

立法會
Legislative Council

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**Information Note for the
Bills Committee on Road Traffic (Amendment) Bill 2011**

At the meeting of the Bills Committee on Road Traffic (Amendment) Bill 2011 held on 5 July 2011 (the meeting), some members noted that, under the proposal in the Bill, parameters are set for a court or magistrate to consider, on convicting a person under two specified offences (namely, dangerous driving causing death under section 36 and driving a motor vehicle without proper control under the influence of a specified illicit drug under section 39J), ordering driving disqualification for life (the Proposal). On the proposed sections 36(2BA) and 39J(4), some members have the following concerns:

- (a) The Proposal might have the unintended effect that where such a provision is absent in other road traffic legislation it might be construed to mean that the court has no power to order life disqualification where necessary; and
 - (b) To address the above concern, the Chairman proposed that the Administration should consider adding a provision to sections 36(2BA) and 39J(4) to make clear that each section would be without prejudice to the power of the court to order life disqualification for other road traffic offences where circumstances warranted.
2. Members requested the Legal Service Division to consider the validity of their concern and the means to effectively address their concern.

Discretion in making life-disqualification orders under the Ordinance

3. Section 69(1) of the Ordinance confers power on a court or magistrate to order a person convicted of any offence prescribed under sections 69(1)(a) to (h), including offences prescribed under sections 36(1) and 39J(1) of the Ordinance, to be disqualified (from driving or holding of a driver's licence) *for such period as the court or magistrate thinks fit*. Disqualification for life is for a period certain and is hence legally imposable under section 69(1) though it should only be done in very unusual circumstances¹. Section 69(1) is "without prejudice to any other provision relating to the penalty that may be imposed for an offence". That means any provision in relation to any penalty to be imposed on the offences prescribed under sections 36 and 39J will prevail over section 69(1).

Whether the absence of provisions similar to section 36(2BA) or 39J(4) in other road traffic legislation might affect the court's general power to order life disqualification where necessary

4. Section 36(2BA) provides that a court or magistrate *may*, in making an order that a person be *disqualified in accordance with section 36(2A)*, order that the person be disqualified for life if the conditions provided in section 36(2BA) are satisfied. The same conditions are also found in section 39J(4), except there reference is made to subsection 39J(1) which is a different offence. The conditions expressed in section 36(2BA) are specific to section 36(2A) *only* and conditions expressed under section 36(2BA) *must* be satisfied before a court may make a life-disqualification order under section 36(2BA). Section 39J(4) has similar effect in relation to the offence created in section 39J(1). For disqualification orders made upon convictions of other offences prescribed under sections 69(1)(a) to (h) in the Ordinance, the court or magistrate can rely on the power conferred by section 69(1) without being bound by sections 36(2BA) or 39J(4).

¹ Paragraph 34-98 of Archbold Hong Kong 2010

5. For traffic offences not covered by section 69(1) of the Ordinance, reference must be made to individual legislation in order to ascertain whether such an order can be made by a court or magistrate. The mere absence of provisions similar to section 36(2BA) or 39J(4) in other legislation on road traffic offences may not, in itself, affect the general power of court or magistrate to order life disqualification.

Amendment to address the concern

6. If members wish to make it abundantly clear that sections 36(2BA) and 39J(4) should not affect the imposition of life-disqualification on any other traffic offences that are provided in other ordinances, sections 36(2BA) and 39J(4) may be amended by adding words to the effect that each subsection is not to be construed as limiting the power of the court to impose life-disqualification under other road traffic legislation.

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