

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1098/07-08

Ref. : CB1/BC/6/07

**Background brief on  
Road Traffic Legislation (Amendment) Bill 2008**

**Introduction**

On 20 February 2008, the Administration introduced the Road Traffic Legislation (Amendment) Bill 2008 into the Council. The main purposes of the Bill are to –

- (a) increase the term of imprisonment of the offence of causing death by dangerous driving under section 36 of the Road Traffic Ordinance (Cap. 374) (the Ordinance);
- (b) increase the penalties on offences under sections 39, 39A, 39B and 39C of the Ordinance, and give police officers a general power to conduct screening breath tests;
- (c) introduce a pre-screening device to facilitate the implementation of the new section 39B(1)(a) of the Ordinance;
- (d) provide that repeat traffic offenders or persons convicted of serious traffic offences are required to attend and complete driving improvement courses (DICs);
- (e) extend the probationary driving licence scheme (PDL Scheme) to novice drivers of private cars and light goods vehicles; and
- (f) provide for the review by a Transport Tribunal of certain decisions made by the Commissioner for Transport (the Commissioner) in relation to driving licences and driving instructor's licences.

2. This paper sets out the background to the above legislative proposals. It also gives an overview of various measures to enhance road safety and summarizes members' concerns expressed in the past when the related road safety matters were discussed by the Panel on Transport.

## **Dangerous driving**

3. The offence of "reckless driving" was changed to "dangerous driving" with effect from 1 July 2000 to address the difficulty in prosecuting reckless driving arisen from the need to prove the driver's subjective mental state. The test for dangerous driving is more objective, as it places the emphasis on actual driving behaviour rather than the driver's state of mind. Two criteria have been laid down for dangerous driving – one is whether the driver's driving standard is far below that of a competent and careful driver, and the other is whether the driver's driving manner would cause obvious danger to others, or himself, or serious damage to property.

4. Under section 36 of the Ordinance, a person who causes the death of another person by driving a motor vehicle on a road dangerously can be charged with the offence of causing death by dangerous driving. A person convicted of this offence is liable to a maximum fine of \$50,000 and 5 years' imprisonment. The convicted would be disqualified from driving for a period of not less than 2 years for a first conviction and for not less than 3 years for a second or subsequent conviction.

5. To further enhance road safety, the Administration proposes to raise the maximum imprisonment term for dangerous driving causing death from 5 to 10 years.

## **Drink driving**

6. A legal limit of alcohol concentration in a driver's blood, urine and breath was first introduced in December 1995. Since 1 October 1999, the legal limit has been tightened up from 80 mg to 50 mg per 100 ml of blood to increase the deterrent effect on drink driving. Under section 39/39A of the Ordinance, a person who drives with an alcohol concentration exceeding the existing prescribed limit<sup>1</sup> will be liable to a maximum fine of \$25,000 and 3 years' imprisonment. The offender will be disqualified from driving for not less than 2 years for a second or subsequent conviction and incur 10 Driving-Offence Points (DOPs) under the Road Traffic (Driving-Offence Points) Ordinance (RT(DOP)O) (Cap. 375).

7. To send a clear message to motorists that drink driving is not in any way tolerated in Hong Kong, the Administration proposes that drink driving offenders should be disqualified from driving for not less than 3 months on first conviction and be required to attend DICs on a mandatory basis.

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<sup>1</sup> The existing prescribed limit is –

- 50 milligrams of alcohol per 100ml of blood; or
- 22 micrograms of alcohol per 100ml of breath; or
- 60 milligrams of alcohol per 100ml of urine.

## **Random breath tests**

8. Random breath tests (RBTs) are roadside screening breath tests (SBTs) conducted on a purely random basis, without the need for any reasonable suspicion. Currently, the Police do not have the power to carry out RBTs. They can only conduct roadside SBTs if there is reasonable suspicion that the person has alcohol in his body, or if the person is involved in a traffic accident, or commits a moving traffic offence.

9. Regarding the proposed RBTs, there have been concerns about the possible abuse of police power and the likely impact on traffic flow. However, having regard to wide public concern over drink driving, the Administration proposes to empower the Police to conduct RBTs. To ensure proper exercise of such power and avoid unnecessary congestion or complaints, the Police has drawn up administrative procedures and guidelines to facilitate RBTs to be carried out smoothly. These include -

- (a) conduct of RBTs would be restricted to SBT-trained traffic officers only;
- (b) RBTs would not normally be targeted against vehicles in motion but would be conducted during roadblock operations or as part of other traffic enforcement checks;
- (c) consideration would be given to the use of a quick and simple pre-screening device to speed up the RBT checking process and avoid undue delay/inconvenience to motorists. This would reduce the time needed from 4-5 minutes (for SBTs) to 3-4 seconds;
- (d) limitations by time or location would not be applied initially, as to do so would defeat the "random" nature of RBTs;
- (e) no rank restrictions would be placed on the conduct of RBTs initially. The Administration's view is that as all Police officers are vested with considerable powers which they exercise in a responsible manner, there is no reason to suspect that RBT powers would be abused; and
- (f) the number of RBTs conducted would be monitored for a trial period after introduction, so as to determine their effectiveness and gauge whether undue inconvenience would be caused to other non-offending road users.

## **Driving Improvement Scheme**

10. The introduction of Driver Improvement Scheme in September 2002 aimed to promote road safety and make drivers more law abiding through a better

understanding of what proper driving behaviour and attitudes should be. Currently, motorists are encouraged to join the Driver Improvement Scheme on a voluntary basis, except for those who are directed by the court. Under section 72A of the Ordinance, the court has the discretionary power to order drivers who have committed traffic offences carrying 5 or more DOPs to attend DICs.

11. The Administration proposes that in addition to the above category of offenders, a person should also be required to attend DICs if he belongs to either of the following categories –

- (a) repeat traffic offenders who have accumulated 10 DOPs within two years; and
- (b) offenders of the following traffic offences that incur 10 DOPs:
  - causing death by dangerous driving
  - dangerous driving
  - driving under the influence of drink or drugs
  - driving with alcohol concentration above prescribed limit
  - driving in excess of speed limit by more than 45 km/hour
  - driving in a motor race or speed trial on a road

12. The current maximum penalties for non-compliance of the court order for attending DICs are a fine of \$3,000 and one-month imprisonment. To deter non-compliance, the Administration proposes to raise the penalties as follows:

- (a) the maximum fine is raised from \$3,000 to \$5,000 for the first conviction of non-compliance to the DIC requirement;
- (b) a person convicted of non-compliance shall be ordered to complete a DIC again. If he fails to comply with the second order, he is liable to a fine of \$10,000, two months of imprisonment, and disqualification from driving for not less than three months;
- (c) if the person has been disqualified from driving and ordered to complete a DIC when convicted of any one of the serious traffic offences, the disqualification period is either that ordered by the court or until he has completed the DIC, whichever is the later; and
- (d) the Commissioner may refuse to issue, re-issue or renew all of his driving licences until he has completed the DIC as required.

### **Probationary driving licence (PDL)**

13. The PDL Scheme for motorcyclists has been in place since October 2000. Under the proposed PDL Scheme for new drivers of private cars and light good vehicles (LGVs), candidates who have passed the driving test for private cars will be issued a PDL for private cars. In line with existing practice, those who have passed the driving test for LGVs will be issued a PDL for both private cars and LGVs. In both cases, the probation period will be 12 months. The Administration proposed that the PDL should carry, inter alia, the following requirements –

- (a) to display "P" plates on the vehicle;
- (b) to keep the driving speed at or below 70 km/h even when the prescribed speed limit is above 70km/h;
- (c) to refrain from driving on the offside lane of expressways where there are three or more traffic lanes;
- (d) to have the probation period extended by 6 months upon conviction of minor road traffic offences (incurring less than 10 DOPs) or upon breaching of any of the three restrictions listed in (a) to (c) above; and
- (e) to have the PDL cancelled upon conviction of a serious road traffic offence, or two or more minor road traffic offences during the probation period.

### **Review of the Commissioner's Decisions on Driving Licences and Driving Instructors' Licences**

14. Regulation 45 of the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B) stipulates that if a person is aggrieved by the Commissioner's refusal to issue or renew a driving licence or driving instructor's licence or the Commissioner's cancellation of these licences, he can appeal by petition to the Chief Executive in Council. On appeal, the Chief Executive in Council may make such order as he thinks fit, which shall be binding on the Commissioner.

15. The Administration proposes that the above appeals be heard by Transport Tribunals, which are appointed by the Secretary for Transport and Housing under section 17 of the Ordinance to review certain decisions made by the Commissioner, such as refusal to register a motor vehicle or issue a permit, etc.

## **Deliberations by the Council and Panel on road safety initiatives**

16. Over the years, the Panel on Transport has been monitoring key safety issues relating to the road transport system. Further details are set out in the **Annex**.

17. The Panel on Transport was consulted on 18 December 2007 on the legislative proposal for implementing a package of measures to enhance road safety. Members were generally in support of the proposed measures. However, some considered that the proposed period of disqualification of not less than three months for drink driving offenders on first conviction should be increased. Some others took the view that the Administration should consider cancelling instead of suspending the driving licences of repeated offenders of causing death by dangerous driving, and requiring those repeated traffic offenders to retake the road test.

18. The Panel was also briefed by the Administration on measures to ensure proper exercise of Police power when conducting random breath tests. The Panel reviewed the effectiveness of the proposed mandatory driving improvement course requirements, and measures to enhance safety of drivers holding an international driving permit or a domestic driving permit issued in a place outside Hong Kong, and other inexperienced drivers who have been issued a driving licence for a long time but seldom drive.

Council Business Division 1  
Legislative Council Secretariat  
26 March 2008

## **Annex**

The road transport system consists of three major components, namely, road users, road infrastructure and vehicle. Over the years, the Panel on Transport (the Panel) has been monitoring key safety issues relating to each of these three components.

### Driving behaviour

2. The Panel keeps a close eye on the major factors contributing to traffic accidents. It has examined various ways to improve the driving attitudes of the motoring community, including, inter alia, –

- (a) the proposed introduction of mandatory courses for repeat traffic offenders; and
- (b) the proposed introduction of probationary driving licence (PDL) for new private car and light goods vehicle (LGV) drivers.

3. The Panel is, in general, in support of the proposed introduction of mandatory courses for repeat traffic offenders.

4. With respect to the proposed introduction of PDL for new private and LGV drivers, the Panel notes that concerns have been expressed by some LGV trades that the PDL Scheme might adversely affect the job opportunities and income of newly qualified LGV drivers. However, in considering the experience of the PDL Scheme for motorcyclists and the long lasting benefits on the driving skill and behaviour of novice drivers, the Panel supported the Administration's proposal to introduce a PDL for new drivers of private cars and LGVs so as to enable new drivers to obtain on-the-road practical experience during the "probationary" period before being issued with a full driving licence.

5. The Administration has also accepted members' view that it should not be necessary to apply the PDL Scheme to novice drivers who already have a certain extent of driving experience. As such, the following persons would be exempted from the Scheme -:

- (a) holders of a valid full private car driving licence for at least 3 years before the date of application for full LGV driving licence, and have passed the LGV driving test; and
- (b) holders of a valid full driving licence for medium goods vehicles or heavy goods vehicles.

### Legislation

6. On legislation, the Panel has kept relevant legislation under constant

review. Regarding the proposal to impose higher penalties for drink driving and dangerous driving, the Panel generally agrees that there is a need to make adjustment on the penalty levels so as to achieve the desired deterrent effect. A member even takes the view that consideration should be given to introducing legislative amendments to implement such additional measures as charging drivers involved in fatal traffic accidents with manslaughter if their alcohol concentration level is in excess of the relevant prescribed limits by a great extent.

7. Over the years, the Panel has also reviewed a number of legislative proposals with a view to enhancing road safety. These include the proposals to impose higher penalties for excessive speeding and red light jumping, to enlarge the coverage of the seat belt legislation, to prohibit the use of hand-held mobile phone while driving, etc. The Panel has also examined the feasibility of introducing a new offence against "failing to keep a safe distance" or "tailgating" as well as the proposed mandatory installation of reversing devices on goods vehicles.

8. On 14 June 2006, the Council also passed a motion on measures to combat drink driving –

"That, as many motorists are not alert to the danger of drink driving, serious traffic accidents caused by drink driving have occurred frequently in recent years, posing a serious threat to the safety of other road users, this Council urges the Government to step up publicity and education, review the deterrent effect of existing penalties for the drink driving offence, study amending legislation, including drawing on the practice in other countries of suspending the driving licences of drivers on first conviction of the offence, and making it a mandatory requirement that the offenders must attend a driving improvement course to improve their driving habits, as well as to pass a driving test before driving licences are re-issued to them, and to empower the Police to conduct random stop checks on vehicles and, where there is reasonable doubt, roadside screening breath tests on motorists, so as to strengthen its efforts in combating drink driving and enhance motorists' alertness to the danger of drink driving, thereby reducing traffic accidents caused by drink driving and safeguarding public safety."

#### Enforcement

9. Road safety legislation needs to be complemented by an effective enforcement regime to achieve the intended effect. In this respect, the Panel has reviewed the prevailing enforcement regime and identified areas to be further strengthened. The Panel has urged the Administration to expand the speed enforcement camera system and red light camera system so as to put roads under 24-hour surveillance and enhance enforcement efficiency. Meanwhile, the Administration should put in place adequate resources to step up enforcement and to enhance the effectiveness of enforcement efforts.



### Traffic engineering and management

10. The Panel has also examined in depth issues concerning traffic engineering and management that define the road environment and shape the behaviour of road users. These include highway design standards, speed management, provision of traffic signs and road markings as well as other traffic control measures.

### Vehicle control

11. Despite modern designs that have made vehicles safer, the way in which a vehicle is used and maintained has greatest bearing on safety. Regarding vehicle maintenance, the Panel was briefed in January 2004 on the proposed voluntary registration scheme for the vehicle maintenance trade to improve the quality of mechanics for vehicle maintenance.

12. Regarding specified measures for enhancing safety of franchised bus operations, the Panel passed a motion urging the Government to immediately implement measures to enhance the safety of franchised bus operations, which should include the introduction of legislation to require bus passengers to wear seat belts, and requirement of franchised bus operators to install seat belts on their buses and to improve the working schedule and rest-break arrangements for their bus captains, etc to ensure the safety of bus passengers.

13. The Panel has also reviewed the progress of implementation of different measures to enhance safety of public light buses (PLB). To better protect PLB passengers in traffic accidents, the Panel considers that all PLBs should be equipped with seat belts and high back seats. Vehicle monitoring system which can keep a full record of the operating conditions of vehicles should also be retrofitted onto PLBs. The Panel welcomes the Administration's plan to introduce legislative proposals to make speed display device a standard requirement on PLBs and to make misuse or malfunctioning of the device an offence, and to require applicants for PLB licences to attend pre-service training courses that focused on driving behaviour and attitude.