

**For discussion  
26 November 2010**

## **LEGISLATIVE COUNCIL PANEL ON TRANSPORT**

### **Legislative Proposals to Combat Drug Driving**

#### **Purpose**

This paper reports the feedback of the public consultation on the initial proposals to combat drug driving, and briefs Members on the Administration's proposed legislative plan to amend the Road Traffic Ordinance ('RTO'), Cap. 374 .

#### **Background and Initial Proposals**

2. According to the Police, there were 67 arrest cases involving drug driving during the period from January to October 2010. The arrest figures for 2008 and 2009 were only 4 and 11 respectively. The increasing trend in drug driving cases and the potential road safety hazards they pose have caused serious concerns in our community. To address this trend and to maximize deterrent effect, we proposed in our initial proposals put forward in July this year to make it an offence to drive with any amount of the commonly abused illegal drugs (namely heroin, ketamine, methylamphetamine ('ice'), cannabis, cocaine and MDMA ('ecstasy')) without having to test for influence/impairment (referred to as 'zero-tolerance offence').

3. Currently under section 39 of the RTO, there is already an offence for a person to drive a motor vehicle on any road under the influence of drugs to such an extent as to be incapable of having proper control of the motor vehicle (referred to as 'general drug driving offence'). "Drugs" under this section include both illegal and legal drugs. However, as there is no provision to require persons who are suspected to have contravened this section to provide blood or other body fluid specimens for laboratory drug analysis, a charge is difficult to prove. In order to provide the Police with the necessary powers to combat drug driving, we also proposed in July this year to empower the Police to require persons suspected to be under the influence of drug (both illegal and legal) to take preliminary drug tests, i.e. rapid oral fluid test and/or impairment test, and that if these persons fail in these preliminary tests, they would be required to provide blood and/or other body fluid specimens for laboratory analysis to ascertain the presence of drugs.

## Consultation Feedback

4. On 23 July 2010, the Administration consulted the Transport Panel on the above initial proposals. A public consultation was also launched and an opinion survey conducted on the initial proposals during the past few months. A total of 70 written submissions were received from various parties during the public consultation.

5. Respondents including Committees advising on traffic / road safety matters, anti-narcotics and rehabilitation organisations, motorist associations and medical and pharmaceutical professional bodies and transport trade all welcomed our efforts to combat drug driving and favoured the early implementation of measures, particularly for the 'zero-tolerance offence'. They support the specification of the six illicit drugs proposed for the purpose of the offence. The majority of them also support to retain the current 'general drug driving offence', and the proposal to provide the Police with necessary powers to plug the existing loophole such that the drug driving offences may be effectively enforced. Summary of the feedback received is at **Annex A**. The public opinion survey, also summarised at **Annex A**, reinforced these general findings. 99% of the respondents agree that driving after taking illicit drugs should be combated and 89% of the respondents supported the creation of a new 'zero-tolerance offence'. 90% supported the 'general drug driving offence', and 93% of the respondents supported that the enforcement authorities should be empowered to require persons suspected of drug driving to undertake preliminary test. There is overwhelming support for our proposals to combat drug driving.

6. Some respondents from the medical profession and transport trade while expressed in general support for the initiatives to combat drug driving, had raised certain concerns. Professional drivers' organisations were concerned about the administration of the impairment test, worrying that drivers might be caught inadvertently if they were not aware that the medicinal drugs they took might affect or impair driving. They suggested to put the 'general drug driving offence' on hold. Some doctors' organisations expressed concerns over the accuracy of the impairment test, as well as their onuses and liabilities in relation to the proposed statutory defence<sup>1</sup>. Some doctors' and pharmacists' organisations suggest that the Government should promote greater public awareness about the effects of drugs on driving through patient

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<sup>1</sup> This refers to the proposal that if a person does not know and could not reasonably have known the permissible non-prescription drug or the prescription drug, or the combination of those drugs, so found in his body would impair driving if consumed or used according to medical advice, this will be a statutory defence to the 'general drug driving offence'. It is proposed that 'medical advice' shall include the written or oral advice given to the person by a registered medical practitioner, a dentist or a pharmacist in relation to the drug or combination of drugs, and includes anything written on a label accompanying the drug.

information leaflets, adequate drug labeling standards and practices, as well as public education.

### **Progress and Major Issues**

7. We appreciate the support, as well as the concerns and suggestions raised by respondents. We have carefully considered the views collected and would take appropriate measures to address their concerns. Also, we have made progress regarding the exploration on/preparations for the preliminary tests in the last several months. We hope the community could act together to stamp out drug driving, contributing towards roads safety.

#### *The need for two offences*

8. We understand that some professional drivers are concerned that they may be assessed as impaired after taking medicinal drugs for treatment. Some of them suggested the current 'general drug driving offence' be removed from the RTO or that the enforcement of it be put on hold.

9. The 'general drug driving offence' deals with drug driving involving any kind of drug, including the following broad groups (i) drugs that are dangerous in nature (and hence are illegal if not obtained through legal means for medical treatment) and at the same time have wide medicinal use and hence not practicable to be covered by the 'zero-tolerance offence'. Examples are midazolam, or so-called 'blue gremlin' and triazolam which are the third most commonly abused dangerous drug and at the same time is a commonly prescribed drug to treat insomnia; (ii) legal drugs that are widely abused and hence could be impairing, such as cough medicine; and (iii) medicinal drugs.

10. Driving safely requires mental alertness, clear vision, physical coordination and the ability to react appropriately. Most medicinal drugs including those for treatment of chronic illness disease, such as diabetes, if taken in accordance with medical advice will not affect driving to the extent of being unable to properly control a vehicle for most patients. However, some medicinal drugs containing antihistamine (used for allergic diseases and alleviation of cold symptoms) may cause inability to concentrate and drowsiness. It is really important for motorists to find out what effects or side effects their prescription drugs or over the counter drugs might have on their ability to drive.

11. Both the ‘zero-tolerance offence’ and ‘general drug driving offence’ are critical and essential tools for effectively combating drug driving. If the suggestion of not enforcing the ‘general drug driving offence’ is adopted, there will be a loophole in the RTO: a police officer may not be able to put a person who is suspected to drive under an influence of say midazolam or triazolam off the road, resulting in serious safety hazards. While we appreciate the concerns of professional driver organisations, a person who drives when his driving ability is under influence of drug is risking his and others’ safety. It is already an offence under the current RTO for a person to drive under the influence of drugs to such an extent as to be incapable of having proper control of the motor vehicle. We think it is in the public interest to maintain and refine the existing offence to cover drugs that may affect or impair driving, be it legal or illegal drugs. This is the only effective way to deal with drug driving and is the approach adopted in overseas jurisdictions.

#### *Preliminary Tests – Impairment tests*

12. We suggested in our initial proposals that preliminary test such as the impairment test should be considered for introduction to enforce the ‘general drug driving offence’. There is concern that the threshold for assessing contravention of the offence would be set at a low level such that many motorists may be caught after taking medicinal drugs without any drug abuse.

13. As stressed above, a person who drives when his driving ability is influence or impaired is risking his and others’ safety. In relation to the concern on threshold, we would like to point out the following-

- (i) For the medicinal drugs, either prescribed by doctors or dispensed by pharmacists or sold over the counter that may influence or impair driving, the relevant side effects shall be explained to the patients by healthcare professionals or specified in the labels of the over the counter drugs;
- (ii) A suitable defence will be provided for persons who have taken medicinal drugs in accordance with ‘medical advice’. A statutory defence will be provided for a person who, having consulted medical advice, genuinely does not know and would not reasonably have known the medicinal drugs he takes would affect or impair driving. ‘Medical advice’ will cover written or oral advice given to the person concerned by a healthcare professional in relation to the drug or combination of drugs, and includes anything written on a label accompanying the drug;

- (iii) The impairment test is a scientific based, structured and systematic assessment for identifying the presence of impairment through drug. Driving is a complex divided attention task and an impairment test, which requires a person to divide their attention, is recognised globally as an appropriate test for the determination of impairment through drug;
- (iv) The impairment test is designed to screen out persons who are grossly impaired by drug to the extent of being incapable of properly controlling a vehicle. Most medicinal drugs including those for treatment of chronic illness disease, if taken in accordance with medical advice will not cause impairment to the extent of being unable to properly control a vehicle;
- (v) As a screening test, the impairment test has a high accuracy rate for positive cases. In the UK, in all cases which were assessed to be impaired by drug in roadside impairment tests, drug was confirmed to have been taken by the persons concerned in 94% of the cases<sup>2</sup>. The corresponding figure for Victoria, Australia is 95%<sup>3</sup>; and
- (vi) The preliminary tests including the impairment test will only be deployed to screen out the drivers who are suspected to drug drive and hence should be required to undergo the next step of testing, i.e. provision of blood and/or urine specimens for detailed drug testing. A charge may only be laid if the presence of drugs is confirmed by the detailed laboratory analysis that follows.

14. The impairment test (assessment procedures at **Annex B**) enables police officers to interact with the driver at close quarters, as a result of which they are able to observe the driver's manner and demeanour, their speech and appearance. Together with the police officer's prior observations of the individual's driving, the test provides additional evidence which helps the officer to assess whether the driver may be impaired due to drugs. To address drivers' concern, to ensure that the impairment test is administered objectively and effectively, the Police will consult overseas experts on impairment tests, and would consider adaptations which would be appropriate for the local context upon the advice of both overseas and local experts. It will also adopt a series of safeguards on the enforcement procedures. The Police will carry out a Drug

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<sup>2</sup> Monitoring the Effectiveness of UK Field Impairment Tests, Road Safety Research Report No. 63. published by London Department for Transport in 2006.

<sup>3</sup> According to the enforcement authorities of Victoria, Australia, drug was confirmed to have been taken by the persons concerned in 95% of all the cases which were assessed to be impaired by drug in the impairment test.

Influence Recognition Observation (DIRO)<sup>4</sup> that will normally take no longer than 5 minutes before forming an opinion whether the driver is under the influence of drugs and that an impairment test is required. This will increase the efficiency of the whole process and will ensure only the persons who are reasonably suspected to be drug driving to undergo the impairment test. The safeguards on the enforcement procedures comprise 6 elements as follows-

- (i) Police officers will only conduct impairment test when they have a reasonable cause to suspect that a person is influenced by drugs through the DIRO and rapid oral fluid test (ROFT) (if available);
- (ii) Only police officers who have been professionally trained to an internationally comparable standard and accredited ('Assessment Officers') may conduct the impairment tests. Assistance and advice will be solicited from overseas and local experts on training and recognition;
- (iii) All impairment tests will be performed in an indoor environment, such as police stations and will be videotaped;
- (iv) Different enforcement procedures will be handled by different officers, e.g. the police officer who performs the DIRO and impairment test would normally not be the same officer;
- (v) A set of detailed procedures and special instructions will be drawn up and provided in the police orders. Procedural forms will be devised ; and
- (vi) Advice from relevant local and overseas experts including the doctors and pharmacists will be sought by the Government with a view to continue ensuring overall implementation of all the drug driving initiatives, including enforcement and court procedures are objective and effective.

Professional training will be provided for police officers who are tasked to perform drug driving enforcement duties. The proposed preliminary drug driving enforcement procedures, which have drawn up with reference to overseas experience, are set out in **Annex C**.

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<sup>4</sup> The DIRO will be carried out on the roadside. The police officer will ask the driver some simple questions, and ask the driver to walk out of the vehicle. The police officer will observe the driver's reactions (e.g. whether he is able to respond in a normal way, or whether he needs to lean on the vehicle to support himself when standing out of the vehicle) to form a view whether the driver is under the influence of drugs.

### *Preliminary Tests – Rapid oral fluid tests (ROFT)*

15. The community would like us to implement the drug driving offences, particularly the proposed ‘zero-tolerance offence’ as early as possible. The ROFT is capable of detecting drugs at low levels, and would be an effective preliminary test for screening out the drivers who should be required to provide blood and/or urine specimens for further drug analysis. We reported in July that the ROFT began to be adopted by overseas enforcement authorities in recent years, and that such a device that could test ketamine at enforcement standards would need to be developed<sup>5</sup>. We undertook to explore whether such a device could be developed for our use.

16. The Police with the support of Government Laboratory has been actively searching for such a device. Some progress has been achieved in the past several months. Interested suppliers approached by the Police and Government Laboratory advise that such devices for testing five out of the six specified illicit drugs proposed for the purpose of the ‘zero-tolerance offence’, namely heroin, ‘ice’, cannabis, cocaine and ‘ecstasy’ are available, and being adopted in overseas jurisdictions for enforcement purposes. As regards testing device for the remaining proposed specified illicit drug, i.e. ketamine, the suppliers have developed prototypes of such devices and have conducted some preliminary tests on them. The Police and Government Laboratory are in the process of obtaining test data and other relevant information from the suppliers to enable them to ascertain the accuracy of the devices. The Government Laboratory will offer technical advice to Police in the evaluation of the devices with reference to requirements adopted in other countries. We will work towards the objective of having such a device fully tested and calibrated for enforcing the ‘zero-tolerance offence’ on six illicit drugs upon the enactment of the proposed legislative amendments.

### *Doctor’s Responsibility*

17. On some doctors’ organisations’ concern about doctors’ liability, it should be clarified that there is no statutory liability for health professionals in connection with drug driving offences under the current RTO. This situation will not change under the proposed legislative amendments.

18. On the question of responsibility, we understand that currently, under the Code of Professional Conduct for the Guidance of Registered Medical Practitioners issued by Medical Council of Hong Kong, and the Code of Professional Discipline for the Guidance of Dental Practitioners in Hong Kong issued by the Dental Council of Hong Kong, it is provided that doctors and

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<sup>5</sup> Ketamine, a common drug of abuse in Hong Kong, is not a common drug of abuse in the overseas jurisdictions which adopt the rapid oral fluid test.

dentists shall properly label all medicines they dispense, including the dosage to be administered and precautions where applicable. As affirmed by the Medical Council, it is a duty of doctors to advise their patients the side effects of drugs prescribed by them. We will remind the medical and pharmacy professions to provide advice on the possible effects of medicinal drugs on driving performance to their patients or consumers. Therefore, doctor's responsibility remains the same under the current situation and after the proposed legislative amendment. We understand that the organisations' concern is that the proposed statutory defence may be a nuisance to medical professionals, but experience drawn from Victoria, Australia is that such a defence serves to protect the drivers who genuinely do not know the impact of the medicinal drugs they take would adversely affect driving after due diligence, and that the defence works well without causing much "nuisance" to the parties concerned.

### *Promote Awareness / Public Education*

19. We fully agree to the views of some respondents on the importance of promoting the awareness of motorists of the possible effects of medicinal drugs on driving performance. We will work with the Road Safety Council to strengthen publicities over the adverse effects and grave consequences of driving after taking drugs of abuse. We will appeal to the public to follow the advice of healthcare professionals or any instructions on the medication packaging or drug label and ask healthcare professionals for advice if in doubt. We will, together with Department of Health, draw up a patient education plan through means such as patient information leaflets, to promote knowledge about the effects of medicinal drugs on driving performance.

### **Legislative Proposals**

20. We propose to amend the RTO to combat drug driving. The legislative proposals include introduction of the ROFT and the impairment test as preliminary screening and evidence gathering tools to help police officers establish prima facie cases for drug driving offences. The current 'general drug driving offence' (section 39 of RTO) should be retained. A new 'zero-tolerance offence' should be provided for to deter driving with the commonly abused illicit drugs, namely heroin, ketamine, 'ice', cannabis, cocaine and 'ecstasy'. Suitable defences should be provided for the offences. The penalties of the offences should be basically aligned with drink driving offences<sup>6</sup>. To reflect the community's concern over the 'zero-tolerance offence', the penalties for the 'zero-tolerance offence' are proposed to be

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<sup>6</sup> A person on conviction on indictment for the section 39 drug drive offence is liable to a fine of \$25,000 and to imprisonment for 3 years. Under the Road Traffic (Amendment Bill) 2010, it is proposed to increase the disqualification period from 3 months to 2 years on first conviction; and from 2 years to 5 years on subsequent convictions.



aligned with those for Tier 3 drink driving offence, and those for the ‘general drug driving offence’ to be aligned with those for Tier 1 drink driving offence. Details of the legislative proposals are set out in **Annex D**.

### **Legislative Timetable and Implementation**

21. We plan to commence with the drafting work for the proposed legislative amendments outlined in **Annex D** to combat drug driving immediately, with a view to introducing the bill into LegCo in the second half of the 2010-11 legislative session, i.e. second quarter of 2011. In the meantime, we will continue to engage different stakeholders including the medical and pharmaceutical professions and transport trades and will take their views into account when drawing up the standards and procedures concerning the preliminary tests.

### **Advice Sought**

22. Members are invited to provide views on the legislative proposals to combat drug driving and the proposed timetable as set out in this paper.

**Transport and Housing Bureau**  
**November 2010**

**Major Views on the Initial Proposals to Combat Drug Driving**

**I. A summary of findings of the opinion survey on proposals to combat drug driving**

<b>Proposal</b>	<b>Opinion</b>
<ul style="list-style-type: none"><li>• Combat driving after taking illicit drugs</li><li>• Prohibit driving with any concentration of commonly abused illicit drugs ('zero-tolerance offence')</li><li>• Combat driving under the influence of drugs to an extent as to be incapable of having proper control of the motor vehicle</li><li>• Introduce enforcement provisions to require suspected drivers to submit to preliminary tests and to provide body fluid specimens for analysis</li></ul>	<p>99% strongly agree or agree</p> <p>89% strongly agree or agree</p> <p>90% strongly agree or agree</p> <p>93% strongly agree or agree</p>

The opinion survey is conducted by the Government during the period from 14 to 19 October 2010. A total of 1,007 people aged 18 or above, who were selected by random, were successfully interviewed by telephone.

## II. A summary of views offered by various stakeholders and the Administration's responses

Consultation Parties	Major Views	Administration's responses
<b>Advisory Committees related to road safety</b>	<ul style="list-style-type: none"> <li>• Support the initial proposals in general.</li> <li>• Drug driving poses serious road safety hazards. The Administration should be sensitive to the impact of the proposals on professional drivers, and help allay their concern about being caught by the 'general drug driving offence'.</li> <li>• The penalties for the 'zero-tolerance offence' and 'general drug driving offence' should be different because the former involves commonly abused illicit drugs.</li> </ul>	<ul style="list-style-type: none"> <li>• Noted.</li> <li>• Suitable defence will be provided for the 'general drug driving offence'. Safeguards and checks and balances will be provided for in the enforcement procedures. We will remind the medical and pharmaceutical professions to provide advice on possible effects of drugs to their patients.</li> <li>• Higher penalties for the 'zero-tolerance offence', and lower penalties for the 'general drug driving offence' are proposed.</li> </ul>
<b>Medical Council, Dental Council, Pharmacy and Poisons Board, and Doctors' and Pharmacists' organisations</b>	<ul style="list-style-type: none"> <li>• Most organisations consider the lists of drugs proposed under zero-tolerance control appropriate, and strongly support the proposed 'zero-tolerance offence'.</li> <li>• A doctors' organisation fully supports the Government's determined move to combat drug driving and agrees to provide all possible assistance. It also supports the adoption of zero tolerance principle and the police to conduct preliminary testing on suspected cases.</li> </ul>	<ul style="list-style-type: none"> <li>• Noted.</li> <li>• Noted.</li> </ul>

Consultation Parties	Major Views	Administration's responses
<p><b>Medical Council, Dental Council, Pharmacy and Poisons Board, and Doctors' and Pharmacists' organizations (Cont'd)</b></p>	<ul style="list-style-type: none"> <li>• The Medical Council agrees that doctors shall have responsibility to give medical advice on effects of drugs to their patients. But some organisations expressed concern about the nuisance caused to the medical professionals and that doctors may be claimed for inadequately explaining to drivers the effects of drugs on driving performance.</li> <li>• An organisation expresses doubts over the sensitivity of the impairment test in detecting low level of drugs. It suggests directly requiring drivers to take oral fluid or blood specimens for testing without applying any preliminary or screening test, if a reliable rapid oral fluid testing device is not available.</li> <li>• Some doctors' and pharmacists' organisations suggest to standardize drug labeling system for the drugs that may cause drowsiness by providing a standard warning statement, to use generic name on drug label, and to develop a list of drugs that a cautionary statement is mandatory. Some suggest efforts to be made to raise the awareness of public and drivers on</li> </ul>	<ul style="list-style-type: none"> <li>• There is no statutory liability for health professionals under the current RTO. This situation will not change under the legislative proposals.</li> <li>• Directly requiring drivers to take blood specimens (which is an intrusive procedure) without any preliminary tests may not be acceptable to the community. The impairment test is widely adopted in many overseas countries for detecting impairment through drug. The positive prediction value of impairment tests in UK and Victoria are 94% and 95% respectively. It is an effective screening tool, which helps the Police establish a prima facie case that a driver is being impaired by drugs before requiring a driver to give blood and / urine specimens. It should be noted that a charge may only be laid if drug presence is confirmed in the blood or urine specimens analysed in laboratory.</li> <li>• Suitable drug labeling is already in place. The Pharmacy and Poisons Ordinance and Regulations section 27(c) and Regulation 15 stipulate that medicines containing antihistamine should not be sold unless they are labeled with the words "<i>Caution. This may cause drowsiness. If affected, do not drive or operate machinery</i>" in both English and Chinese. These drugs are mainly over-the-counter medicines</li> </ul>

Consultation Parties	Major Views	Administration's responses
<p><b>Medical Council, Dental Council, Pharmacy and Poisons Board, and Doctors' and Pharmacists' organizations (Cont'd)</b></p>	<p>the possible influence of medicinal drugs on driving.</p>	<p>and they could be purchased without the supervision of healthcare professionals. The labeling requirement ensures that the purchaser would be warned about the important effect of the medicines even if he/she purchase the drugs for self-medication.</p> <ul style="list-style-type: none"> <li>• Drugs other than antihistamines which are commonly known to cause drowsiness are prescription drugs to be dispensed by doctors, pharmacists and dentists. Whether the patients should drive after taking the drugs concerned requires professional judgment and advice in individual cases. Moreover, there are individual variations to the effects of different medications. Healthcare professionals should advise the individual patients about the possible effect of a particular medicine in affecting driving according the patient's condition and drug history.</li> <li>• We will remind the medical and pharmacy professions to provide advice on the possible effects of medicinal drugs on driving performance to their patients/consumers. We will work with the Road Safety Council to strengthen publicities over the adverse effects and grave consequences of driving with abusive drugs; and appeal to the public to follow the advice of healthcare professionals and pay attention to the drug label about the effect of drugs on driving. We will also draw up a patient education plan through means such as patient information leaflets, to promote knowledge about the effects of medicinal drugs on driving performance.</li> </ul>

Consultation Parties	Major Views	Administration's responses
<p><b>Transport trades' organisations</b></p>	<ul style="list-style-type: none"> <li>• Support efforts to tackle driving after taking illicit drugs and the 'zero-tolerance' offence. Suggest heavier penalties for this offence, e.g. double the penalty over that of drink driving or life-time disqualification.</li>   <li>• Some transport operators are worried that the medicinal drugs they take may cause impairment to certain extent and hence become targets for impairment test or commit drug driving offence easily. There is concern on the enforcement on drug driving including the accuracy of impairment test, the likely procedures and the duration of testing required. They request the frontline police officers shall be adequately trained and there should be check and balance measures to guard against abuse of power by the Police.</li> </ul>	<ul style="list-style-type: none"> <li>• Noted. Higher penalties are proposed for the 'zero-tolerance offence', which will align with tier 3 drink driving. In addition, we have proposed under the Road Traffic (Amendment) Bill 2010 that if at the time of committing a dangerous driving offence, a person with any amount of the 6 specified illicit drugs, he will be caught by the aggravating circumstance and is subject to 50% more penalties in terms of fine, imprisonment and disqualification period.</li>   <li>First, it should be noted that most medicinal drugs including those for treatment of chronic illness disease, if taken in accordance with medical advice will not affect driving to the extent of being unable to properly control a vehicle. The impairment test is designed to screen out persons who are grossly impaired by drug to the extent of being incapable of properly controlling a vehicle. Second, as a screening test, it has a high accuracy rate for positive cases. Third, the preliminary tests including the impairment test will only be deployed to screen out the drivers who are suspected to drug drive and hence should be required to undergo the next step of testing, i.e. provision of blood and/or urine specimens for detailed drug testing. A charge may only be laid if the presence of drugs is confirmed by the detailed drug analysis that follows. Fourth, a suitable defence will be provided for the persons who have taken medicinal drugs in accordance with medical advice.</li> </ul>

Consultation Parties	Major Views	Administration's responses
<b>Transport trades' organizations (Cont'd)</b>	<ul style="list-style-type: none"> <li>As there is exclusion provision for drink driving under the insurance policy, some operators are concerned that drug driving will not be covered and the insurance companies will seek indemnity from the operators for the accidents arising from drug driving caused by the drivers, resulting in huge financial burden to the operators. They opined that the drivers shall be held personally liable to civil and criminal liability of the drug driving offence.</li> <li>Suggest to proceed with zero-tolerance control on illicit drugs first, and leave the general drug driving offence to a later date until the list of drugs that adversely affect driving are duly identified, proper labeling of drugs that may impair driving are developed, and the police is properly trained and tested for drug recognition.</li> </ul>	<ul style="list-style-type: none"> <li>Further, to ensure that the impairment test is administered objectively and effectively, the Police will adopt a series of safeguards on the enforcement procedures.</li> <li>We appreciate the owners' concern about the insurance issue. We understand that if the vehicle owner can demonstrate that he has exercised due diligence to prevent such an accident, it is a factor that may be considered by the Court, in case of dispute.</li> <li>Although the 'zero-tolerance offence' will help combat driving with the 6 specified illicit drugs, it cannot deal with the abusive use of illicit drugs not on the specified list and medicinal drugs, which may also pose serious road safety hazards. It is necessary to maintain the existing offence as otherwise the Police may not prevent a driver suspected to have been impaired by drugs from driving and there will be a loophole in the legislation.</li> </ul>
<b>Anti-Narcotics / Rehabilitation Organisations</b>	<ul style="list-style-type: none"> <li>It is suggested to couple with preventive education and publicity on drug driving to the public.</li> </ul>	<ul style="list-style-type: none"> <li>The Administration will step up education and publicity on anti-drug driving including the production of TV and radio APIs, posters and leaflet through effective channels where appropriate.</li> </ul>

<b>Consultation Parties</b>	<b>Major Views</b>	<b>Administration's responses</b>
	<ul style="list-style-type: none"> <li>Sufficient training shall be provided to the frontline police officers for conducting impairment test; and treatment and rehabilitation services shall be provided to drivers prosecuted of drug driving offence.</li> </ul>	<ul style="list-style-type: none"> <li>Impairment test would only be conducted by trained police officers according to stipulated procedures and guidelines.</li> <li>For a drug abuser convicted of drug driving offence, apart from fine and imprisonment term, under the existing criminal justice system, the Court may consider other sentencing options as appropriate, including probation, compulsory treatment at drug addiction treatment centers, detention in training centers, etc.</li> </ul>
<b>Motorists' Organisations</b>	<ul style="list-style-type: none"> <li>Supports the initial proposals in general.</li> </ul>	<ul style="list-style-type: none"> <li>Noted.</li> </ul>



**Proposed General Enforcement Procedures  
To Enforce Drug Driving Offences**

1. A police officer will be empowered to require a person to conduct a preliminary drug test if :

- (a) the police officer has reasonable cause to suspect that the driver is under the influence of drug;
- (b) the driver is involved in a traffic accident; or
- (c) the driver commits a moving traffic offence.

2. If a person is under the influence of drug, he will display signs of impairments. For instances, the common signs for those who have taken ketamine and heroin will be nystagmus, hypersalivation, increased urinary output, insensitivity to pain, slurred speech and lack of coordination and for those who have taken 'ice' or MDMA, there will be increase in physical and emotional energy, visual disturbances, dilated pupils, dry mouth, sweating, muscle tension and involuntary jaw clenching. The police officer will look for these signs of drug influence.

3. The following procedures will apply:

**Drug Influence Recognition Observation (DIRO)**

- (a) If the driver shows signs that he is under the influence of drugs, a DIRO will be conducted. The DIRO will normally be carried out on the roadside. The police officer will observe the signs and reactions of the driver through interactions to assess whether the driver is under the influence of drug<sup>1</sup>. A DIRO will normally take about 5 minutes.

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<sup>1</sup> In a DIRO, the police officer will ask the driver some simple questions and perform some actions (such as telling his name, displaying his driving licence or walking out the vehicle).

- (b) If the police officer, after the DIRO, is of the opinion that the driver is not under the influence of or impaired by drug, he will release the driver unless other offences have surfaced, otherwise he will require the driver to perform a Rapid Oral Fluid Test (ROFT).

### Rapid Oral Fluid Test (ROFT)

- (c) The police officer will conduct a ROFT with the driver on the roadside or in the police officer Station<sup>2</sup> to test whether the driver has consumed the specified illicit drugs. The ROFT will take about 5 to 10 minutes. The police officer will inform the driver immediately of the test result.
- (d) If the ROFT indicates that the oral fluid of the driver contains any of the specified illicit drugs, the police officer will arrest the driver and the latter will be required to submit blood and/or urine specimens.
- (e) If the ROFT indicates that the driver has not taken any of the specified illicit drugs, the police officer will release the driver unless other offences had surfaced or he reasonably suspect, that the driver is under the influence of drugs that is other than those tested for by the ROFT, in such circumstances, he will then arrest the driver and conduct the Impairment Test (IT) in a Police Station.
- (f) There may be exceptional occasions when the driver shows no sign of impairment and therefore a DIRO would be superfluous. In case the police officer still has suspicion that the driver has consumed a zero tolerance drug, the driver may be required to go directly to a ROFT.
- (g) It is an offence for refusing to perform a ROFT.

### Impairment Test (IT)

- (h) An IT will only be performed in a Police Station by an authorized police officer who normally would not be the same police officer who conducted the DIRO. The process will be video-taped.

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<sup>2</sup> The ROFT is to be carried at or near to the location where the driver is stopped, or at a Police Station when the driver reports an accident at a Police Station.

- (i) An IT comprises various procedures including pupillary examination, horizontal gaze nystagmus, balance test, walk and turn test, one leg stand and finger to nose test. The process will take about 30 minutes. After an IT and together with the observations made in the DIRO, the police officer would be able to distinguish whether the driver is likely to be under the influence of one or a combination of the following drugs categories, namely: cannabis, opiates, central nervous system depressants, central nervous system stimulants, hallucinogens, inhalants, and dissociative anesthetics. For example, ketamine is usually classified under the category of dissociative anesthetics.
- (j) If the police officer, after the IT, is of the opinion that the driver is not under the influence of drug, he will release the driver unless other offences have surfaced, otherwise the driver will be requested to submit blood or/and urine specimens for laboratory analysis.
- (k) It is an offence for refusing to perform the IT.

#### Taking blood and/or urine specimen for analysis

- (l) If a driver who is required to provide blood or urine specimen requires medical attention, he will be sent to hospital for treatment. The medical practitioner attending to the driver may give his opinion whether the driver is physically fit to provide blood and/or urine. Otherwise, blood and urine specimens could be taken in a Police Station and that only approved medical practitioner, registered or enrolled nurse will take blood. The specimens will be divided into two portions, one of which will be handed to the driver and the other portion to the Government Laboratory for analysis.
- (m) It will be an offence for the driver refusing to provide blood and/or urine specimen.
- (n) Once the request to provide blood and/or urine specimens is made, the driving license of the driver shall be suspended for 24 hours. The driver shall surrender his license to the Police. The vehicle concerned will be dealt with according to existing procedures<sup>3</sup>.

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<sup>3</sup> The police officer will ascertain if the driver can arrange any person to drive away his car as soon as possible, or the police officer will arrange the vehicle to be taken to a Police Station temporarily.

**Operation Procedures for Assessing Drug Impairment**

There are five specific components in assessing drug impairment, namely:

1. Eye Examinations,
2. Modified Romberg Balance Test,
3. Walk and Turn Test,
4. One Leg Stand Test,
5. Finger to Nose Test.

**1. Eye Examinations**

The eye assessment consists of :

- (a) An examination of the driver's pupils to determine whether they are
  - (i) Constricted
  - (ii) Dilated
  - (iii) Normal
  - (iv) And to ascertain their reaction to light
  
- (b) Gaze Nystagmus Examination

The assessing officer observes and notes whether the subject's eyes track together, whether both pupils are equal in size, whether the subject's eyes are able to pursue the stimulus smoothly, or with an involuntary jerky motion.

**Observations**

Any drug that affects the nervous system or the brain can almost always produce an influence on the eye. Since proper function requires extremely good precision of very small nerves and muscles, even small dosages of drugs may affect the eye. The aim of the eye examination is to determine whether constriction, dilation or normality of the pupils, caused by drugs, is present. Drugs such as opiates are known to cause pupil constriction whereas

hallucinogens and stimulants are known to cause pupil dilation. A pupil size of between 3 and 6.5 mm in diameter is considered to be normal.

Gaze Nystagmus examination is used to determine :

- (a) whether nystagmus is visible in the left eye when the eye is held as far to the left as possible or in the right eye when the right eye is held as far to the right as possible (Nystagmus at maximum deviation)
- (b) whether, when each eye is observed separately, nystagmus is observable in the left eye before the left eye has moved beyond 45 degrees from the extreme left position, or in the right eye before the right eye has moved beyond 45 degrees from the extreme right position, (Angle of Onset) or
- (c) whether vertical nystagmus is present.

Horizontal Gaze Nystagmus will be seen on persons who are under the influence of :

- (a) Depressants, (i.e. Alcohol, GHB)
- (b) Inhalants (i.e. Nitrous Oxide) and
- (c) Dissociative Anaesthetics (i.e. Ketamine)

Vertical Gaze Nystagmus will also be seen in all of the above, predominantly in high doses but also Cannabis.

## **2. Modified Romberg Balance Test**

The Modified Romberg Balance Test is an indicator of a person's internal clock and body sway.

The subject is asked to stand up straight with their feet together and head tilted backwards. While in this position the subject is asked to estimate the passage of 30 seconds and when finished bring their head forward and say stop.

The test is comprised of two parts, the instructions stage and the performance stage. During the instructions stage the subject will be expected to stand in the

position demonstrated by the officer during that stage. This is also a key component of divided attention.

### Observations

Certain drugs taken will either speed up or slow down the body clock and some drugs will cause the subject to sway from side to side or back to front.

During the test the officer will observe such things as :

- (a) an ability to follow instructions
- (b) being able to stand still or steady
- (c) body and eyelid tremors (particularly prevalent in heavy Cannabis users)
- (d) the amount of time taken

An estimation of time between 25 and 35 seconds is considered to be normal for most people, however persons under the influence of a Stimulant, for example Cocaine, may estimate the passage of 30 seconds in as little as 10 seconds, whereas someone under the influence of an Opiate may well take well beyond 30 seconds and could be up to 90 seconds where the officer would terminate the test in any case.

### **3. Walk and Turn Test**

The Walk and Turn test requires the subject to stand with the heel of the right foot touching the toe of the left foot then walk nine steps along a straight line. They must turn in the prescribed manner, as demonstrated by the officer, and return nine steps.

The walk and turn test is a test that divides attention between balancing and information processing and is comprised of two stages, the instructions stage and the walking stage.

During the instruction stage, the person must stand with the right foot directly in front of the left foot. The heel of the right foot must touch the toe of the left foot and hands must be down by the side. The subject must stand in this position while the officer gives the instructions.

During the walking stage, the person must take nine heel to toe steps in a straight line, turning about then walking another nine steps. During this exercise the subject must count each step out loud.

Both stages are essential parts of the test and each can reveal important evidence.

### Observations

The walk and turn test is a validated test and there are eight major observations. The first two (Balance and starting too soon) are checked strictly during the instruction stage and can only be accumulated once. The next six observations are checked during the performance stage, and include :

- (a) Stops while walking
- (b) Steps off line
- (c) Takes wrong number of steps
- (d) Misses heel to toe
- (e) Uses arms to balance and
- (f) Turns improperly

Of all the tests, this is the test that will produce the most evidence of impairment. Experience has shown that those persons who are impaired will exhibit many of the observations mentioned above plus others and will consistently fail to count the steps out loud. Persons under the influence of stimulants tend to want to complete the test quickly thereby making mistakes, but those under the influence of drugs that depress the central nervous system will tend to complete the test more slowly but less accurately.

## **4. One Leg Stand Test**

This test requires the subject to stand on one leg, whilst the other leg is extended out in front about 6 – 8 inches (15 – 20 centimetres) off the ground. The divided attention part of the test requires the subject to be able to balance and count out loud and again is comprised of two stages, the instructions stage and the balance and counting stage.

During the instruction stage the person is required to stand up straight with their feet together and arms down by the sides.

During the balance and counting stage the person stands on one leg with the other leg held out straight for a period of 30 seconds. The subject however is not informed of the duration of the test and is required to continue counting until the officer instructs them to stop.

### Observations

There are four validated observations for this test that the officer may observe :

- (a) Noticeable swaying from side to side or back to front
- (b) Raising arms more than six inches to balance
- (c) Hopping
- (d) Dropping the raised foot

Other observations that have been noticed through experience is an inability to follow instructions, in that the subject is asked to count out loud in the following manner, one thousand and one, one thousand and two and so on until told to stop. Many subjects under the influence fail to count in the correct manner and this is particularly predominant in those under the influence of depressant drugs. Hopping and dropping the foot can be seen under most categories and provides a good indication of impairment.

## **5. Finger to Nose Test**

The finger to nose test is a test of co-ordination and depth perception. The test requires the subject to bring the tip of the index finger up to touch the tip of the nose, with their head tilted backwards and their eyes closed. This test differs from other test's as it is the only test where the officer must continue to give instructions to the subject throughout the test. The test comprises of two stages, the instructions stage and the command stage.

During the instructions stage the person is told to stand up straight with their feet together, while holding out their hands in front of them, with their hands closed and the index finger extended, palms side out.



During the command stage the person is told to touch the tip of their nose with the tip of their finger. The order of instructions from the officer begins with the left hand, thus:

Left, Right, Left, Right, Right, Left. The change of hands through the test ensure that the subject is listening to the officer and quite often an impaired person will not comply with the right, right, instruction.

### Observations

Persons who are impaired will sometimes miss the tip of their nose and fail to use the proper finger. Observations would include :

- (a) That the officer should note where the finger touches the nose or face.
- (b) Was the speed in which the hand was brought up fast or slow, this helps to assess the person's depth perception, for example. The subject is slow and appears to be fishing around to find their nose in space, or the person is very fast and pokes their face because they misjudge where there nose is.
- (c) Was the correct hand used.
- (d) Body sway.
- (e) Whether the subject followed instructions.

**Legislative Proposals to Amend RTO to combat Drug Driving**

New zero-tolerance offence

- (i) It will be an offence for a person to drive or attempt to drive or is in charge of motor vehicle on any road with any amount of a specified illicit drug, irrespective of whether the drug has any effect on the driver, i.e. zero-tolerance offence.
- (ii) The following six drugs, which are either narcotics or psychotropic substances, will be subject to the zero-tolerance:
  - (a) heroin
  - (b) ketamine
  - (c) methylamphetamine
  - (d) cannabis
  - (e) cocaine
  - (f) 3,4-methylenedioxymethamphetamine ('MDMA')

These six illicit drugs will be specified in a Schedule which will be updated from time to time as necessary. Amendment to the Schedule will be published by notice in the Gazette, and will not come into operation until after the time provided for the LegCo to debate the notice.

- (iii) It will be a defence for a person charged with the offence in (i) if the presence of specified illicit drug in the blood or other body fluid is a result of lawful use of the substance for medical treatment. This is to provide an avenue of defence for persons who have been administered with two of the above illicit drugs, namely ketamine and cocaine, albeit very limited<sup>1</sup>.
- (iv) A person who, commits any dangerous driving offence with any amount of a specified illicit drug present in his blood or urine will trigger the aggravating circumstance and is liable to higher penalties in terms of fine, imprisonment, and minimum disqualification period for the offence concerned (i.e. each to be increased by 50%)<sup>2</sup>.

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<sup>1</sup> Ketamine is an anesthetic medication used in human and for veterinary use. There are four products containing ketamine that are registered in Hong Kong. Cocaine is occasionally used as an anesthetic. There is one medical product containing cocaine that is registered in Hong Kong.

<sup>2</sup> This legislative proposal has been included in the Road Traffic (Amendment) Bill 2010.

### General drug driving offence

- (v) It will be an offence for a person to drive or attempt to drive or is in charge of a motor vehicle on road under the influence of any drug to such an extent as to be incapable of having proper control of the vehicle (this is the existing drug drive offence in section 39 of the Road Traffic Ordinance).
- (vi) The following defence will be provided for this offence – if the person does not know and could not reasonably have known the permissible non-prescription drug or the prescription drug, or the combination of those drugs, so found in his body would adversely affect driving if consumed or used in accordance with medical advice.
- (vii) For the purpose of the defence in (vi), medical advice means the written or oral advice given to the person concerned by a healthcare professional in relation to the drug or combination of drugs, and includes anything written on a label accompanying the drug.

### Preliminary test and laboratory analysis

- (viii) A police officer in uniform may require a driver to take preliminary tests (impairment test and/or rapid oral fluid test) if they have suspected the driver is under the influence of drugs; if the driver is involved in a traffic accident or has committed a moving traffic offence. The preliminary impairment test will only be carried out on drivers who do not need immediate medical attention.
- (ix) A police officer in uniform may require a person who is driving or attempting to drive, or is in charge of, a motor vehicle on a road for a rapid oral fluid test for the specified illicit drugs (i.e. random drug testing). This provision will only come into operation until it is published by notice in the Gazette, and after the time provided for the LegCo to debate the notice.
- (x) A police officer in uniform may require a person who ‘fails’ the preliminary tests (i.e. oral fluid test or impairment test) to provide blood or/and urine specimens for laboratory analysis with regard to the presence and amount of drugs for determination of prosecution.
- (xi) It will be an offence for drivers to refuse to perform the preliminary tests or to refuse to provide blood and/or urine specimens for laboratory analysis without reasonable excuses.

- (xii) In case consent to take blood and/or other body fluid specimens cannot be obtained because the person suspected of drug driving is unconscious or is under the influence to an extent that he is unable or incapable to give consent, the Police is empowered to take blood specimen (likely be part of the normal preliminary medical treatment) from such a person while he is unconscious/incapable. When the person is sober, the Police will seek consent from him to have the blood tested, which if refuses will be an offence. The same requirement should be applicable to suspected drink drivers.
- (xiii) A driver who ‘fails’ in the preliminary tests or refuses to provide blood and/or urine specimens for laboratory analysis is required to surrender his driving licence to the Police for 24 hours as they are unfit for driving immediately.
- (xiv) The same requirement in (xiii) will apply to a driver who refuses to perform a screening breath test, or who fails in an evidential breath test for alcohol;

Proposed Penalties

- (xv) Proposed penalties for drug driving offences are given in the table below:

Drug Driving Offence	Maximum Fine	Maximum Imprisonment	Minimum Driving Disqualification	
			First Conviction	Subsequent Conviction
Drive with any amount of a specified illicit drug, irrespective of whether the drug has any effect on the driver ('zero-tolerance offence')	\$25,000	3 years	2 years	5 years
Drive under the influence of drugs to such an extent as to be incapable of having proper control of a motor vehicle ('general drug driving offence')	\$25,000	3 years	6 months	2 years

Refuse to perform the preliminary tests or/ provide blood and/or urine specimens for laboratory analysis	\$25,000	3 years	2 years	5 years
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The penalties proposed for the ‘zero-tolerance offence’ is aligned with the those for Tier 3 drink drive offence, and those for the ‘general drug driving offence’ is aligned with those for Tier 1 drink drive offence.

- (xvi) In addition to the penalties above, a person convicted of the above drug driving offences will incur 10 Driving-offence Points and will be required to attend mandatory Driving Improvement Course.

Eligibility to drive commercial vehicles

- (xvii) A person who has a previous conviction record of any of the drug driving offences mentioned above shall not be eligible to apply for a full driving licence to drive commercial vehicles<sup>3</sup>, unless the date of committing the offence concerned is no less than five years from the date of application of the driving licence.

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<sup>3</sup> A commercial vehicle means a taxi, a public light bus or private light bus; a public bus or private bus; a medium goods vehicle; a heavy goods vehicle; or a special purpose vehicle.