

## LEGISLATIVE COUNCIL BRIEF

Road Traffic Ordinance (Cap. 374)

### **Road Traffic (Amendment) Ordinance 2011 (Commencement) Notice 2020 and Road Traffic (Rapid Oral Fluid Test Instruments) Notice**

#### INTRODUCTION

The Secretary for Transport and Housing (“STH”) has made the Road Traffic (Amendment) Ordinance 2011 (Commencement) Notice 2020 (“the Commencement Notice”) at **Annex A** to appoint the day on which section 39N of the Road Traffic Ordinance (Cap. 374) (“RTO”) comes into operation in respect of the requirement for a person who is driving or attempting to drive, or is in charge of, a motor vehicle to undergo a Rapid Oral Fluid Test (“ROFT”) for the purpose of enforcing RTO in respect of drug driving.

2. At the same time, the Commissioner of Police (“CP”) has exercised his power under section 39T(2) of RTO to approve an instrument for carrying out ROFT to detect whether any specified illicit drug is present in a person’s oral fluid. The Road Traffic (Rapid Oral Fluid Test Instruments) Notice (“the new Notice”) made by CP is at **Annex B**.

#### JUSTIFICATIONS

3. Drug driving legislation featured in RTO came into effect in March 2012 after the enactment of the Road Traffic (Amendment) Ordinance 2011 (“the 2011 Amendment Ordinance”) and the making of the Road Traffic (Amendment) Ordinance 2011 (Commencement) Notice 2012 by STH (except for the then newly-added section 39N of RTO).

4. Under section 39M of RTO, which is one of the provisions introduced by the 2011 Amendment Ordinance as part of the drug driving legislation, a police officer may require a driver to undergo one or more of the following preliminary drug tests -

- (a) a Drug Influence Recognition Observation (“DIRO”);
- (b) an Impairment Test;
- (c) an ROFT,

if the police officer has reasonable cause to suspect that the driver has been under the influence of drugs or the driver is involved in a traffic accident or commits a traffic offence.

5. ROFT is a test carried out on a person’s oral fluid by an authorised police officer using any instrument approved by CP under section 39T(2) of RTO to detect the presence of any specified illicit drug in the person’s oral fluid. No instrument for ROFT has been approved by CP before and accordingly, section 39N of RTO which concerns the requirement for drivers to undergo ROFTs has yet to come into operation. At present, the Hong Kong Police Force (“the Police”) relies on DIRO and the Impairment Test for drug driving enforcement.

6. After years of search for a suitable ROFT instrument, the Police eventually identified “DrugWipe®6S” which could detect all six illicit drugs specified in Schedule 1A to RTO, including Heroin, Ketamine, Methamphetamine, Cannabis, Cocaine and 3, 4-methylenedioxymethamphetamine.

7. As revealed from a research report entitled “Validation of ROFT Devices for On-spot Screening of Drug Users” published by the Toxicology Reference Laboratory of the Hospital Authority (“HA”) in 2017, after assessing three types of ROFT devices available in the market, HA concluded that “DrugWipe®6S” compared more favourably than the other two devices. Manufactured by a German company, “DrugWipe®6S” was not only the most user-friendly device, it also had the best performance in terms of test success rate. Its specificity and accuracy were satisfactory and met the standards recommended by the European Union.

8. On the basis of HA’s assessment outcome and that “DrugWipe®6S” has been deployed in some other jurisdictions such as Australia, Belgium and the United Kingdom for drug driving enforcement, the Police is satisfied that “DrugWipe®6S” is a suitable and reliable

instrument for detecting the presence of any specified illicit drug in a person's oral fluid. Accordingly, CP has approved "DrugWipe®6S" as an ROFT instrument for drug driving enforcement.

## **THE COMMENCEMENT NOTICE AND THE NEW NOTICE**

9. Under section 1(2) of the 2011 Amendment Ordinance, STH has made the Commencement Notice to appoint 1 November 2020 as the day on which section 14 (in so far as it relates to the new section 39N of RTO) of the 2011 Amendment Ordinance comes into operation.

10. The new Notice made by CP specifies "DrugWipe®6S" as an approved instrument for carrying out an ROFT to detect whether any specified illicit drug is present in a person's oral fluid. The new Notice will come into operation on 1 November 2020.

## **LEGISLATIVE TIMETABLE**

11. The legislative timetable will be as follows -

Publication in the Gazette	15 May 2020
Tabling at the Legislative Council for negative vetting	20 May 2020
Commencement	1 November 2020

## **IMPLICATIONS OF THE PROPOSALS**

12. The Commencement Notice and the new Notice are in conformity with the Basic Law, including provisions concerning human rights. They will not affect the current binding effect of RTO and its subsidiary legislation.

## **PUBLICITY**

13. The Police will arrange publicity in due course on the impending conduct of ROFTs before commencement of section 39N of

RTO and the new Notice on 1 November 2020. The Police will also collaborate with the Road Safety Council to raise public awareness of drug driving through various channels, including government websites, Road Safety Council's social media platform, road safety bulletins, etc.

## **ENQUIRIES**

14. Any enquiries on this brief can be addressed to Mr CHAN Sai-leung, Superintendent of Police (Law Revision and Projects, Traffic) at 2860 6229.

**Transport and Housing Bureau  
Hong Kong Police Force  
13 May 2020**

**Road Traffic (Amendment) Ordinance 2011  
(Commencement) Notice 2020**

Under section 1(2) of the Road Traffic (Amendment) Ordinance 2011 (24 of 2011), I appoint 1 November 2020 as the day on which section 14 (in so far as it relates to the new section 39N) of the Ordinance comes into operation.



Secretary for Transport and Housing

11 May 2020

**Road Traffic (Rapid Oral Fluid Test Instruments) Notice**

**Schedule**

(Made by the Commissioner of Police under section 39T(2) of the Road Traffic Ordinance (Cap. 374))

[s. 2]

**1. Commencement**

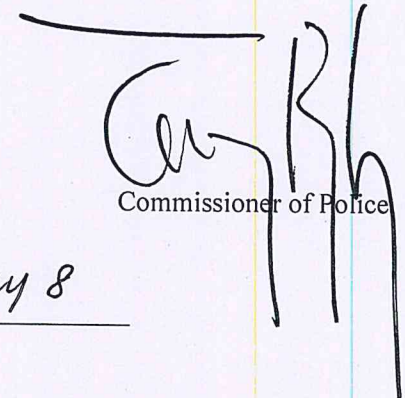
This Notice comes into operation on 1 November 2020.

**Approved Rapid Oral Fluid Test Instruments**

**2. Approved Rapid Oral Fluid Test instruments**

The instruments described in the Schedule are approved as instruments for carrying out a Rapid Oral Fluid Test.

- 1. DrugWipe® 6S manufactured by Securetec Detektions-Systeme AG, Germany.



Commissioner of Police

2020 May 8

**Explanatory Note**

Under section 39N of the Road Traffic Ordinance (Cap. 374), a police officer may require a person who is driving or attempting to drive, or is in charge of, a motor vehicle to undergo a Rapid Oral Fluid Test to detect whether any specified illicit drug is present in the person's oral fluid. This Notice specifies DrugWipe® 6S as an approved instrument for carrying out the test.