

For Information
5 July 2011

Paper for Bills Committee on
Road Traffic (Amendment) Bill 2011

Purpose

This paper provides the information requested by Members at the meeting of the Bills Committee on 21 June 2011 in relation to the Road Traffic (Amendment) Bill 2011 ('the Bill').

Comparison table on penalties

2. During the public consultation on the initial proposals to combat drug driving, it is noted that there is a clear preference for stiffer penalties for drug driving offences involving illicit drugs of abuse, and lighter penalties for drug driving offences involving medicinal drugs. To address the public's concern, it is proposed in the Bill that:

- (a) the penalties for the offence involving drugs other than the specified illicit drugs should be aligned with tier 1 drink driving offence. It should be noted that the proposed penalties are lighter than that under the existing legislation for drug driving. Currently, under section 39 of the Road Traffic Ordinance (Cap. 374) ('RTO'), a person who drives under the influence of drink or drugs to such an extent as to be incapable of having proper control of the motor vehicle ('driving under the influence') is an offence and is liable to penalties equivalent to tier 3 drink driving offence;
- (b) the penalties for the offences involving specified illicit drugs¹ should be heavier to send a clear message to the community that our society does not tolerate driving with illicit drugs. We propose that the penalties for driving with any concentration of the

¹ Specified illicit drug' are the following 6 common drugs of abuse, viz. heroin, ketamine, methamphetamine, cannabis, cocaine, and 3,4-methylenedioxymethamphetamine (MDMA).

specified illicit drugs offence ('zero-tolerance offence') should be aligned with tier 3 drink driving; and that the penalties for driving under the influence of a specified illicit drug offence should even be higher;

- (c) the penalties for refusal to undergo preliminary drug tests, or provide blood and/or urine specimens for analysis without reasonable excuse should be aligned with the most serious drug driving offence to eliminate any incentive for a person to circumvent the law. This is in line with the arrangements for drink driving offences.

3. The Bill also proposes to increase the driving disqualification period for a person convicted of dangerous driving causing death ('DDCD') offence in order to maintain the relativity in penalties between the DDCD offence and the new drug driving offences².

4. The penalties for the new drug driving offences and DDCD offence proposed under the Bill, and the penalties for existing drink driving offences and other dangerous driving offences are set out in the table at Annex. Any person who is convicted of the offences set out in the table shall incur 10 Driving-offence Points and must be ordered to attend and complete a mandatory Driving Improvement Course.

Parameters for ordering life driving disqualification

5. Under the RTO, a person who is convicted of a traffic offence will be liable to a maximum fine and/or a maximum imprisonment term. The provisions allow the court or magistrate the discretion to fix an appropriate penalty within the prescribed maximum that reflects all relevant aspects of a case.

² At present, the driving disqualification period for a person convicted of dangerous driving causing death (DDCD) is not less than 2 years for a first conviction and 5 years for a subsequent conviction. Following the introduction of a new drug driving offence (i.e. driving under the influence of 'specified illicit drug') with longer disqualification periods, there is a need to enhance the disqualification period for the DDCD offence having regard to the seriousness of this offence.

6. On the other hand, the RTO stipulates minimum driving disqualification periods for persons convicted of traffic offences. The court or magistrate must order the person to be disqualified for a certain minimum period 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. By setting out the minimum disqualification periods for respective offences, the public would have no difficulties in understanding the minimum legal consequences of the relevant driving offence. The arrangement also allows the court or magistrate to impose disqualification periods much longer than the minimum periods set out in the law (including life disqualification) to reflect the seriousness of the offences.

7. Although the power of the court or magistrate to order life disqualification is already available under the RTO, as far as we know, the court or magistrate has never handed down such penalty in the past. The highest driving disqualification penalty handed down by the court in recent years was 12 years [SJ v Poon Wing Kay & Anor (2007) HKLRD 660] in a DDCD case. Recently, there are public calls for more stringent penalties especially in terms of disqualification from driving for very serious traffic offences such that dangerous drivers would be kept off the roads for a longer period of time.

8. To address the public requests, we propose in the Bill to set the minimum disqualification periods for the following two very serious traffic offences, namely driving under the influence of a specified illicit drug offence and the DDCD offence at 5 years on first conviction, and 10 years on subsequent conviction respectively. We also propose in the Bill that parameters be set for a court or magistrate to consider, on convicting a person under the above two very serious offences, ordering driving disqualification for life, if –

- (a) the person has been convicted of the same offence previously; and
- (b) having regard to the circumstances in which the offence was committed and the behaviour of the person, the court or magistrate is of the opinion that it is undesirable for the person to continue to be allowed to drive a motor vehicle.

9. This proposal has the advantage of maintaining the current system of mandating the minimum period for driving disqualification on the one hand,

and setting the parameters within which a life disqualification may be imposed on the other. It should send a clear message to the community that life disqualification may be considered for repeated conviction of very serious traffic offences such as DDCD and driving under the influence of a specified illicit drug.

10. The proposed amendment does not specify a maximum disqualification period for the offences concerned, but only introduces the circumstances or factors that the court or magistrate may consider when making a life disqualification order. As the provisions (s.39J and s.36) are now drafted, only the minimum is specified, and allow a disqualification for any period, including life time.

11. As requested by Members, we have searched the Hong Kong laws and found that there are some examples which provide for both the maximum and minimum penalties. These include section 168H of Companies Ordinance (Cap. 32) concerning disqualification of directors; and section 4(2) of Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272) concerning the driving disqualification period for non-compliance with the requirement under section 4(1) of that Ordinance.

Impairment Test

12. The Impairment Test will assist a police officer to form an opinion as to whether or not a person's ability to drive properly is impaired by the consumption or use of drugs. It provides a scientific and objective basis for a police officer to decide whether a driver should be required to provide blood and/or urine specimens for laboratory drug analysis. The Impairment Test will comprise the following five tests :

- (a) Eye Examination Test, consisting of pupillary examination and Gaze Nystagmus;
- (b) Modified Romberg Balance Test, an indicator of a person's internal body clock and ability to balance;
- (c) Walk and Turn Test, to test a person's ability to divide attention between walking, balancing and processing instructions;

- (d) One Leg Stand Test, to test a person's bodily coordination, balancing and ability to count out loud according to instructions; and
- (e) Finger to Nose Test, to test a person's depth of perception and ability to balance and process instructions.

13. The Police are prepared to do a video presentation of the Impairment Test at the second meeting of the Bills Committee.

Transport and Housing Bureau
July 2011

**Penalties for the proposed main drug driving offences
and existing serious traffic offences**

Traffic Offences	Maximum Fine (\$)	Maximum Imprisonment	Minimum Driving Disqualification		Parameters for the Court
			First conviction	Subsequent conviction ¹	
New Drug Driving Offences					
(1) Driving with any concentration of a specified illicit drug ² (new s.39K)	(25,000)	(3 years)	(2 years)	(5 years)	-
(2) Driving under the influence of – (a) a specified illicit drug ² (b) any other drug (new s.39J)	(25,000) (25,000)	(3 years) (3 years)	(5 years) (6 months)	(10 years) (2 years)	(Life) ³ -
(3) Failing to undergo a Rapid Oral Fluid Test or Impairment Test without reasonable excuse (new s.39N)	(25,000)	(3 years)	(5 years)	(10 years)	-
(4) Failing to provide specimens of blood or urine for analysis without reasonable excuse (new s.39R)	(25,000)	(3 years)	(5 years)	(10 years)	-
Drink Driving Offences					
(5) Driving under the influence of drink (s.39)	25,000	3 years	2 years	5 years	-
(6) Driving with alcohol concentration above prescribed limit (s.39A)	25,000	3 years	T1 – 6 months T2 – 1 year T3 – 2 years	T1 – 2 years T2 – 3 years T3 – 5 years	-
(7) Failing to provide a specimen of breath for screening breath test without reasonable excuse (s.39B)	25,000	3 years	2 years	5 years	-
(8) Failing to provide a specimen of breath, blood or urine for analysis without reasonable excuse (s.39C)	25,000	3 years	2 years	5 years	-

Traffic Offences	Maximum Fine (\$)	Maximum Imprisonment	Minimum Driving Disqualification		Parameters for the Court
			First conviction	Subsequent conviction ¹	
Dangerous Driving Offences					
(9) Dangerous driving causing death (s.36)					
(a) Non-aggravated	50,000	10 years	2 years (5 years)	5 years (10 years)	(Life) ³
(b) Aggravated ⁴	75,000	15 years	3 years (7.5 years)	7.5 years (15 years)	(Life) ³
(10) Dangerous driving causing grievous bodily harm (s.36A)					
(a) Non-aggravated	50,000	7 years	2 years	5 years	-
(b) Aggravated ⁴	75,000	10.5 years	3 years	7.5 years	-
(11) Dangerous driving (s.37)					
(a) Non-aggravated	25,000	3 years	6 months	2 years	-
(b) Aggravated ⁴	37,500	4.5 years	9 months	3 years	-

() Proposed penalties under the Road Traffic (Amendment) Bill 2011

Notes

1 Subsequent conviction –

- For drug driving offences (i.e. (1), (2), (3) or (4)), a subsequent conviction means a conviction subsequent to a first conviction of any of these drug driving offences.
- For the drink driving offences (i.e. (5), (6), (7) or (8)), a subsequent conviction means a conviction subsequent to a first conviction of any of these drink driving offences, and for offence (6), regardless of the blood alcohol level on the first conviction.
- For dangerous driving offences (i.e. (9), (10), or (11)), a subsequent conviction means a conviction subsequent to a first conviction of the same offence.

2 The specified illicit drugs are –

- Heroin (or any metabolite derived from heroin)
- Ketamine
- Methamphetamine
- Cannabis (or any active ingredient of cannabis)
- Cocaine (or any metabolite derived from cocaine)
- 3,4-Methylenedioxymethamphetamine (MDMA)

3 Parameters for ordering life disqualification

A court or magistrate may, on convicting a person, order that the person be disqualified for life, if –

- (c) the person has been convicted of the same offence previously; and
- (d) having regard to the circumstances in which the offence was committed and the behaviour of the person, the court or magistrate is of the opinion that it is undesirable for the person to continue to be allowed to drive a motor vehicle.

4 Aggravated penalties –

A person commits the dangerous driving offences (i.e. (12) (13), or (14)) in circumstances of aggravation if at the time of committing the offence -

- (a) the proportion of alcohol in the person's breath, blood or urine is tier 3, or
- (b) any concentration of a specified illicit drug is present in the person's blood or urine.

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%.

Driving-offence Points and Driving Improvement Course

A person convicted of any of the proposed or existing offences listed in the table shall incur 10 Driving-Offence Points (DOP), and must be ordered to attend and complete a mandatory Driving Improvement Course.

Consecutive Implementation of imprisonment and disqualification term

If a driver is convicted of a second or subsequent '10-DOP offence', regardless of whether that conviction is for the same or for a different offence, the court must 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.