

立法會
Legislative Council

LC Paper No. LS22/11-12

**Paper for the House Committee Meeting
on 13 January 2012**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 6 January 2012**

Date of tabling in LegCo : 11 January 2012

Amendment to be made by : 8 February 2012 (or 29 February 2012 if extended by resolution)

Road Traffic Ordinance (Cap. 374)

Road Traffic (Impairment Test) Notice (L.N. 1)

Road Traffic (Amendment) Ordinance 2011 (Commencement) Notice 2012 (L.N. 2)

The Road Traffic (Amendment) Ordinance (24 of 2011) (RT(A)O) was enacted by the Legislative Council on 14 December 2011. It was published in the Gazette on 23 December 2011. The main objects of RT(A)O are to, among other things, create new offences in connection with driving motor vehicles after the consumption or use of drugs. L.N. 1 and L.N. 2 are made for the implementation and commencement of the proposals in RT(A)O.

L.N. 1

2. L.N. 1 was made by the Commissioner of Police under section 39T(1) of the Road Traffic Ordinance (Cap. 374) (RTO)¹, which specifies five tests to be carried out for the purpose of assisting 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 (i.e. the Impairment Tests²). The five tests are –

¹ Section 39T is added to RTO by section 14 of RT(A)O. Under section 32 of the Interpretation and General Clauses Ordinance (Cap. 1) (IGCO), the Commissioner of Police may exercise the power to make the Notice under section 39T(1) after its publication in the Gazette, although the power under section 32 IGCO will only be effective until section 39T(1) comes into operation on 15 March 2012 by the operation of L.N. 2.

² Impairment Test is defined in section 3(2) of the RT(A)O, which means a combination of any or all of the tests specified by the Commissioner of Police under section 39T(1), carried out by an authorized police officer on a person, so as to assist the police officer to form an opinion as to whether or not the person's ability to drive properly is impaired by the consumption or use of drugs.

- (a) Eye Examinations (consisting papillary examination and Gaze Nystagmus examination);
- (b) Modified Romberg Balance Test;
- (c) Walk and Turn Test;
- (d) One Leg Stand Test; and
- (e) Finger to Nose Test.

3. The Administration has explained the above tests to the Bills Committee of the Road Traffic (Amendment) Bill 2011³ and has arranged a video presentation of the operational procedures of the Impairment Test at a meeting of the Bills Committee. General guidelines for police officers on how reasonable suspicion of drug driving would be established before the driver concerned is to be taken to the police station for conducting the Impairment Test has also been provided to the Bills Committee. In response to some members' concerns about the effectiveness of the Impairment Test, the Administration has provided statistics on the effectiveness of the Impairment Test for members' reference.

4. The Transport Panel has not been consulted on L.N. 1.

5. Members may refer to the LegCo Brief issued by the Hong Kong Police Force in January 2012 (File Ref.:(4) in LM 4/11 in CP/T 230/84) for further information.

6. L.N. 1 will come into operation on 15 March 2012.

L.N. 2

7. L.N. 2 was made by the Secretary for Transport and Housing (the Secretary) under section 1(2) of RT(A)O to appoint 15 March 2012 as the day on which the RT(A)O (except section 14 of RT(A)O in so far as it relates to the new section 39N of RTO) comes into operation.

8. Section 14 of RT(A)O adds sections 39J to 39U to RTO, which, among other things, provide the police with the necessary powers to combat drug driving. Section 39N empowers a police officer to require a driver to undergo a Rapid Oral Fluid Test (ROFT). According to the explanation of the

³ See LC Paper No. CB(1)2605/10-11(01) issued in July 2011 and CB(1)224/11-12(01) issued in November 2011 by the Transport and Housing Bureau.

Administration during the deliberation of the Bills Committee, as the technology involved in ROFT is still maturing and as there is a need to search for and develop a ROFT device suitable for the use in Hong Kong, ROFT will be introduced when a suitable device is found and validated for use in Hong Kong. Impairment Test will be deployed as the main preliminary drug test for drug driving offences before a ROFT device is available. Therefore, the commencement date of section 39N may be later than the commencement date for the other provisions of the Bill.⁴

9. The Transport Panel has not been consulted on the commencement date of the RT(A)O. However, the Bills Committee has expressed support for the early implementation of RT(A)O.

10. The Legal Service Division is making certain enquiries with the Administration in relation to L.N. 1 and will report further if necessary. No legal and drafting difficulties have been identified in relation to L.N. 2.

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⁴ See paragraphs 34 to 36 of the Report of the Bills Committee on Road Traffic (Amendment) Bill 2011 to the House Committee dated 1 December 2011 (LC Paper No. CB(1)478/11-12).