

## **LEGISLATIVE COUNCIL BRIEF**

### **ROAD TRAFFIC (AMENDMENT) BILL 2010**

#### **INTRODUCTION**

At the meeting of the Executive Council on 20 April 2010, the Council ADVISED and the Chief Executive ORDERED that the Road Traffic (Amendment) Bill 2010, at **Annex**, should be introduced into the Legislative Council.

#### **JUSTIFICATIONS**

##### **Background**

2. The Road Traffic Legislation (Amendment) Ordinance 2008 has introduced a number of measures to combat drink driving. These include raising penalties on drink driving offences by disqualifying the offenders from driving for not less than three months on first conviction and requiring them to attend a driving improvement course on a mandatory basis; and empowering the Police to conduct random breath tests. Since the implementation of the above measures on 9 February 2009, there has been a significant drop of 67% in the number of traffic accidents<sup>1</sup> involving drink driving. Nevertheless, drink driving is still a matter of serious concern as it can bring about grave consequences not only to the drivers of the vehicles concerned but also to other road users. From time to time, there are calls for increased penalties on drink driving and dangerous driving offences, so that sentences handed down by the court would better reflect the serious injuries and damage caused by traffic accidents, particularly those involving drink driving. Taking into account the public sentiment arising from the Lok Ma Chau fatal accident in January 2009

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<sup>1</sup> The number of drink driving accidents from 9.2.2009 to 31.12.2009 compared with that in the same period in 2008.

and overseas practices, we propose to introduce heavier penalties to further deter drink driving offences and other inappropriate driving behaviour.

### **Traffic Accidents Involving Drink Driving**

3. During the period between 2004 and 2009, the average number of traffic accidents involving drink driving was 85 per year. The average number of casualties in drink driving accidents was 132 per year. On average, 29 persons were killed or seriously injured per year. Although drink driving accounts for a relatively small percentage of all traffic accidents (0.6%), the average Killed and Serious Injuries (KSI)<sup>2</sup> rate of 22% for drink driving accidents is relatively high when compared with that of 14% for all traffic accidents.

### **Introducing Different Penalties According to Blood Alcohol Concentration ('BAC')**

4. At present, under section 39A of the Road Traffic Ordinance, a person with the proportion of alcohol in his breath, blood, or urine exceeding the prescribed limit<sup>3</sup>, regardless of the alcohol level, is liable to the same maximum penalties in terms of fine, imprisonment and minimum driving disqualification period. According to overseas studies, drivers who consume alcohol have a much higher risk of involvement in accidents than those who do not consume alcohol, and the risk increases rapidly with increasing alcohol levels. In some overseas countries, heavier penalties are imposed on drivers with higher BAC. There are calls for the introduction of a sliding scale whereby the higher the BAC level, the heavier the penalties.

### **Introducing a New Provision of Causing Grievous Bodily Harm by Dangerous Driving**

5. A driver who drives dangerously on the road may either be charged

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<sup>2</sup> Killed casualties are those died within 30 days after the traffic accidents. Serious injuries are casualties detained in hospital as "in-patients" for over 12 hours after the traffic accidents. KSI rate is the percentage of KSI casualties over total casualties.

<sup>3</sup> Under section 2 of Road Traffic Ordinance, the prescribed limit means

- (a) 22 micrograms of alcohol in 100 millilitres of breath;
- (b) 50 milligrams of alcohol in 100 millilitres of blood; or
- (c) 67 milligrams of alcohol in 100 millilitres of urine.

with dangerous driving or causing death by dangerous driving as the case may warrant. The maximum imprisonment terms of the offences are three years and ten years respectively. Recognizing the impact suffered by a victim of a traffic accident and his family, we propose to introduce a new offence of ‘causing grievous bodily harm by dangerous driving’ providing for a heavier penalty for a driver who causes grievous bodily harm by driving a motor vehicle on a road dangerously in order to achieve a stronger deterrent effect. A similar provision is found in overseas jurisdictions including Australia and Northern Ireland.

### **Introducing Circumstances of Aggravation**

6. The concept of an aggravating penalty is in place in overseas countries and in Hong Kong. We propose to bring in ‘drink driving’ as a circumstance of aggravation in all dangerous driving offences so that if an offence is committed in circumstances of aggravation, the maximum penalties in terms of fine and imprisonment, and the minimum disqualification period for the offence concerned are each increased by 50%.

### **Consecutive Implementation of Imprisonment and Disqualification**

7. The public opinion is that the deterrent effect of disqualification is apparent rather than real, if it is going to run concurrently with any imprisonment sentence. There are public calls for implementing the penalties of imprisonment and disqualification consecutively, and that express provisions should be provided for the court to do so, such that dangerous drivers would be taken off from our roads for a longer period.

## **PROPOSALS**

8. We propose to amend the Road Traffic Ordinance (Cap. 374) and the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) to introduce the following measures :

- (a) providing for 3 tiers of minimum disqualification periods on conviction according to the driver’s BAC level;

- (b) introducing a new offence of causing grievous bodily harm by dangerous driving;
- (c) bringing in drink driving as a circumstance of aggravation in all dangerous driving offences; and
- (d) providing for the consecutive implementation of imprisonment and driving disqualification for offenders on subsequent conviction of serious traffic offences.

### **Introducing 3-tier Penalties According to BAC Level**

9. Given that disqualification is the most direct means to take drink drivers off the road, we propose that a 3-tier penalty system be introduced whereby the higher the BAC level, the longer will be the minimum disqualification period. A similar sliding scale for the maximum fine and imprisonment terms is not proposed at the same time as the court still has considerable room to impose heavier penalties under the existing legislation should it see merit in doing so.

10. The proposed sliding scale is set out in the following table :

Proportion of alcohol in a person's breath, blood or urine	Proposed Minimum Driving Disqualification Period	
	First Conviction	Second / Subsequent Conviction <sup>4</sup>
<b>Tier 1</b> (if it exceeds the prescribed limit but is less than 35mcg / 80mg / 107mg of alcohol in 100ml of breath / blood / urine respectively)	six months	two years

<sup>4</sup> Under the Bill, a person is regarded as having a second/subsequent conviction in drink driving, if he has been convicted of drink driving previously regardless of the BAC level on the previous conviction. The penalty for the second/subsequent conviction will be pitched at the BAC level in the second/subsequent conviction. For example, if a person is convicted of a tier 1 drink driving offence and subsequently is convicted of a tier 3 drink driving offence, the minimum disqualification period for the subsequent offence is five years.

Proportion of alcohol in a person's breath, blood or urine	Proposed Minimum Driving Disqualification Period	
	First Conviction	Second / Subsequent Conviction <sup>4</sup>
<b>Tier 2</b> (if it exceeds tier 1 but is less than 66mcg / 150mg / 201mg of alcohol in 100ml of breath / blood / urine respectively)	one year	three years
<b>Tier 3</b> (if it exceeds tier 2)	two years	five years

11. To preserve the integrity and effectiveness of the drink driving laws, we propose to set the minimum disqualification periods for the following drink-driving related offences at tier 3 :

- (a) Driving a motor vehicle under the influence of drink or drugs;
- (b) Failure to provide specimens of breath for screening breath tests without reasonable excuse; and
- (c) Failure to provide specimens of breath, blood or urine for analysis without reasonable excuse.

12. To prevent drivers with high BAC levels from evading the penalties by requesting a blood or urine test with the intention of delaying the provision of samples, we propose to remove the option for a person whose breath analysis result is no more than 37mcg of alcohol per 100ml of breath to replace his breath specimen by a specimen of blood or urine. The option was provided in 1995 when drink driving legislation was first introduced to alleviate concerns as to the accuracy of the breath testing equipment. Nowadays, the breath testing equipment has proved to be reliable and able to provide accurate results.

### **Introducing a New Provision of Causing Grievous Bodily Harm by Dangerous Driving**

13. We propose to bring in a new offence of causing grievous bodily harm by dangerous driving. The penalty terms are proposed to be set between

dangerous driving and dangerous driving causing death as follows :

- (a) Maximum fine : \$50,000;
- (b) Maximum imprisonment : seven years;
- (c) Minimum driving disqualification period on first conviction: two years; and on second or subsequent conviction: five years; and
- (d) 10 Driving-offence Points<sup>5</sup>, and to attend mandatory Driving Improvement Course.

14. We do not propose to define the term “grievous bodily harm” but to rely on the common law definition. Under this approach, the possibility of acquittals based on sheer technicalities could be minimized.

### **Introducing Circumstances of Aggravation**

15. We propose that a BAC level of tier 3 should be made a circumstance of aggravation in all dangerous driving offences. If such an offence is committed in circumstances of aggravation, the maximum penalties in terms of fine and imprisonment, and the minimum disqualification period for the offence concerned are each increased by 50%.

### **Consecutive Implementation of Imprisonment and Disqualification**

16. We propose to introduce a provision to require the court to order that the disqualification period should commence at the conclusion of the imprisonment sentence, unless the court sees fit that both imprisonment and disqualification terms should be implemented concurrently, in the circumstance that the driver is convicted of a second or subsequent 10 Driving-offence Points

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<sup>5</sup> The newly proposed offence of causing grievous bodily harm by dangerous driving will be designated as a 10-point offence in the Schedule to the Road Traffic (Driving-offence Points) Ordinance (Cap. 375). Under the current Driving-Offence Points (DOP) System, these points will not be counted for disqualification purpose under Cap. 375 if the driver is disqualified by the Court on conviction. However, the conviction of the new offence will remain in the driver’s conviction record which will be taken into account for other relevant purposes, e.g. the counting of second/subsequent convictions for consecutive implementation of imprisonment and disqualification.

offence<sup>6</sup>, regardless of whether that conviction is for the same or for a different offence. Offences carrying 10 Driving-offence Points are the most serious offences under the Road Traffic Ordinance. They include all dangerous driving offences, drink or drug driving offences, motor racing, and speeding by over 45 km per hour.

### **Other Related Proposals**

17. We propose to lengthen the minimum disqualification periods for a second or subsequent conviction of the following dangerous driving offences so that they will be in line with that proposed for drink driving offences:

- (a) for ‘dangerous driving’ offence, from 18 months to two years; and
- (b) for ‘causing death by dangerous driving’ offence, from three years to five years.

### **THE BILL**

18. The main provisions of the Bill are summarized below :

- (a) Clause 6(5), Clause 7 (new section 36A(6) to (8) of Cap. 374) and Clause 8(5) define the circumstances of aggravation, and set out the additional penalties for a person who commits in circumstances of aggravation various dangerous driving offences;
- (b) Clause 7 provides for the new offence of causing grievous bodily harm by dangerous driving and relevant penalties. Clauses 3, 4, 17, 19, 20, 21, 22 and 23 make consequential amendments to Cap. 374 and Cap. 375 relating to the introduction of the new offence;
- (c) Clauses 10 and 14 introduce 3-tier penalties for drink driving;
- (d) Clauses 9, 11 and 12 amend sections 39, 39B and 39C of Cap. 374 so that penalties of drink driving related offences are set at tier 3 to

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<sup>6</sup> The offence in the Schedule to the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) for which the number of points set out opposite to that offence is 10.

preserve the integrity and effectiveness of the drink driving laws;

- (e) Clause 13 repeals section 39D(2), (3) and (4) of Cap. 374 to remove the option for a person to replace his breath specimen by a specimen of blood or urine; and
- (f) Clause 18 enables the court to direct that the disqualification period is not to start to run until the convicted driver is released from custody, if the driver is convicted of a second or subsequent offence that carries 10 Driving-offence Points.

## **LEGISLATIVE TIMETABLE**

19. The legislative timetable will be :

Publication in the Gazette	30 April 2010
First Reading and commencement of Second Reading debate	12 May 2010
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## **COMMENCEMENT**

20. The Bill comes into operation on the day on which the Ordinance is published in the Gazette.

## **IMPLICATIONS OF THE PROPOSALS**

21. The Bill is in conformity with the Basic Law, including provisions concerning human rights. It has no productivity, environmental or sustainability implications. The amendments in the Bill will not affect the current binding effect of Cap. 374 and Cap. 375.

## **Financial Implications**

22. One-off capital costs of about \$800,000 and \$70,000 are required for enhancing the existing computer systems in the Transport Department and the Judiciary respectively. The capital funding will be met from within the operating expenditures of the Transport Department, and the Transport and Housing Bureau respectively.

## **Civil Service Implications**

23. No additional staff and recurrent resources will be required for implementing the proposals. The Police will carry out related enforcement actions as part of their routine duties.

## **Economic Implications**

24. Introducing further measures to deter drink driving and inappropriate driving behaviour will help bring economic benefits in terms of savings in human lives, and reduction in the direct costs of traffic accidents such as productivity loss from casualties, medical expenses thus arising, and repair/replacement of damaged vehicles. By enhancing road safety, the proposal will also help raise the quality of life in Hong Kong.

## **PUBLIC CONSULTATION**

25. We have consulted the Transport Advisory Committee, the Transport Panel of the Legislative Council, and the Road Safety Council. While they generally support the proposals, some members of the Legislative Council consider that the proposed minimum disqualification periods, particularly for repeat offenders of drink driving offences and ‘causing death by dangerous driving’ offence, should be further increased. In fact, the cumulative effect of our proposals (i.e. minimum disqualification period, circumstances of aggravation and consecutive implementation of imprisonment and disqualification terms) will effectively ban an offending driver from driving for a longer period of time. This will help address the concerns from advocates for stiffer penalties.

26. We have also consulted the transport trades including the franchised bus companies, the non-franchised bus, cross-border coach, public light bus, taxi and goods vehicle trades and their drivers' unions/associations. Broadly speaking, the transport trades support heavier penalties against drink drivers, particularly the introduction of a sliding scale for driving disqualifications. Nevertheless, some unions representing professional drivers expressed concerns about the proposed heavier penalties for the dangerous driving offences, and the introduction of a new offence of 'causing grievous bodily harm by dangerous driving'. They opined that these measures were not directly related to drink driving and they might be misused against professional drivers. We have assured them that the exact charge in individual cases will be based on facts and evidence beyond reasonable doubt.

27. Overall, our proposals reflect the suggestions and views gathered from the community. We consider that the proposals should be taken forward in the interest of the public at large.

## **PUBLICITY**

28. We will issue a press release on 28 April 2010. A spokesman will be available to answer media enquiries.

## **ENQUIRIES**

29. Any enquiries concerning the brief can be directed to Miss Erica Ng, Principal Assistant Secretary for Transport and Housing, at 2189 2182.

**Transport and Housing Bureau**  
**28 April 2010**

**ROAD TRAFFIC (AMENDMENT) BILL 2010**

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## A BILL

To

Amend the Road Traffic Ordinance to increase the minimum disqualification periods for certain offences, create a new offence of causing grievous bodily harm by dangerous driving, increase the penalties for dangerous driving offences in certain circumstances, enable the start of a disqualification period to be delayed and make consequential and other minor amendments and to make related amendments to the Road Traffic (Driving-offence Points) Ordinance.

Enacted by the Legislative Council.

### **1. Short title**

This Ordinance may be cited as the Road Traffic (Amendment) Ordinance 2010.

### **2. Interpretation**

Section 2 of the Road Traffic Ordinance (Cap. 374) is amended by adding –

““tier 1” (第 1 級), “tier 2” (第 2 級) and “tier 3” (第 3 級) have the meaning given by section 39A(1A);”.

### **3. Application of Ordinance to trams**

Section 4(1) is amended by adding “36A,” after “36,”.

### **4. Application of Ordinance to village vehicles**

Section 4A(2) is amended by adding “36A(1), (9) and (10),” after “(4),”.

### **5. Regulation of public service vehicles**

Section 7(1C) is amended, in the Chinese text, by repealing “規則” and substituting “規例”.

## **6. Causing death by dangerous driving**

(1) Section 36(2) is amended, in the Chinese text, by repealing “否則須按照第(2A)或(2B)款，命令” and substituting “否則須命令按照第(2A)或(2B)款”.

(2) Section 36(2A)(b) is amended by repealing “3 years” and substituting “5 years”.

(3) Section 36(2B)(b) is amended by repealing “3 years” and substituting “5 years”.

(4) Section 36(2C)(b) is amended by repealing “3 years” and substituting “5 years”.

(5) Section 36 is amended by adding –

“(2D) If an offence under subsection (1) is committed in circumstances of aggravation, the maximum fine and term of imprisonment for the offence as set out in subsection (1), and the minimum disqualification periods for the offence as set out in subsections (2A) and (2B), are each increased by 50% and subsection (2C) must be construed accordingly.

(2E) A person commits an offence under subsection (1) in circumstances of aggravation if at the time of committing the offence the proportion of alcohol in the person’s breath, blood or urine is tier 3.

(2F) To avoid doubt and despite anything to the contrary in section 113C of the Criminal Procedure Ordinance (Cap. 221), the maximum fine for an offence under subsection (1) committed in circumstances of aggravation is the monetary amount derived by multiplying by 1.5 the maximum fine for the offence as set out in subsection (1).”.

(6) Section 36(4) is amended, in the Chinese text, by repealing everything after “如 —” and substituting –

- “(a) 某人駕駛汽車的方式，遠遜於一個合格而謹慎的駕駛人會被期望達到的水平；  
及  
(b) 對一個合格而謹慎的駕駛人而言，該人以該方式駕駛汽車會屬危險，會是顯然易見的，

該人須視為屬第(1)款所指的危險駕駛。”

(7) Section 36(5) is amended, in the Chinese text, by repealing everything after “如” and substituting “對一個合格而謹慎的駕駛人而言，駕駛處於當時狀況的有關汽車會屬危險，會是顯然易見的，則該人亦須視為屬第(1)款所指的危險駕駛。”

(8) Section 36(6) is amended, in the Chinese text, by repealing “損害” and substituting “損壞”.

(9) Section 36(7) is amended, in the Chinese text, by repealing everything before “；及” and substituting –

“(7) 就第(4)及(5)款而言，斷定在某個案中，對合格而謹慎的駕駛人有何預期，或斷定在某個案中，對合格而謹慎的駕駛人而言甚麼是顯然易見，須顧及該個案的整體情況，包括 –

- (a) 在關鍵時間有關道路的性質、狀況及使用情況；  
(b) 在關鍵時間在有關道路上的實際交通流量，或按理可預期的在關鍵時間在該道路上的交通流量”。

(10) Section 36 is amended by adding –

“(9A) If on the trial of any person charged with an offence under subsection (1) the prosecution proves that the person

charged drove dangerously and caused grievous bodily harm to, but not the death of, another person by so driving, the person charged must be acquitted of the offence under subsection (1) and be found guilty of an offence under section 36A.”.

## 7. Section 36A added

The following is added –

### “36A. Causing grievous bodily harm by dangerous driving

(1) A person who causes grievous bodily harm to another person by driving a motor vehicle on a road dangerously commits an offence and is liable –

- (a) on conviction on indictment to a fine at level 5 and to imprisonment for 7 years;
- (b) on summary conviction to a fine at level 4 and to imprisonment for 2 years.

(2) If a court or magistrate convicts a person of an offence under subsection (1), the court or magistrate must order that the person be disqualified in accordance with subsection (3) or (4) unless the court or magistrate for special reasons orders that the person be disqualified for a shorter period or that the person not be disqualified.

(3) Subject to subsection (4), the period for which the person is to be disqualified is –

- (a) for a first conviction, a period of not less than 2 years; and
- (b) for a second or subsequent conviction, a period of not less than 5 years.

(4) If the court or magistrate has ordered the person to attend and complete a driving improvement course under section 72A(1A), the period for which the person is to be disqualified is –

- (a) for a first conviction, a period of not less than 2 years, or until the person has attended and completed the course at his or her own cost, whichever is the later; and
- (b) for a second or subsequent conviction, a period of not less than 5 years, or until the person has attended and completed the course at his or her own cost, whichever is the later.

(5) For the purposes of subsection (2), a person to whom subsection (4) applies is disqualified for a shorter period if the period for which he or she is disqualified is –

- (a) for a first conviction, a period of less than 2 years, or until the person has attended and completed the driving improvement course at his or her own cost, whichever is the later; and
- (b) for a second or subsequent conviction, a period of less than 5 years, or until the person has attended and completed the driving improvement course at his or her own cost, whichever is the later.

(6) If an offence under subsection (1) is committed in circumstances of aggravation, the maximum fine and term of imprisonment for the offence as set out in subsection (1), and the minimum disqualification periods for the offence as set out in subsections (3) and (4), are each increased by 50% and subsection (5) must be construed accordingly.

(7) A person commits an offence under subsection (1) in circumstances of aggravation if at the time of committing the offence the proportion of alcohol in the person's breath, blood or urine is tier 3.

(8) To avoid doubt and despite anything to the contrary in section 113C of the Criminal Procedure Ordinance (Cap. 221), the

maximum fine for an offence under subsection (1) committed in circumstances of aggravation is the monetary amount derived by multiplying by 1.5 the maximum fine for the offence as set out in subsection (1).

(9) The court or magistrate may deal with the conviction of an offence as a first conviction if, as at the date on which the offence was committed, at least 5 years have passed since the person's last conviction under subsection (1).

(10) A person is to be regarded as driving dangerously within the meaning of subsection (1) if –

- (a) the way he or she 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.

(11) A person is also to be regarded as driving dangerously within the meaning of subsection (1) if it would be obvious to a competent and careful driver that driving the motor vehicle concerned in its current state would be dangerous.

(12) For the purposes of subsections (10) and (11), “dangerous” refers to danger either of injury to any person or of serious damage to property.

(13) For the purposes of subsections (10) and (11), in determining what would be expected of, or obvious to, a competent and careful driver in a particular case, regard must be had to all the circumstances of the case including –

- (a) the nature, condition and use of the road concerned at the material time;
- (b) the amount of traffic which is actually on the road concerned at the material time or which might

reasonably be expected to be on the road concerned at the material time; and

- (c) the circumstances (including the physical condition of the accused) of which the accused could be expected to be aware and any circumstances (including the physical condition of the accused) shown to have been within the knowledge of the accused.

(14) In determining for the purposes of subsection (11) the state of the motor 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.

(15) If on the trial of any person charged with an offence under subsection (1) the prosecution proves that the person charged drove dangerously but not that he or she caused grievous bodily harm to another person by so driving, the person charged must be acquitted of the offence under subsection (1) and be found guilty of an offence under section 37.

(16) On the trial of any person charged with an offence under subsection (1), the person charged may be acquitted of the offence under subsection (1) and be found guilty of one or more offences under section 38, 39 or 39A.”.

## **8. Dangerous driving**

(1) Section 37(2) is amended, in the Chinese text, by repealing “否則須按照第(2A)或(2B)款，命令” and substituting “否則須命令按照第(2A)或(2B)款”.

(2) Section 37(2A)(b) is amended by repealing “18 months” and substituting “2 years”.

(3) Section 37(2B)(b) is amended by repealing “18 months” and substituting “2 years”.

(4) Section 37(2C)(b) is amended by repealing “18 months” and substituting “2 years”.

(5) Section 37 is amended by adding –

“(2D) If an offence under subsection (1) is committed in circumstances of aggravation, the maximum fine and term of imprisonment for the offence as set out in subsection (1), and the minimum disqualification periods for the offence as set out in subsections (2A) and (2B), are each increased by 50% and subsection (2C) must be construed accordingly.

(2E) A person commits an offence under subsection (1) in circumstances of aggravation if at the time of committing the offence the proportion of alcohol in the person’s breath, blood or urine is tier 3.

(2F) To avoid doubt and despite anything to the contrary in section 113C of the Criminal Procedure Ordinance (Cap. 221), the maximum fine for an offence under subsection (1) committed in circumstances of aggravation is the monetary amount derived by multiplying by 1.5 the maximum fine for the offence as set out in subsection (1).”.

(6) Section 37(4) is amended, in the Chinese text, by repealing everything after “如 —” and substituting –

“(a) 某人駕駛汽車的方式，遠遜於一個合格而謹慎的駕駛人會被期望達到的水平；  
及

(b) 對一個合格而謹慎的駕駛人而言，該人以該方式駕駛汽車會屬危險，會是顯然易見的，

該人須視為屬第(1)款所指的危險駕駛。”.

(7) Section 37(5) is amended, in the Chinese text, by repealing everything after “如” and substituting “對一個合格而謹慎的駕駛人而言，駕駛處於當時狀況的有關汽車會屬危險，會是顯而易見的，則該人亦須視為屬第(1)款所指的危險駕駛。”。

(8) Section 37(6) is amended, in the Chinese text, by repealing “損害” and substituting “損壞”。

(9) Section 37(7) is amended, in the Chinese text, by repealing everything before “；及” and substituting –

“(7) 就第(4)及(5)款而言，斷定在某個案中，對合格而謹慎的駕駛人有何預期，或斷定在某個案中，對合格而謹慎的駕駛人而言甚麼是顯而易見，須顧及該個案的整體情況，包括 –

- (a) 在關鍵時間有關道路的性質、狀況及使用情況；
- (b) 在關鍵時間在有關道路上的實際交通流量，或按理可預期的在關鍵時間在該道路上的交通流量”。

## **9. Driving a motor vehicle under the influence of drink or drugs**

(1) Section 39(2) is amended, in the Chinese text, by repealing “否則須按照第(2A)或(2B)款，命令” and substituting “否則須命令按照第(2A)或(2B)款”。

(2) Section 39(2A)(a) is amended by repealing “3 months” and substituting “2 years”。

(3) Section 39(2A)(b) is amended by repealing “2 years” and substituting “5 years”。

(4) Section 39(2B)(a) is amended by repealing “3 months” and substituting “2 years”.

(5) Section 39(2B)(b) is amended by repealing “2 years” and substituting “5 years”.

(6) Section 39(2C)(a) is amended by repealing “3 months” and substituting “2 years”.

(7) Section 39(2C)(b) is amended by repealing “2 years” and substituting “5 years”.

**10. Driving, attempting to drive or being in charge of a motor vehicle with alcohol concentration above prescribed limit**

(1) The heading of section 39A is amended, in the Chinese text, by repealing “限制” and substituting “限度”.

(2) Section 39A(1) is amended, in the Chinese text, by repealing “限制” and substituting “限度”.

(3) Section 39A is amended by adding –

“(1A) The proportion of alcohol in a person’s breath, blood or urine is –

- (a) tier 1 if it exceeds the prescribed limit but is less than –
  - (i) for breath, 35 micrograms of alcohol in 100 millilitres of breath;
  - (ii) for blood, 80 milligrams of alcohol in 100 millilitres of blood; or
  - (iii) for urine, 107 milligrams of alcohol in 100 millilitres of urine;
- (b) tier 2 if it exceeds tier 1 but is less than –

- (i) for breath, 66 micrograms of alcohol in 100 millilitres of breath;
  - (ii) for blood, 150 milligrams of alcohol in 100 millilitres of blood; or
  - (iii) for urine, 201 milligrams of alcohol in 100 millilitres of urine;
- (c) tier 3 if it exceeds tier 2.”.

(4) Section 39A(2) is amended, in the Chinese text, by repealing “否則須按照第(2A)或(2B)款，命令” and substituting “否則須命令按照第(2A)或(2B)款”.

(5) Section 39A(2A) is repealed and the following substituted –

“(2A) Subject to subsection (2B), the period for which the person is to be disqualified is –

- (a) for a first conviction, a period of not less than –
  - (i) 6 months if the proportion of alcohol in the person’s breath, blood or urine is tier 1;
  - (ii) 12 months if the proportion of alcohol in the person’s breath, blood or urine is tier 2;
  - (iii) 2 years if the proportion of alcohol in the person’s breath, blood or urine is tier 3; and
- (b) for a second or subsequent conviction (regardless of the proportion of alcohol in the person’s breath, blood or urine on any

previous conviction), or a conviction subsequent to a conviction under section 39, 39B or 39C, a period of not less than –

- (i) 2 years if the proportion of alcohol in the person’s breath, blood or urine is tier 1;
- (ii) 3 years if the proportion of alcohol in the person’s breath, blood or urine is tier 2;
- (iii) 5 years if the proportion of alcohol in the person’s breath, blood or urine is tier 3.”.

(6) Section 39A(2B)(a) is amended by repealing “3 months” and substituting “that specified in subsection (2A)(a) according to the proportion of alcohol in the person’s breath, blood or urine”.

(7) Section 39A(2B)(b) is amended by repealing “2 years” and substituting “that specified in subsection (2A)(b) according to the proportion of alcohol in the person’s breath, blood or urine”.

(8) Section 39A(2C)(a) is amended by repealing “3 months” and substituting “that specified in subsection (2A)(a) according to the proportion of alcohol in the person’s breath, blood or urine”.

(9) Section 39A(2C)(b) is amended by repealing “2 years” and substituting “that specified in subsection (2A)(b) according to the proportion of alcohol in the person’s breath, blood or urine”.

## **11. Screening breath tests**

(1) Section 39B(7) is amended, in the Chinese text, by repealing “否則須按照第(7A)或(7B)款，命令” and substituting “否則須命令按照第(7A)或(7B)款”.

(2) Section 39B(7A)(a) is amended by repealing “3 months” and substituting “2 years”.

(3) Section 39B(7A)(b) is amended by repealing “2 years” and substituting “5 years”.

(4) Section 39B(7B)(a) is amended by repealing “3 months” and substituting “2 years”.

(5) Section 39B(7B)(b) is amended by repealing “2 years” and substituting “5 years”.

(6) Section 39B(7C)(a) is amended by repealing “3 months” and substituting “2 years”.

(7) Section 39B(7C)(b) is amended by repealing “2 years” and substituting “5 years”.

## **12. Provision of specimens for analysis**

(1) Section 39C(16) is amended, in the Chinese text, by repealing “否則須按照第(16A)或(16B)款，命令” and substituting “否則須命令按照第(16A)或(16B)款”.

(2) Section 39C(16A)(a) is amended by repealing “3 months” and substituting “2 years”.

(3) Section 39C(16A)(b) is amended by repealing “2 years” and substituting “5 years”.

(4) Section 39C(16B)(a) is amended by repealing “3 months” and substituting “2 years”.

(5) Section 39C(16B)(b) is amended by repealing “2 years” and substituting “5 years”.

(6) Section 39C(16C)(a) is amended by repealing “3 months” and substituting “2 years”.

(7) Section 39C(16C)(b) is amended by repealing “2 years” and substituting “5 years”.

**13. Choice of specimens of breath**

Section 39D(2), (3) and (4) is repealed.

**14. Section 39H added**

The following is added –

**“39H. Amendment of tier 1, tier 2 or tier 3**

(1) The Secretary for Transport and Housing may by notice in the Gazette amend section 39A(1A) by varying the proportion of alcohol that constitutes tier 1, tier 2 or tier 3.

(2) A notice under subsection (1) is not to come into operation until after the time provided for the Legislative Council to debate the notice under section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) has expired.”.

**15. Driving in excess of speed limit**

Section 41(3) is amended, in the Chinese text, by repealing “否則須按照第(4)款，命令” and substituting “否則須命令按照第(4)款”.

**16. Restriction on motor racing and speed trials**

Section 55(2) is amended, in the Chinese text, by repealing “否則須按照第(2A)款，命令” and substituting “否則須命令按照第(2A)款”.

**17. Notice of intention to prosecute for certain offences**

(1) Section 68(1) is amended by adding “36A,” after “36,”.

(2) Section 68(1) is amended by adding “causing grievous bodily harm by dangerous driving,” after “causing death by dangerous driving,”.

**18. Section 69A added**

The following is added –

**“69A. Start of disqualification period**

- (1) This section applies if –
  - (a) a court or magistrate convicts a person of a relevant scheduled offence;
  - (b) the conviction is the person’s second or subsequent conviction of a relevant scheduled offence, regardless of whether that conviction is for the same or for a different relevant scheduled offence; and
  - (c) the court or magistrate orders that the person be disqualified for a fixed period in addition to sentencing him or her to undergo a term of imprisonment.

(2) The court or magistrate must direct that the disqualification period is not to start to run until the person is released from custody, unless the court or magistrate for special reasons decides not to make such a direction.

(3) The court or magistrate may deal with the conviction of a relevant scheduled offence as a first conviction if, as at the date on which the offence was committed, at least 5 years have passed since the person’s last conviction of a relevant scheduled offence.

(4) In this section “relevant scheduled offence” (有關表列罪行) means an offence mentioned in the Schedule to the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) for which the number of points set out opposite that offence in that Schedule is 10.”.

**19. Power of court or magistrate to order persons to attend driving improvement courses**

- (1) Section 72A(1A) is amended by adding “36A,” after “36,”.

(2) Section 72A(3B)(a) is amended by adding “36A(2),” after “36(2),”.

(3) Section 72A(3B)(a) is amended, in the Chinese text, by repealing “訂明” where it twice appears and substituting “指定”.

## **20. Application of Ordinance to private roads**

Section 117 is amended by adding “36A,” after “36,”.

## **21. Defence**

Section 120(1) is amended by adding “36A,” after “36,”.

## **22. Offences specified for the purposes of section 72A**

Schedule 11 is amended by adding “1A,” after “1,”.

### **Related Amendments**

## **23. Road Traffic (Driving-offence Points) Ordinance**

(1) The Schedule to the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) is amended by adding –

“1A Section 36A(1) Causing grievous bodily harm 10”.  
by dangerous driving

(2) The Schedule is amended, in the Chinese text, in item 4A, by repealing “限制” and substituting “限度”.

### **Explanatory Memorandum**

The object of this Bill is to amend the Road Traffic Ordinance (Cap. 374) (“the Ordinance”) –

- (a) to increase the minimum disqualification periods on conviction of certain traffic offences;
- (b) for an offence under section 39A of the Ordinance (driving, attempting to drive or being in charge of a motor

vehicle with alcohol concentration above prescribed limit), to provide for 3 tiers of minimum disqualification periods on conviction according to the proportion of alcohol in the person's breath, blood or urine;

- (c) to create a new offence of causing grievous bodily harm by dangerous driving;
- (d) to make driving with more than a specified proportion of alcohol in the person's breath, blood or urine a circumstance of aggravation in all dangerous driving offences resulting in increased penalties (a circumstance of aggravation is to be distinguished from aggravating factors that are taken into account on sentencing); and
- (e) to enable the start of a disqualification period to be delayed in certain circumstances until the driver is released from custody.

2. The Bill makes a related amendment to the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) to provide that the new offence of causing grievous bodily harm by dangerous driving carries 10 points under that Ordinance.

3. Clause 1 provides for the short title of the Bill when enacted.

4. Clause 2 adds a definition of "tier 1", "tier 2" and "tier 3" to section 2 of the Ordinance.

5. Clauses 3 and 4 respectively amend sections 4(1) and 4A(2) of the Ordinance consequentially on the creation of the new offence of causing grievous bodily harm by dangerous driving.

6. Clause 6 amends section 36 of the Ordinance (causing death by dangerous driving) to increase the minimum disqualification periods on a second or subsequent conviction, to generally increase penalties by 50% if at the time of committing the offence the proportion of alcohol in the person's breath, blood or urine is tier 3 and to make the new offence of causing grievous bodily harm by

dangerous driving a possible alternative conviction on a trial of an offence under that section.

7. Clause 7 adds a new section 36A to the Ordinance providing for an offence of causing grievous bodily harm by dangerous driving. The drafting of that section is modelled on the 2 existing dangerous driving offences, as proposed to be amended by the Bill.

8. Clause 8 makes amendments to section 37 of the Ordinance (dangerous driving) similar to those made to section 36 of the Ordinance by clause 6.

9. Clause 9 amends section 39 of the Ordinance (driving a motor vehicle under the influence of drink or drugs) to increase the minimum disqualification periods on conviction.

10. Clause 10 amends section 39A of the Ordinance (driving, attempting to drive or being in charge of a motor vehicle with alcohol concentration above prescribed limit) to link the minimum disqualification periods on conviction to the proportion of alcohol in the person's breath, blood or urine.

11. Clause 11 amends section 39B of the Ordinance (screening breath tests) to increase the minimum disqualification periods on conviction.

12. Clause 12 amends section 39C of the Ordinance (provision of specimens for analysis) to increase the minimum disqualification periods on conviction.

13. Clause 13 amends section 39D of the Ordinance (choice of specimens of breath) by repealing subsections (2), (3) and (4) of that section so as to remove the option for a person to replace his or her breath specimens with a specimen of blood or urine.

14. Clause 14 adds a new section 39H to the Ordinance to enable the Secretary for Transport and Housing to amend the new section 39A(1A) being added by clause 10(3) so as to vary the proportion of alcohol that constitutes tier 1, tier 2 or tier 3. The drafting of the new section 39H is modelled on section 39G of the Ordinance.

15. Clause 17 amends section 68(1) of the Ordinance consequentially on the creation of the new offence of causing grievous bodily harm by dangerous driving.

16. Clause 18 adds a new section 69A to the Ordinance to enable the start of a disqualification period to be delayed on a second or subsequent conviction of an offence mentioned in the Schedule to the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) for which the number of points set out opposite that offence in that Schedule is 10. The new section applies where the driver is sentenced to imprisonment and enables the start of the disqualification period to be delayed until the driver is released from custody. The court or magistrate must delay the start of the disqualification period until then unless there are special reasons not to do so. The court or magistrate may deal with a conviction as a first conviction if at least 5 years have passed since the person was last convicted of an offence that carries 10 points.

17. Clauses 19, 20 and 21 respectively amend sections 72A, 117 and 120(1) of the Ordinance consequentially on the creation of the new offence of causing grievous bodily harm by dangerous driving.

18. Clause 22 amends Schedule 11 to the Ordinance consequentially on the amendments made to section 72A of the Ordinance by clause 19.

19. Clause 23 amends the Schedule to the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) to provide that the new offence of causing grievous bodily harm by dangerous driving carries 10 points under that Ordinance.

20. Clauses 5, 6(1), (6), (7), (8) and (9), 8(1), (6), (7), (8) and (9), 9(1), 10(1), (2) and (4), 11(1), 12(1), 15, 16, 19(3) and 23(2) make textual amendments to the Chinese text of certain sections of the Ordinance and of the Road Traffic (Drink-offence Points) Ordinance (Cap. 375) to improve their accuracy.