

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 33 OF 2000

A circular stamp containing the letters "L.S." in a bold, serif font.

TUNG Chee-hwa
Chief Executive
8 June 2000

An Ordinance to amend the Road Traffic Ordinance.

[1 July 2000]

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Road Traffic (Amendment) Ordinance 2000.

(2) This Ordinance shall come into operation on 1 July 2000.

2. Sections substituted

Sections 36 and 37 of the Road Traffic Ordinance (Cap. 374) are repealed and the following substituted—

“36. Causing death by dangerous driving

(1) A person who causes the death of another person by driving a motor vehicle on a road dangerously commits an offence and is liable—

(a) on conviction on indictment to a fine at level 5 and to imprisonment for 5 years;

(b) on summary conviction to a fine at level 4 and to imprisonment for 2 years.

(2) A person convicted of an offence under subsection (1) shall be disqualified—

(a) for a period of not less than 2 years in the case of a first conviction; and

(b) for a period of not less than 3 years in the case of a second or subsequent conviction,

unless the court or magistrate for special reasons orders that the person be disqualified for a shorter period or that the person not be disqualified.

(3) The court or magistrate may deal with the offence as a first offence when a period of 5 years has elapsed since the person's last conviction of an offence under subsection (1).

(4) A person is to be regarded as driving dangerously within the meaning of subsection (1) if—

- (a) the way he drives falls far below what would be expected of a competent and careful driver; and
- (b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.

(5) A person is also to be regarded as driving dangerously within the meaning of subsection (1) if it would be obvious to a competent and careful driver that driving the motor vehicle concerned in its current state would be dangerous.

(6) For the purposes of subsections (4) and (5), “dangerous” refers to danger either of injury to any person or of serious damage to property.

(7) For the purposes of subsections (4) and (5), in determining what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be had to all the circumstances of the case including—

- (a) the nature, condition and use of the road concerned at the material time;
- (b) the amount of traffic which is actually on the road concerned at the material time or which might reasonably be expected to be on the road concerned at the material time; and
- (c) the circumstances (including the physical condition of the accused) of which the accused could be expected to be aware and any circumstances (including the physical condition of the accused) shown to have been within the knowledge of the accused.

(8) In determining for the purposes of subsection (5) the state of the motor vehicle, regard may be had to anything attached to or carried on or in it and to the manner in which it is attached or carried.

(9) If on the trial of any person charged with an offence under subsection (1) the prosecution proves that the person charged drove dangerously but not that he caused the death of another person by so driving, the person charged shall be acquitted of the offence under subsection (1) and be found guilty of an offence under section 37.

(10) On the trial of any person charged with an offence under subsection (1), the person charged may be acquitted of the offence under subsection (1) and be found guilty of one or more offences under section 38, 39 or 39A.

37. Dangerous driving

(1) A person who drives a motor vehicle on a road dangerously commits an offence and is liable—

- (a) on conviction on indictment to a fine at level 4 and to imprisonment for 3 years;
- (b) on summary conviction to a fine at level 3 and to imprisonment for 12 months.

(2) A person convicted of an offence under subsection (1) shall be disqualified—

- (a) for a period of not less than 6 months in the case of a first conviction; and
- (b) for a period of not less than 18 months in the case of a second or subsequent conviction,

unless the court or magistrate for special reasons orders that the person be disqualified for a shorter period or that the person not be disqualified.

(3) The court or magistrate may deal with the offence as a first offence when a period of 5 years has elapsed since the person's last conviction of an offence under subsection (1).

(4) A person is to be regarded as driving dangerously within the meaning of subsection (1) if—

- (a) the way he drives falls far below what would be expected of a competent and careful driver; and
- (b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.

(5) A person is also to be regarded as driving dangerously within the meaning of subsection (1) if it would be obvious to a competent and careful driver that driving the motor vehicle concerned in its current state would be dangerous.

(6) For the purposes of subsections (4) and (5), "dangerous" refers to danger either of injury to any person or of serious damage to property.

(7) For the purposes of subsections (4) and (5), in determining what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be had to all the circumstances of the case including—

- (a) the nature, condition and use of the road concerned at the material time;
- (b) the amount of traffic which is actually on the road concerned at the material time or which might reasonably be expected to be on the road concerned at the material time; and
- (c) the circumstances (including the physical condition of the accused) of which the accused could be expected to be aware and any circumstances (including the physical condition of the accused) shown to have been within the knowledge of the accused.

(8) In determining for the purposes of subsection (5) the state of the motor vehicle, regard may be had to anything attached to or carried on or in it and to the manner in which it is attached or carried.

(9) On the trial of any person charged with an offence under subsection (1), the person charged may be acquitted of the offence under subsection (1) and be found guilty of one or more offences under section 38, 39 or 39A.”.

3. Careless driving

Section 38(1) is amended by repealing “of \$4,000” and substituting “at level 2”.

4. Section added

The following is added—

“113B. Transitional provisions regarding reckless driving causing death and reckless driving

(1) The repeal of sections 36 and 37 by section 2 of the Road Traffic (Amendment) Ordinance 2000 (33 of 2000) (“the amending Ordinance”) does not—

(a) affect any liability incurred under the repealed section 36 or 37; or

(b) affect—

(i) any penalty or disqualification imposed; or

(ii) any investigation or criminal proceedings instituted, in respect of any offence committed before the commencement of the amending Ordinance against the repealed section 36 or 37; and any such penalty or disqualification may be imposed, and any investigation or criminal proceedings may be instituted or carried on in respect of such offence, as if the amending Ordinance had not been passed.

(2) A person may be convicted of an offence under the repealed section 36 notwithstanding that the death of another person as referred to in the repealed section 36(1) occurs on or after the commencement of the amending Ordinance.

(3) Subsections (1) and (2) shall be in addition to and shall not derogate from section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).”.

5. Consequential amendments

The enactments specified in column 2 of the Schedule are amended to the extent and in the manner specified in column 3 of that Schedule in relation to each enactment.

SCHEDULE

[s. 5]

Item	Enactment	Amendment
1.	Road Traffic Ordinance (Cap. 374)	In section 68(1), repeal “reckless” where it twice appears and substitute “dangerous”.
2.	Road Traffic (Driving-offence Points) Ordinance (Cap. 375)	In the Schedule— (a) in item 1, repeal “reckless” and substitute “dangerous”; (b) in item 2, repeal “Reckless” and substitute “Dangerous”.
3.	Airport Authority Bylaw (Cap. 483 sub. leg.)	(a) In section 48(3) and (4), repeal “recklessly” and substitute “dangerously”. (b) In Schedule 4, in column 2— (i) repeal “reckless” where it appears opposite “48(3)” in column 1 and substitute “dangerous”; (ii) repeal “Reckless” where it appears opposite “48(4)” in column 1 and substitute “Dangerous”.
4.	Coroners Ordinance (Cap. 504)	In sections 33(2), 35(1)(b) and (7)(b) and 36(1), repeal “reckless” and substitute “dangerous”.
5.	Coroners Rules (Cap. 504 sub. leg.)	In rule 12, repeal “reckless” and substitute “dangerous”.
6.	Coroners (Forms) Rules (Cap. 504 sub. leg.)	In the Schedule, in Form 12, in Note 4(b) and (c), repeal “reckless” and substitute “dangerous”.