

立法會
Legislative Council

LC Paper No. CB(2) 1928/99-00

Ref : CB2/BC/11/99

**Paper for the House Committee meeting
on 19 May 2000**

**Report of the Bills Committee on
Road Traffic (Amendment) Bill 2000**

Purpose

This paper reports on the deliberations of the Bills Committee on Road Traffic (Amendment) Bill 2000 (the Bill).

The Bill

2. The Bill seeks to improve the existing legislation in dealing with reckless and careless driving by amending the Road Traffic Ordinance (RTO) so as 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.

3. The Bill, if enacted, shall come into operation on 1 July 2000.

4. Members agreed at the House Committee meeting on 18 February 2000 to form a Bills Committee to study the Bill. The Bills Committee, under the chairmanship of Hon Mrs Miriam LAU Kin-ye, held four meetings with the Administration. The membership list of the Bills Committee is in **Appendix I**.

Deliberations of the Bills Committee

5. The main deliberations of the Bills Committee are set out in the following paragraphs.

6. Some members of the Bills Committee question the need to replace "reckless driving" by "dangerous driving" as they consider that the definitions of "reckless driving", "dangerous driving" and "careless driving" refer to different driving behaviours. They are of the view that one of the common law principles is that a person ought not be held accountable for carelessness and that the level of penalty should be commensurate with the driving behavior of the driver who has committed the offence.

7. The Administration has explained that the proposed amendments in the Bill were made in response to public outcry against perceived inadequacies in the RTO, which were brought to light as a result of a spate of serious traffic accidents involving fatalities. The Administration has pointed out that in many of these cases, the difficulty in proving mens rea (i.e. a driver's mental state) has resulted in the defendants being found guilty of the lesser offence of "careless driving" with much lower penalties, rather than the more serious offences of "reckless driving" or "reckless driving causing death".

8. The Administration has further explained that what constitutes reckless driving is not defined in the RTO. Since the test of recklessness requires proof of the driver's subjective mental state which in practice is not easy to establish, the Administration has proposed to replace "reckless driving" by "dangerous driving" to instil 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. Under the proposals in the Bill, the test for dangerous driving will be made more objective by benchmarking the behaviour against the driving standard expected of a competent and careful driver, and not on the consequences of accidents arising from the driving behaviour. In the Administration's view, the proposed definition of "dangerous driving" will overcome the difficulty in proving mens rea for recklessness by shifting the emphasis from the mental state of the driver to the actual driving behaviour.

9. The Administration has also advised that in drawing up the proposal to replace "reckless driving" by "dangerous driving", the Administration has made reference to the practices adopted in the United Kingdom (UK) and other countries to tackle the problem. In the UK, "reckless driving" was replaced with "dangerous driving" in 1991. The UK's definition for dangerous driving has two main ingredients -

- (a) a standard of driving which fell far below that expected of a competent and careful driver; and

- (b) it would be obvious that the driving behaviour would carry a potential or actual danger of physical injury or serious damage to property.

10. The Administration has further advised that the determination of what amounts to driving dangerously in the UK is by means of a test which concentrates upon the nature of the driving rather than the defendant's state of mind. The intention of the amendment in 1991 was that the standard of driving should be judged in absolute terms, taking no account of factors such as inexperience, age or disability. According to the Administration, the UK authority has encountered no major difficulties in enforcing the provision and prosecuting offenders for dangerous driving over the past nine years.

11. Members have expressed concern as to whether driving under the following conditions would be regarded as an offence under the new definition of "dangerous driving" -

- (a) driving after taking drugs;
- (b) driving under poor health condition such as suffering from heart disease or diabetes; and
- (c) driving after working long hours overnight without rest or sleep.

12. The Administration has pointed out that while the offence of dangerous driving is absolute in the sense that it is unnecessary to show that the defendant's mind was conscious of the consequences of his action in determining whether it would be obvious to a competent and careful driver that the driving behaviour would carry a danger of physical injury or serious damage to property, the court must have regard to any circumstances shown to have been within the defendant's own knowledge. As an illustration, the Administration has cited a case in the UK where the court ruled that the defendant, who was a diabetic and suffered several hypoglycaemic episodes during a period of six months before the fatal accident, must have been aware of the risk that he might have a hypoglycaemic attack while driving and that constituted circumstances of which he could be expected to be aware.

13. The Administration has explained that the simple fact that a person who has taken panadol, or is tired or suffers from a disease and drives would not in itself constitute dangerous driving. There would have to be two tests. First, the actual driving behaviour is dangerous, e.g. he drives in excessive speed, or he drives on the wrong side of the road. Second, the court shall have regard to the circumstances of the case including the nature, condition and use of the road, the traffic condition and the state of the vehicle. The court shall also have regard to all relevant circumstances shown to have been within the

knowledge of the defendant that it is obvious to a competent and careful driver that driving in such a state is dangerous. Given the reaction to panadol and disease varies from person to person, it would be difficult to argue that it is obvious to a competent and careful driver that driving in such a state is dangerous.

14. Members have expressed concern that it is not clearly specified in the Bill that in determining what would be regarded as a dangerous driving behaviour, the circumstances to be taken into account by the court or magistrate include the physical condition of the driver. The Bills Committee has suggested that "the court or magistrate shall have regard to" and "the court or magistrate may have regard to" appearing in proposed sections 36 and 37 in clause 2 of the Bill should be changed to "regard shall be had" and "regard may be had" respectively. The Administration has agreed to propose amendments to the Bill on the lines as suggested by the Bills Committee.

15. Members enquire whether consideration was given to retaining "reckless driving" when the main road traffic offences were reformed in the UK in 1991 to crack down on bad driving. The Administration has advised that the UK authority recognized that it had not always proved possible to secure convictions for the offences of "reckless driving" and "causing death by reckless driving" because of the need for the jury to be satisfied as to the driver's state of mind at the time the act of bad driving took place. New driving offences of "dangerous driving" and "causing death by dangerous driving" were therefore introduced as replacement.

16. A member has pointed out that based on UK 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 created 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. If the jury are satisfied that an obvious and serious risk was created by the manner of the defendant's driving, the jury are entitled to infer that the defendant was in one or other of the states of mind required to constitute the offence. The member is not convinced by the Administration's argument that the present definition of "reckless driving" makes it difficult to establish the test of recklessness. The member maintains the view that "dangerous driving" is one kind of "careless driving", whereas "reckless driving" is a different kind of serious driving behaviour. The member does not therefore accept the Administration's proposal to replace "reckless driving" with "dangerous driving".

17. Some members have expressed concern that with the replacement of "reckless driving" by "dangerous driving", some offences which should have been charged with careless driving might eventually fall within the scope of

dangerous driving.

18. The Administration has advised that there are strict internal guidelines on laying charges for serious driving offences for front-line police officers to follow. The prosecution will also refer to UK case laws before recommending charges for dangerous driving. Examples of possible dangerous driving behaviours given by the Administration include the following -

- (a) excessive speeding on roads where there are traffic lights, sharp bends, or emerging traffic;
- (b) substantially crossing over double white lines at sharp bends or driving on the wrong side of the road continuously for some distance;
- (c) overtaking by crossing over double white lines at sharp bends;
- (d) driving at excessive speed through red lights at busy intersections;
- (e) driving at speed and colliding with pedestrians at controlled crossings where other vehicles have clearly stopped ahead as a warning indicator; and
- (f) attempting to escape obvious police apprehension thereby causing a serious risk or actual injury to others.

The Administration has provided a few cases in the UK illustrating the types of driving behaviour which are caught under the dangerous driving provision.

19. With the exception of one member, all other members of the Bills Committee have expressed support for the proposal to replace "reckless driving" with "dangerous driving".

20. In response to members' request, the Administration has undertaken to publish a pamphlet after the enactment of the Bill to enable the public to have a better understanding of what kinds of driving behaviour may be regarded as dangerous driving.

21. The Administration has advised that there are about ten cases currently under active investigation which would be likely to result in charges of reckless driving/reckless driving causing death. It is expected that the investigation and the legal proceedings would not be completed before the commencement of the new "dangerous driving" provisions on 1 July 2000. The Administration has therefore proposed amendments to include transitional

provisions in the Bill. These amendments aim to remove any possible risk of challenge that any offence of "causing death by reckless driving" or "reckless driving" committed before the commencement date, or any criminal proceedings for such offences instituted before the commencement date, shall not continue to be charged, punished or instituted.

Committee Stage Amendment

22. In addition to the amendments referred to in paragraphs 14 and 21 above, the Administration will also move consequential amendments to various ordinances. A complete set of Committee Stage amendments to be moved by the Administration is in **Appendix II**.

Recommendation

23. The Bills Committee supports the Bill and recommends that, subject to the Committee Stage amendments in Appendix II to be moved by the Administration, the Second Reading debate on the Bill be resumed on 31 May 2000.

Advice sought

24. Members are invited to note the deliberations of the Bills Committee and support the recommendation in paragraph 23 above.

Legislative Council Secretariat

18 May 2000

**Bills Committee on
Road Traffic (Amendment) Bill 2000**

Membership list

Hon Mrs Miriam LAU Kin-yee, JP (Chairman)

Hon Albert HO Chun-yan

Ir Dr Hon Raymond HO Chung-tai, JP

Hon Margaret NG

Hon CHAN Kwok-keung

Hon Bernard CHAN

Hon CHAN Wing-chan

Hon CHAN Kam-lam

Hon Howard YOUNG, JP

Hon LAU Kong-wah

Hon Andrew CHENG Kar-foo

Dr Hon TANG Siu-tong, JP

Total : 12 members