

香港特別行政區政府
The Government of the Hong Kong Special Administrative Region

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運輸及房屋局
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Ms Evelyn Lee
Legislative Council Secretariat
Legal Service Division
Legislative Council Complex
1 Legislative Council Road
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Dear Ms Lee,

Road Traffic (Amendment) Bill 2011

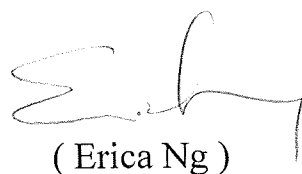
Thank you for your letter dated 7 November, in which you enquired about the policy intention regarding the penalties proposed for the offence of failure to undergo preliminary drug test without reasonable excuse (s.39N(1)).

We would like to point out that under the Road Traffic (Amendment) Bill 2011 ('the Bill'), a person who, without reasonable excuse, fails to undergo an Impairment Test or to provide specimens of oral fluid to carry out a Rapid Oral Fluid Test when required commits an offence. He is liable to a fine at Level 4 and to imprisonment for 3 years. The court or magistrate must order the person to be disqualified from driving for not less than 5 years on a first conviction, and not less than 10 years on a subsequent conviction; and to attend and complete a driving improvement course. The scale of penalties is the same as the offence of 'driving under the influence of a specified illicit drug'(DUISID), which is the most stringent among all drug

driving offences. The objective is to deter drug drivers, including those under the influence of a drug other than a specified illicit drug, from circumventing the penalties by refusing to undergo a drug test. Taking account of the seriousness of the refusal offence in terms of the consequences of the behaviour to other road users, we consider the proposed penalties sufficiently severe to have the deterrent effect.

We have proposed in the Bill that a court or magistrate may consider imposing life disqualification on a person convicted of the offences of dangerous driving causing death offence or driving under the influence of specified illicit drug (DUISID) having regard to two parameters. The parameters are not part of the minimum driving disqualification period set out in the relevant provisions that the court or magistrate must order. In the Bill, a subsequent conviction of the offence under s.39N(1) means a conviction subsequent to a first conviction of any major drug offences, which may or may not involve specified illicit drugs. We consider it appropriate to leave it to the court or magistrate to consider the appropriate penalties taking into consideration the circumstances of each case. If the court or magistrate finds a person refusing a drug test repeatedly and that if the court or magistrate thinks fit, he must order a driving disqualification period that he considers appropriate. Ten years is only the minimum disqualification period. Also, if the evidence suggests that the person concerned is in possession of a dangerous drug, and he has been found driving dangerously before he is stopped by the Police for a preliminary drug test and he refuses, in addition to the refusal offence, the person may also be charged with dangerous driving offence and possession of dangerous drug offence and subject to relevant penalties.

Yours sincerely,



(Erica Ng)

for Secretary for Transport and Housing