

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Sections 36 and 37 of the Road Traffic Ordinance (Cap. 374) are repealed and the following substituted---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