

LEGISLATIVE COUNCIL BRIEF

ROAD TRAFFIC (AMENDMENT) BILL 2000

MEASURES TO DEAL WITH RECKLESS DRIVING

INTRODUCTION

At the meeting of the Executive Council on 25 January 2000, the Council **ADVISED** and the Chief Executive **ORDERED** that the Road Traffic (Amendment) Bill 2000, at Annex A, should be introduced to the Legislative Council to improve the existing legislation in dealing with reckless driving.

BACKGROUND AND ARGUMENT

2. A spate of serious traffic accidents involving fatalities has led to public outcry against perceived inadequacies in the Road Traffic Ordinance (RTO) (Cap.374). In many cases, the defendants were only found guilty of the lesser offence of careless driving rather than the more serious offences of reckless driving or reckless driving causing death. As a result, the defendants were only fined a few thousand dollars. Members of the public felt that penalties imposed in these cases were unfairly low. There was also criticism that the sentences were not commensurate with the seriousness of the consequences (e.g. fatalities caused) of the driving behaviour.

3. A review was carried out to assess the effectiveness of the provisions in the RTO dealing with reckless and careless driving behaviour. The problems identified were set out in paragraphs 6 to 9 below.

Definitional Problem

4. The existing legislative provisions in respect of reckless driving causing death, reckless driving and careless driving are stipulated in sections 36, 37 and 38 of the RTO. What constitutes reckless driving is not defined in the RTO. The court has to refer to precedent cases. Based on case law, there are two elements that must be satisfied in the test of recklessness. Firstly, the defendant was driving the vehicle in such a manner which creates an obvious and serious risk. Secondly, in driving in that manner, the defendant did so without having given any thought to the possibility of there being any such risk

or, having recognized that there was some risk involved, had nevertheless gone on to take it.

5. The test of recklessness requires proof of the driver's subjective mental state (*mens rea*) which in practice is not easy to achieve. Prosecution will therefore recommend charges for reckless driving only when there are obvious facts to support the case (e.g. ignore road block and fail to follow police officer's instructions). In addition, the existing legislation has the following problems -

- (a) if the court acquits the defendant of reckless driving causing death or reckless driving, the only alternative verdict is careless driving. The latter offence is however restricted to a much lower penalty level;
- (b) some blatant driving behaviours (e.g. taking part in speed trials) that are not serious enough to bring in a conviction of "reckless driving" may not be attributed to carelessness, hence cannot be prosecuted under the charge of "careless driving"; and
- (c) the court does not have the discretion to hand down convictions in reference to other strict liability driving offences (e.g. failure to comply with traffic signals) which could have been causes to such accidents.

Level of Penalties

6. Existing penalties under Sections 36, 37 and 38 of the RTO, ranging from \$4,000 for careless driving to \$25,000 for reckless driving causing death, have not been revised since 1982. The average fine imposed over the past three years ranged from \$1,200 for careless driving to \$4,100 for reckless driving causing death. The average sentences are substantially below the maximum allowed in the RTO. Based on Police record, prison terms for reckless driving causing death and reckless driving were usually not more than four months. This is far below the maximum sentences for such offences which range from one to five years.

Driving Disqualification Arrangements

7. Disqualification from holding a driving licence for not less than two years or 18 months is provided under Sections 36 and 37 of the RTO only for a second and subsequent conviction of reckless driving causing death or

reckless driving respectively within five years. It is believed that the courts should be given the discretion to cancel the licence of a reckless driver on first conviction when the offence was committed with blatant disregard to the safety of other road users.

The Proposal

8. To improve the existing legislation in dealing with reckless and careless driving, it is proposed to -

- (a) instill more objectivity by replacing “reckless driving” with “dangerous driving”;
- (b) introduce alternative offences in addition to “careless driving” to allow the court to have the discretion in handing down convictions; and
- (c) increase the penalty level to strengthen the deterrent effect.

To replace “reckless driving” with “dangerous driving”

9. The high degree of mens rea required under the test of recklessness has led in many cases to charges and conviction of the less serious offence of careless driving with much lower penalties. This creates a situation in which the public expectations may deviate significantly from what is in the law.

10. To address the problem, the Administration has made reference to practices adopted by other countries in tackling the same problem. In 1991, the UK legislature replaced reckless driving with dangerous driving (see Annex B). The test for “dangerous driving” was made more objective by benchmarking the behaviour against the driving standard expected of a “competent and careful driver”.

11. The Department of Justice has reviewed various overseas definitions on dangerous driving and it is proposed to further refine the UK’s definition to instill more objectivity in establishing dangerous driving behaviour by requiring the courts to have regard to all relevant circumstances involved to determine what would constitute the standards expected of a “competent and careful driver”. The proposed definition of “dangerous driving” should also overcome the difficulty in proving mens rea for recklessness as provided under the current RTO by shifting the emphasis from the mental state of the driver to the actual driving behaviour. Since the

proposed definition substantially follows the UK model, this would facilitate the cross-referencing of precedent cases.

12. Similarly, it is proposed that “reckless driving causing death” would be replaced by “dangerous driving causing death”.

To introduce alternative offences in addition to “careless driving”

13. The current restriction to consider “careless driving”, which carries a much lower penalty level, as the only alternative offence to “reckless driving causing death” and “reckless driving” by the court has given rise to public concern on the perceived “gap” between the consequence caused and the sentences imposed.

14. To address this problem, it is proposed that a list of existing driving offences (see Annex C) should be introduced as alternatives to “dangerous driving causing death” and “dangerous driving” in addition to “careless driving” so as to give the court the discretion to make use of an appropriate alternative offence. The offences included in the list are all related to driving behaviours that are causes of serious accidents. Although some of the offences carry comparable penalty levels to “careless driving” on first conviction, heavier penalties could be imposed on second and subsequent convictions (see Annex D). Introducing the list of alternative offences would make the legislation more objective as the emphasis is on the actual driving behaviour involved. A similar approach is also adopted by the UK.

To increase the level of penalties

15. The levels of pecuniary fines would need to be updated to strengthen their deterrent effect. It is proposed that the level of fines should be set in accordance with the six levels provided under Schedule 8 of the Criminal Procedure Ordinance (Cap. 221) and the revised penalties will be in the range of \$5,000 to \$50,000.

To tighten the disqualification conditions

16. Disqualification is one of the most effective measures to deter bad driving behaviour. It is proposed that distinct provisions should be created to state clearly the court’s power to disqualify first time convicts of “dangerous driving”. It is also proposed that disqualification should be made mandatory for all convicts of “dangerous driving causing death” with the disqualification period for the second time convicts of “dangerous driving causing death” being

increased from no less than two years to no less than three years. This is to reflect the gravity of the second time conviction where further fatalities are involved.

THE BILL

17. The Bill contains two main provisions. Clause 2 of the Bill repeals the existing provisions on “causing death by reckless driving” and “reckless driving” and substitutes them with provisions on “causing death by dangerous driving” and “dangerous driving”. It also sets out what constitutes dangerous driving, the list of alternative offences that may be convicted, the penalty levels and the periods of disqualification on convictions of “causing death by dangerous driving” and “dangerous driving” respectively. Clause 3 of the Bill revises the level of fine imposed on persons convicted of “careless driving”.

LEGISLATIVE TIMETABLE

18. The legislative timetable will be -

Publication in the Gazette	3 February 2000
First Reading and commencement of Second Reading debate	16 February 2000
Resumption of Second Reading Debate, committee stage and Third Reading	to be notified

COMMENCEMENT

19. The Bill will take effect on 1 July 2000.

BINDING EFFECT OF THE LEGISLATION

20. The amendments in the Bill will not affect the current binding effect of the Road Traffic Ordinance (Cap. 374).

BASIC LAW IMPLICATIONS

21. The Department of Justice advises that the proposed legislative amendments are consistent with those provisions of the Basic Law carrying no human rights implication.

HUMAN RIGHTS IMPLICATIONS

22. The Department of Justice advises that the proposed legislative amendments are consistent with the human right provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

23. There are no financial and staffing implications.

ECONOMIC IMPLICATIONS

24. The proposed legislative amendments are more effective in deterring dangerous driving and will have economic benefits in terms of savings of human lives and reduction in the costs of traffic accidents.

PUBLIC CONSULTATION

25. The proposal to replace reckless driving with dangerous driving was put to the Transport Advisory Committee and the Legislative Council Panel on Transport in September and October 1999 respectively and received general support. The Road Safety Council also supported the proposal.

PUBLICITY

26. The Bill will be gazetted on 3 February 2000. A press release will be issued on 2 February 2000.

ENQUIRIES

27. Any enquiries can be directed to the following officer on the Transport Bureau -

Mr Brian Lo
Principal Assistant Secretary for Transport
(Telephone No. : 2189 2182)

Government Secretariat
Transport Bureau
2 February 2000

LEGISLATIVE COUNCIL BRIEF

The Secretary for Transport submits the following note for Members' information -

Title of the Note	Date of ExCo	Date of Gazette
Measures to Deal with Reckless Driving	25 January 2000	3 February 2000
Road Traffic (Amendment) Bill 2000		
2 February 2000		Transport Bureau

ROAD TRAFFIC (AMENDMENT) BILL 2000

List of Annexes

- Annex A - The Road Traffic (Amendment) Bill 2000
- Annex B - UK's Definition for Dangerous Driving as in the Road Traffic Act 1991
- Annex C - List of Alternative Offences
- Annex D - Penalties of Alternative Offences in comparison with Careless Driving

A BILL

To

Amend the Road Traffic Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Road Traffic (Amendment) Ordinance 2000.
- (2) This Ordinance shall come into operation on 1 July 2000.

2. Sections substituted

Sections 36 and 37 of the Road Traffic Ordinance (Cap. 374) are repealed and the following substituted -

“36. Causing death by dangerous driving

(1) A person who causes the death of another person by driving a motor vehicle on a road dangerously commits an offence and is liable -

- (a) on conviction on indictment to a fine at level 5 and to imprisonment for 5 years;
- (b) on summary conviction to a fine at level 4 and to imprisonment for 2 years.

(2) A person convicted of an offence under subsection (1) shall be disqualified -

- (a) for a period of not less than 2 years in the case of a first conviction; and
- (b) for a period of not less than 3 years in the case of a second or subsequent conviction,

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) The court or magistrate may deal with the offence as a first offence when a period of 5 years has elapsed since the person's last conviction of an offence under subsection (1).

(4) A person is to be regarded as driving dangerously within the meaning of subsection (1) if -

(a) the way he drives falls far below what would be expected of a competent and careful driver; and

(b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.

(5) A person is also to be regarded as driving dangerously within the meaning of subsection (1) if it would be obvious to a competent and careful driver that driving the motor vehicle concerned in its current state would be dangerous.

(6) For the purposes of subsections (4) and (5), "dangerous" refers to danger either of injury to any person or of serious damage to property.

(7) For the purposes of subsections (4) and (5), in determining what would be expected of, or obvious to, a competent and careful driver in a particular case, the court or magistrate shall have regard to all the circumstances of the case including -

(a) the nature, condition and use of the road concerned at the material time;

- (b) the amount of traffic which is actually at the material time or which might reasonably be expected to be on the road concerned at the material time; and
- (c) the circumstances of which the accused could be expected to be aware and any circumstances shown to have been within the knowledge of the accused.

(8) In determining for the purposes of subsection (5) the state of the motor vehicle, the court or magistrate may have regard to anything attached to or carried on or in it and to the manner in which it is attached or carried.

(9) If on the trial of any person charged with an offence under subsection (1) the prosecution proves that the person charged drove dangerously but not that he caused the death of another person by so driving, the person charged shall be acquitted of the offence under subsection (1) and be found guilty of an offence under section 37.

(10) On the trial of any 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 38, 39, 39A, 41 or 55 or regulation 11, 18, 31 or 38 of the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg.).

37. Dangerous driving

(1) A person who drives a motor vehicle on a road dangerously commits an offence and is liable -

(a) on conviction on indictment to a fine at level 4 and to imprisonment for 3 years;

(b) on summary conviction to a fine at level 3 and to imprisonment for 12 months.

(2) A person convicted of an offence under subsection (1) shall be disqualified -

(a) for a period of not less than 6 months in the case of a first conviction; and

(b) for a period of not less than 18 months in the case of a second or subsequent conviction,

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) The court or magistrate may deal with the offence as a first offence when a period of 5 years has elapsed since the person's last conviction of an offence under subsection (1).

(4) A person is to be regarded as driving dangerously within the meaning of subsection (1) if -

(a) the way he drives falls far below what would be expected of a competent and careful driver; and

(b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.

(5) A person is also to be regarded as driving dangerously within the meaning of subsection (1) if it would be obvious to a competent and careful driver that driving the motor vehicle concerned in its current state would be dangerous.

(6) For the purposes of subsections (4) and (5), “dangerous” refers to danger either of injury to any person or of serious damage to property.

(7) For the purposes of subsections (4) and (5), in determining what would be expected of, or obvious to, a competent and careful driver in a particular case, the court or magistrate shall have regard to all the circumstances of the case including -

- (a) the nature, condition and use of the road concerned at the material time;
- (b) the amount of traffic which is actually at the material time or which might reasonably be expected to be on the road concerned at the material time; and
- (c) the circumstances of which the accused could be expected to be aware and any circumstances shown to have been within the knowledge of the accused.

(8) In determining for the purposes of subsection (5) the state of the motor vehicle, the court or magistrate may have regard to anything attached to or carried on or in it and to the manner in which it is attached or carried.

(9) On the trial of any 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 38, 39, 39A, 41 or 55 or regulation 11, 18, 31 or 38 of the Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg.).”.

3. Careless driving

Section 38(1) is amended by repealing “of \$4,000” and substituting “at level 2”.

Explanatory Memorandum

The purpose of this Bill is to amend the Road Traffic Ordinance (Cap. 374) to -

- (a) abolish the existing offences of causing death by reckless driving and reckless driving and to replace them respectively by the proposed offences of causing death by dangerous driving and dangerous driving (clause 2);
- (b) impose higher pecuniary fines -
 - (i) a fine at level 5 (\$50,000) on conviction on indictment for causing death by dangerous driving and a fine at level 4 (\$25,000) on summary conviction for the same offence (proposed section 36(1) in clause 2);
 - (ii) a fine at level 4 (\$25,000) on conviction on indictment for dangerous driving and a fine at level 3 (\$10,000) on summary conviction for the same offence (proposed section 37(1) in clause 2);
- (c) impose a minimum disqualification period for first offenders -

- (i) of 2 years, if convicted of causing death by dangerous driving (proposed section 36(2)(a) in clause 2);
 - (ii) of 6 months, if convicted of dangerous driving (proposed section 37(2)(a) in clause 2);
- (d) increase the minimum disqualification period from 2 years to 3 years for a second or subsequent conviction for “causing death by dangerous driving” (proposed section 36(2)(b) in clause 2);
- (e) specify a wider range of alternative offences to the new offences (proposed sections 36(10) and 37(9) in clause 2); and
- (f) increase the pecuniary fine from \$4,000 to \$5,000 (level 2) on conviction for careless driving (clause 3).

**UK's Definition for Dangerous Driving
As in the Road Traffic Act 1991**

Causing death by dangerous driving

1. A person who causes the death of another person by driving a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence.

Dangerous driving

2. A person who drives a mechanically propelled vehicles dangerously on a road or other public place is guilty of an offence.

2A. (1) For the purposes of sections 1 and 2 above a person is to be regarded as driving dangerously if (and, subject to subsection (2) below, only if) ---

(a) the way he drives falls far below what would be expected of a competent and careful driver, and

(b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.

(2) A person is also to be regarded as driving dangerously for the purposes of sections 1 and 2 above if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.

(3) In subsections (1) and (2) above “dangerous” refers to danger either of injury to any person or of serious damage to property; and in determining for the purposes of those subsections what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be had not only to the circumstances of which the accused could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.

(4) In determining for the purposes of subsection (2) above the state of a vehicle, regard may be had to anything attached to or carried on or in it and to the manner in which it is attached or carried.

List of Alternative Offences

Where-

- (a) a person charged with an offence under a provision of this Ordinance specified in the first column of the Table below (where the general nature of the offences is also indicated) is found not guilty of that offence, but
- (b) the allegations in the information, charge or indictment about to or include an allegation of an offence under one or more of the provisions specifies in the corresponding entry in the second column, he may be convicted of that offence or of one or more of these offences.

Offence charged	Alternative
- Causing death by dangerous driving (s.36 of RTO)	- Dangerous driving (s.37 RTO) - Careless driving (s.38 RTO) - Driving a motor vehicle under the influence of drink or drugs (s.39 RTO) - Driving a vehicle with alcohol concentration above prescribed limit (s.39A RTO) - Driving in excess of speed limit (s.41 RTO) - Taking part in racing and speed trials (s.55 RTO) - Crossing double white lines (reg.11RT(TC)R) - Failure to comply with traffic signals (reg.18 RT(TC)R) - Failure to accord precedence to pedestrians at zebra crossings (reg.31 RT(TC)R) - Failure to comply with a school crossing patrol sign (reg.38 RT(TC)R)
- Dangerous driving (s.37 RTO)	- Careless driving (s.38 RTO) - Driving a motor vehicle under the influence of drink or drugs (s.39 RTO) - Driving a vehicle with alcohol concentration above prescribed limit (s.39A RTO) - Driving in excess of speed limit (s.41 RTO) - Taking part in racing and speed trials (s.55 RTO) - Crossing double white lines (reg.11 RT(TC)R) - Failure to comply with traffic signals (reg. 18 RT(TC)R) - Failure to accord precedence to pedestrians at zebra crossings (reg.31 RT(TC)R) - Failure to comply with a school crossing patrol sign (reg.38 RT(TC)R)

Penalties of Alternative Offences in comparison with Careless Driving

Road Traffic Ordinance (Cap. 374)				
Section	Offence	Imprisonment	Fines	DOP*
38	Careless driving	6 months	\$4,000	5
39	Driving a motor vehicle under the influence of drink or drugs	Indictment - 3 yrs. Summary - 6 months subsequently 1 yr.	\$25,000 \$10,000 subsequently \$25,000	10
39A	Driving a motor vehicle with alcohol concentration above prescribed limit	Indictment - 3 yrs. Summary - 6 months subsequently 1 yr.	\$25,000 \$10,000 subsequently \$25,000	10
41	Driving in excess of speed limit	--	\$4,000	3-8
55	Promoting/taking part in racing and speed trials	1 yr. (Disqualification - 1 yr.)	\$10,000	10
Road Traffic (Traffic Control) Regulations (Cap. 374 sub. leg. G)				
Reg.	Offence	Imprisonment	Fines	DOP*
11	Crossing double white lines	3 months subsequently 6 months	\$5,000 subsequently \$10,000	3
18	Failure to comply with traffic signals	3 months subsequently 6 months	\$5,000 subsequently \$10,000	3
31	Failure to give precedence for pedestrians at zebra crossings	3 months subsequently 6 months	\$5,000 subsequently \$10,000	3
38	Failure to comply with a school crossing patrol sign	3 months subsequently 6 months	\$5,000 subsequently \$10,000	3

*DOP: Driving-offence Points