

立法會
Legislative Council

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Paper for the House Committee meeting on 26 November 2010

Report of the Bills Committee on Road Traffic (Amendment) Bill 2010

Purpose

This paper reports on the deliberations of the Bills Committee on Road Traffic (Amendment) Bill 2010 (the Bills Committee).

Background

2. To step up efforts in combating drink driving, the Road Traffic Legislation (Amendment) Ordinance 2008 was enacted in 2008 to implement measures including 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 these measures on 9 February 2009, there has been a significant drop of 67% in the number of traffic accidents¹ involving drink driving.

3. 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 damages caused by traffic accidents involving drink driving. Taking into account the public sentiment arising from the Lok Ma Chau fatal

¹ The number of drink driving accidents from 9 February 2009 to 31 December 2009 compared with that in the same period in 2008.

accident in January 2009² and overseas practices, the Administration proposes to introduce heavier penalties to further deter drink driving offences and other inappropriate driving behaviour through the Road Traffic (Amendment) Bill 2010 (the Bill).

The Bill

4. The Bill seeks to amend the Road Traffic Ordinance (Cap. 374) (RTO) by introducing the following measures to further deter drink driving and other inappropriate driving behaviour –

- (a) providing for minimum driving disqualification periods on conviction according to three tiers of driver's alcohol concentration;
- (b) introducing a new offence of causing grievous bodily harm by dangerous driving (DDCGBH);
- (c) bringing in drink driving as a circumstance of aggravation in all dangerous driving offences;
- (d) providing for the consecutive implementation of imprisonment and driving disqualification for offenders on subsequent conviction of serious traffic offences;
- (e) increasing the minimum period of driving disqualification of certain offences; and
- (f) introducing other related or textual amendments.

The Bills Committee

5. At the House Committee meeting held on 14 May 2010, Members agreed to form a Bills Committee to study the Bill. Hon Miriam LAU Kin-yeo was elected Chairman of the Bills Committee. The membership list of the Bills Committee is in **Appendix I**. The Bills Committee has held six meetings with the Administration and received views from stakeholders, including the transport trade, at one of these meetings. A list of

² A serious traffic accident in which six men were killed occurred in Lok Ma Chau on 23 January 2009. It was reported by the media that a medium goods vehicle (MGV) travelling along Castle Peak Road towards Lok Ma Chau rammed into a taxi which was travelling on the opposite lane. The MGV driver was arrested for drink driving and dangerous driving causing death.

organizations/individuals that have given views to the Bills Committee is in **Appendix II.**

Deliberations of the Bills Committee

6. The Bills Committee generally supports the legislative intent of the Bill to introduce heavier penalties to further deter drink driving offences and other inappropriate driving behaviour. In the course of deliberation, members have raised concerns about the 3-tier penalty system according to driver's alcohol concentration, the new offence of DDCGBH, consecutive implementation of imprisonment and driving disqualification, and drug driving.

3-tier penalty system

7. Under section 39A of the RTO, a person with the proportion of alcohol in his breath, blood, or urine exceeding the prescribed limit³, regardless of the alcohol level, is liable to the same maximum penalties in terms of fine, imprisonment and minimum driving disqualification period. At present, an option is provided 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. This provision was introduced in 1995 when drink driving legislation was first introduced to alleviate concerns as to the accuracy of the breath testing equipment.

8. Given that disqualification is the most direct means to take drink drivers off the road, the Administration proposes to introduce a 3-tier penalty system whereby the higher the alcohol concentration level, the longer will be the minimum disqualification period. The existing and the proposed minimum penalty of driving disqualification are set out in the table below:

³ Under section 2 of the RTO, the prescribed limit means
(a) 22 micrograms (mcg) of alcohol in 100 millilitres (ml) of breath;
(b) 50 milligrams (mg) of alcohol in 100ml of blood; or
(c) 67mg of alcohol in 100ml of urine.

Proportion of alcohol in a person's breath, blood or urine	Proposed minimum driving disqualification period		Existing minimum driving disqualification period	
	First conviction	Second/Subsequent Conviction	First conviction	Second/Subsequent conviction
Tier 1 (if it exceeds the prescribed limit but is less than 35mcg/80mg/107mg of alcohol in 100ml of breath/blood/urine respectively)	6 months	2 years		
Tier 2 (if it exceeds tier 1 but is less than 66mcg/150mg/201mg of alcohol in 100ml of breath/blood/urine respectively)	12 months	3 years	3 months	2 years
Tier 3 (if it exceeds tier 2)	2 years	5 years		

9. The Administration also proposes to preserve the integrity and effectiveness of the drink driving laws by prolonging the minimum driving disqualification periods for the following drink-driving related offences at tier 3:

- (a) driving a motor vehicle under the influence of drink or drugs to the extent as to be incapable of having a proper control of a motor vehicle;
- (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.

10. As breath testing equipment has proven to be reliable and able to provide accurate results nowadays, the Administration proposes to remove the option to replace a person's breath specimen by a specimen of blood or urine. This would prevent drivers with high alcohol concentration levels

from evading the penalties by requesting a blood or urine test with the intention of delaying the provision of samples.

11. The Bills Committee has made reference to the experience of a number of overseas jurisdictions on the penalties on drink driving offences. Members have noted that while the proposed minimum driving disqualification period on second or subsequent conviction under tier 3 is in line with the legislation of Australia (New South Wales), it is more stringent when compared with the United Kingdom and Singapore.

12. Hon Andrew CHENG is of the view that even though the proposed penalties on drink driving offence are harsher than those jurisdictions studied by the Administration, it should not preclude Hong Kong from introducing heavier penalties in view of the seriousness of the drink driving problem and the small and densely populated territory of Hong Kong. He suggests that the proposed minimum driving disqualification period on second/subsequent conviction for tier 3 should be set at life disqualification, which would take repeat offenders off the road permanently and provide effective deterrence and enhance public safety.

13. The Administration has advised that Hong Kong is one of the jurisdictions which imposes the heaviest penalties on drink driving offences. The present proposal regarding penalties is formulated after balancing the views of different stakeholders. The disqualification period is only a minimum standard and the court is at liberty to rule a much higher disqualification period should circumstances so warrant. The Bill also proposes that an alcohol concentration level of tier 3 should be made a circumstance of aggravation in all dangerous driving offences, including dangerous driving, dangerous driving causing death (DDCD) and DDCGBH. Hence, if a drink driver commits a dangerous driving offence in such a circumstance, the maximum penalties in terms of fine and imprisonment, and the minimum disqualification period for the offence concerned are each increased by 50%. The Bill also provides for the consecutive implementation of imprisonment and driving disqualification for offenders on subsequent conviction of serious traffic offences to enhance deterrence. The total effect of the Bill will result in debarring repeat drink drivers from the road for a much prolonged period.

14. Hon Jeffrey LAM has expressed concern that the introduction of a 3-tier penalty system according to alcohol concentration levels may create the misconception that it is acceptable to drink a little before driving. He suggests that the Administration should step up publicity to remove such misconception and impose a sliding scale for imprisonment and fines in parallel with the minimum disqualification period.

15. The Administration has advised that the slogan "if you drink, don't drive" clearly conveys the message that drivers should not drive after drinking regardless of the quantity they take. According to medical evidence, the risk of causing an accident will rise with increases in the alcohol concentration level in drivers. The threshold for penalty has not been lowered under the 3-tier penalty system. On the contrary, minimum disqualification periods have been raised. Disqualification is considered the most direct means to take drink drivers off the road. There is still room for the courts to impose heavier penalties in terms of fines and imprisonment, as the courts see fit.

16. The Chairman is of the view that the slogan "if you drink, don't drive" is ineffective in combating drink driving. She urges the Administration to adopt a new approach to facilitate the public's understanding of the 3-tier penalty system according to alcohol concentration level, including its impact on disqualification period. The Administration will step up publicity and education in collaboration with the Road Safety Council to tie in with the new measures to further deter drink driving offences.

Dangerous driving causing grievous bodily harm

17. At present, a driver who drives dangerously on the road may either be charged with dangerous driving, or DDCD as appropriate. The maximum imprisonment terms of these offences are three years and 10 years upon indictment respectively. If a person drives dangerously and causes grievous bodily harm to another person, he may be convicted of dangerous driving with a maximum imprisonment of up to three years.

18. The Administration proposes to bring in a new offence of DDCGBH, and intends to rely on the common law definition of "grievous bodily harm" in order to minimize the possibility of acquittals based on sheer technicalities. The penalties of the proposed new offence are set between dangerous driving and DDCD, as shown in the table below –

Offences	Dangerous driving	Proposed offence of causing grievous bodily harm by dangerous driving	Causing death by dangerous driving
Penalties			
<u>Maximum fine</u>			
Conviction on indictment	\$25,000	\$50,000	\$50,000
Summary conviction	\$10,000	\$25,000	\$25,000
<u>Maximum imprisonment</u>			
Conviction on indictment	3 years	7 years	10 years
Summary conviction	12 months	2 years	2 years
<u>Minimum period of driving disqualification</u>			
First conviction	6 months	2 years	2 years
Second or subsequent conviction	18 months (proposed to be increased to 2 years)	5 years	3 years (proposed to be increased to 5 years)

19. Hon IP Wai-ming has relayed the concern of the transport trade that the Administration is trying to introduce the offence of DDCGBH under the pretext of combating drink driving. Mr IP shares the views of some deputations that the offences of drink driving and dangerous driving should be dealt with separately, as dangerous driving can be caused by many factors other than drinking and some are beyond the driver's control.

20. The Administration has advised that the existing legislation does not provide for a sentence which reflects fully the seriousness of physical injuries sustained by victims in traffic accidents. Views have been received during public consultations that the existing sanctions against dangerous driving are too lenient in cases where no fatality is involved. Taking into account the

gap in penalties between dangerous driving and DDCD, the physical impairments and psychological trauma suffered by these victims and their families as a result of the dangerous driving behaviour, the Administration considers it appropriate to allow the court additional sentencing options over and above the penalties for dangerous driving. The provision of DDCGBH is proposed with reference to experience in overseas jurisdictions including Australia and Northern Ireland. The aim is to provide heavier penalties to reflect the more serious nature of the offence and to achieve a stronger deterrent effect.

21. The Administration has cited the example of the Lok Ma Chau fatal accident in January 2009 and advised that there is a strong correlation between drink driving and dangerous driving in many cases. As drink driving is a common cause of dangerous driving, it is necessary to adjust the penalties for dangerous driving when adjusting the penalties for drink driving, in order to ensure fairness and consistency in punishment. The proposed penalties for DDCGBH and drink driving will appear in separate provisions in the legislation.

22. The Chairman has relayed the deputations' concern that the introduction of the offence of DDCGBH could have serious impact on professional drivers who do not drink or take drugs in their day-to-day work. At present, it is not uncommon for the Police to lay a charge of dangerous driving initially, and then substitute the charge with a lesser offence of careless driving. Professional drivers are worried that, with the new offence of DDCGBH, the prosecution would be less willing to accept a careless driving plea in future, as there is no such offence as "careless driving causing grievous bodily harm". In this connection, the Chairman and Hon IP Wai-ming have asked whether a consistent and fair prosecution policy on dangerous driving offences would be adopted by the Administration, particularly with the introduction of the offence of DDCGBH, and whether DDCGBH would only be applied to drink driving and drug driving only.

23. The Administration has advised that in accordance with the Police statutory duty to prevent injury to life and damage to property, the primary aim of road traffic policing in Hong Kong is to reduce the toll of deaths, injuries and damage to property caused by traffic accidents on roads. In support of this aim, the Commissioner of Police maintains a policy which will identify traffic offences that significantly contribute to the road traffic casualties for vigorous enforcement. Dangerous driving and DDCD are included as such offences within this policy.

24. The Administration has further advised that before contemplating a charge for dangerous driving offence, the Police have to establish that the

driver concerned did drive dangerously. Under section 37 of the RTO, a person is to be regarded as driving dangerously if the way he drives falls far below what would be expected of a competent and careful driver, and it would be obvious to a competent and careful driver that driving in that way would be dangerous. As in handling all serious cases, the Police will conduct thorough investigations into dangerous driving offences and collect evidence from various sources including drivers and other witnesses as well as forensic, motor vehicle and medical expert evidence. All evidence is carefully examined and considered by a supervisory officer before instigating prosecution. If legal input is required on the strength of the evidence, the appropriateness of the charge or venue of trial, the Police will seek the advice from the Department of Justice.

25. The Administration has explained that apart from drink driving and drug driving, dangerous driving behaviour include all inappropriate driving behaviour, such as driving in an opposite direction of the traffic, red light jumping, speeding and road racing, which may result in serious traffic accidents and casualties. The disparity in sentence will continue to exist for all other driving misbehaviour if the application of DDCGBH is to be confined only to drink driving and drug driving. This will send out a wrong signal to the community, and is not supported on ground of road safety considerations.

26. The Chairman has relayed the transport trade's concern about the rising number of false personal injury claims and insurance claims involving whiplash injury purportedly sustained as a result of traffic accidents. She has enquired about the yardsticks in determining DDCGBH and whether whiplash injury would constitute DDCGBH. She has also reminded the Administration to take extra care in handling traffic cases involving whiplash injuries.

27. The Administration has advised that the focus of the offence should be on whether the driver concerned has committed dangerous driving in the first place. In determining whether grievous bodily harm has been sustained, reference could be drawn from the findings of the medical report of the injured. In fact, grievous bodily harm is an established concept in wounding cases. Under the common law, "grievous bodily harm" means "really serious bodily harm". It does not necessarily mean permanent or life-threatening injury, but include non-physical or psychiatric injury. In determining the criminal liability, the most important factors to consider would be the driver's driving manner, the traffic condition and the consequences of the accident. The Police would adopt a common sense approach and would be guided by the existing criminal case law in respect of grievous bodily harm. There is no hard and fast rule on whether whiplash

injury would constitute DDCGBH. Legal advice from the Department of Justice would be sought as to how to apply the charge.

28. Hon Andrew CHENG has suggested that an objective indicator, such as the level of permanent incapacity or the percentage of loss of earning capacity of the victim, should be adopted as the yardstick for determining what would constitute the offence of DDCGBH. The Administration has advised that if the level of permanent incapacity is adopted as a yardstick in determining DDCGBH, it would be inconsistent with the definition of grievous bodily harm adopted in wounding cases. As in all criminal cases, the burden of proof rests with the prosecution which must prove beyond reasonable doubt that defendants are guilty. It should best be left to the courts to decide whether grievous bodily harm has been sustained by the injured in traffic accident cases. At the request of Hon Andrew CHENG, the Administration will consider addressing this issue in the speech to be delivered by the Secretary for Transport and Housing during the resumption of Second Reading debate on the Bill.

29. The Bills Committee has noted that the penalty for a driver convicted of DDCGBH is the same as that for a driver convicted of DDCD in case of summary conviction (i.e. a fine of \$25,000 and imprisonment for two years). Members have suggested that the Administration should consider imposing a different imprisonment term under summary conviction for DDCGBH to tie in with the 3-tier penalty system, so as to reflect the difference in seriousness of DDCD, DDCGBH and dangerous driving offences.

30. The Administration has advised that under the existing provisions, there is a substantial gap in terms of maximum imprisonment penalty for persons convicted of DDCD and dangerous driving on indictment. There is a need to narrow the gap by providing for a heavier penalty for a driver who is caught under the offence of DDCGBH in order to achieve a stronger deterrent effect. On the other hand, the gap in terms of maximum imprisonment penalty in case of summary conviction is minimal. Since the impact on the victims and their families arising from DDCGBH may not be less than that of DDCD, the Administration considers that the penalties for both imprisonment and fine of DDCGBH should be aligned with those of DDCD in case of summary conviction.

Consecutive implementation of imprisonment and disqualification

31. Under the existing provisions of the RTO, if a court or magistrate convicts a person for a driving offence such as dangerous driving, the person is to be disqualified from driving for a minimum period unless the court or magistrate for special reasons orders otherwise. The disqualification period

has to run concurrently with any term of imprisonment. According to the feedback received from the public consultation, the deterrent effect of disqualification is more apparent 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 the road for a longer period.

32. The Administration therefore proposes to introduce a provision to require the courts 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-point offence in the Schedule to the Road Traffic (Driving-offence Points) Ordinance (Cap. 375) regardless of whether that conviction is for the same or for a different offence.

33. The Bills Committee has noted that Clause 18 of the Bill, which provides for the consecutive implementation of imprisonment and driving disqualification for offenders on subsequent conviction of serious traffic offences, states that "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." According to the policy intent of the Bill, the term "released from custody" refers to the completion of serving the term of imprisonment computed under section 67A of the Criminal Procedure Ordinance (Cap. 221) with any remission granted under rule 69 of the Prison Rules (Cap. 234 sub. leg. A). In this connection, the legal adviser to the Bills Committee has asked the Administration to clarify whether disqualification should only start to run after the completion of all the terms of imprisonment.

34. The Administration has advised that disqualification only starts to run until the expiration of all terms of imprisonment or detention, unless the court for special reasons decides not to make such a direction. In a number of circumstances, persons who are ordered by the court to have a disqualification period that commences after an imprisonment term might be released from custody before the expiration of their imprisonment terms. For instance, a prisoner may be granted leave of absence during the imprisonment period to attend a family marriage, funeral, examinations or job interviews. Persons participating in Release under Supervision Scheme, Pre-release Employment Scheme, or undergoing training in Rehabilitation Centres are also released for employment at approved places under the supervision by the Correctional Services Department. They may reside at

their own residence, or stay in a designated half-way house for night accommodation. They are actually out on the street during the release periods and are able to drive. For the avoidance of doubt, the Administration will propose Committee Stage amendments (CSAs) to the Bill to the effect that:

- (a) a person who is released from prison or detention before the expiration of his or her term of imprisonment or detention under specified circumstances (such circumstances be listed out in the Bill) must be taken to be disqualified when he is on the street and able to drive; and
- (b) the days when they are out on the street should be deducted from the period of disqualification to be served by the person.

The Administration has further advised that as a person may be charged and convicted of other offences together with a traffic offence, the Administration will move CSAs to set out precisely that disqualification will only start to run after the person has served all imprisonment terms.

Drug driving

35. The Bills Committee is very concerned about the recent traffic accidents caused by driving under the influence of drugs, particularly drugs of abuse. Some members including the Chairman and Hon Andrew CHENG have called on the Administration to introduce measures to combat drug driving and consider moving CSAs to include such measures in the Bill. However, some other members including Hon Jeffery LAM opine that the issues of drink driving and drug driving should be addressed separately. They consider that the Administration should act swiftly to legislate for drink driving without further delay, and should avoid enacting laws on drug driving hastily before conducting a comprehensive study on the effect of each type of drug on driving behaviour.

36. The Administration has emphasized that it attaches great importance to combating drug driving. In view of the rising trend of drug driving cases, the Administration has set up a dedicated inter-departmental Working Group⁴ in early 2010 to work on the matter in full steam. The Working Group has been taking prompt action to examine the control framework required, including the feasibility of adopting a "zero-tolerance" approach, to deal with

⁴ The Working Group, chaired by Transport and Housing Bureau, comprises members from the Hong Kong Police Force, the Transport Department, the Government Laboratory, the Department of Health, the Hospital Authority and the Security Bureau.

specified dangerous drugs that are commonly abused and have no or very limited medical use.

37. The Administration has advised that in order to tackle the complex issue of drug driving effectively, the Administration is not only required to examine the scope of regulatory control, but also the more fundamental issue of how best to facilitate evidence gathering and enforcement work by the Police. It has to be very careful in drawing up new offences and ensuring the enforcement power by the Police is balanced, so that while drivers who drive while being influenced or impaired by drugs are prosecuted and road users are protected, the offences would not adversely affect the majority of the law-abiding driving population who may need to take drugs for genuine medical purpose.

38. The Administration also points out that, under section 39 of the RTO, 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 and has been successfully invoked by the Police in prosecutions involving drug driving cases. 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 as specimens for analysis. A charge under section 39 is therefore difficult to be proved before a court in the absence of objective evidence. The Administration further points out that an offence must be accompanied by the necessary enforcement powers in order to be effective, or else, any efforts to create new offences will be fruitless. The Working Group needs to consider very carefully how the Police may be empowered in order that the drug driving offences can be effectively enforced, and that the rights of motorists are not unjustly undermined. The Administration therefore considers it prudent and appropriate to deal with drink driving and drug driving separately.

39. Some Bills Committee members including the Chairman and Hon Andrew CHENG opine that the Administration should provide a timeframe for coming up with a legislative proposal on combating drug driving. The Administration should in the meantime formulate interim administrative measures, such as preliminary tests, to tackle the problem.

40. The Administration has advised that to combat drug driving, it is necessary to empower the Police to screen out drivers who are impaired by drugs through preliminary tests, namely impairment test or oral fluid test or both. These preliminary tests will be an objective method to help police officers establish a *prima facie* case, before the suspected driver is required to

give blood or/and urine for laboratory analysis to ascertain whether he has taken any drugs. In overseas experience, the introduction of preliminary drug tests requires the enactment of legislation and cannot be effected through administrative measures. At present, preliminary tests on drug driving has not been introduced in Hong Kong. The Administration is still looking for a rapid oral fluid test device in the market for the testing of Ketamine which is a major type of illicit drug abused by Hong Kong drivers in detected cases. The Police intend to train a team of trainers who will provide in-house training for frontline traffic police officers to conduct the preliminary tests. The Police are consulting overseas experts for advice and training in this respect.

41. The Administration has stressed that it is very concerned about the trend of traffic accidents caused by driving under the influence of illicit drugs, and is determined to introduce measures as soon as possible to tackle the problem. In fact, the Administration has drawn up initial proposals to combat drug driving and has recently completed public consultations on this subject. Various views have been received on the proposed new offences and preliminary tests from medical and pharmaceutical professionals, transport trades and members of the public. While there is a general support to combat drug driving, some have expressed concerns on the implementation arrangements. Notably, concerns have been expressed about how impairment tests are performed, e.g. the procedures and the place for the test, the time required and the checks and balances available. The Administration is refining the detailed legislative proposals with due regard to the consultation feedback and will report the matter to the Panel on Transport (the Panel) by the end of November 2010. Subject to the Panel's support, the Administration will commence law drafting work immediately. As complex legal issues are involved and the whole process involving drafting, consultation and consideration of drafts would take at least several months, the Administration would endeavour to introduce a separate Bill into LegCo in the second half of the 2010-2011 legislative session. At the Bills Committee's request, the Administration will provide an estimate of the number or percentage of frontline police officers trained and ready to conduct preliminary tests for drug driving offences, and also the timetable for completing the training of all frontline officers in this respect when the Administration introduces the relevant Amendment Bill into LegCo.

42. Some Bills Committee members including the Chairman have suggested that the Administration should consider proposing CSAs to the Bill to include a list of illicit drugs, under the "zero tolerance" control, which would constitute a circumstance of aggravation in all dangerous driving offences if the driver concerned is found to have taken such drugs, so as to provide deterrence against drug driving in addition to drink driving.

43. Having considered members' suggestion, the Administration agrees to move CSAs to the Bill to provide for the following:

- (a) a person commits an offence in circumstance of aggravation if at the time of committing the dangerous driving offence, any amount of a drug specified in Schedule 1A is present in the person's blood or urine;
- (b) for the purpose of (a), six illicit drugs⁵ will be specified in Schedule 1A, which may be amended by the Secretary for Transport and Housing by way of subsidiary legislation through the negative vetting procedure. These six illicit drugs are—
 - (i) Heroin;
 - (ii) Ketamine;
 - (iii) Methylamphetamine;
 - (iv) Cannabis;
 - (v) Cocaine;
 - (vi) 3,4-methylenedioxymethamphetamine (MDMA); and
- (c) for persons who are caught by the circumstance of aggravation in (a), the maximum penalty in terms of fine, imprisonment and disqualification for the dangerous driving offences concerned are each increased by 50%.

44. Hon Andrew CHENG has urged the Administration to speed up the legislative process on combating drug driving and submit the relevant Amendment Bill to LegCo in the first half of the current legislative session. He considers that the Police should be empowered to conduct impairment test on drivers as soon as possible. He has proposed to move a CSA to include a code of practice on drug impairment test in this respect. The Administration is of the view that the matter should be dealt with by the Administration to contemplate in a more comprehensive manner in the next Amendment Bill.

Committee Stage amendments

45. A set of CSAs to be moved by the Administration is in **Appendix III**. The Bills Committee will not move any CSAs in its name. Hon Andrew CHENG has indicated intention to move CSAs to the Bill.

⁵ The six illicit drugs above are the same as those the Administration proposes to be covered under the zero-tolerance drug driving offence in its initial proposals to combat drug driving.

Recommendation

46. The Bills Committee supports the resumption of the Second Reading debate on the Bill on 8 December 2010.

Advice sought

47. Members are requested to note the deliberations and recommendation of the Bills Committee.

Council Business Division 1
Legislative Council Secretariat
25 November 2010

Appendix I

Bills Committee on Road Traffic (Amendment) Bill 2010

Membership List

Chairman Hon Miriam LAU Kin-yee, GBS, JP

Members Hon Andrew CHENG Kar-foo

Hon Jeffrey LAM Kin-fung, SBS, JP

Hon CHEUNG Hok-ming, GBS, JP

Hon Ronny TONG Ka-wah, SC

Hon CHAN Kin-por, JP

Hon WONG Sing-chi (since 5 October 2010)

Hon IP Wai-ming, MH

(Total : 8 members)

Clerk Ms YUE Tin-po

Legal Adviser Mr Kelvin LEE

Appendix II

Bills Committee on Road Traffic (Amendment) Bill 2010

List of organizations/individuals that have given views to the Bills Committee

1. Tsuen Wan District Tourists and Passengers Omnibus Operators Association
2. United Friendship Taxi Owners & Drivers Association Ltd.
3. New Lantao Bus Company (1973) Limited
4. The Kowloon Taxi Owners Association Ltd.
5. Hong Kong Kowloon Taxi & Lorry Owners' Association
6. Motor Transport Workers General Union - Taxi Driver Branch
7. Front Line Taxi Driver Association
8. Tuen Mun District Tourists and Passengers Omnibus Operators Association
9. Yuen Long District Tourists and Passengers Omnibus Operators Association
10. Association of N.T. Radio Taxicabs Ltd.
11. Hong Kong District Tourists and Passengers Omnibus Operators Association
12. New Territories West Buses/Coaches Association
13. G.M.B. Maxicab Operators General Association
14. Taxi & P.L.B. Concern Group
15. Mr Michael MAK Kwok-fung, Wan Chai District Councillor
16. Koon Wing Motors Ltd.
17. Lok Ma Chau China - Hong Kong Freight Association
18. Tai Wo Motors Ltd.
19. Dr YANG Mo, Southern District Councillor*
20. The Goods Vehicle Fleet Owners Association Limited*
21. A member of the public*

* submitted written views only

Appendix III

ROAD TRAFFIC (AMENDMENT) BILL 2010

COMMITTEE STAGE

Amendments to be moved by the Secretary for Transport and Housing

<u>Clause</u>	<u>Amendment Proposed</u>
4	<p>By deleting everything after “amended” and substituting “by repealing “36(1), (3) and (4), 37(1) and (3), 38, 39(1), 39A, 39B, 39C” and substituting “36 (other than subsections (2), (2A), (2B), (2C), (2D) to the extent that it relates to minimum disqualification periods and (3)), 36A (other than subsections (2), (3), (4), (5), (6) to the extent that it relates to minimum disqualification periods and (9)), 37 (other than subsections (2), (2A), (2B), (2C), (2D) to the extent that it relates to minimum disqualification periods and (3)), 38, 39 (other than subsections (2), (2A), (2B) and (2C)), 39A (other than subsections (1A), (2), (2A), (2B) and (2C)), 39B (other than subsections (7), (7A), (7B) and (7C)), 39C (other than subsections (16), (16A), (16B) and (16C))”.”.</p>
6(5)	<p>In the proposed section 36(2E), by deleting everything after “committing the” and substituting—</p> <p>“offence—</p> <ul style="list-style-type: none">(a) the proportion of alcohol in the person’s breath, blood or urine is tier 3; or(b) any amount of a drug specified in Schedule 1A is present in the person’s blood or urine.”.
7	<p>In the proposed section 36A(7), by deleting everything after “committing the” and substituting—</p>

“offence—

- (a) the proportion of alcohol in the person’s breath, blood or urine is tier 3; or
- (b) any amount of a drug specified in Schedule 1A is present in the person’s blood or urine.”.

8(5) In the proposed section 37(2E), by deleting everything after “committing the” and substituting—

“offence—

- (a) the proportion of alcohol in the person’s breath, blood or urine is tier 3; or
- (b) any amount of a drug specified in Schedule 1A is present in the person’s blood or urine.”.

9 By adding before subclause (1)—

“(1A) Section 39(1) is amended, in the Chinese text, by repealing “以致” and substituting “其程度達到”.”.

14 (a) In the heading, by deleting “**Section 39H**” and substituting “**Sections 39H and 39I**”.

(b) In the English text, by deleting “is added” and substituting “are added”.

(c) By adding—

“39I. Amendment of Schedule 1A

(1) The Secretary for Transport and Housing may by notice in the Gazette amend Schedule 1A.

(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.”.

18

- (a) In the proposed section 69A(1)(b), by deleting “and”.
- (b) By deleting the proposed section 69A(1)(c) and substituting—
 - “(c) the court or magistrate sentences the person to undergo a term of imprisonment or detention and the sentence is not suspended; and”.
- (c) In the proposed section 69A(1), by adding—
 - “(d) the court or magistrate orders that the person be disqualified for a fixed period.”.
- (d) In the proposed section 69A(2), by deleting “person is released from custody” and substituting “expiration of the term of imprisonment or detention, or of any other term of imprisonment or detention which the person is undergoing at that expiration, or has been previously sentenced to undergo (whichever is the later)”.
- (e) In the proposed section 69A, by adding—
 - “(3A) Subject to subsection (3B), a person is disqualified by this section for the whole of any day during which or during part of which the person is released from custody before the disqualification period is to start to run by virtue of a direction given under subsection (2) and any such day must be deducted from the period of disqualification to be served by the person.

(3B) The court or magistrate may direct that a person is not disqualified by this section during any period of release from custody of a kind referred to in subsection (3E)(a) (admission to bail pending sentence or appeal).

(3C) Subsection (3A) ceases to operate if the period of disqualification becomes exhausted because of deductions made under that subsection. In such a case the disqualification period

does not start to run in accordance with the direction of the court or magistrate and must be taken for all purposes to have been served.

(3D) For the purpose of subsection (3C), each 30 days deducted under subsection (3A) is to be treated as being equal to a month.

(3E) Without limiting subsection (3A), a person must be taken to be released from custody for the purposes of this section during any period that he or she—

- (a) is, following his or her conviction of the relevant scheduled offence, admitted to bail pending sentence or appeal;
- (b) is released from prison or detention on leave of absence granted under—
 - (i) section 12A of the Prisons Ordinance (Cap. 234);
 - (ii) rule 17(1) of the Prison Rules (Cap. 234 sub. leg. A);
 - (iii) regulation 14(1) of the Detention Centres Regulations (Cap. 239 sub. leg. A);
 - (iv) regulation 13(1) of the Drug Addiction Treatment Centres Regulations (Cap. 244 sub. leg. A);
 - (v) regulation 18(1) of the Training Centres Regulations (Cap. 280 sub. leg. A); or
 - (vi) section 17(1) of the Rehabilitation Centres

Regulation (Cap. 567 sub. leg. A);

- (c) is released from imprisonment under section 7(1) or (2) of the Prisoners (Release under Supervision) Ordinance (Cap. 325);
- (d) is released under an order made under section 15(1)(b) of the Long-term Prison Sentences Review Ordinance (Cap. 524); or
- (e) while undergoing a period of residence at a rehabilitation centre referred to in section 3(b) of the Rehabilitation Centres Ordinance (Cap. 567), is engaged in activities outside that centre under permission granted under section 5(1) of that Ordinance.”.

New

By adding—

“21A. Schedule 1A added

The following is added—

“SCHEDULE 1A [ss. 36, 36A, 37 & 39I]

DRUGS

1. Heroin
2. Ketamine
3. Methylamphetamine

4. Cannabis
5. Cocaine
6. 3,4-methylenedioxymethamphetamine (MDMA)”.”.