

**For information
on 18 July 2014**

Legislative Council Panel on Transport

Latest Progress of Combating Drink and Drug Driving

Purpose

This paper reports the latest progress of the Government's work in combating drink and drug driving.

Drink Driving

Legal requirements

2. Drink driving can bring about serious consequences not only to a motorist but also to all road users. To deter such inappropriate driving behaviour, the Government has over the years tightened up the control over, and raised the penalties of, drink driving by introducing legislative amendments to the Road Traffic Ordinance (Cap. 374).

3. Pursuant to section 39 and 39A of Cap. 374, it is an offence to drive, attempt to drive or be in charge of a motor vehicle under the influence of alcohol to such an extent as to be incapable of having proper control of the vehicle; or to drive, attempt to drive or be in charge of a motor vehicle with alcohol concentration above the prescribed limit¹. To further enhance the deterrent effect, the Government has introduced a 3-tier penalty system whereby the higher the alcohol concentration of a motorist over the prescribed limit, the longer the driving disqualification period will be.

¹ The prescribed limit of the proportion of alcohol under Cap. 374 is set as –

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

4. It is also an offence under section 39B and 39C of Cap. 374 for a motorist to fail to provide specimens of breath for screening breath tests without reasonable excuse; or fail to provide specimens of breath, blood or urine for analysis without reasonable excuse. Details of the drink driving offences and the related penalties are set out at **Annex A**.

5. In accordance with the law, the Police make use of various tests to collect specimens of breath, blood or urine from motorists under prescribed circumstances². The law also empowers the Police to conduct breath tests on motorists without the need for a suspicion (known as the Random Breath Test (“RBT”)). The administration of various tests for drink driving is outlined at **Annex B**.

Enforcement figures

6. With the introduction of RBT in 2009, there has been a significant drop in the number of drink driving related accidents from 680 to 234 (i.e. a drop of 66%) between 2008 and 2013. A similar trend was observed in the number of motorists arrested for drink driving which dropped from 1 495 to 953 (i.e. a drop of 36%) over the same period. Meanwhile, the Police will continue to step up their efforts in combating drink driving, as seen by a four-fold increase in the number of RBT operations conducted between 2009 and 2013 which led to a doubling in the number of motorists arrested in RBT operations during the same period (i.e. from 284 to 557). Detailed enforcement figures of drink driving from 2008 to 2013 are set out at **Annex C**.

² A police officer may demand a breath test from any motorist who –
(a) is involved in a traffic accident;
(b) has committed a moving traffic offence; or
(c) is suspected of drink driving.

There are circumstances under which a breath test cannot be taken, for example, when a motorist is seriously injured in a traffic accident or when a motorist refuses to provide breath specimen. In such case, the Police will require the motorist to provide blood / urine specimen for test.

Drug Driving

Legal requirements

7. The abuse of drugs significantly impairs the ability to drive a motor vehicle and cause road safety hazards. Noting the community's concern over the increasing trend in drug driving cases involving the use of illicit drugs, the Government has enhanced its efforts in combating drug driving by amending Cap. 374 to adopt a "zero tolerance" control over the six most commonly abused drugs.

8. Pursuant to section 39K of Cap 374, any person driving with any concentration of the six specified illicit drugs, i.e. heroin, cocaine, ketamine, methamphetamine, cannabis and MDMA³ present in his/her blood or urine, whether his/her driving ability is impaired or not, commits an offence. It is also an offence under section 39J and 39L of Cap. 374 for any person to drive under the influence of any drug (i.e. section 39J applies to the six specified illicit drugs while section 39L applies to any other drugs) to such an extent that the person is incapable of proper control of the motor vehicle.

9. It is further an offence under section 39O and 39S of Cap. 374 if a motorist fails to undergo preliminary drug tests without reasonable excuse; or fails to provide specimens of blood and/or urine for analysis without reasonable excuse. Details of the drug driving offences and the related penalties are set out at **Annex D**.

10. In accordance with the law, the Police may require a motorist to undergo one or more of the three preliminary drug tests under prescribed circumstances⁴. Section 39N(1)⁵ of Cap. 374 also empowers police officers to conduct the Rapid Oral Fluid Test ("ROFT") on a motorist without the need for a suspicion. The administration of various tests for

³ MDMA stands for 3,4-methylenedioxyamphetamine.

⁴ A police officer may require a motorist to undergo one or more of the three preliminary drug tests under the following circumstances –

- (a) there is reasonable cause to suspect that the motorist is involved in a traffic accident;
- (b) the motorist has committed a traffic offence; or
- (c) the motorist is suspected of driving under the influence of any drugs.

⁵ The relevant provision is not yet in operation as a suitable instrument for ROFT is still being identified.

drug driving is outlined at Annex E.

Enforcement figures

11. Since the introduction of “zero tolerance” control over illicit drugs to combat drug driving in March 2012, the Police have conducted a total of about 270 drug driving tests up to end 2013. The number of drug driving related traffic accidents dropped from 17 to 7 from 2012 to 2013. The number of persons arrested for drug driving offences also saw a decrease of 33% from 55 to 37 during the same period. Detailed enforcement figures of drug driving in 2012 and 2013 are set out at Annex F.

Publicity and Education

12. The Police and the Transport Department have been actively working together with the Road Safety Council (“RSC”) to enhance public awareness of drink and drug driving. Roadside banners and leaflets with anti-drink / anti-drug driving slogans are widely displayed and distributed to the public. Further, the RSC and the Police regularly launch anti-drink / anti-drug driving publicity campaigns, particularly during festive periods such as Halloween and Christmas.

13. In the coming year, the Police and RSC will continue the efforts to educate the public through a variety of publicity activities as follows –

- (a) publicising against drink and drug driving through leaflet distribution, Announcement of Public Interests on television, radio and the internet;
- (b) displaying flyover banners promoting anti-drink / anti-drug driving slogans;
- (c) using bus body advertisements to raise the awareness of motorists on the effects of drugs and alcohol on driving ability; and
- (d) stepping up publicity during festive periods.

Way Forward

14. The Police have all along accorded priority to combating drink and drug driving. Indeed, both items are included in the Commissioner's Operational Priorities⁶ for 2014. The Police will continue to regularly conduct territory-wide enforcement operations focusing on drink and drug driving offences to ensure road safety.

15. Despite the reduction in traffic accidents caused by drink and drug driving, the Police will continue to combat drink and drug driving through concerted efforts on publicity, education and law enforcement.

Advice Sought

16. Members are invited to note the contents of the paper.

Hong Kong Police Force
July 2014

⁶ The Commissioner's Operational Priorities set out the key operational areas to which the Police will accord priority during the year.

Penalties of Drink Driving Offences under Cap. 374

Drink Driving Offences under Cap. 374		Maximum Fine (\$)	Maximum Imprisonment period	Minimum Driving Disqualification period		Driving-offence points to be incurred on conviction	Attend mandatory driving improvement course
				First Conviction	Subsequent Conviction		
S 39	Driving, attempting to drive or being in charge of a motor vehicle under the influence of drink 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
S 39A	Driving, attempting to drive or being in charge of a motor vehicle 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
S 39B	Failure to provide specimens of breath for screening breath tests without reasonable excuse	25,000	3 years	2 years	5 years	10	Yes
S 39C	Failure to provide specimens of breath, blood or urine for analysis without reasonable excuse	25,000	3 years	2 years	5 years	10	Yes

Administration of Tests for Drink Driving

The Police have the power to demand a breath test from any driver who –

- (a) is involved in a traffic accident; or
- (b) has committed a moving traffic offence; or
- (c) is suspected of drink driving.

2 To further deter drink driving, the Police are also empowered under Cap. 374 to conduct breath tests on motorists without the need for a suspicion. This is usually referred to as “Random Breath Test” (“RBT”).

3. In an RBT operation, a motorist concerned will be required to go through a Pre-screening Breath Test¹, failing which he/she will be required to undergo a Screening Breath Test (“SBT”)². If the SBT results show that the alcohol level exceeds the prescribed limit, the motorist will then be asked to take an Evidential Breath Test (“EBT”)³. For cases mentioned in paragraph 1, the Police will require the driver to take an SBT. If the driver fails the SBT, he will be required to undergo an EBT.

4. With the introduction of the 3-tier penalty system, it is critical to shorten the time gap between an SBT and an EBT so that the alcohol level of a motorist will not be reduced over time. In this regard, all police stations in the five Land Regions have been equipped with an EBT

¹ A Pre-screening Breath Test is performed with the use of a simple hand-held device and can take as short as 10 seconds to complete. The device will show a reading as either “pass” or “fail”. It is introduced with a view to reducing delay and inconvenience to motorists during RBT operations.

² SBT is performed with a hand-held device and normally takes about four minutes to complete. An SBT device will show a reading of alcohol level in the breath specimen. If the SBT reading shows that the motorist’s alcohol level is higher than the prescribed limit, the Police will take the motorist to either a police station or mobile Breath Test Centre for further test.

³ EBT is performed using a more sophisticated device, the size of which is similar to a laptop. An EBT test takes about 10 minutes to complete. The motorist concerned will be asked to provide two specimens of breath for two separate analyses of alcohol level by the EBT device. The EBT device will take the lower reading out of the two analysis results as the final reading.

device since December 2013. A police vehicle has also been modified as a Mobile Breath Test Centre (“BTC”) to collect the evidential breath specimen from the drivers concerned at the roadside. With the availability of a mobile BTC, the time gap between taking an SBT and an EBT has been significantly reduced from an average of 40 minutes in a police station to around 10 minutes in a mobile BTC. The Police plans to increase the number of mobile BTC.

5. There are circumstances under which a breath test cannot be taken, for example, when a motorist is seriously injured in a traffic accident or when a motorist refuses to provide breath specimen. In such case, the Police will require the motorist to provide blood / urine specimen for test.

6. The results of EBT or the laboratory test of blood or urine will be used as evidence for prosecution of drink driving.

Annex C

Enforcement figures of drink driving between 2008 and 2013

	2008	2009	2010	2011	2012	2013
No. of traffic accidents involving drink driving	680	281	212	210	227	234
No. of persons arrested for drink driving offences	1 495	1 024	1 147	1 026	955	953
No. of RBT* operations conducted	-	39 926	105 160	134 127	136 638	167 627
No. of motorists arrested in RBT* operations	-	284	586	615	561	557

* RBT has been in operation since 9 February 2009.

Penalties of Drug Driving Offences under Cap. 374

Drug Driving Offences under Cap. 374	Maximum Fine (\$)	Maximum Imprisonment period	Minimum Driving Disqualification period		Driving-offence points to be incurred on conviction	Attend mandatory driving improvement course
			First Conviction	Subsequent Conviction		
S 39J Driving motor vehicle without proper control under influence of specified illicit drug	25,000	3 years	5 years	10 years	10	Yes
S 39K Driving motor vehicle with any concentration of specified illicit drug	25,000	3 years	2 years	5 years	10	Yes
S 39L Driving motor vehicle without proper control under influence of drug other than specified illicit drug	25,000	3 years	6 months	2 years	10	Yes
S 39O Failure to undergo preliminary drug test	25,000	3 years	5 years	10 years	10	Yes
S 39S Failure to provide specimen of blood or urine	25,000	3 years	5 years	10 years	10	Yes

Administration of Tests for Drug Driving

A police officer may require a motorist to undergo one or more of the three preliminary drug tests, namely Drug Influence Recognition Observation (“DIRO”)¹, Impairment Test (“IT”)², and Rapid Oral Fluid Test (“ROFT”)³, under the following circumstances –

- (a) there is reasonable cause to suspect that the motorist is involved in a traffic accident;
- (b) the motorist has committed a traffic offence; or
- (c) the motorist is suspected of driving under the influence of any drugs.

DIRO and IT

2. Should a motorist fail a DIRO and the police officer believes that the motorist is under the influence of drugs, the motorist will be required to undergo an IT at a specified Identification Parade Room in a police station. If the motorist further fails the IT/ROFT (see paragraph 3 below), he/she will be required to provide blood or urine specimen⁴ for

¹ DIRO is normally carried out on the roadside by trained traffic police officers. The police officer conducting the DIRO is to form an opinion if the motorist is under the influence of drugs. In a DIRO, the police officer will ask the motorist some simple questions and to perform some actions (such as telling his/her name, displaying his/her driving license or walking outside the vehicle). A DIRO will normally take about 5 minutes.

² The police officer conducting the IT is to form an opinion whether the motorist’s ability to drive has been impaired. IT comprises five tests, namely Eye Examination Test, Modified Romberg Balance Test, Walk and Turn Test, One Leg Stand Test and Finger to Nose Test. IT can only be performed at a police station by trained traffic police officers and takes about 30 minutes. The process is video-recorded.

³ ROFT is a short test whereby a motorist will be required to provide oral fluid specimens for testing of the presence of the specified illicit drugs. A ROFT will take about 5 to 10 minutes.

⁴ If one or more of the preliminary drug tests cannot be carried out for medical reasons, or if a police officer has reasonable cause to suspect that a motorist is under the influence of any drug, the motorist will be required to provide blood or urine specimens.

laboratory tests to determine the presence and amount of drugs in blood or urine.

ROFT

3. ROFT is a test to quickly screen the saliva of a motorist for any of the specified illicit drugs. Section 39N of Cap. 374 provides that ROFT is used as a preliminary drug test, but the provision will only become effective when a suitable and reliable ROFT device is identified.

4. The Police are actively looking for an accurate and reliable ROFT device. Prototypes of two ROFT instruments have been procured and reliability tests in both laboratory setting and clinical setting will be conducted. When a suitable device can be identified for use and subject to the result of the reliability tests, the Government will bring section 39N into operation.

5. Although the Police are empowered under section 39N(1) to conduct ROFT on a motorist without the need for a suspicion, the one-off use of the instrument and also the relatively high unit cost⁵ precludes its random use. As such, the Police will only conduct ROFT on motorists who are suspected to be driving under the influence of the specified illicit drugs. The Police will keep in view the cost of ROFT instruments and may consider expanding its use when its cost becomes lower in future.

6. The results of IT and the laboratory test on the blood or urine specimens will be used as evidence for prosecution of drug driving.

⁵ According to the preliminary assessment by the Police, the unit cost will range from about \$100 to \$400.

Annex F

Enforcement figures of drug driving between 2012 and 2013

	2012*	2013
No. of traffic accidents involving drug driving	17	7
No. of persons arrested for drug driving offences	55	37
No. of Drug Influence Recognition Observation conducted	105	117
No. of Impairment Test conducted	32	20

* The current drug driving regulatory regime has been in operation since 15 March 2012.