

立法會
Legislative Council

LC Paper No. CB(3) 249/11-12

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Tel : 3919 3306

Date : 12 December 2011

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 14 December 2011

Road Traffic (Amendment) Bill 2011

Committee stage amendments

Members were informed vide LC Paper No. CB(3) 227/11-12 issued on 8 December 2011 that the President had given permission for the Secretary for Transport and Housing to move her amendments to the above Bill at the Council meeting of 14 December 2011. Members are invited to note that the President has also given permission for the following Members, subject to the Bill receiving a Second Reading, to move their amendments to the Bill, as set out in **Appendices I and II**:

| <u>Mover</u> | <u>Appendix</u> |
|------------------|-----------------|
| Hon KAM Nai-wai | I |
| Hon Andrew CHENG | II |

2. As directed by the President, the amendments are attached for Members' consideration.

(Desmond LAM)
for Clerk to the Legislative Council

Encl.

Road Traffic (Amendment) Bill 2011

Committee Stage

Amendments to be moved by the Honourable KAM Nai-wai, M.H.

| <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|--|
| 14 | In the proposed section 39J(1)(a), by deleting “level 4” and substituting “level 5”. |
| 14 | In the proposed section 39J(1)(a), by deleting “3 years” and substituting “5 years”. |
| 14 | In the proposed section 39N(1)(a), by deleting “level 4” and substituting “level 5”. |
| 14 | In the proposed section 39N(1)(a), by deleting “3 years” and substituting “5 years”. |
| 14 | In the proposed section 39R(1)(a), by deleting “level 4” and substituting “level 5”. |
| 14 | In the proposed section 39R(1)(a), by deleting “3 years” and substituting “5 years”. |

Road Traffic (Amendment) Bill 2011

Committee Stage

Amendments to be moved by the Honourable Andrew CHENG Kar-foo

| <u>Clause</u> | <u>Amendment Proposed</u> |
|---------------|---|
| 4 | By adding “39KA,” after “39K,”. |
| 5 | By deleting subclause (1). |
| 5(2) | By deleting “39J (other than subsections (2), (3), (4), (5) and (6)), 39K (other than subsections (2), (3), (4) and (5)),” and substituting “39J (other than subsections (2), (3), (5) and (6)), 39K (other than subsections (2), (3), (4) and (5)), 39KA (other than subsections (2), (3), (4) and (5)),”. |
| 6(2) | By deleting everything after “ Repeal ” and substituting— “ “a period of not less than 5 years” Substitute “a disqualification period for life”. ”. |
| 6 | By deleting subclause (3). |
| 6 | By adding— “(4A) Section 36(2B)(a)— Repeal “; and” Substitute a full stop. ”. |
| 6 | By deleting subsection (5) and substituting— “(5) Section 36(2B)— Repeal paragraph (b).”. |
| 6(7) | By deleting everything after “ Repeal ” and substituting— “ “for a period of less than 5 years” Substitute “less than for a disqualification period for life”. ”. |
| 6 | By deleting subclause (9). |
| 6 | By adding— “(10) Section 36(10)— |

Repeal

“or 39A”

Substitute

“, 39A, 39J, 39K or 39KA”.”.

- 7
- (a) By renumbering the clause as clause 7(1).
 - (b) By adding—
 - “(2) Section 36A(16)—
Repeal
“or 39A”
Substitute
“, 39A, 39J, 39K or 39KA”.”.
- 8
- (a) By renumbering the clause as clause 8(1).
 - (b) By adding—
 - “(2) Section 37(9)—
Repeal
“or 39A”
Substitute
“, 39A, 39J, 39K or 39KA”.”.
- 14
- (a) In the proposed section 39J, in the heading, by deleting “**any**” and substituting “**specified illicit**”.
 - (b) In the proposed section 39J(1), by adding “specified illicit” after “influence of a”.
 - (c) In the proposed section 39J(1)(a), by deleting “level 4 and to imprisonment for 3 years” and substituting “level 5 and to imprisonment for 5 years”.
 - (d) In the proposed section 39J(1)(b)(iv), by adding “39KA,” after “39K,”.
 - (e) In the proposed section 39J(3), by deleting everything after “to be disqualified—” and substituting—
 - “(a) for a first conviction, is a period of not less than 5 years;
and
 - (b) for a subsequent conviction, is a period of disqualification for life.”.
 - (f) By deleting the proposed section 39J(4).
 - (g) In the proposed section 39J(5)(a), by deleting “not less than the relevant minimum period” and substituting “of not less than 5 years”.
 - (h) In the proposed section 39J(5)(a), by deleting “; and” and substituting a full stop.
 - (i) By deleting the proposed section 39J(5)(b).
 - (j) In the proposed section 39J(6)(a), by deleting “less than the

- relevant minimum period” and substituting “of less than 5 years”.
- (k) In the proposed section 39J(6)(b), by deleting “less than the relevant minimum period” and substituting “of less than a disqualification period for life”.
 - (l) In the proposed section 39J(7), by deleting everything after “a first conviction” and substituting “, 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.”.
 - (m) In the proposed section 39J(8), by adding “specified illicit” after “influence of a”.
 - (n) In the proposed section 39J(9), in the Chinese text, by deleting everything from “是否存在” to “有關” and substituting “上述的人是否如第(8)款所述當時不可能駕駛有關汽車時，可不理會該人所受的任何損傷及該”.
 - (o) In the proposed section 39J(10), by adding “specified illicit” after “influence of a”.
 - (p) In the proposed section 39J(10)(b), by deleting “drug or of the combination of drugs present in the person’s blood or urine” and substituting “specified illicit drug or of the combination of such drugs present in the person’s blood or urine and to which the charge relates”.
 - (q) By deleting the proposed section 39J(11).
 - (r) By adding before the proposed section 39J(12)(a)—
 - “(aa) the specified illicit drug or the combination of such drugs found in the person’s blood or urine and to which the charge relates was lawfully obtained;”.
 - (s) In the proposed section 39J(12)(a), by adding “specified illicit” after “the lawfully obtained”.
 - (t) In the proposed section 39J(12)(b), in the Chinese text, by deleting “藥物或該藥物” and substituting “指明毒品或指明毒品” .
 - (u) In the proposed section 39J(13), by deleting “under subsection (1) with driving or attempting to drive, or being in charge of, a motor vehicle on any road while under the influence of a specified illicit drug to such an extent as to be incapable of having proper control of the motor vehicle” and substituting “with an offence under subsection (1)”.
 - (v) In the proposed section 39J(13)(a), by deleting “and” and substituting “but may”.
 - (w) In the proposed section 39J(13)(b), by deleting everything after “acquitted of the” and substituting “offence under subsection (1) but may be found guilty of an offence under section

- 39KA.”.
- (x) In the proposed section 39J, by adding—
“(13A) On the trial of a person charged with an offence under subsection (1), the person charged may be acquitted of the offence under subsection (1) and be found guilty of one or more offences under section 37 or 38 and, to avoid doubt, subsection (12) does not apply to those offences.
(13B) For the purposes of subsection (12), a specified illicit drug is lawfully obtained if it is a specified illicit drug that is prescribed for or administered or supplied to an accused person by a healthcare professional.”.
- (y) In the proposed section 39J(14), in the definition of *advice*, by deleting everything after “that is referred to in” and substituting “subsection (13B), written or oral advice given to an accused person by the healthcare professional who prescribed, administered or supplied the drug;”.
- (z) In the proposed section 39J(14), in the definition of *healthcare professional*, by deleting paragraph (c).
- (za) In the proposed section 39J(14), in the definition of *healthcare professional*, in paragraph (e), by deleting “, (c)”.
- (zb) In the proposed section 39J(14), by deleting the definitions of *lawfully obtained drug* and *relevant minimum period*.
- (zc) In the proposed section 39K(1)(b)(iv), by adding “39KA,” after “39J,”.
- (zd) In the proposed section 39K(5)(a), in the English text, by deleting “he or she has attended and completed a” and substituting “the person has attended and completed the”.
- (ze) In the proposed section 39K(5)(b), in the English text, by deleting “he or she has attended and completed a” and substituting “the person has attended and completed the”.
- (zf) In the proposed section 39K(6), by adding “39KA,” after “39J,”.
- (zg) In the proposed section 39K(7), by deleting everything after “to prove that—” and substituting—
“(a) if only one specified illicit drug was present in his or her blood or urine, that drug; or
(b) if more than one specified illicit drug was present in his or her blood or urine, every such drug,
was a specified illicit drug that was prescribed for or administered or supplied to the person by a healthcare professional.”.
- (zh) In the proposed section 39K(8), in the Chinese text, by deleting everything after “以下情況，” and substituting “即視為未有掌

管汽車：在關鍵時間，按當時情況，只要該人的血液或尿液含有任何濃度的指明毒品，該人當時便不可能駕駛該汽車。”。

- (zi) In the proposed section 39K(9), in the Chinese text, by deleting everything from “是否存在” to “有關” and substituting “上述的人是否如第(8)款所述當時不可能駕駛有關汽車時，可不理會該人所受的任何損傷及該”。
- (zj) In the proposed section 39K, by adding—
 - “(9A) On the trial of a person charged with an offence under subsection (1), the person charged may be acquitted of the offence under subsection (1) and be found guilty of one or more offences under section 37 or 38 and, to avoid doubt, subsection (7) does not apply to those offences.”.
- (zk) In the proposed section 39K(10), in the Chinese text, in the definition of *first conviction*, by deleting the full stop and substituting a semicolon.
- (zl) In the proposed section 39K(10), by adding—
 - “*healthcare professional* (醫護專業人員) has the meaning given by section 39J(14);”.
- (zm) By adding—
 - “**39KA. Driving motor vehicle without proper control under influence of drug other than specified illicit drug**
 - (1) A person who drives or attempts to drive, or is in charge of, a motor vehicle on any road while he or she is under the influence of a drug other than a specified illicit drug (*non-specified drug*) to such an extent as to be incapable of having proper control of the motor vehicle commits an offence and is liable—
 - (a) on conviction on indictment, to a fine at level 4 and to imprisonment for 3 years; and
 - (b) on summary conviction—
 - (i) on a first offence under this subsection, to a fine at level 3 and to imprisonment for 6 months;
 - (ii) subsequent to a conviction on indictment under this subsection, to a fine at level 4 and to imprisonment for 12 months;
 - (iii) subsequent to a summary conviction under this subsection, to a fine at level 4 and to imprisonment for 12 months; or
 - (iv) subsequent to a conviction under section 39J, 39K, 39N(1) or 39R, to a fine at

level 4 and to imprisonment for 12 months.

- (2) If a court or magistrate convicts a person of an offence under subsection (1), the court or magistrate must order that the person be disqualified in accordance with subsection (3) or (4) unless the court or magistrate for special reasons orders that the person be disqualified for a shorter period or that the person not be disqualified.
- (3) Subject to subsection (4), the period for which the person is to be disqualified—
 - (a) for a first conviction, is a period of not less than 6 months; and
 - (b) for a subsequent conviction, is a period of not less than 2 years.
- (4) If the court or magistrate has ordered a person to attend and complete a driving improvement course under section 72A(1A), the person is to be disqualified—
 - (a) for a first conviction, for a period of not less than 6 months, or until the person has attended and completed the course at his or her own cost, whichever is the later; and
 - (b) for a subsequent conviction, for a period of not less than 2 years, or until the person has attended and completed the course at his or her own cost, whichever is the later.
- (5) For the purposes of subsection (2), a person to whom subsection (4) applies is disqualified for a shorter period if the period for which he or she is disqualified—
 - (a) for a first conviction, is a period of less than 6 months, or until the person has attended and completed the driving improvement course at his or her own cost, whichever is the later; and
 - (b) for a subsequent conviction, is a period of less than 2 years, or until the person has attended and completed the driving improvement course at his or her own cost, whichever is the later.
- (6) The court or magistrate may deal with the offence as a first offence, or the conviction of an offence as a first conviction, if, as at the date on which the

offence was committed, at least 5 years have passed since the person's last conviction under subsection (1) or section 39J, 39K, 39N(1) or 39R.

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

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

(13) In this section—

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

- (a) subsection (12)(a)—
 - (i) written or oral advice given to an accused person by the healthcare professional who prescribed, administered or supplied the drug; and
 - (ii) information written on a label, as defined by section 2(1) of the Pharmacy and Poisons Ordinance (Cap. 138), accompanying the prescribed or supplied drug;
- (b) subsection (12)(b), any information written on a label referred to in paragraph (a)(ii) accompanying the drug; and
- (c) subsection (12)(c), any information on the package insert, as defined by section 2(1) of

the Chinese Medicine Ordinance (Cap. 549),
supplied with the drug;

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

healthcare professional (醫護專業人員) means—

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

subsequent conviction (再次定罪) means—

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

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

- (zn) In the proposed section 39N(1)(a), by deleting “level 4 and to imprisonment for 3 years” and substituting “level 5 and to imprisonment for 5 years”.
- (zo) In the proposed section 39N(1)(b)(iv), by adding “, 39KA” after “39K”.
- (zp) In the proposed section 39N(2)(b), in the Chinese text, by deleting everything after “方式，” and substituting “使該測試得以令人滿意地達到其目的。”.
- (zq) In the proposed section 39N(5)(b), by deleting “not less than 10 years” and substituting “disqualification for life”.
- (zr) In the proposed section 39N(6)(a), by deleting “; and” and substituting a full stop.
- (zs) By deleting the proposed section 39N(6)(b).
- (zt) In the proposed section 39N(7)(b), by deleting “10 years” and

substituting “a disqualification period for life”.

- (zu) In the proposed section 39N(8), by adding “, 39KA” after “39K”.
- (zv) In the proposed section 39N(9)(b), by deleting “or 39K(1)” and substituting “, 39K(1) or 39KA(1)”.
- (zw) In the proposed section 39N(9)(c), by deleting “or 39K(1)” and substituting “, 39K(1) or 39KA(1)”.
- (zx) By deleting the proposed section 39P(1)(b)(i) and substituting—
 - “(i) if it is a person referred to in paragraph (a)(i), he or she may be incapable of undergoing a preliminary drug test and of giving a valid consent to the taking of a specimen of blood, and if it is a person referred to in paragraph (a)(ii), he or she may be incapable of giving a valid consent to the taking of a specimen of blood; and”.
- (zy) In the proposed section 39Q(1), by deleting “or 39K” and substituting “, 39K or 39KA”.
- (zz) In the proposed section 39R(1)(a), by deleting “level 4 and to imprisonment for 3 years” and substituting “level 5 and to imprisonment for 5 years”.
- (zza) In the proposed section 39R(1)(b)(iv), by adding “, 39KA” after “39K”.
- (zzb) In the proposed section 39R(2)(b), in the Chinese text, by deleting everything after “方式，” and substituting “使該分析或化驗得以令人滿意地達到其目的。”.
- (zzc) In the proposed section 39R(4)(b), by deleting “not less than 10 years” and substituting “disqualification for life”.
- (zzd) In the proposed section 39R(5)(a), by deleting “; and” and substituting a full stop.
- (zze) By deleting the proposed section 39R(5)(b).
- (zzf) In the proposed section 39R(6)(a), in the English text, by adding a comma after “5 years”.
- (zzg) In the proposed section 39R(6)(b), by deleting “10 years” and substituting “a disqualification period for life”.
- (zzh) In the proposed section 39R(7), by adding “, 39KA” after “39K”.

16(1) By adding “39KA,” after “39K,”.

16(9) In the proposed definition of *disqualification order*, by deleting everything after “order made under” and substituting “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), 55(2) or 69(1)(a) that a person be

disqualified;”.

17 By adding “39KA,” after “39K,”.

18 By adding “39KA,” after “39K,”.

20 By adding “39KA,” after “39K,”.

21 By adding “39KA,” after “39K,”.

22 By adding “39KA,” after “39K,”.

23 By adding “39KA,” after “39K,”.

24 By adding “39KA,” after “39K,”.

25 By adding “39KA,” after “39K,”.

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

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