

Road Traffic (Amendment) Bill 2011

Road Traffic (Amendment) Bill 2011

Contents

Clause		Page
Part 1		
Preliminary		
1.	Short title and commencement.....	1
2.	Enactments amended	2
Part 2		
Amendments to Road Traffic Ordinance (Cap. 374)		
3.	Section 2 amended (Interpretation).....	3
4.	Section 4 amended (Application of Ordinance to trams).....	4
5.	Section 4A amended (Application of Ordinance to village vehicles).....	4
6.	Section 36 amended (Causing death by dangerous driving).....	5
7.	Section 36A amended (Causing grievous bodily harm by dangerous driving).....	7
8.	Section 37 amended (Dangerous driving).....	7
9.	Section 39 amended (Driving a motor vehicle under the influence of drink or drugs).....	8
10.	Section 39A amended (Driving, attempting to drive or being in charge of a motor vehicle with alcohol concentration above	

Clause	Page
	prescribed limit)..... 9
11.	Section 39B amended (Screening breath tests) 9
12.	Section 39C amended (Provision of specimens for analysis) 10
13.	Section 39E amended (Protection for hospital patients) 13
14.	Sections 39J to 39T added 13
39J.	Driving motor vehicle without proper control under influence of <u>specified illicit</u> any drug 14
39K.	Driving motor vehicle with any concentration of specified illicit drug 21
<u>39KA.</u>	<u>Driving motor vehicle without proper control under influence of drug other than specified illicit drug 25</u>
39L.	Persons who may be required to undergo preliminary drug test..... 29
39M.	Drivers may be required to undergo Rapid Oral Fluid Test 31
39N.	Failure to undergo preliminary drug test..... 32
39O.	Provision of specimen for drug analysis 35
39P.	Specimens of blood from persons incapable of consenting 37
39Q.	Evidence of analysis of specimens..... 38
39R.	Failure to provide specimen of blood or urine 40

Clause	Page
39S. Tests to be included in Impairment Test, approval of instruments for preliminary drug tests, etc.	43
39T. Surrender of licence for 24 hours.....	43
<u>14A. Section 69A amended (Start of disqualification period).....</u>	<u>45</u>
15. Section 70 amended (Re-testing of drivers).....	45
16. Section 72A amended (Power of court or magistrate to order persons to attend driving improvement courses).....	46
17. Section 117 amended (Application of Ordinance to private roads).....	49
18. Section 120 amended (Defence).....	50
19. Schedule 1A substituted.....	50
Schedule 1A Specified Illicit Drugs	50

Part 3

Amendments to Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B)

20. Regulation 8 amended (Previous experience and driving record).....	51
21. Regulation 22 amended (Issue of driving instructors' licences).....	51
22. Regulation 22A amended (Application for driving instructors' licences issued under regulation 22(4) and conditions of issue).....	51

Clause	Page
23.	Regulation 23 (Renewal of driving instructors' licences)..... 52
24.	Regulation 23A amended (Renewal of certain driving instructors' licences issued under regulation 22(4)) 52
25.	Regulation 28 amended (Cancellation of driving instructors' licences) 52

Part 4

Amendments to Road Traffic (Driving-offence Points) Ordinance (Cap. 375)

26.	Schedule amended 53
-----	---------------------------

A BILL

To

Amend the Road Traffic Ordinance to create new offences in connection with driving motor vehicles after the consumption or use of drugs; to enhance the penalty of disqualification for the offence of causing death by dangerous driving; to provide procedures to obtain specimens of blood and urine for laboratory tests; to provide means to test for impairment by drugs and their presence in body fluids; to provide for temporary surrender of driving licences for specified contraventions; to specify different periods for completing driving improvement courses under different circumstances; to make consequential and related amendments to the Ordinance and its subsidiary legislation and to the Road Traffic (Driving-offence Points) Ordinance; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Road Traffic (Amendment) Ordinance 2011.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2, 3 and 4 are amended as set out in those Parts.

Part 2

Amendments to Road Traffic Ordinance (Cap. 374)

3. Section 2 amended (Interpretation)

- (1) Section 2, definition of *fail*—

Repeal

“section 39B and 39C”

Substitute

“sections 39B, 39C, 39N and 39R”.

- (2) Section 2—

Add in alphabetical order

“*authorized police officer* (獲授權警務人員), in relation to a preliminary drug test, means a police officer authorized under section 39S(3) to carry out that test;

drug (藥物) means—

- (a) a substance specified in Schedule 1A; or
- (b) any substance (other than alcohol or a substance referred to in paragraph (a)) which, when consumed or used by a person, deprives a person (temporarily or permanently) of any of his or her normal mental or physical faculties;

Drug Influence Recognition Observation (識認藥物影響觀測) means a test carried out by an authorized police officer on a person, to detect signs that indicate the effect on the human body of the consumption or use of drugs, so as to assist the police officer to form an opinion as to whether or not the person is under the influence of a drug;

Impairment Test (損害測試) means a combination of any or all of the tests specified by the Commissioner of Police under section 39S(1), carried out by an authorized police

officer on a person, so as to assist the police officer to form an opinion as to whether or not the person's ability to drive properly is impaired by the consumption or use of drugs;

preliminary drug test (初步藥物測試) means a Drug Influence Recognition Observation, an Impairment Test or a Rapid Oral Fluid Test;

Rapid Oral Fluid Test (快速口腔液測試) means a test carried out—

- (a) on a person's oral fluid;
- (b) by an authorized police officer;
- (c) using any instrument approved under section 39S(2); and
- (d) to detect the presence of any specified illicit drug in the person's oral fluid;

specified illicit drug (指明毒品) means a substance specified in Schedule 1A;”.

4. Section 4 amended (Application of Ordinance to trams)

Section 4(1), after “39E”—

Add

“, 39J, 39K, 39KA, 39L, 39M, 39N, 39O, 39P, 39Q, 39R, 39T”.

5. Section 4A amended (Application of Ordinance to village vehicles)

(1) Section 4A(2), after “36 (other than subsections (2), (2A))”—

Add

“, (2AB2BA)”.

(2) Section 4A(2), after “39E”—

Add

“, 39J (other than subsections (2), (3), (4), (5) and (6)), 39K (other than subsections (2), (3), (4) and (5)), 39KA (other than subsections (2), (3),(4) and (5)), 39L, 39M, 39N (other than subsections (4), (5), (6) and (7)), 39O, 39P, 39Q, 39R (other than subsections (3), (4), (5) and (6)), 39T”.

6. Section 36 amended (Causing death by dangerous driving)

(1) Section 36(2A)(a)—

Repeal

“2”

Substitute

“5”.

(2) Section 36(2A)(b)—

Repeal

“5”

Substitute

“10”.

(3) After section 36(2A)—

Add

“(2AB2BA)A court or magistrate may, in making an order that a person be disqualified in accordance with subsection (2A), order that the person be disqualified 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 (which may include but is not limited to those set out in subsection (2E)) 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.”.

-
- (4) Section 36(2B)(a)—
Repeal
“2”
Substitute
“5”.
- (5) Section 36(2B)(b)—
Repeal
“5”
Substitute
“10”.
- (6) Section 36(2C)(a)—
Repeal
“2”
Substitute
“5”.
- (7) Section 36(2C)(b)—
Repeal
“5”
Substitute
“10”.
- (8) Section 36(2E)(b)—
Repeal
“any amount of a drug specified in Schedule 1A”
Substitute
“any concentration of a specified illicit drug”.
- (9) Section 36(3), after “first conviction”—
Add

“(including for the purposes of subsection (~~2AB2BA~~)(a))”.

~~(10) Section 36(10)—~~

Repeal

“or 39A”

Substitute

“, 39A, 39J, 39K or 39KA”.

7. Section 36A amended (Causing grievous bodily harm by dangerous driving)

~~(1) Section 36A(7)(b)—~~

Repeal

“any amount of a drug specified in Schedule 1A”

Substitute

“any concentration of a specified illicit drug”.

~~(2) Section 36A(16)—~~

Repeal

“or 39A”

Substitute

“, 39A, 39J, 39K or 39KA”.

8. Section 37 amended (Dangerous driving)

~~(1) Section 37(2E)(b)—~~

Repeal

“any amount of a drug specified in Schedule 1A”

Substitute

“any concentration of a specified illicit drug”.

~~(2) Section 37(9)—~~

Repeal

“or 39A”

Substitute

“, 39A, 39J, 39K or 39KA”.

9. Section 39 amended (Driving a motor vehicle under the influence of drink or drugs)

(1) Section 39, heading—

Repeal

“or drugs”.

(2) Section 39(1)—

Repeal

“or drugs”.

(3) Section 39(4)—

Repeal

“or drugs”.

(4) Section 39(5), Chinese text—

Repeal

“是否曾有一如第(4)款所述的相當可能”

Substitute

“上述的人是否如存在第(4)款所述當時不可能駕駛有關汽車的可能性”.

(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. Section 39A amended (Driving, attempting to drive or being in charge of a motor vehicle with alcohol concentration above prescribed limit)

- (1) Section 39A, Chinese text—

Repeal subsection (4)

Substitute

“(4) 任何人如證明以下情況，即視為當作未有掌管汽車：在關鍵時間，按當時情況，只要其該人的呼氣、血液或尿液中的酒精比例，仍相當可能超過訂明限度，即不存在該人當時便不可能駕駛該汽車的可能性。”

- (2) Section 39A(5), Chinese text—

Repeal

“是否曾有一如第(4)款提述的相當可能”

Substitute

“存在上述的人是否如第(4)款所述當時不可能駕駛有關汽車的可能性”。

- (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. Section 39B amended (Screening breath tests)

- (1) Section 39B(1), Chinese text—

Repeal

“在道路上駕駛或掌管道路上的” (wherever appearing)

Substitute

“駕駛或掌管”。

- (2) Section 39B(10), Chinese text—

Repeal paragraph (b)

Substitute

“(b) 其提供的方式，**令使**該測試得以**在令人滿意的情況下****地**達到其目的，”。

12. Section 39C amended (Provision of specimens for analysis)

- (1) Section 39C, heading, after “**for**”—

Add

“**alcohol**”.

- (2) Section 39C(4), Chinese text—

Repeal

“**體內取得**”

Substitute

“**抽取**”.

- (3) Section 39C(9), Chinese text—

Repeal

“**取得**”

Substitute

“**抽取**”.

- (4) Section 39C(10), Chinese text—

Repeal

“**取得**”

Substitute

“**抽取**”.

- (5) Section 39C—

Repeal subsection (11)

Substitute

- “(11) Subject to subsection (11A), a specimen of blood must not be taken from a person unless the person consents to its being taken and it is so taken.
- (11A) A police officer may request a medical practitioner to take a specimen of blood from a person, if—
- (a) he or she is a person the police officer is entitled to require—
 - (i) to provide a specimen of breath under section 39B(1)(b) or (2); or
 - (ii) to provide a specimen of blood under subsection (1)(b); and
 - (b) it appears to the police officer that—
 - (i) if it is a person referred to in paragraph (a)(i), he or she may be incapable of providing a specimen of breath ~~or~~ 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
 - (ii) the incapacity is attributable to medical reasons.
- (11B) It is lawful for a medical practitioner to whom a request is made under subsection (11A), if the medical practitioner thinks fit—
- (a) to take a specimen of blood from the person; and
 - (b) to provide the specimen to the police officer who made the request.
- (11C) A specimen of blood may be taken pursuant to a request under subsection (11A) only at a breath test centre, a police station or a hospital.

- (11D) If a specimen of blood is taken pursuant to a request under subsection (11A), it must not be subjected to a laboratory test unless the person from whom it was taken—
- (a) has been informed that it was taken;
 - (b) has been required by a police officer to give consent to the analysis of the specimen for the purpose of evidence in the relevant investigation; and
 - (c) has given that consent.
- (11E) A police officer who makes a requirement referred to in subsection (11D)(b) must warn the person at the time of making the requirement that a failure to give consent may render the person liable to prosecution.
- (11F) Evidence that a specimen of blood was taken from a person referred to in subsection (11A) by a medical practitioner may be given by the production of a document certifying that fact and purporting to be signed by the medical practitioner.
- (11G) Evidence that a specimen of blood taken from a person under subsection (11B) was subjected to a laboratory test only after the person from whom it was taken was informed that it was taken and the person consented to the laboratory test may be given by the production of a document certifying that fact and purporting to be signed by the police officer who made the requirement referred to in subsection (11D)(b).”.
- (6) After section 39C(13)—

Add

- “(13A) If an accused from whom a specimen of blood was taken under subsection (11B), at the time he or she consented to its analysis, asked to be provided with a part of that specimen, evidence of the proportion of alcohol found in the specimen is not admissible on behalf of the prosecution unless—

- (a) the specimen in which the alcohol was found is one of 2 parts into which the specimen taken from the accused was divided at the time it was taken; and
 - (b) the other part was supplied to the accused.”.
- (7) Section 39C(15), after “this section”—
Add
“or fails to give consent under subsection (11D)(b)”.
- (8) Section 39C(19), Chinese text—
Repeal paragraph (b)
Substitute
“(b) 其提供的方式，**今使**該分析或化驗得以**在令人滿意的情況下**達到其目的，”。

13. Section 39E amended (Protection for hospital patients)

- (1) Section 39E(1), after “analysis”—
Add
“, a specimen of oral fluid for a Rapid Oral Fluid Test”.
- (2) Section 39E(4), after “analysis”—
Add
“, a specimen of oral fluid for a Rapid Oral Fluid Test”.
- (3) After section 39E(4)—
Add
“(5) To avoid doubt, this section does not apply to the taking of a specimen of blood from a person falling within section 39C(11A) or 39P(1).”.

14. Sections 39J to 39T added

- After section 39I—
Add

“39J. Driving motor vehicle without proper control under influence of 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 specified illicit 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 39K, 39KA, 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 (5) 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 (5), the period for which the person is to be disqualified—
 - (a) for a first conviction ~~for driving or attempting to drive, or being in charge of, a motor vehicle on any road while under the influence of—~~

- ~~(i) a specified illicit drug, is a period of not less than 5 years; and~~
- ~~(ii) any other drug, is a period of not less than 6 months; and~~
- (b) for a subsequent conviction, ~~for driving or attempting to drive, or being in charge of, a motor vehicle on any road while under the influence of—~~
- ~~(i) a specified illicit drug, is a period of not less than 10 years; and~~
- ~~(ii) any other drug, is a period of not less than 2 years.~~
- (4) A court or magistrate may, on convicting a person under subsection (1) ~~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,~~ in making an order that he or she be disqualified in accordance with subsection (3), order that the person be disqualified 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.
- (5) 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 ~~the relevant minimum period 5 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 subsequent conviction, for a period of not less than 10 years~~the relevant minimum period~~, or until the person has attended and completed the course at his or her own cost, whichever is the later.
- (6) For the purposes of subsection (2), a person to whom subsection (5) 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~~the relevant minimum period~~ 5 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 subsequent conviction, is a period of less than ~~the relevant minimum period~~ 10 years, or until the person has attended and completed the driving improvement course at his or her own cost, whichever is the later.
- (7) The court or magistrate may deal with the offence as a first offence, or the conviction of an offence as a first conviction (including for the purposes of subsection (4)(a)), 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 39K, 39KA, 39N(1) or 39R.
- (8) 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 specified illicit drug to such an extent as to be incapable of having proper control of the motor vehicle.
- (9) The court or magistrate may, in determining whether there was such a likelihood as is mentioned in subsection

(8), disregard any injury to the person and any damage to the motor vehicle.

(10) For the purposes of subsection (1), a person 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 if—

- (a) the person's ability to drive properly is for the time being impaired; and
- (b) the concentration of the specified illicit 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.

~~(11) The defence under subsection (12) applies if, after a laboratory test is carried out under section 390, no drug other than a lawfully obtained drug or a combination of such drugs is found present—~~

- ~~(a) if the test was carried out on a specimen of blood only, in the person's blood;~~
- ~~(b) if the test was carried out on a specimen of urine only, in the person's urine; or~~
- ~~(c) if the test was carried out on a specimen of blood and a specimen of urine, in neither the person's blood or urine.~~

(12) It is a defence for a person charged under subsection (1) to prove that—

- (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;
- (a) he or she did not know and could not reasonably have known that the lawfully obtained specified illicit 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

- (b) he or she consumed or used that drug or combination of those drugs in accordance with that advice.

(13) If on the trial of a person charged with an offence 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~~, the prosecution proves that the person drove or attempted to drive, or was in charge of, the motor vehicle on a road, and—

- (a) that a specified illicit drug was present in the person's blood or urine but not that he or she was under the influence of the drug to such an extent as to be incapable of having proper control of the motor vehicle, the person charged must be acquitted of the offence under subsection (1) but may ~~and~~ be found guilty of an offence under section 39K; or

- (b) that the person was under the influence of a drug, but not a specified illicit drug, to such an extent as to be incapable of having proper control of the motor vehicle, the person charged must be acquitted of the offence under subsection (1) but may be found guilty of an offence under section 39KA ~~first charge and be found guilty of driving or attempting to drive, or being in charge of, a motor vehicle on any road while he or she was under the influence of the other drug.~~

(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.

(14) In this section—

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

~~— (a) paragraph (a) of the definition of *lawfully obtained drug*—~~

~~— (i) subsection (13B), 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) paragraph (b) of that definition, any information written on such a label accompanying the drug; and~~

~~— (c) paragraph (c) of that definition, 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);

lawfully obtained drug (合法藥物) means—

- ~~(a) a drug that is prescribed for or supplied to an accused person by a healthcare professional;~~
- ~~(b) a 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 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;~~

relevant minimum period (最短停牌期), in relation to—

- ~~(a) a first conviction for driving or attempting to drive, or being in charge of, a motor vehicle on any road while under the influence of—~~
 - ~~(i) a specified illicit drug, means 5 years; and~~
 - ~~(ii) any other drug, means 6 months; and~~

- ~~(b) a subsequent conviction for driving or attempting to drive, or being in charge of, a motor vehicle on any road while under the influence of—~~
- ~~(i) a specified illicit drug, means 10 years; and~~
- ~~(ii) any other drug, means 2 years;~~

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).

39K. Driving motor vehicle with any concentration of specified illicit drug

- (1) A person who drives or attempts to drive, or is in charge of, a motor vehicle on any road while any concentration of a specified illicit drug is present in the person's blood or urine (whether or not any other drug is also so present) 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, 39KA, 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 2 years; and
 - (b) for a subsequent conviction, is 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 person is to be disqualified—
- (a) for a first 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; and
 - (b) for a subsequent conviction, for 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 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 2 years, or until ~~the person—he or she~~ has attended and completed ~~thea~~ 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 5 years, or until ~~the person—he or she~~ has attended and

completed ~~thea~~ 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, 39KA, 39N(1) or 39R.
- (7) It is a defence for a person charged under subsection (1) to prove that—
- (a) if only one specified illicit drug was present in his or her blood or urine, ~~the presence of~~ that drug; or
- (b) if more than one specified illicit drug was present in his or her blood or urine, ~~the presence of~~ every such drug,

~~was a specified illicit drug that was prescribed for or administered or supplied to the person by a healthcare professional as a result of ingestion or injection under section 26 of the Dangerous Drugs Ordinance (Cap. 134).~~

- (8) 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 any concentration of a specified illicit drug was present in his or her blood or urine.
- (9) The court or magistrate may, in determining whether there was such a likelihood as is mentioned in subsection (8), disregard any injury to the person and any damage to the motor vehicle.
- (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.

____(10) In this section—

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 () has the meaning given by section 39J(14);

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).

(11) In this section a reference to a conviction for an offence under subsection (1) includes a conviction pursuant to section 39J(13)(a).—

—**39KA. Driving motor vehicle without proper control under influence of drug other than a 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, 39KA, 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 under subsection (1) includes a conviction pursuant to section 39J(13)(b).

7 39L. Persons who may be required to undergo preliminary drug test

(1) A police officer may require a person referred to in subsection (2) to undergo one or more of the following—

- (a) a Drug Influence Recognition Observation;
- (b) an Impairment Test;
- (c) a Rapid Oral Fluid Test.

(2) A person who may be required to undergo a preliminary drug test under subsection (1) is any person whom the police officer has reasonable cause to suspect—

- (a) has been driving or attempting to drive, or has been in charge of, a motor vehicle on a road while any concentration of a specified illicit drug was present in his or her blood or urine or while under the influence of any drug; or

- (b) has been driving or attempting to drive, or has been in charge of, a motor vehicle on a road and has committed a traffic offence while the motor vehicle was in motion.
- (3) If an accident occurs owing to the presence of a motor vehicle on a road, a police officer may require a person, whom the police officer has reasonable cause to suspect was driving or attempting to drive, or was in charge of, the motor vehicle at the time of the accident, to undergo one or more preliminary drug tests.
- (4) A person is not obliged to undergo an Impairment Test under subsection (1) or (3) if—
 - (a) immediately before the requirement to undergo such a test is made, he or she, on being required by a police officer, had undergone a Drug Influence Recognition Observation; and
 - (b) the authorized police officer who carried out the Drug Influence Recognition Observation did not form an opinion that he or she was under the influence of a drug.
- (5) An authorized police officer may require a person referred to in subsection (2) or (3) to provide one or more specimens of oral fluid to carry out a Rapid Oral Fluid Test.
- (6) A police officer or an authorized police officer who makes a requirement under subsection (1), (3) or (5) must warn the person at the time of making the requirement that—
 - (a) a failure to provide the specimen or specimens he or she is required to provide may render him or her liable to prosecution;
 - (b) he or she may be required to undergo more than one of the preliminary drug tests referred to in subsection (1); and

- (c) a failure to undergo any of those tests he or she is required to undergo may render him or her liable to prosecution.
- (7) A Drug Influence Recognition Observation or a Rapid Oral Fluid Test may be carried out at or near the place where the requirement is made.
- (8) An Impairment Test must be carried out at a police station specified by the police officer who makes the requirement.
- (9) Evidence whether an accused person's ability to drive properly was impaired by the consumption or use of a drug may be given by the production of a document purporting to—
 - (a) be the opinion of the authorized police officer who carried out the Impairment Test as to whether the person's ability to drive properly was impaired; and
 - (b) be signed by the authorized police officer who carried out the Impairment Test.

39M. Drivers may be required to undergo Rapid Oral Fluid Test

- (1) A police officer may require a person who is driving or attempting to drive, or is in charge of, a motor vehicle on a road, to undergo a Rapid Oral Fluid Test to detect whether any specified illicit drug is present in his or her oral fluid.
- (2) An authorized police officer may require a person referred to in subsection (1) to provide one or more specimens of oral fluid to carry out a Rapid Oral Fluid Test.
- (3) An authorized police officer who makes a requirement under subsection (2) must warn the person at the time of making the requirement that a failure to provide the specimen or specimens he or she is required to provide may render him or her liable to prosecution.

- (4) A Rapid Oral Fluid Test may be carried out at or near the place where the requirement is made.

39N. Failure to undergo preliminary drug test

- (1) A person who, without reasonable excuse, fails to undergo an Impairment Test or to provide a specimen or specimens (if more than one is required) of oral fluid to carry out a Rapid Oral Fluid Test when required to do so under section 39L or 39M 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, 39KA or 39R, to a fine at level 4 and to imprisonment for 12 months.
- (2) Without limiting subsection (1), a person fails to provide any specimen of oral fluid unless the specimen—
- (a) is sufficient to enable the Rapid Oral Fluid Test to be carried out; and
 - (b) is provided in a way to enable the objective of the test to be satisfactorily achieved.
- (3) A person who, without reasonable excuse, fails to undergo a Drug Influence Recognition Observation when

- required to do so under section 39L commits an offence and is liable on conviction to a fine at level 1 and to imprisonment for 3 months.
- (4) 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 (5) or (6) 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.
- (5) Subject to subsection (6), the period for which the person is to be disqualified—
- (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.
- (6) If the court or magistrate has ordered the 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 5 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 subsequent conviction, for a period of not less than 10 years, or until the person has attended and completed the course at his or her own cost, whichever is the later.
- (7) For the purposes of subsection (4), a person to whom subsection (6) 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 5 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 subsequent conviction, is a period of less than 10 years, or until the person has attended and completed the driving improvement course at his or her own cost, whichever is the later.
- (8) 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~~, 39KA or 39R.
- (9) A police officer may arrest a person without a warrant if—
- (a) as a result of a Rapid Oral Fluid Test carried out on the person, the police officer has reasonable cause to suspect that any concentration of a specified illicit drug is present in his or her oral fluid;
 - (b) as a result of a Drug Influence Recognition Observation carried out on the person, the police officer has reasonable cause to suspect that he or she has committed an offence under section 39J(1), ~~or 39K(1)~~, or 39KA(1);
 - (c) as a result of an Impairment Test carried out on the person, the police officer has reasonable cause to suspect that he or she has committed an offence under section 39J(1), ~~or 39K(1)~~, or 39KA(1);
 - (d) he or she fails to undergo a Drug Influence Recognition Observation when required to do so under section 39L;
 - (e) he or she fails to undergo an Impairment Test when required to do so under section 39L; or
 - (f) he or she fails to provide a specimen or specimens of oral fluid to carry out a Rapid Oral Fluid Test when required to do so under section 39L or 39M.

(10) In this section—

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);

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).

390. Provision of specimen for drug analysis

- (1) A police officer may require a person to provide a specimen of blood or urine, or specimens both of blood and urine, for a laboratory test, if the results of the Rapid Oral Fluid Test carried out on the person indicate that any concentration of a specified illicit drug is present in his or her oral fluid.
- (2) An authorized police officer who has carried out an Impairment Test on a person may require the person to provide a specimen of blood or urine, or specimens both of blood and urine, for a laboratory test, if the police officer is of the opinion that the results of the Impairment Test indicate that his or her ability to drive properly is for the time being impaired.
- (3) A police officer may require a person on whom a preliminary drug test could not be carried out due to a medical reason or any other reasonable cause, to provide a specimen of blood or urine, or specimens both of blood and urine, for a laboratory test, if the police officer has reasonable cause to suspect that—
 - (a) any concentration of a specified illicit drug is present in his or her blood, urine or oral fluid; or
 - (b) he or she is under the influence of any drug.

- (4) A requirement to provide any specimen under subsection (1), (2) or (3) can only be made at a breath test centre, a police station or a hospital.
- (5) A police officer or an authorized police officer who makes a requirement under subsection (1), (2) or (3) must decide whether the specimen is to be of blood or urine or whether both blood and urine specimens are to be taken, but if a medical practitioner is of the opinion that for medical reasons a specimen of blood cannot or should not be taken, only a specimen of urine may be taken.
- (6) A specimen of blood under subsection (1), (2) or (3) may only be taken by a medical practitioner, a registered nurse or an enrolled nurse, specified by a police officer in each case.
- (7) A person must provide the specimen of urine within 1 hour of being required to provide it.
- (8) A police officer or an authorized police officer who makes a requirement under this section must warn the person at the time of requiring the specimen that a failure to provide it may render him or her liable to prosecution.
- (9) Subject to section 39P, a specimen of blood must not be taken from a person unless he or she consents to its being taken and it is so taken.
- (10) Evidence that a specimen of blood was taken from the accused person with his or her consent by a medical practitioner, a registered nurse or an enrolled nurse may be given by the production of a document certifying that fact and purporting to be signed by the medical practitioner, the registered nurse or the enrolled nurse.
- (11) Evidence that a specimen of urine was taken from the accused person by a police officer or a medical practitioner may be given by the production of a document certifying that fact and purporting to be signed by the police officer or the medical practitioner.

(12) In this section—

enrolled nurse (登記護士) has the meaning given by section 2(1) of the Nurses Registration Ordinance (Cap. 164);

registered nurse (註冊護士) has the meaning given by section 2(1) of the Nurses Registration Ordinance (Cap. 164).

39P. Specimens of blood from persons incapable of consenting

(1) A police officer may request a medical practitioner to take a specimen of blood from a person, if—

(a) he or she is a person the police officer is entitled to require—

(i) to undergo a preliminary drug test under section 39L(1) or (3); or

(ii) to provide a specimen of blood under section 39O(1), (2) or (3); and

(b) it appears to the police officer that—

(i) if it is a person referred to paragraph (a)(i), he or she may be incapable of undergoing a preliminary drug test ~~or~~ 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

(ii) the incapacity is attributable to medical reasons.

(2) It is lawful for a medical practitioner to whom a request is made under subsection (1), if the medical practitioner thinks fit—

(a) to take a specimen of blood from the person; and

(b) to provide the specimen to the police officer who made the request.

- (3) A specimen of blood may be taken pursuant to a request under subsection (1) only at a breath test centre, a police station or a hospital.
- (4) If a specimen of blood is taken pursuant to a request under this section, it must not be subjected to a laboratory test unless the person from whom it was taken—
 - (a) has been informed that it was taken;
 - (b) has been required by a police officer to give consent to the analysis of the specimen for the purpose of evidence in the relevant investigation; and
 - (c) has given that consent.
- (5) A police officer who makes a requirement referred to in subsection (4)(b) must warn the person at the time of making the requirement that a failure to give consent may render him or her liable to prosecution.
- (6) Evidence that a specimen of blood was taken from a person referred to in subsection (1) by a medical practitioner may be given by the production of a document certifying that fact and purporting to be signed by the medical practitioner.
- (7) Evidence that a specimen of blood taken from a person under this section was subjected to a laboratory test only after the person from whom it was taken was informed that it was taken and he or she consented to the laboratory test may be given by the production of a document certifying that fact and purporting to be signed by the police officer who made the requirement referred to in subsection (4)(b).

39Q. Evidence of analysis of specimens

- (1) A specimen of blood or urine taken under section 39O or 39P may also be used for a laboratory test for alcohol (in addition to a test for any drug) in connection with an alleged offence under section 39J, ~~or 39K~~ or 39KA.

- (2) Evidence of the concentration of a drug, or the concentration of a drug and the proportion of alcohol, in a specimen of blood or urine taken under section 39O or 39P may be given by the production of a document purporting to be a certificate under section 25 of the Evidence Ordinance (Cap. 8) as to the concentration of the drug, or the concentration of the drug and the proportion of alcohol, in the specimen of blood or urine identified in the certificate.
- (3) Evidence of the presence of a drug, or the presence of a drug and the proportion of alcohol, in a specimen of blood or urine taken under section 39O or 39P may be given by the production of a document purporting to be a certificate under section 25 of the Evidence Ordinance (Cap. 8) as to the presence of the drug, or the presence of the drug and the proportion of alcohol, in the specimen of blood or urine identified in the certificate.
- (4) Evidence of the concentration of a drug, or the concentration of a drug and the proportion of alcohol, in a specimen of blood or urine provided by the accused person is evidence that the concentration of the drug, or the concentration of the drug and the proportion of alcohol, in the blood or urine of the accused person at the time of the alleged offence was not less than that in the specimen.
- (5) Evidence of the presence of a drug, or the presence of a drug and the proportion of alcohol, in a specimen of blood or urine provided by the accused person is evidence of the presence of the drug, or the presence of the drug and the proportion of alcohol, in the blood or urine of the accused person at the time of the alleged offence.
- (6) If at the time a specimen of blood or urine was provided by an accused person under section 39O, he or she asked to be provided with a part of the specimen of blood or urine or a part of each specimen (if both blood and urine

specimens are provided by the accused person), evidence of the concentration of or the presence of a drug, or the concentration of or the presence of a drug and the proportion of alcohol, found in the specimen is not admissible on behalf of the prosecution unless—

- (a) the specimen in which the drug or the drug and alcohol was found is one of 2 parts into which the specimen provided by the accused person was divided at the time it was provided; and
 - (b) the other part was supplied to the accused person.
- (7) If an accused person from whom a specimen of blood was taken under section 39P, at the time he or she consented to its analysis, asked to be provided with a part of that specimen, evidence of the concentration of or the presence of a drug, or the concentration of or the presence of a drug and the proportion of alcohol, found in the specimen is not admissible on behalf of the prosecution unless—
- (a) the specimen in which the drug or the drug and alcohol was found is one of 2 parts into which the specimen taken from the accused person was divided at the time it was taken; and
 - (b) the other part was supplied to the accused person.

39R. Failure to provide specimen of blood or urine

- (1) A person who, without reasonable excuse, fails to provide a specimen of blood or urine when required to do so under section 39O or fails to give consent under section 39P(4)(b) 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, 39KA or 39N(1), to a fine at level 4 and to imprisonment for 12 months.
- (2) Without limiting subsection (1), a person fails to provide a specimen of blood or urine for analysis or laboratory test unless the specimen—
 - (a) is sufficient to enable the analysis or laboratory test to be carried out; and
 - (b) is provided in a way to enable the objective of the analysis or laboratory test to be satisfactorily achieved.
- (3) 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 (4) or (5) 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.
- (4) Subject to subsection (5), the period for which the person is to be disqualified—
 - (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.

- (5) If the court or magistrate has ordered the 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 5 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 subsequent conviction, for a period of not less than 10 years, or until the person has attended and completed the course at his or her own cost, whichever is the later.
- (6) For the purposes of subsection (3), a person to whom subsection (5) 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 5 years, or until he or she 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 10 years, or until he or she has attended and completed the driving improvement course at his or her own cost, whichever is the later.
- (7) 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, 39KA or 39N(1).
- (8) In this section—
- 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);
- 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).

39S. Tests to be included in Impairment Test, approval of instruments for preliminary drug tests, etc.

- (1) The Commissioner of Police may, by notice published in the Gazette, specify the tests to be carried out for the purpose of assisting a police officer to form an opinion as to whether or not a person's ability to drive properly is impaired by the consumption or use of drugs.
- (2) The Commissioner of Police may, by notice published in the Gazette, approve types of instruments as approved instruments for carrying out a Rapid Oral Fluid Test.
- (3) The Commissioner of Police may authorize in writing members of the police force as authorized police officers to carry out preliminary drug tests.
- (4) Only an instrument approved under subsection (2) may be used for carrying out a Rapid Oral Fluid Test, and more than one such instrument may be used when carrying out a Rapid Oral Fluid Test on a person.
- (5) Only an authorized police officer may carry out a preliminary drug test.

39T. Surrender of licence for 24 hours

- (1) A police officer may require a person to surrender his or her licence for driving to the Commissioner of Police for 24 hours if—
 - (a) the police officer has reasonable cause to suspect that the person has committed a relevant offence;
 - (b) the result of a breath analysis carried out under section 39C indicates that the proportion of alcohol

- in his or her breath has exceeded the prescribed limit;
- (c) the result of an Impairment Test carried out under section 39L indicates, in the opinion of the police officer who carried out the test, that his or her ability to drive properly is for the time being impaired; or
 - (d) the result of a Rapid Oral Fluid Test carried out under section 39L or 39M indicates the presence of any concentration of a specified illicit drug in his or her oral fluid.
- (2) In each case referred to in subsection (1), the period of 24 hours begins at the time the requirement is made.
 - (3) A person who, without reasonable excuse, fails to surrender his or her licence for driving when required to do so by a police officer commits an offence and is liable on—
 - (a) a first conviction to a fine of \$1,000; and
 - (b) a subsequent conviction to a fine at level 1.
 - (4) A person who has been required to surrender, or has surrendered, a licence for driving under subsection (1), must not drive or attempt to drive, or be in charge of, a motor vehicle of any class on any road during the 24-hour period for which the licence for driving was required to be surrendered, whether or not he or she holds any other licence for driving referred to in subsection (7).
 - (5) A person who contravenes subsection (4) commits an offence and is liable to a fine at level 3 and to imprisonment for 12 months.
 - (6) If a court or magistrate convicts a person of an offence under subsection (5), the court or magistrate must order that the person be disqualified—
 - (a) for a first conviction, for a period of not less than 12 months; and

- (b) for a subsequent conviction under that subsection, for a period of not less than 3 years,
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.

(7) In this section—

licence for driving (車牌) means—

- (a) a driving licence;
- (b) an international driving permit;
- (c) a domestic driving licence; or
- (d) a domestic driving permit;

relevant offence (相關罪行) means—

- (a) an offence under section 39B(6);
- (b) an offence under section 39C(15) (other than a failure to give consent under section 39C(11D)(b));
- (c) an offence under section 39N(1); or
- (d) an offence under section 39R(1) (other than a failure to give consent under section 39P(4)(b)).”.

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”.

15. Section 70 amended (Re-testing of drivers)

After section 70(4)—

Add

“(5) This section does not apply if the court or magistrate makes an order that a person be disqualified for life.”.

16. Section 72A amended (Power of court or magistrate to order persons to attend driving improvement courses)

(1) Section 72A(1A), after “39C”—

Add

“, 39J, 39K, 39KA, 39N(1), 39R”.

(2) Section 72A—

Repeal subsections (3), (3A) and (3B)

Substitute

“(3) A person who is ordered to attend and complete a driving improvement course under subsection (1) or (1A) must, at the person’s own cost, attend and complete that course in accordance with subsection (3A), (3B) or (3C) as may be applicable to the person.

(3A) The person must attend and complete the driving improvement course within 3 months beginning on the date the order is made to attend and complete it if the person—

(a) has not been ordered to serve a term of imprisonment or detention and is not the subject of a disqualification order; or

(b) has not been ordered to serve a term of imprisonment or detention, but is the subject of a disqualification order with a disqualification period of less than 3 months.

- (3B) The person must attend and complete the driving improvement course within the last 3 months of the disqualification period if the person—
- (a) has not been ordered to serve a term of imprisonment or detention, but is the subject of a disqualification order with a disqualification period of 3 months or more; or
 - (b) has been ordered to serve a term of imprisonment or detention and is also the subject of a disqualification order with a disqualification period that ends after a period of 3 months or more ~~after- beginning on~~ the date the person finishes serving that term.
- (3C) The person must attend and complete the driving improvement course within 3 months beginning on the date the person finishes serving the term of imprisonment or detention if the person—
- (a) has been ordered to serve a term of imprisonment or detention, but is not the subject of a disqualification order; or
 - (b) has been ordered to serve a term of imprisonment or detention and is also the subject of a disqualification order with a disqualification period that ends—
 - (i) before the person finishes serving that expiration of the term of imprisonment or detention the person is ordered to serve; or
 - (ii) within a period of less than 3 months beginning on the date the person finishes serving that term of expiration of that term.”.
- (3) Section 72A(4)—

Repeal

“comply with subsection (3) or (3A)”

Substitute

“attend and complete a driving improvement course within the compliance period”.

- (4) Section 72A(4)—

Repeal

“period of 3 months referred to in subsection (3), or the period specified in subsection (3B) for the purposes of subsection (3A),”

Substitute

“compliance period”.

- (5) Section 72A(9)—

Repeal

“or (3A)”.

- (6) Section 72A(9E), after “period”—

Add

“, or that period as extended under subsection (4), or, in relation to an order made under subsection (9A), the period specified in the order”.

- (7) Section 72A(11)—

Repeal the definition of *compliance period*

Substitute

“*compliance period* (遵從限期) means, in relation to a person who has been ordered under subsection (1) or (1A) to attend and complete a driving improvement course, the period specified in subsection (3A), (3B) or (3C) for attending and completing that course, as may be applicable to the person;”.

- (8) Section 72A(11), English text, definition of *Registrar*—

Repeal the full stop

Substitute a semicolon.

- (9) Section 72A(11)—

Add in alphabetical order

“*disqualification order* (停牌令) means an order made under 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;

disqualification period (停牌期) means, in relation to a disqualification order in which the court or magistrate has specified the period for which the convicted person is to be disqualified with reference to a fixed period and the completion of a driving improvement course, the fixed period;

term of imprisonment or detention (監禁或拘留刑期) means a period of deprivation of liberty a person is ordered to undergo or is undergoing—

- (a) on conviction for an offence for which a disqualification order is made; or
- (b) on conviction for any other offence.”.

(10) After section 72A(13)—

Add

“(14) The requirement in subsection (1A) to order a person to attend and complete a driving improvement course does not apply if the court or magistrate makes an order that the person be disqualified for life.”.

17. Section 117 amended (Application of Ordinance to private roads)

Section 117, after “39E”—

Add

“, 39J, 39K, 39KA, 39L, 39M, 39N, 39O, 39P, 39Q, 39R, 39T”.

18. Section 120 amended (Defence)

Section 120(1), after “39C”—

Add

“, 39J, 39K, 39KA, 39N, 39R”.

19. Schedule 1A substituted

Schedule 1A—

Repeal the Schedule

Substitute

“Schedule 1A

[ss. 2 & 39I]

Specified Illicit Drugs

1. Heroin or any metabolite derived from heroin
2. Ketamine
3. Methylamphetamine
4. Cannabis or any active ingredient of cannabis
5. Cocaine or any metabolite derived from cocaine
6. 3, 4-methylenedioxymethamphetamine (MDMA)”.

Part 3

Amendments to Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B)

20. Regulation 8 amended (Previous experience and driving record)

Regulation 8(3)—

Repeal

“section 36 or 39”

Substitute

“section 36, 36A, 39, 39A, 39B, 39C, 39J, 39K, 39KA, 39N(1) or 39R”.

21. Regulation 22 amended (Issue of driving instructors’ licences)

Regulation 22(2)(c)—

Repeal

“section 36 or 39”

Substitute

“section 36, 36A, 39, 39A, 39B, 39C, 39J, 39K, 39KA, 39N(1) or 39R”.

22. Regulation 22A amended (Application for driving instructors’ licences issued under regulation 22(4) and conditions of issue)

Regulation 22A(3)—

Repeal

“section 36 or 39”

Substitute

“section 36, 36A, 39, 39A, 39B, 39C, 39J, 39K, 39KA, 39N(1) or 39R”.

23. Regulation 23 (Renewal of driving instructors' licences)

Regulation 23(3)(b)—

Repeal

“section 36 or 39”

Substitute

“section 36, 36A, 39, 39A, 39B, 39C, 39J, 39K, 39KA, 39N(1) or 39R”.

24. Regulation 23A amended (Renewal of certain driving instructors' licences issued under regulation 22(4))

Regulation 23A(4)—

Repeal

“section 36 or 39”

Substitute

“section 36, 36A, 39, 39A, 39B, 39C, 39J, 39K, 39KA, 39N(1) or 39R”.

25. Regulation 28 amended (Cancellation of driving instructors' licences)

Regulation 28(1)(b)—

Repeal

“section 36 or 39”

Substitute

“section 36, 36A, 39, 39A, 39B, 39C, 39J, 39K, 39KA, 39N(1) or 39R”.

Part 4

Amendments to Road Traffic (Driving-offence Points) Ordinance (Cap. 375)

26. Schedule amended

- (1) The Schedule, item 4—

Repeal

“or drugs”.

- (2) The Schedule, item 4C, column 3, after “test”—

Add

“, or failing to give consent to laboratory test of a specimen of blood,”.

- (3) The Schedule, after item 4C—

Add

“4D	Section 39J(1)	Driving, attempting to drive or being in charge of a motor vehicle under the influence of a <u>specified illicit drug</u>	10
4E	Section 39K(1)	Driving, attempting to drive or being in charge of a motor vehicle while any concentration of a specified illicit drug is present in the blood or urine	10

<u>4EA</u>	<u>Section 39KA(1)</u>	<u>Driving, attempting to drive or being in charge of a motor vehicle under the influence of a drug other than a specified illicit drug</u>	<u>10</u>
4F	Section 39N(1)	Failing to undergo an Impairment Test or provide a specimen of oral fluid without reasonable excuse	10
4G	Section 39R(1)	Failing to provide a specimen of blood or urine for laboratory test, or failing to give consent to the analysis of a specimen of blood, without reasonable excuse	10".

Explanatory Memorandum

The main object of this Bill is to amend the Road Traffic Ordinance (Cap. 374) (*the Ordinance*) to create new offences for driving under the influence of a drug, and driving while any concentration of a specified illicit drug (which is a drug set out in Schedule 1A to the Ordinance) is present in the blood or urine. The Bill also contains amendments to—

- (a) provide for means to detect the presence of drugs in a person's body fluids and to test for impairment caused by drugs;
 - (b) specify procedures to obtain specimens of blood and urine for testing;
 - (c) increase the minimum disqualification periods for the offence of causing death by dangerous driving and to provide for disqualification for life;
 - (d) require the temporary surrender of driving licences in specified circumstances; and
 - (e) specify different periods for completing a driving improvement course under different circumstances.
2. Clause 1 sets out the short title and provides for commencement.
3. Clause 3 adds new definitions relating to drug-related driving offences, and the most significant are the definitions of drug, specified illicit drug (basically the drugs specified in existing Schedule 1A to the Ordinance) and preliminary drug test (that is, Drug Influence Recognition Observation, Impairment Test and Rapid Oral Fluid Test).
4. Clauses 4 and 5 consequentially amend sections 4 and 4A of the Ordinance to apply the new provisions on drug-related driving offences to trams and village vehicles.

5. Clause 6 amends section 36 of the Ordinance to increase the minimum disqualification periods for the offence of causing death by dangerous driving, to provide for life disqualification from driving or holding a driving licence and to substitute the expression “specified illicit drug” for references to a drug specified in Schedule 1A to the Ordinance.
6. Clauses 7 and 8 amend sections 36A and 37 of the Ordinance to substitute the expression “specified illicit drug” for references to a drug specified in Schedule 1A to the Ordinance.
7. Clause 9 amends section 39 of the Ordinance to remove the references to drugs as drug-related driving offences are dealt with in separate new provisions.
8. Clause 12 amends section 39C of the Ordinance to enable taking a specimen of blood, for a laboratory test for alcohol, from a driver who is unable to consent.
9. Clause 13 amends section 39E of the Ordinance (which deals with requiring a hospital patient to provide specimens for testing, after notifying the medical practitioner in charge) to extend it to a requirement to provide a specimen of oral fluid. It already applies to a requirement to provide a specimen of blood or urine, which could be to test for alcohol or drugs. Also, a new subsection is added to clarify that the section does not apply to taking a specimen of blood from a person who cannot consent, after a request to the medical practitioner.
10. Clause 14 adds the following new provisions on drug-related driving offences—
 - (a) section 39J, which creates the offence of driving under the influence of a drug to an extent that makes the person incapable of having proper control of the motor vehicle and provides penalties (including life disqualification for drivers under the influence of a specified illicit drug) and a defence based on the consumption or use of the drug

- according to advice from a healthcare professional or information on the label;
- (b) section 39K, which creates the offence of driving while any concentration of a specified illicit drug is present in the blood or urine and provides penalties and a defence based on the consumption or use of the drug in accordance with lawful use under section 26 of the Dangerous Drugs Ordinance (Cap. 134);
 - (c) section 39L, which empowers a police officer to require a driver to take a preliminary drug test, if there is reasonable cause to suspect that he or she—
 - (i) was driving after the consumption or use of drugs;
 - (ii) has committed a traffic offence; or
 - (iii) has been involved in an accident;
 - (d) section 39M, which empowers a police officer to require a driver to take a Rapid Oral Fluid Test, which is a test to detect whether a specified illicit drug is present in a person's oral fluid;
 - (e) section 39N, which makes the failure to undergo a preliminary drug test an offence and provides penalties;
 - (f) section 39O, which empowers a police officer to require a driver to provide a specimen of blood (with consent) or urine or a specimen of each, for a laboratory test for the presence of or concentration of drugs;
 - (g) section 39P, which enables taking a specimen of blood for drug analysis from a driver who is unable to consent;
 - (h) section 39Q, which provides that a specimen of blood or urine taken under section 39O or 39P may also be tested for alcohol in drug-related driving offences and also provides that evidence of the results of the analysis for drugs and alcohol can be given by a certificate;

- (i) section 39R, which makes the failure to give a specimen or to consent to taking a specimen or to testing it an offence, and provides penalties;
 - (j) section 39S, which empowers the Commissioner of Police to specify the constituent tests of an Impairment Test, to approve instruments for a Rapid Oral Fluid Test and to authorize police officers to carry out preliminary drug tests and stipulates that only an approved instrument can be used for a Rapid Oral Fluid Test and only an authorized police officer can carry out a preliminary drug test;
 - (k) section 39T, which requires a driver who contravenes certain requirements under the Ordinance to surrender a licence for driving (defined) for 24 hours, and makes it an offence to fail to surrender it or to drive a motor vehicle during the 24-hour period.
11. Clause 15 amends section 70 of the Ordinance, which provides for re-testing of drivers, to exclude from it persons who have been disqualified for life from driving or holding a driving licence.
 12. Clause 16 amends section 72A of the Ordinance to specify different periods for completing a driving improvement course to take into account that a driver who is ordered to complete such a course may also be ordered to serve a term of imprisonment or be undergoing a term of imprisonment. The section is also amended so that an order to attend and complete a driving improvement course need not be made if a person is disqualified for life from driving or holding a driving licence.
 13. Clause 17 amends section 117 of the Ordinance so that the newly created drug-related driving offences and new section 39T apply to private roads.
 14. Clause 18 amends section 120 of the Ordinance to add the newly created drug-related driving offences as offences that are not covered by the defence that the private road where the offence was

- committed was an area used for construction work or carrying on an industry.
15. Clause 19 replaces the existing Schedule 1A to the Ordinance, but the only substantive change is the addition of metabolites of heroin and cocaine and any active ingredient of cannabis to the list of specified illicit drugs.
 16. Clauses 20 to 25 amend the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B) to add serious traffic offences (including the newly created drug-related driving offences) to certain regulations so that convictions for those offences will be taken into account when considering the driving record of a person in connection with an application for a commercial vehicle driving licence and the issue, renewal or cancellation of a driving instructor's licence.
 17. Clause 26 amends the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) to add the newly created drug-related driving offences, and the new offence under section 39C(15), to the Schedule to that Ordinance, with 10 driving offence points for each offence.