

LegCo Panel on Transport

Measures to Deal with Reckless and Careless Driving

PURPOSE

This paper proposes a revised package of measures to deal with reckless and careless driving under the Road Traffic Ordinance, Cap. 374 (RTO), and seeks Members' comments on the proposal.

BACKGROUND

2. The proposal of replacing "reckless driving" by "dangerous driving" and increasing the penalties for dangerous driving and careless driving to enhance their deterrent effect was discussed by the LegCo Panel on Transport on 9 February 1999. The Panel asked the Administration to review the need for introducing a new offence of "careless driving causing death" and the appropriateness of referring to the Road Users' Code in determining the standard expected of a competent and careful driver.

3. After the Panel meeting, the Transport Department discussed with the trades in March 1999 to obtain further feedback on the proposed measures, including the introduction of dangerous driving and careless driving causing death, the revised penalties and the mandatory disqualification of convicts of dangerous driving.

REVISED PROPOSALS

To replace "reckless driving" by "dangerous driving"

4. In the previous proposal, it was recommended that in replacing "reckless driving" by "dangerous driving", the test for "dangerous driving" should follow the UK's definition (see **Annex A**) and be benchmarked against the driving standard expected of a "competent and careful" driver. It was considered that the proposed definition of "dangerous driving" (see **Annex B**) would overcome the difficulty in proving mens rea (i.e. a driver's mental state) for recklessness experienced under "reckless driving" in Sections 36 and 37 of the current RTO (Cap.374). Under the new definition, the test for "dangerous driving" would be made more objective by shifting the emphasis from the mental state of the driver to the actual driving behaviour. This would facilitate the cross-referencing of precedent cases. In addition, the revised definition

seeks to improve on the UK's definition by stating more clearly the circumstances that the court should have regard to in establishing whether the driving behaviour would constitute "dangerous driving" (see paragraph 5 of **Annex B**).

5. Although the proposal to replace "reckless driving" by "dangerous driving" received general support, there were objections from the driver groups to the suggestion of making reference to the Road Users' Code in the legislation to determine what would be falling far below the standard expected of a "competent and careful" driver. The Code was considered to be too detailed and there was general concern among professional drivers that it would become very easy for the Police to lay charges for "dangerous driving" for even simple traffic contraventions.

6. Taking into consideration the views of the trade, it is now proposed that reference to the Road Users' Code under the definition of "dangerous driving" should be removed. However, this would not preclude the court from taking the Code into account as it is already an existing practice that any party to any proceedings for an offence under the RTO could rely on the Code to establish or negate any liability at issue in these proceedings.

To replace "reckless driving causing death" by "dangerous driving causing death" and introduce alternative offences in addition to "careless driving"

7. Under the current legislation, to convict a driver of "reckless driving" requires a high degree of mens rea. Failure to prove recklessness would result in a lesser conviction of "careless driving". As courts are bound by case law not to take deaths into account when passing sentence on "careless driving", the lesser conviction of "careless driving" has often resulted in much lower penalties. There has been considerable public concern over the gap between the seriousness of the traffic incident and the light penalties imposed, especially where deaths were involved. To address this problem, it was previously recommended that a new offence, "careless driving causing death", be introduced to enable the court to take deaths into account.

8. However, at the Panel meeting held in February 1999, some Members queried whether the principle of looking at the consequences rather than the culpability was right in the case of careless driving, and whether the proposed penalties were too stringent for an act of carelessness.

9. The problems with the existing legislation are as follows -

- (a) it confines the court to consider “careless driving” as the only alternative offence to “reckless driving causing death” and “reckless driving”. The former offence is however restricted to a much lower penalty level;
- (b) some blatant driving behaviours that are not serious enough to bring in a conviction of “reckless driving” or “dangerous driving” may not be attributed to carelessness, and hence cannot be prosecuted under the charge of “careless driving”; and
- (c) the court currently does not have the discretion to hand down convictions in reference to other strict liability driving offences which could have been causes to such accidents.

10. To address the problems and the concerns of the public and the trade, it is proposed that the suggestion of introducing a new offence of “careless driving causing death” should not be pursued. However, a list of existing driving offences should be introduced as alternatives to “dangerous driving causing death” and “dangerous driving” (see **Annex C**) 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 with “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 on the alternative offences is shifted from the mental element of “carelessness” to the driving behaviour involved. This approach is also adopted by the UK (see **Annex E**).

Penalties

11. Existing penalties for careless driving and reckless driving causing death (ranging from \$4,000 to \$25,000) have not been revised since 1982. The levels of pecuniary fines would need to be updated to restore 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 (see **Annex F**).

Disqualification

12. While noting the concerns expressed by the trade, the Administration considers disqualification to be one of the most effective measures to deter bad driving behaviour. The Administration therefore

proposed that the disqualification conditions should be tightened. At present, the court has the discretionary power to disqualify an offender of a driving offence for a period the court thinks fit under Section 69 of the RTO. To deter dangerous driving, 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 conviction of "dangerous driving causing death" being increased from no less than two years to no less than three years (see **Annex F**). This is to reflect the gravity of the second time conviction where further fatalities are involved.

13. The Administration aims to submit the legislative amendments to the Legislative Council in early 2000.

ADVICE SOUGHT

14. Members are requested to advise whether the following legislative proposals should be adopted -

- (a) replace "reckless driving" and "reckless driving causing death" with "dangerous driving" and "dangerous driving causing death" adopting the revised definition as set out in **Annex B** based on the UK's definition (paragraph 4);
- (b) introduce a list of existing driving offences as alternative/lesser verdicts for "dangerous driving causing death" and "dangerous driving" in addition to "careless driving" as set out in **Annex C** (paragraph 10);
- (c) update the level of penalties to restore their deterrent effect (paragraph 11); and
- (d) tighten the disqualification conditions as set out in **Annex F** (paragraph 12).

Transport Bureau
Government Secretariat
21 October 1999

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.

Proposed Definition for Dangerous Driving

- (1) A person drives a motor vehicle on a road in a manner which is dangerous shall be guilty of an offence and is liable to [penalty].
- (2) A person is to be regarded as driving dangerously 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.
- (3) A person is also to be regarded as driving dangerously if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.
- (4) For the purpose of subsection (2) and (3) above, “dangerous” refer to danger either of injury to any person or of serious damage to property.
- (5) For the purpose of subsection (2) and (3) above, in determining what would be expected of, or obvious to, a competent and careful driver in a particular case, the court shall have regard to all the circumstances of the case including :-
 - (a) the nature, condition and use of the road; and
 - (b) the amount of traffic which is actually at the time or which might reasonably be expected to be on the road.

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)	<ul style="list-style-type: none"> - 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)	<ul style="list-style-type: none"> - 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

UK's Road Traffic Offenders Act 1988, s. 24

Alternative verdicts : general

24 - (1) Where -

- (a) a person charged with an offence under a provision of the Road Traffic Act 1988 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 indictment or information (or in Scotland complaint) 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 those offences.

Offence charged	Alternative
Section 1 (causing death by dangerous driving) Section 2 (dangerous driving) Section 3A (causing death by careless driving when under influence of drink or drugs) Section 4(1) (driving or attempting to drive when unfit to drive through drink or drugs) Section 5(1)(a) (driving or attempting to drive with excess alcohol in breath, blood or urine) Section 28 (dangerous cycling)	Section 2 (dangerous driving) Section 3 (careless, and inconsiderate driving) Section 3 (careless, and inconsiderate driving) Section 3 (careless, and inconsiderate driving) Section 4(1) (driving when unfit in drive through drink and drugs) Section 5(1)(a) (driving with excess alcohol in breath, blood or urine) Section 7(b) (failing to provide specimen) Section 4(2) (being in charge of a vehicle when unfit to drive through drink or drugs) Section 5(1)(b) (being in charge of a vehicle with excess alcohol in breath, blood or urine) Section 29 (careless, and inconsiderate cycling)

Existing and Proposed Penalty Provisions

Offence		Maximum Fine	Maximum Imprisonment	Disqualification
Careless Driving		\$4,000 <i>(Level 2 - \$5,000)</i>	6 months (no change)	Court's discretionary disqualification under Section 69 of the RTO (no change).
Reckless Driving <i>(Dangerous Driving)</i>	for summary conviction:	\$10,000 <i>(Level 3 - \$10,000)</i>	12 months (no change)	Shall be disqualified for not less than 18 months in the case of the second or subsequent conviction.
	for conviction on indictment:	\$20,000 <i>(Level 4 - \$25,000)</i>	3 years (no change)	<i>May be disqualified for not less than 6 months for the first conviction and mandatory disqualification for not less than 18 months in the case of the second and subsequent conviction.</i>
Reckless Driving Causing Death <i>(Dangerous Driving Causing Death)</i>	for summary conviction:	\$12,500 <i>(Level 4 - \$25,000)</i>	2 years (no change)	Shall be disqualified for not less than 2 years in the case of the second or subsequent conviction.
	for conviction on indictment:	\$25,000 <i>(Level 5 - \$50,000)</i>	5 year (no change)	<i>Mandatory disqualification for not less than 2 years for the first conviction and not less than 3 years for the second conviction.</i>

* Regular font denotes present arrangements. Proposed changes in *italic and bold*.