Bills Committee on Road Traffic (Amendment) Bill 2010

Plan to Combat Drug Driving

Purpose

The Government is very concerned about the recent traffic accidents caused by driving under the influence of drugs, particularly drugs of abuse. We are determined to introduce measures as soon as possible to vigorously combat drug driving. This paper explains the work that the Administration has undertaken, its overall plan as well as its proposed timetable for combating drug driving.

Government's determination to combat drug driving

2. The absolute number of drug driving convicted cases remains to be small (8 in 2007, 4 in 2008 and 8 in 2009). However, we are very concerned about the increasing trend of such cases that happened in early 2010 – 29 arrests were made in the first five months of 2010 of which 5 drivers were convicted so far.

3. In view of the rising trend of drug driving cases, the Secretary for Transport and Housing (STH) announced in end January 2010 that the Government will draw up preliminary proposals in around mid year to combat drug driving. The Transport and Housing Bureau (THB) set up a dedicated inter-departmental Working Group[1] in early 2010 to work on the matter in full steam.

Working Group on drug driving

4. From the experience of overseas jurisdictions, combating drug driving involves complex legal and practical issues which would affect the majority of the driving population. We need to be very careful in drawing up new offences and ensuring the enforcing power is balanced so that on the one hand, drivers who drive while being influenced or impaired by drugs are prosecuted and road users are protected, while on the other hand, the offences would not adversely affect the majority of the law-abiding driving population who may need to take drugs for genuine medical purpose.

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[1] The Working Group, chaired by Transport and Housing Bureau, comprises members from the Police Force, the Transport Department, the Government Laboratory, the Department of Health, the Hospital Authority and the Security Bureau.

5. Currently under section 39 of the Road Traffic Ordinance (Cap. 374), it is an offence for a person to drive a motor vehicle on any road under the influence of drugs to such an extent as to be incapable of having proper control of the motor vehicle. This provision is broad enough to cover all drugs. However, the existing legislation does not empower the Police to require drivers who are suspected to have taken drugs to submit to rapid tests, to give blood samples or to provide other body fluid specimens for analysis. A charge under section 39 is therefore difficult to establish in court in the absence of objective evidence. An offence must be accompanied by the necessary enforcement powers in order to be effective. Otherwise, any efforts to create new offences would be fruitless. The Working Group needs to, on one the hand, consider and consult very carefully how the Police may be empowered in order that the drug driving offences can be effectively enforced, and on the other hand, the checks and balances available to ensure that the rights of motorists are not unjustly undermined.

6. In addition, the Working Group is considering whether a new offence, in addition to the current section 39 of Road Traffic Ordinance, Cap. 374, should be introduced to prohibit driving while having in the blood or other body fluid specimens of a driver any concentration of some specified illicit drugs. If so, the types of illicit drugs to be included in this "zero tolerance" control. According to the latest statistics from the Central Registry of Drug Abuse, the most commonly drugs of abuse in descending order are heroin, ketamine, triazolam/midazolam/zopiclone, ice, cough medicine, cannabis, cocaine and ecstasy and nimetazepam. The proportions of drug abusers reported to abuse each of these drugs and the general effects of these drugs on driving are set out in **Annex A** and **Annex B**. All these drugs of abuse could have serious adverse influence on a person's ability to control a vehicle properly hence causing danger to himself and other road users. Of these drugs, triazolam/midazolam/zopiclone and nimetazepam are prescribed drugs while cough medicine may be bought over-the-counter. They are widely used for medical purpose and the Working Group has to consider whether these should be excluded from the "zero tolerance" control.

7. Apart from "zero tolerance" control or first tier control, Australia maintains a second tier of control, i.e. it is an offence if a driver is impaired by any drugs when driving. The Working Group is considering whether to remove the subjective element in the current section 39 of Cap. 374 and introduce a similar offence which covers all kinds of drugs. According to the Australian experience, it was found impossible to draw up a list of drugs under the second tier of control and set prescribed limits for each and every drug. The Australian Police may however rely on impairment tests to determine whether a person is impaired and, if so, requires the person to provide blood or other body fluid specimens for testing.

Since some people take drugs for medical purpose (to treat diabetes or kill pain, for instance), and some take medication on doctors' prescription, we need to consider how best to deal with these situations. Besides, we need to consider whether the hospital system and Government Laboratory have the necessary resources/equipment/expertise to cope with the increased demand for prompt testing of blood or other body fluid specimens for prosecution purpose. Safeguards from abuse from the point of collection to disposal of samples, and use and disposal of records, will need to be carefully considered to ensure that the individual's right to privacy is duly protected.

8. In some overseas jurisdictions, police officers are empowered to require drivers suspected to have taken drugs/shown signs of impairment to undergo preliminary tests (impairment test or rapid oral fluid test). Drivers who fail in the preliminary tests may be arrested and will be required to provide blood or other body fluid specimens for laboratory testing. The Working Group is considering whether, and if so, which kind(s) of preliminary tests should be introduced into Hong Kong. While impairment test is rather widely adopted in European countries, the rapid oral fluid test technology only emerged recently and only a handful of developed economies have started gradually to adopt it in the last decade (Australia was the first country in the world to adopt the device). As compared with alcohol breath test, the time for the rapid oral fluid test is longer and the cost is higher. According to our preliminary research, there is no rapid oral fluid test device on ketamine currently available in the market for enforcement purposes, although some manufacturers claim that they could offer their products in not a distant future. The Working Group needs to look for devices that are suitable for local circumstances, e.g. fit to be used in the humid and hot weather in Hong Kong. On impairment tests, it may be implemented within a relatively shorter period time when the required training has been provided for police officers.

9. To sum up, the Government is determined to vigorously combat drug driving. The Working Group has studied the practices of overseas jurisdictions in tackling drug driving[2] and has deliberated on various possible measures, including the complex issues hightlighted above, and are formulating preliminary proposals for launching public consultation in the summer months. To combat drug driving effectively, a comprehensive legislative control framework is essential. As new offences and preliminary tests for drugs may be introduced, which would likely raise enforcement, privacy, technical and practical issues, we need to consult the

[2] For example, in February 2010, the inter-departmental Working Group sent a delegation to Victoria, Australia to study how their Police authority enforces drug driving as well as how the Monash University researches the effect on drivers who have taken drugs.

various stakeholders and professional bodies to ensure that the proposed measures incorporate expert/professional advice, would be effective, and are acceptable to the community. We are according top priority to this important work.

Proposed consultation and legislative plan

10. We plan to consult LegCo Transport Panel in July 2010, and Transport Advisory Committee, Road Safety Council, medical associations, pharmacist associations, the transport trades and motorists associations etc. during the summer months. Depending on the views received, we would endeavour to report back to the LegCo Panel the results of the consultation and our legislative proposals on combating drug driving in October/November 2010, with a view to introducing the necessary legislative amendments within the next legislative session.

Road Traffic (Amendment) Bill 2010

11. In response to Members' requests expressed at the Bills Committee meeting on Road Traffic (Amendment) Bill 2010 held on 3 June 2010, we have considered whether it will be appropriate to deal with some of the proposals against drug driving under the present Bill. We will endeavour to do as much as we can within the Rules of Procedure of LegCo. In the meantime, we hope that the Road Traffic (Amendment) Bill 2010 could be pursued expeditiously so that the various proposals therein to combat drink driving which have wide public support may be implemented as early as possible.

Transport and Housing Bureau
17 June 2010

Annex A

Reported drug abusers for 2009
by age group by type of drugs abused – All ages and aged 21 & over

Age group / Type of drugs abused	As a proportion of all reported abusers *
All ages	
Heroin	49.8%
Ketamine	37.6%
Triazolam / Midazolam / Zopiclone	10.1%
Methylamphetamine ('ice')	10.0%
Cough medicine	4.8%
Cannabis	4.4%
Cocaine	3.7%
MDMA('ecstasy')	3.7%
Nimetazepam	2.0%
Aged 21 & over	
Heroin	64.9%
Ketamine	22.8%
Triazolam / Midazolam / Zopiclone	12.9%
Methylamphetamine ('ice')	7.9%
Cough Medicine	5.2%
Cannabis	3.5%
Cocaine	2.8%
MDMA(Ecstasy)	1.1%
Nimetazepam	0.8%

Note

Source : Central Registry of Drug Abuse

* Figures refer to proportions of all reported drug abusers of corresponding age group with known drugs abused. The figures add up to over 100% because some abusers use more than one kind of drugs.

Annex B

Effect of drugs on driving

For the most commonly abused dangerous drugs, **ketamine** use is associated with poor body coordination and balancing which could impair the driving performance. One may also experience blurred vision and a sense of detachment from reality. Drivers after ketamine use may have distorted perceptions of speed and distance. Stimulants like **ice and ecstasy** can distort a driver's sense of vision; affect his concentration; make him become over-confident and more likely to take dangerous risks. During the phase whilst the stimulating effects are wearing off, the taker may feel fatigued, which will affect their concentration whilst driving. **Cocaine** can lead to misjudging driving speed and stopping distances. It can also lead to aggressive and erratic driving. **Cannabis** can acutely impair cognition, psychomotor function and driving performance. Users of cannabis find it difficult to stay in one lane on the road and may be unaware that they are drifting into the path of oncoming traffic. The sedative effect of **triazolam/midazolam/zopiclone** and **nimetazepam** tends to slow reactions and reduce concentration. All these drugs may adversely affect a person's ability to properly control a vehicle.

2. There are thousands types of drugs and people's reactions to drugs are very different. Besides, the effects of intake may also vary when drugs are mixed. Hence it will not be possible to prescribe in the legislation the limits of each and every drug that may affect driving. Expert advice on whether the taking of a particular drug has an effect on driving behaviour on a case by case basis would be needed for prosecution purpose.