

立法會
Legislative Council

LC Paper No. LS67/10-11

**Paper for the House Committee Meeting
on 27 May 2011**

**Legal Service Division Report on
Road Traffic (Amendment) Bill 2011**

I. SUMMARY

- 1. Objects of the Bill** To amend the Road Traffic Ordinance (Cap. 374) (the Ordinance) to create new offences in connection with driving motor vehicles after consumption or use of drugs and to-

 - (a) enhance the penalty of disqualification for the offence of causing death by dangerous driving;
 - (b) provide procedures to obtain specimens of blood and urine for laboratory tests;
 - (c) provide means to test for impairment by drugs and their presence in body fluids;
 - (d) provide for temporary surrender of driving licences for specified contraventions;
 - (e) specify different periods for completing driving improvement courses under different circumstances; and
 - (f) make consequential and related amendments to the Ordinance and its subsidiary legislation and to the Road Traffic (Driving-offence Points) Ordinance.
- 2. Comments** There may be situations that a non-specified illicit drug taken alone will not influence a driver to the extent that he cannot properly control a motor vehicle on the road but for the consumption with an alcohol. It is unclear whether such and similar situations are intended to be covered by the Bill.
- 3. Public Consultation** The Administration has consulted the Transport Advisory Committee, the Road Safety Council, the transport trades, the medical and pharmaceutical professional bodies and the general public. According to the Administration, a strong support of the proposals was found amongst all the consultees.
- 4. Consultation with LegCo Panel** The initial proposals to combat drug driving and its proposed legislative plan to amend the Ordinance were discussed by the Panel on Transport at its meetings on 17 July 2010 and 26 November 2010 respectively. In the latter meeting, Panel members in general expressed support for the early enactment of the legislative proposals to combat drug driving.
- 5. Conclusion** Since the Bill contains proposals concerning criminal liabilities of drivers, it is recommended that a Bills Committee be formed to study the Bill in detail.

II. REPORT

Objects of the Bill

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LegCo Brief Reference

2. File Ref.: THB(T)CR4/14/3231/00 issued by the Transport and Housing Bureau and dated 11 May 2011.

Date of First Reading

3. 25 May 2011.

Comments

New definitions relating to drug driving

4. "Drug" is not defined under section 2 of the existing Ordinance, except being referred to as "a drug specified in Schedule 1A" under some driving offence sections in the Ordinance. A new definition of "drug" is added to section 2 of the Ordinance under Clause 3. It defines "drug" to mean: (a) a substance specified in the new Schedule 1A or (b) any substance (other than alcohol or any specified illicit drugs) which, when consumed or used by a person, deprives a person (temporarily or permanently) of any of his or her

normal mental or physical faculties. Schedule 1A is repealed and substituted by a new one which prescribes the following (collectively as "specified illicit drugs")-

- (i) Heroin or any metabolite derived from heroin;
- (ii) Ketamine;
- (iii) Methylamphetamine;
- (iv) Cannabis or any active ingredient of Cannabis;
- (v) Cocaine or any metabolite derived from Cocaine; and
- (vi) 3,4-methylenedioxyamphetamine(MDMA).

5. Further, a definition of Preliminary Drug Tests (PDTs) is added to section 2 of the Ordinance and defined to include: Drug Influence Recognition Observation (DIRO), Impairment Test (IT) and Rapid Oral Fluid Test (ROFT), which are tests for drugs on a person.

New drug driving offences proposed to be added

6. Under the existing legislation, offences relating to driving a motor vehicle under the influence of drink and drugs are collectively provided for under section 39 of the Ordinance. Clause 9 of the Bill proposes to repeal the word "drugs" in section 39 of the Ordinance, which renders it no longer applicable to drug driving offences. Two new drug-related offences are proposed to be created under the new section 39J and new section 39K (Clause 14). The new section 39J provides that driving, attempting to drive or being in charge of a motor vehicle on any road under the influence of a drug to an extent that makes the person incapable of having proper control of the motor vehicle to be an offence. The new section 39K provides for driving, attempting to drive or being in charge of a motor vehicle while any concentration of a specified illicit drug is present in the blood or urine of a person to be an offence, even if the person does not show any signs of being under the influence of those drugs. This is a "Zero-tolerance Offence".

Extent and scope of application of newly created offences

7. Clauses 4 and 5 amend sections 4 and 4A of the Ordinance respectively to apply the new offence provisions to trams and village vehicles. Clause 17 of the Bill amends section 117 to allow the proposed new offences to be applicable to driving on private roads. Clause 18 amends section 120 of the Ordinance to disallow a defence on the basis that an element of the offence has not been established because the private road is within an area wholly or mainly used for construction work or carrying on an industry.

Detecting the presence of and testing for impairment caused by drugs

8. The existing section 39C of the Ordinance prescribes the provision of specimens (breath, blood and urine) for analysis in drink driving cases. Section 39C (11) of the Ordinance provides that a specimen of blood shall not be taken from a person without his consent. It is proposed to be repealed under Clause 12 and substituted with a new one and adds section 39C (11A) to (11G) to the Ordinance. The amendments provide that it is lawful for a medical practitioner, if he thinks fit and at the request of a police officer (new subsection (11B)), to take blood specimen from a suspected drink driver while he or she is incapable of giving consent (new subsection (11A)(b)).

9. Police officers are empowered to require a person (whom a police officer has reasonable cause to suspect that he or she has committed any drug driving offence, both previously existed and newly created) to undergo one or more PDTs (new section 39L). An authorized police officer may require such person to provide specimens of oral fluid for ROFT (new section 39L and section 39M) according to specified procedures. Failure to comply with such requirements without reasonable excuse is an offence (new section 39N).

10. Both DIRO and ROFT can be carried out by police officers empowered under the Ordinance at or near the place where the requirement is made (new section 39L(7)) whereas an IT must be carried out at a police station specified by the police officer who makes the requirement (new section 39L(8)). If the result of the ROFT indicated that there is a specified illicit drug present in the person's oral fluid, or the IT result indicated that the person's driving ability is impaired for that time being, or the person is unable to undergo a PDT, specimen of blood and/or urine from such person for laboratory testing can be required by a police officer or an authorized police officer with (new section 39O) or without (new section 39P, when the person is incapable of consenting) the consent of such person for both drugs and alcohol (new section 39Q). Failure to provide the required specimen without reasonable excuse is an offence (new section 39R).

Penalties and Disqualifications

11. A table of revised disqualification periods and penalties proposed under the Bill is set out in the **appendix**.

12. Further, the new section 39T provides that a driver who fails in the ROFT or is assessed to be impaired in an IT or failed to provide specimens of blood and/or urine must surrender his driving licence immediately to the police for 24 hours. The same applies to drivers whose alcohol level is found to have exceeded the prescribed limit in an evidential breath test, or refuse to perform such a test or the screening test. Failure to comply with such requirements is an offence.

13. Clause 16 amends section 72A of the Ordinance to-
- (a) specify different periods for completing a driving improvement course;
 - (b) require drivers to complete such courses after serving a term of imprisonment; and
 - (c) provide that such courses need not be taken by drivers being disqualified from driving for life.

14. The Bill amends the Road Traffic (Driving Licences) Regulations (Cap. 374 sub. leg. B), with the effect that convictions of any of the proposed drug driving offences, previous drink driving offences, the offence of causing death by dangerous driving or causing grievous bodily harm by dangerous driving will be taken into account when considering an application for a full commercial vehicle driving licence, or the holding, applying and renewing of a driver instructor's licence (Clauses 20 to 25). Clause 15 amends section 70 of the Ordinance to exclude drivers who have been disqualified for life from taking driving tests.

15. The Bill amends, under Clause 26, the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) to provide 10 driving offence points for each newly created drug-related driving offence and the new offence for failing to give consent by a person from whom a blood specimen has been taken for laboratory analysis (new section 39C(15)).

Dual consumption of alcohol and drugs

16. There may be situations that a non-specified illicit drug taken alone will not influence a driver to the extent that he cannot properly control a motor vehicle on the road but for the consumption with an alcohol. It is unclear whether such and similar situations are intended to be covered by the Bill. The Legal Service Division continues to scrutinize the Bill.

Commencement

17. The proposed amendments will come into operation on the day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

Public Consultation

18. According to the LegCo Brief, the Administration has consulted the Transport Advisory Committee, the Road Safety Council, the transport trades, the medical and pharmaceutical professional bodies and the general

public through a public opinion survey. A strong support of the proposals to combat drug driving was found amongst all the consultees.

19. According to the LegCo Brief, some doctors' organizations raised concerns on their liability under the proposed defence had they not explained the side effects of the drugs prescribed to their patients clearly and the accuracy of the impairment test prescribed in the Bill. The Administration clarified that there is no statutory liability for health professionals in connection with drug driving offence under both the existing Ordinance and the proposed amendments. It is observed that no provisions in the Ordinance and/or amendments proposed under the Bill imposed criminal liabilities on health professionals in relation to drug driving offences in the context raised by them (i.e. failure to advise the patient on the effects of the medication on their ability to drive).

Consultation with LegCo Panel

20. The Administration's initial proposals to combat drug driving and its proposed legislative plan to amend the Ordinance were discussed by the Panel on Transport at its meetings on 17 July 2010 and 26 November 2010 respectively. In the latter meeting, while Panel members in general expressed support for the early enactment of the legislative proposals to combat drug driving, members raised a number of concerns including the arrangements for drug driving tests and relevant procedures, the inclusion of only six specified illicit drugs under the new "zero-tolerance offence", the need to introduce rapid oral fluid tests, and whether drivers who took drugs for medical purposes could be inadvertently caught drug driving.

Conclusion

21. Since the Bill contains proposals concerning criminal liabilities of drivers, it is recommended that a Bills Committee be formed to scrutinize the Bill in detail.

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Appendix- Penalties & disqualification period revised or imposed under the Bill

Offence	Disqualification period under the existing Ordinance	Disqualification period for driving proposed under the Bill
Causing death by dangerous driving	(a) not less than 2 years on first conviction; and (b) not less than 5 years on subsequent convictions.	(a) not less than 5 years on first conviction; and (b) not less than 10 years <u>or for life</u> on subsequent convictions.
Driving a motor vehicle under the influence of drink or drugs	(a) not less than 2 years on first conviction; and (b) not less than 5 years on subsequent convictions	Not applicable ("drugs" to be repealed from section)
Driving a motor vehicle without proper control under the influence of a <i>drug</i> other than a <i>specified illicit drug</i>	Nil (newly created offence)	(a) not less than 6 months on first conviction; and (b) not less than 2 years on subsequent convictions.
Driving a motor vehicle without proper control under the influence of a <i>specified illicit drug</i>	Nil (newly created offence)	(a) not less than 5 years on first conviction; and (b) not less than 10 years <u>or for life</u> on subsequent convictions.
Driving with any concentration of a <i>specified illicit drug</i>	Nil (newly created offence)	(a) not less than 2 years on first conviction; and (b) not less than 5 years on subsequent convictions.
Failure to undergo PDT as required	Nil (newly created offence)	(a) not less than 5 years on first conviction; and (b) not less than 10 years on subsequent convictions.
Failure to provide specimen of blood/urine	(a) not less than 2 years on first conviction; and (b) not less than 5 years on subsequent convictions.	(a) not less than 5 years on first conviction; and (b) not less than 10 years on subsequent convictions

New Offences	New Penalties (fine and imprisonment) proposed under the Bill
Driving a motor vehicle without proper control under the influence of a <i>drug</i> other than a <i>specified illicit drug</i>	(a) on conviction on indictment : fine \$25,000 and imprisonment for 3 years (b) (i) on first summary conviction : fine \$10,000 and imprisonment for 6 months (ii) on subsequent convictions : fine \$25,000 and imprisonment for 12 months
Driving a motor vehicle without proper control under the influence of a <i>specified illicit drug</i>	Same as above
Driving with any concentration of a <i>specified illicit drug</i>	Same as above
Failure to provide specimen of blood or urine	Same as above
Failure to undergo PDT as required (i) fail to undergo IT or fail to provide specimen for ROFT (ii) fail to undergo DIRO	Same as above Fine \$2,000 and imprisonment for 3 months