

本署檔號 OUR REF: (9) in LM 4/11 in
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Wanchai
Hong Kong

18 January 2012

Mr. Kelvin Ka-yun LEE
Legal Service Division
Legislative Council Secretariat
11/F, Legislative Council Complex
Legislative Council Road, Central
HONG KONG

Dear Mr LEE,

Road Traffic (Impairment Test) Notice (the Notice)
(L.N. 1 of 2012)

The Impairment Test (IT) is one of the preliminary drug tests under the new section 39M(1)(b) of the Road Traffic Ordinance (Cap. 374) as amended by the Road Traffic (Amendment) Ordinance 2011 (24 of 2011). It provides a scientific and objective means for police officers to decide whether a person is required to provide blood or/and urine for laboratory drug analysis.

According to the new section 39T(1) of the Road Traffic Ordinance as amended, the Commissioner of Police may, by notice published in the Gazette, specify the tests to be carried out.

The Notice specifies five tests which may be included in an IT: (i) Eye Examinations; (ii) Modified Romberg Balance Test; (iii) Walk and Turn Test; (iv) One Leg Stand Test; and (v) Finger to Nose Test. To make the law sufficiently clear, the nature or purpose of the tests are also specified in the Notice so that the public will know what these tests are about. There will be a series of publicity activities prior to the commencement of the new law on matters of public concern including how and where an IT will be conducted.

These five tests as mentioned above are common components of IT adopted in different overseas jurisdictions although their practices may vary. In the UK, for example, IT is usually conducted by the roadside while IT in Hong Kong will be conducted in the controlled environment of an IT Suite in a police station with the whole procedure video recorded.

In Hong Kong, IT must be conducted by police officers who are properly trained and authorized for the purpose by the Commissioner of Police. The training provided to the officers is of a very high standard and delivered by UK experts. The training syllabus follows closely that in the UK with adaptations to comply with local laws and operational requirements. The officers have to pass a test at the end of the training before they would be considered for authorization to perform IT.

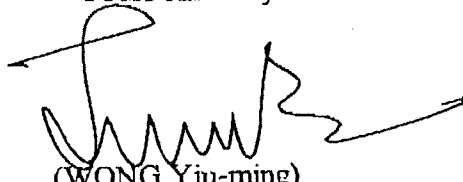
In order to facilitate authorized officers to form an objective opinion, IT will be conducted by using standardized procedural forms in a systematic manner with the whole process video recorded. The procedural forms and the video recording will form part of the evidence if the case is brought to court. Both a copy of the video recording and the procedural forms will be made available to the charged person to prepare his defence.

Modeling on the UK procedures, the procedures to be adopted in Hong Kong are designed with a view to minimizing the possibility of catching innocent drivers. With the high standard of training received by the officers, the robust operational procedures and the high threshold set for the test, IT would be an effective tool in combating drug driving.

In a study conducted by the Department for Transport in the UK in 2006, their Impairment Test had a very high positive predictive value of 94%.

Regarding future changes to the standards and practices in relation to the tests specified, if the changes do not affect the nature or purpose of the tests as specified in the Notice, no legislative amendment would be required to effect the changes. If the changes will result in a change in the purpose or nature of the test, the Commissioner of Police will, in accordance with new section 39T(1), effect the changes by a notice published in the Gazette and the notice will be subject to negative vetting by the Legislative Council. In any event, the public will be informed of such changes.

Yours sincerely



(WONG Yiu-ming)

for Commissioner of Police

c.c. Secretary for Transport & Housing (Attn: Mr K Y KWONG)
Secretary for Justice (Attn: Mr Peter SZE)