

**For discussion**  
**17 July 2009**

## **LEGISLATIVE COUNCIL PANEL ON TRANSPORT**

### **Legislative proposals to combat drink driving**

#### **Purpose**

This paper briefs Members on the legislative proposals to further combat drink driving.

#### **Background**

2. The Road Traffic Legislation (Amendment) Ordinance 2008 provides, inter alia, for a package of measures to further combat drink driving. These include:

- (a) to raise the penalties on drink driving offences so that a person convicted of a drink driving offence shall, apart from imprisonment and fine, be liable to disqualification from driving for not less than three months on a first conviction; and to attend a driving improvement course on a mandatory basis;
- (b) to empower the Police to conduct a screening breath test on drivers without the need for reasonable suspicion that they had consumed alcohol (the random breath test, RBT); and
- (c) to raise the maximum imprisonment term of the offence of dangerous driving causing death from five years to ten years.

Details of the existing penalties of drink driving, and related driving offences are set out at **Annex A**.

3. As reported to this Panel at its meeting on 26 June 2009, the RBT legislation and procedures have been effective in creating a deterrent effect as witnessed by the significant drop in the number of drink driving cases and traffic accidents involving drink driving since RBT began on 9 February 2009. The Police will continue with the RBT operations.

4. However, the Administration is aware of the call from some members of the public and accident victims' request for heavier penalties for drink driving and dangerous driving causing death offences, so that sentences handed down by the court would better reflect the serious injuries and damage caused by serious traffic accidents, particularly those involving drink driving. At a motion debate of this Council on drink driving that took place on 18 February 2009, the Administration undertook to consider tightening the drink driving legislation in the following three directions:

- (a) introducing a scale of penalties according to different levels of blood alcohol concentration;
- (b) introducing a new offence of dangerous driving causing grievous bodily harm; and
- (c) bringing in 'aggravating factors' such as drink driving to all dangerous driving cases.

5. In the past few months, we have studied overseas drink driving legislation, and have closely monitored the effect of the drink driving provisions that came into force on 9 February 2009. We have accordingly drawn up a number of proposals along the lines outlined in paragraph 4 above. They are set out in more detail in the ensuing paragraphs.

### **Introducing different penalties according to Blood Alcohol Concentration ('BAC')**

6. Alcohol affects the central nervous system, blunting perception and coordination and impairing one's ability to detect risk. According to overseas studies, drivers who consumed alcohol had a much higher risk of involvement in accidents than those who have not consumed alcohol, and the risk increased rapidly with increasing blood alcohol levels<sup>1</sup>.

7. We propose to set three tiers of penalties to deter drink driving. Given that disqualification is the most effective and direct way to take drink drivers off the road and thus deter drink driving, we propose that different levels of BAC should trigger different disqualification periods according to a sliding scale as set out in the following table:

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<sup>1</sup> According to a report published by the US National Institute on Alcohol Abuse and Alcoholism in 1996, the risk of crash increases as BAC of the driver rises. Compared with drivers who have not consumed alcohol, the risk of fatal crash for drivers with BAC between 50 mg and 90 mg is 11.1 times higher; and for those between 100 mg and 140 mg, 48 times higher; and for those with BAC at or above 150 mg, 380 times higher.

Prescribed limits of alcohol in blood, or equivalent concentration in breath and urine	Existing Driving Disqualification Period		Proposed Driving Disqualification Period	
	First Conviction	Subsequent Conviction	First Conviction	Subsequent Conviction <sup>2</sup>
50mg to less than 80mg in 100ml of blood	Minimum 3 months	Minimum 2 years	Minimum 6 months	Minimum 2 years
80mg to less than 150mg in 100ml of blood			Minimum 1 year	Minimum 3 years
150mg or more in 100ml of blood			Minimum 2 years	Minimum 5 years

8. The above categorizations are in line with the Australian (New South Wales) legislation. The United States (Arizona), Japan and the Mainland also adopt a similar categorization scheme, imposing heavier penalties on drivers with higher BACs. A summary of our proposed scale and the provisions in overseas countries is at **Annex B**. It should be noted that all the disqualification periods proposed are **minimum periods**, which follow the current practice for serious traffic offences. We note that there have been suggestions that maximum, instead of minimum periods of disqualification should be provided for serious traffic offences, or that both the minimum and the maximum periods of disqualification should be provided for in the legislation. We have considered these suggestions. We would like to point out that, under the Road Traffic Ordinance (Cap. 374), a person who is convicted of a serious driving offence (including drink driving, dangerous driving, dangerous driving causing death, etc.) will be liable to a maximum fine and imprisonment term, and a minimum period of driving disqualification. The imposition of a maximum fine and a imprisonment term would allow for justice to be done by giving the court a discretion to fix an appropriate penalty (within the prescribed maximum) that reflects all relevant aspects of a case. As regards disqualification, our laws in this respect were modelled on the UK's legislation, such that serious driving offences would entail obligatory disqualification, and the minimum disqualification periods for respective offences are set out so that the public would have no difficulties in understanding the minimum legal consequences of the relevant driving offence. In our view, the current arrangement of setting out the minimum obligatory disqualification period is a fairer arrangement of greater clarity, since the court may, as it thinks fit, impose disqualification periods much longer than the minimum periods set out in the law to reflect the seriousness of individual cases.

<sup>2</sup> It is proposed that a first conviction of drink driving, irrespective of BAC level, will trigger the higher penalty levels in subsequent conviction. The exact penalty level applicable for the subsequent conviction will depend on the BAC level found in that conviction.

9. We do not propose a similar sliding scale for the fine and imprisonment terms for drink driving offence at the same time as we note that, in the past three years, the sentences for drink driving cases in terms of fines ranged from \$300 to \$20,000; and periods of imprisonment ranged from five days to four months respectively, depending on the specific circumstances of individual cases. The court still has considerable room to impose heavier penalties under the existing legislation should it see merit in doing so.

10. To complement the proposed penalties scale, the following legislative changes are also proposed to preserve the integrity and effectiveness of the drink driving laws:

- (a) To prevent drivers with high BAC level from evading the penalties by refusing to perform a breath test, we propose setting the penalties for failure to provide specimens of breath when required in a screening breath test, or to provide blood / urine when required for analysis, without reasonable excuse, at the highest tier of penalties for drink driving.
- (b) To prevent drivers with high BAC levels from evading the penalties by requesting a blood or urine test (which has to take place in a hospital) with the intention of delaying the provision of samples, we propose to remove the option for a person whose BAC is no more than 37 mcg of alcohol per 100 ml of breath to replace his breath specimen by a specimen of blood or urine. The relevant provision was introduced in 1995 when drink driving legislation was first introduced in Hong Kong in the light of concern as to the accuracy of the breath testing equipment. Over the years, the equipment has proved to be reliable and able to provide accurate results.

### **Introducing a new provision of dangerous driving causing grievous bodily harm**

11. At present, a driver who drives dangerously on the road may either be charged with dangerous driving, or dangerous driving causing death, as the case may warrant. Recognizing the impact suffered by a victim of a traffic accident and his family, we propose to introduce a new offence of 'dangerous driving causing grievous bodily harm' providing for a heavier penalty for a driver who causes grievous bodily harm by driving a motor vehicle on a road dangerously, for punitive purposes, in order to achieve a stronger deterrent effect. The penalties are proposed to be set between dangerous driving and dangerous driving causing death, as follows:

- (a) Maximum fine: \$50,000
- (b) Maximum imprisonment: 7 years
- (c) Minimum driving disqualification period on first conviction: 2 years; and on second or subsequent conviction: 5 years
- (d) To incur 10 Driving-offence Points, and to attend mandatory Driving Improvement Course.

12. The term ‘grievous bodily harm’ is clearly defined in some jurisdictions such as New South Wales<sup>3</sup>. But in other common law jurisdictions the term is not explicitly defined in law. In these cases, the common law definition<sup>4</sup> is relied upon. We propose to follow the common law definition approach, so that the possibility of acquittals based on sheer technicalities could be minimized.

### **Introducing aggravating factors**

13. The concept of an aggravating penalty is in place in overseas countries and in Hong Kong. In New South Wales, the maximum penalty in terms of imprisonment is 10 years for dangerous driving occasioning death, and it will be increased to 14 years if the person commits the offence in

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<sup>3</sup> ‘Grievous bodily harm’ is defined under the legislation of New South Wales as follows:

- (a) the destruction (other than in the course of a medical procedure) of the foetus of a pregnant woman, whether or not the woman suffers any other harm, and
- (b) any permanent or serious disfiguring of the person, and
- (c) any grievous bodily disease (in which case a reference to the infliction of grievous bodily harm includes a reference to causing a person to contract a grievous bodily disease)

<sup>4</sup> Some quotes on the common law interpretation for ‘grievous bodily harm’ in UK textbooks are given below:

Page 347 of Criminal Law, Smith & Hogan, 7th Edition – ‘Grievous bodily harm’, at one time broadly interpreted to mean any harm sufficiently serious to interfere with health and comfort, must now be applied in its ordinary natural meaning. "Grievous" means "really serious" and the word "really" probably adds nothing but emphasis to the fact that the harm intended must be (actually or really) serious.

Page 425 of Criminal Law, Smith & Hogan, 7th Edition - "Grievous bodily harm" was formerly interpreted to include any harm which seriously interferes with health or comfort; but in Smith's case the House of Lords said that there was no warrant for giving the words a meaning other than that which they convey in their ordinary and natural meaning. Grievous bodily harm may cover cases where there is no wounding as, for instance, the broken collarbone in Wood's case. Conversely, there might be a technical "wounding" which could not be said to amount to grievous bodily harm.

circumstances of aggravation. Similarly, in Hong Kong, under the Organized and Serious Crimes Ordinance (Cap 455), the court may, if it thinks fit, pass an enhanced sentence on a person if the specified offence was an organized crime.

14. We propose that a BAC exceeding 150mg/100ml of blood (or equivalent concentration in breath and urine) should be made a circumstance of aggravation in all dangerous driving offences<sup>5</sup>. We also propose that the maximum penalty for the circumstance of aggravation (in terms of fine, imprisonment and disqualification period) should be an additional 50% of the maximum penalties provided under the law for the dangerous driving offences.

### **Other related proposals**

15. Taking the opportunity of enhancing the drink driving and dangerous driving related legislation, we propose that the following corresponding legislative changes be made to improve certain existing provisions. Details are set out below:

- (a) To lengthen the minimum disqualification period for a subsequent conviction for ‘dangerous driving’ from 18 months to 2 years to bring it in line with the penalty for drink driving.
- (b) To lengthen the minimum disqualification period for a subsequent conviction for ‘dangerous driving causing death’ from 3 years to 5 years to bring it in line with that proposed for drink driving.

16. We have also taken note of some other suggestions from members of the public and interested parties. For example, there are suggestions that, where both the penalties of imprisonment and disqualification from driving are ordered by the court, the disqualification should take effect after the person concerned has served the imprisonment term to ensure that the disqualification would be meaningfully observed and that drivers who are more likely to cause potential danger to the public would be prevented from driving for a prolonged period. To address this concern, as we develop the detailed legislative amendments, we will consider including a provision that gives the court the discretion to order consecutive implementation of the imprisonment and disqualification terms. We also note that in some recent cases, the court has ordered that the person

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<sup>5</sup> The offences include ‘dangerous driving’, ‘dangerous driving causing death’, and the proposed ‘dangerous driving causing grievous bodily harm’.

concerned must retake the driving test under section 70 of the Road Traffic Ordinance (Cap. 374) before he could resume driving after the disqualification period. We will consider how best to further enable the court to utilize this provision.

17. A summary of the proposed penalties related to dangerous driving causing grievous bodily harm, enhanced penalties for aggravating factors and other related proposals are at **Annex C**.

### **Education and Publicity**

18. Enforcement and legislative amendments aside, education and publicity remains an important tool for combating drink driving and instilling proper driving behaviour. We have displayed the message of “If you drink, don’t drive” on major trunk roads, tunnels, flyovers and electronic message signs over the territory as a reminder to drivers. Announcements in the Public Interest (APIs) have been broadcast, and billboard and signs have also been displayed to promote the introduction of Random Breath Test, and remind the public not to drink and drive.

19. The Road Safety Council will launch a thematic campaign against drink drinking later this year to sustain the message to the community. The campaign will include a Pledging Ceremony whereby representatives from the District Councils, transport trades, the wine and beer industry and automobile associations will be invited to pledge that that they will not drink and drive. TV and Radio APIs will be broadcast to maximize the publicity effect. A more alarming and shocking approach will be adopted in producing the APIs to create a bigger impact to the audience.

### **Next Steps**

20. We consulted the Transport Advisory Committee on the legislative proposals on 30 June 2009. The Committee supported the proposals and considered that with the proposed new penalties, the seriousness of the accidents and the responsibility of the relevant drivers could be more effectively reflected. We intend to consult the Road Safety Council and the motoring associations and transport trades on the above legislative proposals in August and September, and thereafter to prepare the relevant amendment legislation for introduction in the 2009-10 legislative session.

## **Advice Sought**

21. Members are requested to give their views on the legislative proposals set out in the paper.

Transport and Housing Bureau  
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**Existing Penalties on Drink Driving Offences and other Serious Driving Offences**

Traffic Offence	Fine (Maximum)			Imprisonment (Maximum)			Driving Disqualification (Minimum)		DOP*	MDIC#
	Summary		Indictment	Summary		Indictment	First	Subsequent		
	First	Subsequent		First	Subsequent					
Drink Driving, and related offences (including refuse to provide a specimen of breath when required, or blood/ urine specimens for analysis)	\$10,000	\$25,000	\$25,000	6 months	12 months	3 years	3 months	2 years	10	Yes
Driving under the influence of drink or drugs	\$10,000	\$25,000	\$25,000	6 months	12 months	3 years	3 months	2 years	10	Yes
Dangerous Driving	\$10,000		\$25,000	12 months		3 years	6 months	18 months	10	Yes
Dangerous Driving causing death	\$25,000		\$50,000	2 years		10 years	2 years	3 years	10	Yes

\* DOP - Driving-offence Points

# MDIC - Mandatory Driving Improvement Course

**Penalties for different levels of Blood Alcohol Concentration**

Country/State /Province & Prescribed Limits	Penalties for first offence				Penalties for subsequent offence			
	Fine		Imprisonment	Driving Disqualification	Fine		Imprisonment	Driving Disqualification
	Local Currency	HKD			Local Currency	HKD		
<b>Hong Kong</b>								
BAC: 50mg to less than 80mg in 100ml of blood	<u>Summary</u> Max. 10,000  <u>Indictment</u> Max. \$25,000		<u>Summary</u> Max. 6 months  <u>Indictment</u> Max. 3 years	[Min. 6 months]	<u>Summary</u> Max. \$25,000  <u>Indictment</u> Max. \$25,000		<u>Summary</u> Max. 12 months  <u>Indictment</u> Max. 3 years	[Min. 2 years]
BAC: 80mg to less than 150mg in 100ml of blood				[Min. 1 year]				[Min. 3 years]
BAC: 150mg or more in 100ml of blood				[Min. 2 years]				[Min. 5 years]
<b>New South Wales (Australia)</b>								
BAC : 50 mg to less than 80 mg in 100ml of blood	Max. \$1,100	Max. \$6,800	N.A.	6 months	Max. \$2,200	Max. \$13,760	NA	12 months
BAC : 80 mg to less than 150 mg in 100ml of blood	Max. \$2,200	Max. \$13,760	Max. 9 months	12 months	Max. \$3,300	Max. \$20,500	Max. 1 year	3 years
BAC : 150 mg or more in 100ml of blood	Max. \$3,300	Max. \$20,500	Max. 18 months	3 years	Max. \$5,500	Max. \$34,180	Max. 2 years	5 years

Country/State /Province & Prescribed Limits	Penalties for first offence				Penalties for subsequent offence			
	Fine		Imprisonment	Driving Disqualification	Fine		Imprisonment	Driving Disqualification
	Local Currency	HKD			Local Currency	HKD		
<b>Mainland China</b>								
BAC: 20 mg to less than 80mg in 100ml of blood	RMB 200 to 500	\$226 to 570	-	Over 1 month but less than 3 months	RMB 200 to 500	\$226 to 570	NA	Over 1 month but less than 3 months*
BAC: 80 mg or more in 100ml of blood	RMB 500 to 2,000	\$570 to 2,260	Max.15 days' detention	Over 3 months but less than 6 months	RMB 500 to 2,000	\$570 to 2,260	Max.15 days' detention	Over 3 months but less than 6 months*
<b>Arizona (USA)</b>								
BAC: 80 mg to less than 150mg in 100ml of blood	Min. \$250	Min. \$1,950	Min. 10 days	Min. 3 months	Min. \$500	Min. \$3,900	Min. 3 months	1 year
BAC : 150 mg or more in 100ml of blood	\$250	Min. \$1,950	Min. 1 month	Min. 3 months	Min. \$500	Min. \$3,900	Min. 4 months	Over 1 year
<b>Japan</b>								
BAC: 30 mg to less than 80mg in 100ml of blood (Driving under influence)	Max. 3 years' imprisonment or a fine up to 0.3M yen (HK\$24,200)			Max. 2 years	Information is not available			
BAC: 80mg or more in 100ml of blood (Driving while Impaired)	Max. 3 years' imprisonment or a fine up to 0.5M yen (HK\$40,300)			2 years				

\* A person who has been convicted of drink driving or drunk driving when driving commercial vehicles for over 2 times in a year is liable to disqualification from driving of commercial vehicles for 5 years.

[ ] Proposed disqualification periods for different levels of BAC in Hong Kong.

**Aggravated Dangerous Driving  
Aggravated Dangerous Driving Causing Grievous Bodily Harm  
Aggravated Dangerous Driving Causing Death**

	<b>Fine (Maximum) (a)</b>	<b>Imprisonment (Maximum) (b)</b>	<b>Disqualification (Minimum) (c) (First)</b>	<b>Disqualification (Minimum) (d) (Subsequent)</b>	<b>DOPs</b>	<b>MDIC</b>
Dangerous driving	25,000	3 years	6 months	18 months [2 years]	10	Yes
Dangerous driving causing grievous bodily harm	[\$50,000]	[7 years]	[2 years]	[5 years]	[10]	[Yes]
Dangerous driving causing death	\$50,000	10 years	2 years	3 years [5 years]	10	Yes
Circumstances of aggravation	BAC is equal to or more than 150mg / 100ml in the accuser's blood, or equivalent concentration in breath or urine.					
Aggravated Penalty	Penalty under (a) to (d) above to be increased by 50%					

Note:

Proposed new penalties are set out in square bracket.