

立法會
Legislative Council

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Panel on Transport
Meeting on 28 January 2011

Background brief on Random Breath Test

Purpose

This paper provides background information on Random Breath Tests (RBTs) and summarizes the major concerns expressed by the Panel on Transport (the Panel) on the subject.

Background

Drink driving legislation

2. Drink driving legislation has been introduced since December 1995. Under section 39 of the Road Traffic Ordinance (Cap. 374), a person who drives with an alcohol concentration exceeding the prescribed limit commits the offence. The current prescribed limit is –

- (a) 50 milligrams of alcohol per 100 ml of blood; or
- (b) 22 micrograms of alcohol per 100 ml of breath; or
- (c) 67 milligrams of alcohol per 100 ml of urine.

The Police are empowered to require a person to provide a specimen of breath for the screening test if he is involved in a traffic accident, or commits a moving traffic offence or is suspected of drink driving.

Random Breath Test

3. The Road Traffic Legislation (Amendment) Ordinance 2008 empowers the Police to conduct a screening breath test on drivers without

the need for reasonable suspicion that they had consumed alcohol. In order to minimize inconvenience to the public, it was decided that a pre-screening test using a pre-screening device would be added into the procedure. The test is called RBT. The Police commenced conducting RBT when the legislation came into effect on 9 February 2009.

4. The pre-screening device for RBT can take as short as 10 seconds or so to complete, compared with the Screening Breath Test (SBT) process which normally takes about four minutes to complete. If a driver failed RBT¹, he is required to conduct SBT². Likewise, if a driver is showing obvious signs that the alcohol concentration in his body is likely to exceed the prescribed limit when he is stopped for RBT operation, he will be required to undergo a SBT right away.

Arrangements for Random Breath Test

5. In order to give the public confidence that the Police would exercise the power to conduct RBT in a responsible manner, the following measures were taken –

- (a) conduct of RBT would initially be restricted to traffic police officers already trained in handling drink-driving cases. Traffic officers would have the requisite knowledge and experience to conduct such checks whilst ensuring both their own and the public's safety;
- (b) RBT would not normally be targeted against vehicles in motion. For the safety of the officers concerned, and to ensure that the check could be carried out with the minimum of inconvenience to the driver and other motorists, RBT would normally be conducted during roadblock operations or as part of other traffic enforcement checks;
- (c) a quick and simple hand-held pre-screening device would

¹ The pre-screening device is set to indicate a "FAIL" at 20 micrograms of alcohol or more in 100 ml of breath.

² A driver is required to conduct a Screening Breath Test (SBT) if

- (a) the Police have reason to suspect that the driver has alcohol in his body or he has committed a traffic offence while the vehicle was in motion; or
- (b) he was involved in an accident; or
- (c) he fails to pass a RBT.

Refusal to provide a breath specimen without reasonable excuse is an offence.

be used to speed up RBT checking process and to avoid undue delay/inconvenience to motorists. If the pre-screening device indicated that a driver had consumed alcohol, the existing drink-driving devices would continue to form the basis for any prosecution;

- (d) RBTs conducted would be monitored for a trial period after introduction, to determine their success and gauge whether undue inconvenience has been caused to road users;
- (e) limitations on RBT checks by time or location would not be applied as this would defeat the "random" nature of the checks; and
- (f) no rank restrictions would be placed on the use of RBT power.

Results of Random Breath Test operations

6. As reported by the Administration in June 2009, between 9 February and 9 June 2009, the Police conducted 657 RBT operations involving 13 632 drivers, of whom 13 519 passed the test. As for the remaining 113 drivers, 81 failed RBT, 9 refused to conduct RBT and 23 appeared to have consumed alcohol. They were all required to conduct SBT but 2 refused. 111 drivers completed SBT and 65 of them failed the test. They were arrested and required to conduct the Evidential Breath Test³ (EBT). The 46 drivers who failed EBT and the two drivers who refused to conduct SBT had been / would be charged.

7. According to the Administration, there has been a significant drop in the number of drink driving cases and traffic accidents involving drink driving since the introduction of RBT. When compared with the same period in 2008, drink driving cases between February and May 2009 decreased by 37% (473 cases reduced to 300) and traffic accidents involving drink driving decreased by 65% (229 traffic accidents reduced to 80).

Major concerns expressed by the Panel on Transport on Random Breath Test

8. On 26 June 2009, the Panel discussed the results of RBT operations conducted by the Police to combat drink driving and the way

³ An EBT is a breath test conducted in police stations, hospitals or other designated breath test centres. Currently, if SBT shows a reading of 23 micrograms of alcohol or above in 100ml of breath, the Police will arrest the driver and take him to the nearest breath test centre for EBT.

forward. Panel members in general were satisfied that the RBT legislation and procedures had created a deterrent effect. Panel members asked whether enforcement statistics showed that drink driving was more common during festive seasons. The Administration advised that it was common during festive seasons and weekends. Territory-wide RBT operations were conducted during these periods while operations on a smaller scale were conducted on ordinary days. However, drink driving occurred more between midnight and 0500 hours, irrespective of whether it was festive season or not.

9. Panel members also expressed concern about the seriousness of drink driving among drivers of taxis and public light buses as gathered from the relevant enforcement figures. The Administration pointed out that no drink driving cases involving professional drivers on duty had been identified through RBTs. The Administration was nonetheless mindful that they were only conducting RBTs on a small portion of drivers and would continue to remind drivers, in particular professional drivers, not to drink before driving. The Administration considered that the RBT procedures had created a deterrent effect and RBT had caused little inconvenience to law-abiding members of the public.

10. Panel members, however, considered that to combat drink driving more effectively, there was a need to tighten the drink driving legislation by introducing heavier penalties to further deter drink driving offences. They expressed concern about the progress of the Administration in introducing the relevant legislative proposals to further combat drink driving. The Administration advised that the legislative proposals would be submitted to the Panel for consultation in July 2009.

Road Traffic (Amendment) Bill 2010

11. After consultation with the Panel, the Road Traffic (Amendment) Bill 2010 (the Amendment Bill) which sought to amend the Road Traffic Ordinance (Cap. 374) to introduce various measures to further deter drink driving offences and other inappropriate driving behaviour was introduced on 30 April 2010. Under the Bill, three-tier penalties for drink driving and the new offence of causing grievous bodily harm by dangerous driving were proposed to be introduced. The Bill was passed by LegCo on 8 December 2010.

12. The Road Traffic (Amendment) Ordinance 2010 (Amendment Ordinance) was gazetted on 17 December 2010 to substantially increase the penalties for drink driving and other serious traffic offences. The Amendment Ordinance came into operation on the same day. Details of

the measures in the Amendment Ordinance are listed in **Appendix I**.

Latest developments

13. The Administration has proposed to brief the Panel of its plan to enhance the implementation of RBT at the next meeting on 28 January 2011.

Relevant papers

14. A list of relevant papers is in **Appendix II**.

Council Business Division 1
Legislative Council Secretariat
24 January 2011

New measures under the Road Traffic Ordinance

Driving Offences	Maximum Fine (\$)	Maximum Imprisonment period	Minimum Driving Disqualification period		Driving-offence points to be incurred on conviction	Should attend mandatory driving improvement course
			First Conviction	Subsequent Conviction		
Drink driving offences						
1. Driving with alcohol concentration above prescribed limit						
Tier 1	25,000	3 years	(6 months)	(2 years)	10	Yes
Tier 2	25,000	3 years	(1 year)	(3 years)	10	Yes
Tier 3	25,000	3 years	(2 years)	(5 years)	10	Yes
2. Driving under the influence of drink or drugs to such an extent as to be incapable of having proper control of the motor vehicle	25,000	3 years	(2 years)	(5 years)	10	Yes
3. Failure to provide specimens of breath for screening breath tests without reasonable excuse	25,000	3 years	(2 years)	(5 years)	10	Yes
4. Failure to provide specimens of breath, blood or urine for analysis without reasonable excuse	25,000	3 years	(2 years)	(5 years)	10	Yes

Driving Offences	Maximum Fine (\$)	Maximum Imprisonment period	Minimum Driving Disqualification period		Driving-offence points to be incurred on conviction	Should attend mandatory driving improvement course
			First Conviction	Subsequent Conviction		
Dangerous Driving Offences						
5. Dangerous driving	25,000	3 years	6 months	2 years	10	Yes
6. Dangerous driving causing grievous bodily harm	(50,000)	(7 years)	(2 years)	(5 years)	(10)	(Yes)
7. Dangerous driving causing death	50,000	10 years	2 years	(5 years)	10	Yes

Note

1. The new penalties introduced under the Road Traffic (Amendment) Ordinance 2010 are in brackets.

2. If at the time of committing any dangerous driving offences (i.e. item 5, 6 or 7) ,
 - (a) the driver's alcohol concentration is tier 3, or
 - (b) any amount of heroin, ketamine, 'ice' cannabis, cocaine or MDMA is present in his body,
 the driver will be caught by the **aggravating circumstance** and subject to 50% higher penalties in terms of fine, imprisonment, and minimum disqualification period for the offence concerned.

3. Alcohol concentration under the 3-tier penalty system:
 - Tier 1: If it exceeds the prescribed limit (i.e. 22mcg / 50mg / 67mg of alcohol in 100ml of breath / blood / urine respectively) but is less than 35mcg / 80mg / 107mg of alcohol in 100ml of breath / blood / urine respectively.
 - Tier 2: If it exceeds tier 1 but is less than 66mcg / 150mg / 201mg of alcohol in 100ml of breath / blood / urine respectively.
 - Tier 3: If it exceeds tier 2.

Random Breath Test

List of relevant papers

Date of meeting	Committee	Minutes/Paper	LC Paper No.
29 June 2009	Panel on Transport	Administration's paper on the review of the results from random breath testing	CB(1)1982/08-09(06) http://www.legco.gov.hk/yr08-09/english/panels/tp/papers/tp0626cb1-1982-6-e.pdf
		Minutes of meeting	CB(1)52/09-10 http://www.legco.gov.hk/yr08-09/english/panels/tp/minutes/tp20090626.pdf
17 July 2009	Panel on Transport	Administration's paper on legislative proposals to combat drink driving	CB(1)2237/08-09(01) http://www.legco.gov.hk/yr08-09/english/panels/tp/papers/tp0717cb1-2237-1-e.pdf
		Paper on drink driving offences prepared by the Legislative Council Secretariat (Background brief)	CB(1)2238/08-09 http://www.legco.gov.hk/yr08-09/english/panels/tp/papers/tp0717cb1-2238-e.pdf
		Minutes of meeting	CB(1)200/09-10 http://www.legco.gov.hk/yr08-09/english/panels/tp/minutes/tp20090717.pdf