2 The offence of dangerous driving causing grievous bodily harm has been introduced since 17 December 2010.

Traffic Offence Cases which the court or magistrate ordered a disqualification period higher than the statutory minimum

Case 1

Date of Offence:	4 May 2009
Driver's information:	Male, aged 36
Type of Vehicle:	Light goods vehicle
Offences convicted:	(1) Driving a vehicle with alcohol concentration above prescribed limit (2) Driving while disqualified (3) Driving without third party insurance (4) Insecure load
Sentence	Imprisonment – 2 months Driving disqualification – 40 months
Remarks	The statutory minimum disqualification periods for offences (1), (2) and (3) are 3 months; 12 months; and 12 months respectively on a first conviction.

Case 2

Date of Offence	4 July 2010
Driver's information	Male, aged 27
Type of Vehicle	Private Car
Offences convicted	(1) Driving under the influence of drink or drugs (2) Possession of Dangerous Drug
Sentence	To undergo treatment in a Drug Addiction Treatment Centre Driving disqualification - 60 months
Remarks	<ul style="list-style-type: none">• The driver was also involved in another case in January 2011 when he was charged of (1) Driving under the influence of drink or drugs, and (2) Possession of Dangerous Drugs. Both cases were heard together by the court.• The statutory minimum disqualification period for offence (1) is 3 months on a first conviction; and 2 years on a subsequent conviction.

Case 3

Date of Offence	2 November 2010
Driver's information	Male, aged 40
Type of Vehicle	Private Car
Offences convicted	Driving a vehicle with alcohol concentration above prescribed limit
Sentence	Imprisonment - 4 months, suspended for 3 years Disqualification - 36 months Fine - \$7,000
Remarks	<ul style="list-style-type: none">• The offender has previous conviction records of driving a vehicle with alcohol concentration above prescribed limit; and driving above the speed limit by 32 km per hour in October 2010.• The statutory minimum disqualification period of the offence is 2 years on a subsequent conviction.