

Road Traffic (Amendment) Bill 2011

Committee Stage

Amendments to be moved by the Secretary for Transport and Housing

<u>Clause</u>	<u>Amendment Proposed</u>
4	By adding “39KA,” after “39K,”.
5(1)	By deleting “(2BA)” and substituting “(2AB)”.
5(2)	By adding “39KA (other than subsections (2), (3), (4) and (5)),” before “39L,”.
6(3)	By deleting “(2BA)” and substituting “(2AB)”.
6(9)	By deleting “(2BA)” and substituting “(2AB)”.
6	By adding— “(10) Section 36(10)— Repeal “or 39A” Substitute “, 39A, 39J, 39K or 39KA”.”.
7	(a) By renumbering the clause as clause 7(1). (b) By adding— “(2) Section 36A(16)—

Repeal

“or 39A”

Substitute

“, 39A, 39J, 39K or 39KA”.”.

8 (a) By renumbering the clause as clause 8(1).

(b) By adding—

“(2) Section 37(9)—

Repeal

“or 39A”

Substitute

“, 39A, 39J, 39K or 39KA”.”.

9(3) In the Chinese text, in the proposed section 39(4), by deleting everything after “以下情況，” and substituting “即當作未有掌管汽車：在關鍵時間，按當時情況，只要該人仍受酒類影響，程度達到沒有能力妥當地控制該汽車，該人當時便不可能駕駛該汽車。”.

9(4) By deleting everything after “**Repeal**” and substituting—

““是否曾有一如第(4)款所述的相當可能”

Substitute

“上述的人是否如第(4)款所述當時不可能駕駛有關汽車”.”.

9 By adding—

“(5) After section 39(5)—

Add

“(6) On the trial of a 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 37 or 38.”.”.

- 10(1) In the proposed section 39A(4), by deleting everything after “以下情況，” and substituting “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。”.
- 10(2) By deleting everything after “**Repeal**” and substituting—
 ““是否曾有一如第(4)款提述的相當可能”
Substitute
 “上述的人是否如第(4)款所述當時不可能駕駛有關汽車”.”.
- 10 By adding—
 “(3) After section 39A(5)—
Add
 “(6) On the trial of a 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 37 or 38.”.”.
- 11(2) In the proposed section 39B(10)(b), by deleting “令該測試得以在令人滿意的情況下” and substituting “使該測試得以令人滿意地”.
- 12(5) By deleting the proposed section 39C(11A)(b)(i) and substituting—
 “(i) if it is a person referred to in paragraph (a)(i), he or she may be incapable of providing a specimen of breath and of giving a valid consent to the taking of a specimen of blood, and if it is a person referred to in paragraph (a)(ii), he or she may be incapable of giving a valid consent to the taking of a specimen of blood; and”.

- 12(8) In the proposed section 39C(19)(b), by deleting “令該分析或化驗得以在令人滿意的情況下” and substituting “使該分析或化驗得以令人滿意地”.
- 14
- (a) In the proposed section 39J, in the heading, by deleting “**any**” and substituting “**specified illicit**”.
 - (b) In the proposed section 39J(1), by adding “specified illicit” after “influence of a”.
 - (c) In the proposed section 39J(1)(b)(iv), by adding “39KA,” after “39K,”.
 - (d) In the proposed section 39J(3), by deleting everything after “to be disqualified—” and substituting—
 - “(a) for a first conviction, is a period of not less than 5 years; and
 - (b) for a subsequent conviction, is a period of not less than 10 years.”.
 - (e) In the proposed section 39J(4), by deleting “for the offence of driving or attempting to drive, or being in charge of, a motor vehicle on any road while he or she is under the influence of a specified illicit drug to such an extent as to be incapable of having proper control of the motor vehicle”.
 - (f) In the proposed section 39J(5)(a), by deleting “not less than the relevant minimum period” and substituting “of not less than 5 years”.
 - (g) In the proposed section 39J(5)(b), by deleting “not less than the relevant minimum period” and substituting “of not less than 10 years”.
 - (h) In the proposed section 39J(6)(a), by deleting “less than the relevant minimum period” and substituting “of less than 5

- years”.
- (i) In the proposed section 39J(6)(b), by deleting “less than the relevant minimum period” and substituting “of less than 10 years”.
 - (j) In the proposed section 39J(7), by adding “39KA,” after “39K,”.
 - (k) In the proposed section 39J(8), by adding “specified illicit” after “influence of a”.
 - (l) In the proposed section 39J(9), in the Chinese text, by deleting everything from “是否存在” to “有關” and substituting “上述的人是否如第(8)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”.
 - (m) In the proposed section 39J(10), by adding “specified illicit” after “influence of a”.
 - (n) In the proposed section 39J(10)(b), by deleting “drug or of the combination of drugs present in the person’s blood or urine” and substituting “specified illicit drug or of the combination of such drugs present in the person’s blood or urine and to which the charge relates”.
 - (o) By deleting the proposed section 39J(11).
 - (p) By adding before the proposed section 39J(12)(a)—
 - “(aa) the specified illicit drug or the combination of such drugs found in the person’s blood or urine and to which the charge relates was lawfully obtained;”.
 - (q) In the proposed section 39J(12)(a), by adding “specified illicit” after “the lawfully obtained”.
 - (r) In the proposed section 39J(12)(b), in the Chinese text, by deleting “藥物或該藥物” and substituting “指明毒品或指明毒品”.

- (s) In the proposed section 39J(13), by deleting “under subsection (1) with driving or attempting to drive, or being in charge of, a motor vehicle on any road while under the influence of a specified illicit drug to such an extent as to be incapable of having proper control of the motor vehicle” and substituting “with an offence under subsection (1)”.
- (t) In the proposed section 39J(13)(a), by deleting “and” and substituting “but may”.
- (u) In the proposed section 39J(13)(b), by deleting everything after “acquitted of the” and substituting “offence under subsection (1) but may be found guilty of an offence under section 39KA.”.
- (v) In the proposed section 39J, by adding—
 - “(13A) On the trial of a 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 37 or 38 and, to avoid doubt, subsection (12) does not apply to those offences.
 - (13B) For the purposes of subsection (12), a specified illicit drug is lawfully obtained if it is a specified illicit drug that is prescribed for or administered or supplied to an accused person by a healthcare professional.”.
- (w) In the proposed section 39J(14), in the definition of *advice*, by deleting everything after “that is referred to in” and substituting “subsection (13B), written or oral advice given to an accused person by the healthcare professional who prescribed, administered or supplied the drug;”.
- (x) In the proposed section 39J(14), in the definition of *healthcare professional*, by deleting paragraph (c).
- (y) In the proposed section 39J(14), in the definition of *healthcare*

- professional*, in paragraph (e), by deleting “, (c)”.
- (z) In the proposed section 39J(14), by deleting the definitions of *lawfully obtained drug* and *relevant minimum period*.
- (za) In the proposed section 39K(1)(b)(iv), by adding “39KA,” after “39J,”.
- (zb) In the proposed section 39K(5)(a), in the English text, by deleting “he or she has attended and completed a” and substituting “the person has attended and completed the”.
- (zc) In the proposed section 39K(5)(b), in the English text, by deleting “he or she has attended and completed a” and substituting “the person has attended and completed the”.
- (zd) In the proposed section 39K(6), by adding “39KA,” after “39J,”.
- (ze) In the proposed section 39K(7), by deleting everything after “to prove that—” and substituting—
- “(a) if only one specified illicit drug was present in his or her blood or urine, that drug; or
- (b) if more than one specified illicit drug was present in his or her blood or urine, every such drug,
- was a specified illicit drug that was prescribed for or administered or supplied to the person by a healthcare professional.”.
- (zf) In the proposed section 39K(8), in the Chinese text, by deleting everything after “以下情況，” and substituting “即視為未有掌管汽車：在關鍵時間，按當時情況，只要該人的血液或尿液含有任何濃度的指明毒品，該人當時便不可能駕駛該汽車。”.
- (zg) In the proposed section 39K(9), in the Chinese text, by deleting everything from “是否存在” to “有關” and substituting “上述的人是否如第(8)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”。

- (zh) In the proposed section 39K, by adding—
- “(9A) On the trial of a 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 37 or 38 and, to avoid doubt, subsection (7) does not apply to those offences.”.
- (zi) In the proposed section 39K(10), in the Chinese text, in the definition of *first conviction*, by deleting the full stop and substituting a semicolon.
- (zj) In the proposed section 39K(10), by adding—
- “*healthcare professional* (醫護專業人員) has the meaning given by section 39J(14);”.
- (zk) By adding—
- “39KA. Driving motor vehicle without proper control under influence of drug other than specified illicit drug**
- (1) A person who drives or attempts to drive, or is in charge of, a motor vehicle on any road while he or she is under the influence of a drug other than a specified illicit drug (*non-specified drug*) to such an extent as to be incapable of having proper control of the motor vehicle commits an offence and is liable—
- (a) on conviction on indictment, to a fine at level 4 and to imprisonment for 3 years; and
- (b) on summary conviction—
- (i) on a first offence under this subsection, to a fine at level 3 and to imprisonment for 6 months;
- (ii) subsequent to a conviction on indictment under this subsection, to a fine at level 4 and to imprisonment for 12 months;
- (iii) subsequent to a summary conviction under this subsection, to a fine at level 4 and to

imprisonment for 12 months; or

- (iv) subsequent to a conviction under section 39J, 39K, 39N(1) or 39R, to a fine at level 4 and to imprisonment for 12 months.
- (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—
- (a) for a first conviction, is a period of not less than 6 months; and
 - (b) for a subsequent conviction, is a period of not less than 2 years.
- (4) If the court or magistrate has ordered a person to attend and complete a driving improvement course under section 72A(1A), the person is to be disqualified—
- (a) for a first conviction, for a period of not less than 6 months, or until the person has attended and completed the course at his or her own cost, whichever is the later; and
 - (b) for a subsequent conviction, for 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.
- (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—
- (a) for a first conviction, is a period of less than 6 months, 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 subsequent conviction, is 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.

- (6) The court or magistrate may deal with the offence as a first offence, or 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) or section 39J, 39K, 39N(1) or 39R.
- (7) A person is taken not to have been in charge of a motor vehicle if he or she proves that at the material time the circumstances were such that there was no likelihood of the person's driving the motor vehicle so long as he or she remained under the influence of a non-specified drug to such an extent as to be incapable of having proper control of the motor vehicle.
- (8) The court or magistrate may, in determining whether there was such a likelihood as is mentioned in subsection (7), disregard any injury to the person and any damage to the motor vehicle.
- (9) For the purposes of subsection (1), a person is under the influence of a non-specified drug to such an extent as to be incapable of having proper control of the motor vehicle if—
 - (a) the person's ability to drive properly is for the time being impaired; and
 - (b) the concentration of the non-specified drug or of the combination of such drugs present in the person's blood or urine and to which the charge relates would usually result in a person being unable to drive properly.
- (10) It is a defence for a person charged under subsection (1) to prove that—
 - (a) the non-specified drug or the combination of such drugs found in the person's blood or urine and to which the charge relates was lawfully obtained;
 - (b) he or she did not know and could not reasonably have known that the lawfully obtained non-specified drug or the combination of such drugs found in the

blood or urine would render him or her incapable of having proper control of a motor vehicle if consumed or used in accordance with advice; and

- (c) he or she consumed or used that drug or combination of those drugs in accordance with that advice.
- (11) On the trial of a 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 37 or 38 and, to avoid doubt, subsection (10) does not apply to those offences.
- (12) For the purposes of subsection (10), a non-specified drug is lawfully obtained if it is—
- (a) a non-specified drug that is prescribed for or administered or supplied to an accused person by a healthcare professional;
 - (b) a non-specified drug that is a pharmaceutical product as defined by section 2(1) of the Pharmacy and Poisons Ordinance (Cap. 138)—
 - (i) that is registered as mentioned in regulation 36 of the Pharmacy and Poisons Regulations (Cap. 138 sub. leg. A); and
 - (ii) for the sale of which a prescription is not required by Hong Kong law; or
 - (c) a non-specified drug that is a proprietary Chinese medicine, as defined by section 2(1) of the Chinese Medicine Ordinance (Cap. 549), that is registered under section 121 of that Ordinance.

(13) In this section—

advice (指示) means, in relation to a drug that is referred to in—

- (a) subsection (12)(a)—
 - (i) written or oral advice given to an accused person by the healthcare professional who prescribed,

administered or supplied the drug;
and

- (ii) information written on a label, as defined by section 2(1) of the Pharmacy and Poisons Ordinance (Cap. 138), accompanying the prescribed or supplied drug;
- (b) subsection (12)(b), any information written on a label referred to in paragraph (a)(ii) accompanying the drug; and
- (c) subsection (12)(c), any information on the package insert, as defined by section 2(1) of the Chinese Medicine Ordinance (Cap. 549), supplied with the drug;

first conviction (首次定罪) means a conviction on a first offence under subsection (1) (whether a conviction on indictment or a summary conviction);

healthcare professional (醫護專業人員) means—

- (a) a medical practitioner;
- (b) a registered dentist as defined by section 2(1) of the Dentists Registration Ordinance (Cap. 156);
- (c) a registered Chinese medicine practitioner or a listed Chinese medicine practitioner, as defined by section 2(1) of the Chinese Medicine Ordinance (Cap. 549);
- (d) a person whose name is entered on the register of pharmacists under section 5 of the Pharmacy and Poisons Ordinance (Cap. 138); or
- (e) a person acting under the direction or supervision of a person referred to in paragraph (a), (b), (c) or (d);

subsequent conviction (再次定罪) means—

- (a) a conviction subsequent to a first conviction; or
- (b) a conviction referred to in subsection (1)(b)(ii), (iii) or (iv).

- (14) In this section a reference to a conviction for an offence under subsection (1) includes a conviction pursuant to section 39J(13)(b).”.
- (zl) In the proposed section 39N(1)(b)(iv), by adding “, 39KA” after “39K”.
- (zm) In the proposed section 39N(2)(b), in the Chinese text, by deleting everything after “方式 ,” and substituting “使該測試得以令人滿意地達到其目的。”.
- (zn) In the proposed section 39N(8), by adding “, 39KA” after “39K”.
- (zo) In the proposed section 39N(9)(b), by deleting “or 39K(1)” and substituting “, 39K(1) or 39KA(1)”.
- (zp) In the proposed section 39N(9)(c), by deleting “or 39K(1)” and substituting “, 39K(1) or 39KA(1)”.
- (zq) By deleting the proposed section 39P(1)(b)(i) and substituting—
- “(i) if it is a person referred to in paragraph (a)(i), he or she may be incapable of undergoing a preliminary drug test and of giving a valid consent to the taking of a specimen of blood, and if it is a person referred to in paragraph (a)(ii), he or she may be incapable of giving a valid consent to the taking of a specimen of blood; and”.
- (zr) In the proposed section 39Q(1), by deleting “or 39K” and substituting “, 39K or 39KA”.
- (zs) In the proposed section 39R(1)(b)(iv), by adding “, 39KA” after “39K”.
- (zt) In the proposed section 39R(2)(b), in the Chinese text, by deleting everything after “方式 ,” and substituting “使該分析或化驗得以令人滿意地達到其目的。”.
- (zu) In the proposed section 39R(6)(a), in the English text, by adding a comma after “5 years”.

- (zv) In the proposed section 39R(7), by adding “, 39KA” after “39K”.

New

By adding—

“14A. Section 69A amended (Start of disqualification period)

Section 69A(2)—

Repeal

“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”

Substitute

“the person finishes serving the term of imprisonment or detention, or finishes serving any other term of imprisonment or detention which the person is undergoing at the time he or she finishes serving the first-mentioned term”.”.

16(1)

By adding “39KA,” after “39K,”.

16(2)

- (a) In the proposed section 72A(3B)(b), by deleting “3 months or more after” and substituting “after a period of 3 months or more beginning on”.
- (b) In the proposed section 72A(3C)(b)(i), by deleting “expiration of the term of imprisonment or detention the person is ordered to serve” and substituting “person finishes serving that term”.
- (c) In the proposed section 72A(3C)(b)(ii), by deleting “of expiration of” and substituting “the person finishes serving”.

16(9)

In the proposed definition of *disqualification order*, by deleting everything after “order made under” and substituting “subsection (1)

or section 36(2), 36A(2), 37(2), 39(2), 39A(2), 39B(7), 39C(16), 39J(2), 39K(2), 39KA(2), 39N(4), 39R(3), 41(3) or 55(2) that a person be disqualified;”.

17 By adding “39KA,” after “39K,”.

18 By adding “39KA,” after “39K,”.

20 By adding “39KA,” after “39K,”.

21 By adding “39KA,” after “39K,”.

22 By adding “39KA,” after “39K,”.

23 By adding “39KA,” after “39K,”.

24 By adding “39KA,” after “39K,”.

25 By adding “39KA,” after “39K,”.

26(3) (a) In the proposed item 4D, by adding “specified illicit” after “influence of a”.

(b) By adding—

“4EA	Section 39KA(1)	Driving, attempting to drive or being in charge of a motor vehicle under the influence of a drug other than a specified illicit drug	10”.
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