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# Marine Safety (Alcohol and Drugs) Bill

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# A BILL

## To

Provide for restrictions in connection with operating vessels, and performing certain duties on board vessels, in the waters of Hong Kong after consumption or use of alcohol or drugs; to provide for procedures to obtain specimens of breath, blood and urine, and to test for the presence of alcohol and drugs in the specimens and for impairment by drugs; to provide for disqualification from operating vessels and performing certain duties on board vessels on conviction of certain offences; to provide for enforcement powers; and to provide for related matters.

Enacted by the Legislative Council.

### **Part 1**

#### **Preliminary**

##### **1. Short title and commencement**

- (1) This Ordinance may be cited as the Marine Safety (Alcohol and Drugs) Ordinance.

- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Transport and Logistics by notice published in the Gazette.

## 2. Interpretation

- (1) In this Ordinance—

***approved breath analyzing instrument*** (認可呼氣分析儀器) means an instrument of a type approved under section 46(1)(a);

***approved screening instrument*** (認可檢查儀器) means an instrument of a type approved under section 46(1)(b);

***authorized officer*** (獲授權人員) means—

- (a) the Director;
- (b) a public officer of the Marine Department of or above the rank of Marine Inspector Class II;
- (c) a police officer of or above the rank of Sergeant; or
- (d) a public officer authorized under section 44;

***designated test centre*** (指定測試中心) means a place, vehicle or vessel designated to be a test centre under section 47(1);

***Director*** (處長) means the Director of Marine;

***drug*** (藥物) means—

- (a) a specified illicit drug; or
- (b) any other substance (other than alcohol) that, when consumed or used by a person, deprives the person of any of the person's normal mental or physical faculties temporarily or permanently;

***dynamically supported craft*** (動力承托的航行器) means a craft that is operable on or above water and the weight of which (or a significant part of which) is balanced in one mode of operation by forces other than hydrostatic forces;

***enrolled nurse*** (登記護士) has the meaning given by section 2(1) of the Nurses Registration Ordinance (Cap. 164);

***hospital*** (醫院) means an institution that provides medical or surgical treatment for in-patients or out-patients;

***junk*** (中式帆船) includes any vessel—

- (a) of Chinese or other Asiatic build, construction and rig;
- (b) of Chinese or other Asiatic build and construction, but of European rig; or
- (c) of European build and construction, but of Chinese or other Asiatic rig,

whether such vessel is of a sea-going type or not, and whether such vessel is mechanically propelled or not;

***local vessel*** (本地船隻) has the meaning given by section 2 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548);

***Marine Field Sobriety Test*** (海上現場清醒度測試) means any, or a combination of any or all, of the tests specified under section 46(2);

***marine traffic offence*** (海上交通罪行) means an offence under any of the following Ordinances or under any subsidiary legislation made under any of them—

- (a) the Pilotage Ordinance (Cap. 84);
- (b) the Shipping and Port Control Ordinance (Cap. 313);
- (c) the Merchant Shipping (Safety) Ordinance (Cap. 369);

- (d) the Merchant Shipping (Seafarers) Ordinance (Cap. 478);
- (e) the Merchant Shipping (Local Vessels) Ordinance (Cap. 548);

**master** (船長), in relation to a vessel, means the person (except a pilot) having for the time being command or charge of the vessel;

**operate** (操作), in relation to a vessel, means—

- (a) to determine, to exercise control over, or to be in charge of, the course or direction of the vessel or the means of propulsion of the vessel;
- (b) to exercise a function in connection with the navigation of the vessel; or
- (c) to pilot the vessel under the Pilotage Ordinance (Cap. 84);

**owner** (擁有人), in relation to a vessel, means—

- (a) the person registered as the owner of the vessel; or
- (b) in the absence of such registration, the person owning the vessel;

**Part 2 offence** (第2部罪行) means an offence under section 5, 6, 9 or 12;

**Part 3 offence** (第3部罪行) means an offence under section 16, 17, 18, 24 or 27;

**pilot** (領港員、領港) has the meaning given by section 2 of the Pilotage Ordinance (Cap. 84);

**preliminary drug test** (初步藥物測試) means—

- (a) a Marine Field Sobriety Test;
- (b) a Rapid Oral Fluid Test; or
- (c) a urine screening test;

**prescribed limit** (訂明限度) means—

- (a) 22 micrograms of alcohol in 100 millilitres of breath;
- (b) 50 milligrams of alcohol in 100 millilitres of blood;  
or
- (c) 67 milligrams of alcohol in 100 millilitres of urine;

**Rapid Oral Fluid Test** (快速口腔液測試) means a test carried out on a person's oral fluid by means of an instrument of a type approved under section 46(1)(c);

**registered dentist** (註冊牙醫) has the meaning given by section 2(1) of the Dentists Registration Ordinance (Cap. 156);

**registered nurse** (註冊護士) has the meaning given by section 2(1) of the Nurses Registration Ordinance (Cap. 164);

**screening breath test** (檢查呼氣測試) means a test carried out on a specimen of a person's breath by means of an approved screening instrument;

**Secretary** (局長) means the Secretary for Transport and Logistics;

**specified illicit drug** (指明毒品) means a substance specified in the Schedule;

**urine screening test** (尿液檢查測試) means a test carried out on a person's urine by means of an instrument of a type approved under section 46(1)(d);

**vessel** (船隻) includes—

- (a) any ship, junk, boat, dynamically supported craft, seaplane, and any other description of vessel that is used in navigation; and
- (b) any other description of vessel that is not used, or not constructed or adapted for use, in navigation.

- (2) In this Ordinance—
- (a) a reference to the performance of a designated duty on board a vessel is a reference to the performance of a duty relating to the following on board a vessel—
    - (i) the safety of the vessel;
    - (ii) the security of the vessel; or
    - (iii) the protection of the marine environment; and
  - (b) a reference to a vessel that is underway is a reference to a vessel that is not at anchor, made fast to the shore or aground.

**3. Meaning of ordering that a person be disqualified**

- (1) In this Ordinance, a reference to ordering that a person be disqualified on conviction of an offence has the meaning given by subsection (2), (3) or (4).
- (2) If the offence is for contravening section 5(1), 6(1), 16(1), 17(1) or 18(1), the reference is a reference to ordering that the person not be allowed to operate a vessel that is underway in the waters of Hong Kong.
- (3) If the offence is for contravening section 5(2), 6(2), 16(2), 17(2) or 18(2), the reference is a reference to ordering that the person not be allowed to perform any designated duty on board a vessel that is underway in the waters of Hong Kong.
- (4) If the offence is one under section 9(1), 12(1)(a) or (b), 24(1)(a), (b) or (c) or 27(1)(a) or (b)—

- (a) for a person who, before committing the offence, operated a vessel that was underway—the reference is a reference to ordering that the person not be allowed to operate a vessel that is underway in the waters of Hong Kong; or
  - (b) for a person who, before committing the offence, performed a designated duty on board a vessel that was underway—the reference is a reference to ordering that the person not be allowed to perform any designated duty on board a vessel that is underway in the waters of Hong Kong.
- (5) In this Ordinance, a reference to ordering that a person not be disqualified is to be construed accordingly.

#### **4. Application**

This Ordinance applies to a vessel (other than a warship) in the waters of Hong Kong, including a vessel for the time being used by—

- (a) the Government of the Hong Kong Special Administrative Region;
  - (b) an Office set up by the Central People's Government in the Hong Kong Special Administrative Region, other than the Hong Kong Garrison of the Chinese People's Liberation Army; or
  - (c) the government of a foreign state.
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## Part 2

### Operating Vessels or Performing Designated Duties: Restrictions regarding Alcohol

#### Division 1—Restrictions and Related Offences

5. **Operating vessel or performing designated duty under influence of alcohol**
- (1) A person must not operate a vessel that is underway while the person is under the influence of alcohol to such an extent as to be incapable of having proper control of the vessel.
  - (2) A person must not perform any designated duty on board a vessel that is underway while the person is under the influence of alcohol to such an extent as to be incapable of performing the designated duty properly on board the vessel.
  - (3) A person who contravenes subsection (1) or (2) commits an offence and is liable—
    - (a) on summary conviction—
      - (i) if the person has never previously been convicted of any Part 2 offence, whether on summary conviction or on conviction on indictment—to a fine at level 3 and to imprisonment for 6 months; or
      - (ii) in any other case—to a fine at level 4 and to imprisonment for 12 months; or
    - (b) on conviction on indictment—to a fine at level 4 and to imprisonment for 3 years.

- (4) If a court or magistrate convicts a person of an offence in accordance with subsection (3), the court or magistrate must order that the person be disqualified—
  - (a) if the person has never previously been convicted of any Part 2 offence—for a period of not less than 2 years; or
  - (b) in any other case—for a period of not less than 5 years.
- (5) However, the court or magistrate may for special reasons order that the person be disqualified for a shorter period, or that the person not be disqualified.
- (6) For the purposes of subsection (3)(a) or (4), if, as at the date on which the offence was committed by a person, at least 5 years have elapsed since the person's last conviction of a Part 2 offence, the person is regarded as having never previously been convicted of any Part 2 offence.

**6. Operating vessel or performing designated duty while alcohol concentration exceeds limit**

- (1) A person must not operate a vessel that is underway while the proportion of alcohol in the person's breath, blood or urine exceeds the prescribed limit.
- (2) A person must not perform any designated duty on board a vessel that is underway while the proportion of alcohol in the person's breath, blood or urine exceeds the prescribed limit.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable—
  - (a) on summary conviction—

- 
- (i) if the person has never previously been convicted of any Part 2 offence, whether on summary conviction or on conviction on indictment—to a fine at level 3 and to imprisonment for 6 months; or
      - (ii) in any other case—to a fine at level 4 and to imprisonment for 12 months; or
    - (b) on conviction on indictment—to a fine at level 4 and to imprisonment for 3 years.
  - (4) If a court or magistrate convicts a person of an offence in accordance with subsection (3), the court or magistrate must order that the person be disqualified for a period specified in subsection (6).
  - (5) However, the court or magistrate may for special reasons order that the person be disqualified for a shorter period, or that the person not be disqualified.
  - (6) The period is—
    - (a) if the person has never previously been convicted of any Part 2 offence—
      - (i) if the proportion of alcohol in the person's breath, blood or urine is tier 1—a period of not less than 6 months;
      - (ii) if the proportion of alcohol in the person's breath, blood or urine is tier 2—a period of not less than 12 months; or
      - (iii) if the proportion of alcohol in the person's breath, blood or urine is tier 3—a period of not less than 2 years; or

- (b) in any other case—
  - (i) if the proportion of alcohol in the person's breath, blood or urine is tier 1—a period of not less than 2 years;
  - (ii) if the proportion of alcohol in the person's breath, blood or urine is tier 2—a period of not less than 3 years; or
  - (iii) if the proportion of alcohol in the person's breath, blood or urine is tier 3—a period of not less than 5 years.
- (7) For the purposes of subsection (6)—
  - (a) the proportion of alcohol in a person's breath, blood or urine is tier 1 if it exceeds the prescribed limit but is less than—
    - (i) for breath—35 micrograms of alcohol in 100 millilitres of breath;
    - (ii) for blood—80 milligrams of alcohol in 100 millilitres of blood; or
    - (iii) for urine—107 milligrams of alcohol in 100 millilitres of urine;
  - (b) the proportion of alcohol in a person's breath, blood or urine is tier 2 if it exceeds tier 1 but is less than—
    - (i) for breath—66 micrograms of alcohol in 100 millilitres of breath;
    - (ii) for blood—150 milligrams of alcohol in 100 millilitres of blood; or
    - (iii) for urine—201 milligrams of alcohol in 100 millilitres of urine; and
  - (c) the proportion of alcohol in a person's breath, blood or urine is tier 3 if it exceeds tier 2.

- (8) For the purposes of subsection (3)(a) or (6), if, as at the date on which the offence was committed by a person, at least 5 years have elapsed since the person's last conviction of a Part 2 offence, the person is regarded as having never previously been convicted of any Part 2 offence.

**7. Alternative offences for person charged under section 5 or 6**

On the trial of a person charged with an offence in relation to a vessel under section 5(3) or 6(3), the person may be acquitted of the offence and be found guilty of one or more offences under—

- (a) for a local vessel—section 32 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548); or
- (b) for any other vessel—section 72 of the Shipping and Port Control Ordinance (Cap. 313).

**Division 2—Requirements on Specimens and Related Offences**

**8. Providing specimen for screening breath test**

- (1) An authorized officer may require any of the following persons to provide a specimen of breath for a screening breath test—
- (a) a person who is operating, or attempting to operate, a vessel that is underway;
  - (b) a person who is performing, or attempting to perform, any designated duty on board a vessel that is underway;
  - (c) a person whom the officer has reasonable cause to—
    - (i) suspect of—

- (A) having been operating, or attempting to operate, a vessel that was underway while alcohol was in the person's body; and
  - (B) still having alcohol in the person's body;
- (ii) suspect of—
- (A) having been operating, or attempting to operate, a vessel that was underway; and
  - (B) having committed a marine traffic offence while the vessel was underway;
- (iii) suspect of—
- (A) having been performing, or attempting to perform, any designated duty on board a vessel that was underway while alcohol was in the person's body; and
  - (B) still having alcohol in the person's body; or
- (iv) suspect of—
- (A) having been performing, or attempting to perform, any designated duty on board a vessel that was underway; and
  - (B) having committed a marine traffic offence while the vessel was underway.
- (2) Also, an authorized officer may require a person to provide a specimen of breath for a screening breath test if—
- (a) an accident occurred owing to the presence of a vessel that was underway; and
  - (b) the officer has reasonable cause to suspect that, at the time of the accident, the person was—

- (i) operating, or attempting to operate, the vessel;  
or
  - (ii) performing, or attempting to perform, any  
designated duty on board the vessel.
- (3) For a requirement under subsection (1) or (2), the  
authorized officer may require the person to provide the  
specimen—
  - (a) at or near the place where the requirement is made;  
or
  - (b) at a designated test centre, a police station, or a  
hospital, specified by the officer.
- (4) An authorized officer must, at the time of requiring a  
person to provide a specimen under subsection (1) or (2),  
warn the person that a failure to provide it may render the  
person liable to prosecution.
- (5) An authorized officer may arrest a person without a  
warrant if—
  - (a) as a result of a screening breath test, the officer has  
reasonable cause to suspect that the proportion of  
alcohol in the person's breath exceeds the prescribed  
limit; or
  - (b) the person fails to provide a specimen of breath for a  
screening breath test when required to do so under  
this section.

## **9. Failure to provide specimen for screening breath test**

- (1) A person who, without reasonable excuse, fails to provide  
a specimen of breath for a screening breath test when  
required to do so under section 8 commits an offence and  
is liable—

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- (a) on summary conviction—
    - (i) if the person has never previously been convicted of any Part 2 offence, whether on summary conviction or on conviction on indictment—to a fine at level 3 and to imprisonment for 6 months; or
    - (ii) in any other case—to a fine at level 4 and to imprisonment for 12 months; or
  - (b) on conviction on indictment—to a fine at level 4 and to imprisonment for 3 years.
- (2) Without limiting subsection (1), a person fails to provide a specimen of breath for a screening breath test, if the specimen—
- (a) is not sufficient to enable the test to be carried out; and
  - (b) is not provided in a way to enable the objective of the test to be satisfactorily achieved.
- (3) If a court or magistrate convicts a person of an offence in accordance with subsection (1), the court or magistrate must order that the person be disqualified—
- (a) if the person has never previously been convicted of any Part 2 offence—for a period of not less than 2 years; or
  - (b) in any other case—for a period of not less than 5 years.
- (4) However, the court or magistrate may for special reasons order that the person be disqualified for a shorter period, or that the person not be disqualified.

- (5) For the purposes of subsection (1)(a) or (3), if, as at the date on which the offence was committed by a person, at least 5 years have elapsed since the person's last conviction of a Part 2 offence, the person is regarded as having never previously been convicted of any Part 2 offence.

#### **10. Providing specimen for alcohol analysis or laboratory test**

- (1) Subject to subsection (3), an authorized officer may require any of the persons specified in subsection (2) to provide—
  - (a) a specimen of breath for alcohol analysis by means of an approved breath analyzing instrument; or
  - (b) a specimen of blood or urine for a laboratory test.
- (2) The following persons are specified for the purposes of subsection (1)—
  - (a) a person whose screening breath test indicates that the proportion of alcohol in the person's breath is likely to exceed the prescribed limit;
  - (b) a person who, with reasonable excuse, fails to provide a specimen of breath for a screening breath test.
- (3) The authorized officer may require the person to provide a specimen of blood or urine under subsection (1) only if—
  - (a) the officer has reasonable cause to believe that, for medical reasons, a specimen of breath cannot be provided or should not be required; or
  - (b) at the time the requirement is made—
    - (i) an approved breath analyzing instrument is not available on the vessel concerned, or at the designated test centre, the police station or the hospital, where the requirement is made; or

- (ii) it is not practicable to use an approved breath analyzing instrument for any other reason.
- (4) For a requirement under this section to provide a specimen other than a specimen of breath—
  - (a) subject to paragraph (b), the authorized officer who makes the requirement must decide whether the specimen is to be of blood or urine; and
  - (b) if a medical practitioner is of the opinion that, for medical reasons, a specimen of blood cannot or should not be taken, the specimen required to be provided must be a specimen of urine.
- (5) A requirement under this section to provide a specimen of breath, blood or urine may only be made on the vessel concerned, or at a designated test centre, a police station or a hospital.
- (6) For a requirement under this section to provide a specimen of urine, the authorized officer who makes the requirement must decide whether the specimen is to be provided on the vessel concerned, or at a designated test centre, a police station or a hospital.
- (7) If a person is required to provide a specimen of urine under this section, the person must—
  - (a) provide a first sample of urine for discard; and
  - (b) provide a second sample of urine within 1 hour of the requirement as the specimen.
- (8) An authorized officer must, at the time of requiring a person to provide a specimen under this section, warn the person that a failure to provide it may render the person liable to prosecution.

**11. Supplementary provision on specimen of blood for laboratory test**

- (1) If a person is required to provide a specimen of blood for a laboratory test under section 10, the specimen must be taken from the person by a medical practitioner, a registered nurse, or an enrolled nurse, specified by the authorized officer who makes the requirement.
- (2) A specimen of blood may only be taken from a person with the person's consent.
- (3) However, the authorized officer may request a medical practitioner to take a specimen of blood from a person without the person's consent if—
  - (a) the officer is entitled to require the person to provide a specimen of breath under section 8(1)(c) or (2), and it appears to the officer that, for medical reasons, the person may be incapable of providing a specimen of breath and of giving valid consent to the taking of a specimen of blood; or
  - (b) the officer is entitled to require the person to provide a specimen of blood under section 10(1)(b) or (3), and it appears to the officer that, for medical reasons, the person may be incapable of giving valid consent to the taking of a specimen of blood.
- (4) If the medical practitioner to whom a request is made under subsection (3) considers it appropriate, it is lawful for the medical practitioner—
  - (a) to take a specimen of blood from the person without the person's consent; and
  - (b) to provide the specimen to the authorized officer who made the request, without the person's consent.

- (5) A specimen of blood may be taken under subsection (4) only on the vessel concerned, or at a designated test centre, a police station or a hospital.
- (6) A specimen of blood taken under subsection (4) may be subjected to a laboratory test only if the person from whom it was taken—
  - (a) has been informed that it was taken;
  - (b) has been required by the authorized officer to give consent to its analysis for the purpose of evidence in the relevant investigation; and
  - (c) has given the consent.
- (7) An authorized officer must, at the time of requiring a person to give consent under subsection (6)(b), warn the person that a failure to give consent may render the person liable to prosecution.

**12. Failure to provide specimen for, or give consent to, alcohol analysis or laboratory test**

- (1) A person commits an offence if the person, without reasonable excuse—
  - (a) fails to provide a specimen of breath, blood or urine for alcohol analysis or a laboratory test when required to do so under section 10; or
  - (b) fails to give consent when required to do so under section 11(6)(b).
- (2) A person who commits an offence under subsection (1) is liable—
  - (a) on summary conviction—

- 
- (i) if the person has never previously been convicted of any Part 2 offence, whether on summary conviction or on conviction on indictment—to a fine at level 3 and to imprisonment for 6 months; or
    - (ii) in any other case—to a fine at level 4 and to imprisonment for 12 months; or
  - (b) on conviction on indictment—to a fine at level 4 and to imprisonment for 3 years.
- (3) Without limiting subsection (1), a person fails to provide a specimen of breath, blood or urine for alcohol analysis or a laboratory test, if the specimen—
- (a) is not sufficient to enable the alcohol analysis or laboratory test to be carried out; and
  - (b) is not provided in a way to enable the objective of the alcohol analysis or laboratory test to be satisfactorily achieved.
- (4) If a court or magistrate convicts a person of an offence in accordance with subsection (2), the court or magistrate must order that the person be disqualified—
- (a) if the person has never previously been convicted of any Part 2 offence—for a period of not less than 2 years; or
  - (b) in any other case—for a period of not less than 5 years.
- (5) However, the court or magistrate may for special reasons order that the person be disqualified for a shorter period, or that the person not be disqualified.

- (6) For the purposes of subsection (2)(a) or (4), if, as at the date on which the offence was committed by a person, at least 5 years have elapsed since the person's last conviction of a Part 2 offence, the person is regarded as having never previously been convicted of any Part 2 offence.

### **13. Protection for hospital patients**

- (1) A person at a hospital as a patient must not be required to provide—
  - (a) a specimen of breath for a screening breath test or alcohol analysis; or
  - (b) a specimen of blood or urine for a laboratory test, unless the medical practitioner in immediate charge of the person's case has been notified of the proposal to require such a specimen to be provided at the hospital.
- (2) The requirement must not be made if the medical practitioner—
  - (a) objects on the ground specified in subsection (3); and
  - (b) states in writing the diagnosis justifying the objection.
- (3) For the purposes of subsection (2), the ground is that providing a specimen mentioned in subsection (1) would be prejudicial to the proper care and treatment of the patient.
- (4) To avoid doubt, this section does not apply to the taking of a specimen of blood under section 11(4).

### **Division 3—Evidential Provisions on Specimens**

#### **14. Evidence in relation to specimen**

- (1) Evidence that a specimen of urine was taken from a person under section 10 by an authorized officer or a medical practitioner may be given by producing a document that certifies that fact and purports to be signed by the officer or medical practitioner (as the case may be).
- (2) Evidence that a specimen of blood was taken from a person under section 11(1) with the person's consent by a medical practitioner, a registered nurse or an enrolled nurse may be given by producing a document that certifies that fact and purports to be signed by the medical practitioner, registered nurse or enrolled nurse (as the case may be).
- (3) Evidence that a specimen of blood was taken from a person under section 11(4) by a medical practitioner may be given by producing a document that certifies that fact and purports to be signed by the medical practitioner.
- (4) Evidence that a specimen of blood was subjected to a laboratory test in compliance with section 11(6) may be given by producing a document that certifies that fact and purports to be signed by the authorized officer who made the requirement to give consent under section 11(6)(b).

#### **15. Evidence in relation to alcohol in specimen**

- (1) This section applies in relation to a specimen taken under Division 2.
- (2) Evidence of the proportion of alcohol in a specimen of breath may be given by producing one or more documents that purport to be—

- (a) a statement automatically produced by the approved screening instrument, or approved breath analyzing instrument, that measured the proportion of alcohol in the specimen; and
  - (b) a certificate (whether or not contained in the same document as the statement) signed by an authorized officer certifying that—
    - (i) the statement relates to the specimen provided by the person concerned at the date and time shown in the statement; and
    - (ii) the approved screening instrument, or approved breath analyzing instrument, was operated correctly and properly when the specimen was being taken.
- (3) If—
- (a) a person provides a specimen of breath under section 8 and another specimen of breath under section 10; and
  - (b) evidence of the proportion of alcohol in each specimen is given under subsection (2),
- the court or magistrate must use the statement relating to the specimen with the lower proportion of alcohol out of the specimens and disregard the other.
- (4) Evidence of the proportion of alcohol in a specimen of blood or urine may be given by producing a document that purports to be a certificate under section 25 of the Evidence Ordinance (Cap. 8) as to the proportion of alcohol found in the specimen of blood or urine identified in the certificate.

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- (5) Evidence of the proportion of alcohol in a specimen of breath, blood or urine provided by a person is evidence that the proportion of alcohol in the person's breath, blood or urine at the time of the alleged offence was not less than that in the specimen.
- (6) If, at the time a specimen of blood or urine was provided by a person, the person asked to be provided with a part of the specimen, evidence of the proportion of alcohol found in the specimen is not admissible unless—
- (a) the part of the specimen in which the alcohol was found is one of 2 parts into which the specimen provided by the person was divided at the time it was provided; and
  - (b) the other part was provided to the person.
- (7) If a specimen of blood was taken from a person under section 11(4) and, at the time the person consented to its analysis, the person asked to be provided with a part of the specimen, evidence of the proportion of alcohol found in the specimen is not admissible unless—
- (a) the part of the specimen in which the alcohol was found is one of 2 parts into which the specimen taken from the person was divided at the time it was taken; and
  - (b) the other part was provided to the person.
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## Part 3

### Operating Vessels or Performing Designated Duties: Restrictions regarding Drugs

#### Division 1—Restrictions and Related Offences

16. **Operating vessel or performing designated duty under influence of specified illicit drug**
- (1) A person must not operate a vessel that is underway while the person is under the influence of a specified illicit drug to such an extent as to be incapable of having proper control of the vessel.
  - (2) A person must not perform any designated duty on board a vessel that is underway while the person is under the influence of a specified illicit drug to such an extent as to be incapable of performing the designated duty properly on board the vessel.
  - (3) For the purposes of subsection (1), a person is under the influence of a specified illicit drug to such an extent as to be incapable of having proper control of a vessel if—
    - (a) the person's ability to operate the vessel properly is for the time being impaired; and
    - (b) the concentration of a specified illicit drug (or of a combination of specified illicit drugs) found in the person's blood or urine would usually result in a person being unable to operate a vessel properly.
  - (4) For the purposes of subsection (2), a person is under the influence of a specified illicit drug to such an extent as to be incapable of performing any designated duty properly if—

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- (a) the person's ability to perform the designated duty properly is for the time being impaired; and
  - (b) the concentration of a specified illicit drug (or of a combination of specified illicit drugs) found in the person's blood or urine would usually result in a person being unable to perform any designated duty properly.
- (5) A person who contravenes subsection (1) or (2) commits an offence and is liable—
- (a) on summary conviction—
    - (i) if the person has never previously been convicted of any Part 3 offence, whether on summary conviction or on conviction on indictment—to a fine at level 3 and to imprisonment for 6 months; or
    - (ii) in any other case—to a fine at level 4 and to imprisonment for 12 months; or
  - (b) on conviction on indictment—to a fine at level 4 and to imprisonment for 3 years.
- (6) If a court or magistrate convicts a person of an offence in accordance with subsection (5), the court or magistrate must order that the person be disqualified—
- (a) if the person has never previously been convicted of any Part 3 offence—for a period of not less than 5 years; or
  - (b) in any other case—for a period of not less than 10 years.
- (7) However, the court or magistrate may for special reasons order that the person be disqualified for a shorter period, or that the person not be disqualified.

- (8) For the purposes of subsection (6), the court or magistrate may order that the person be disqualified for life on conviction of the offence concerned (*subject offence*) if—
- (a) the person has previously been convicted of an offence for contravening subsection (1) or (2); and
  - (b) having regard to the circumstances in which the subject offence was committed and the behaviour of the person, the court or magistrate is of the opinion that it is undesirable for the person to continue to be allowed—
    - (i) where the subject offence is an offence for contravening subsection (1)—to operate a vessel that is underway; or
    - (ii) where the subject offence is an offence for contravening subsection (2)—to perform any designated duty on board a vessel that is underway.
- (9) For the purposes of subsection (5)(a), (6) or (8)(a), if, as at the date on which the offence was committed by a person, at least 5 years have elapsed since the person's last conviction of a Part 3 offence, the person is regarded as having never previously been convicted of any Part 3 offence.

**17. Operating vessel or performing designated duty with any concentration of specified illicit drug**

- (1) A person must not operate a vessel that is underway while any concentration of a specified illicit drug (with or without any other drug) is present in the person's blood or urine.

- (2) A person must not perform any designated duty on board a vessel that is underway while any concentration of a specified illicit drug (with or without any other drug) is present in the person's blood or urine.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable—
  - (a) on summary conviction—
    - (i) if the person has never previously been convicted of any Part 3 offence, whether on summary conviction or on conviction on indictment—to a fine at level 3 and to imprisonment for 6 months; or
    - (ii) in any other case—to a fine at level 4 and to imprisonment for 12 months; or
  - (b) on conviction on indictment—to a fine at level 4 and to imprisonment for 3 years.
- (4) If a court or magistrate convicts a person of an offence in accordance with subsection (3), the court or magistrate must order that the person be disqualified—
  - (a) if the person has never previously been convicted of any Part 3 offence—for a period of not less than 2 years; or
  - (b) in any other case—for a period of not less than 5 years.
- (5) However, the court or magistrate may for special reasons order that the person be disqualified for a shorter period, or that the person not be disqualified.

- (6) For the purposes of subsection (3)(a) or (4), if, as at the date on which the offence was committed by a person, at least 5 years have elapsed since the person's last conviction of a Part 3 offence, the person is regarded as having never previously been convicted of any Part 3 offence.

**18. Operating vessel or performing designated duty under influence of other drug**

- (1) A person must not operate a vessel that is underway while the person is under the influence of a drug other than a specified illicit drug (*non-specified drug*) to such an extent as to be incapable of having proper control of the vessel.
- (2) A person must not perform any designated duty on board a vessel that is underway while the person is under the influence of a non-specified drug to such an extent as to be incapable of performing the designated duty properly on board the vessel.
- (3) For the purposes of subsection (1), a person is under the influence of a non-specified drug to such an extent as to be incapable of having proper control of a vessel if—
  - (a) the person's ability to operate the vessel properly is for the time being impaired; and
  - (b) the concentration of a non-specified drug (or of a combination of non-specified drugs) found in the person's blood or urine would usually result in a person being unable to operate a vessel properly.
- (4) For the purposes of subsection (2), a person is under the influence of a non-specified drug to such an extent as to be incapable of performing any designated duty properly if—
  - (a) the person's ability to perform the designated duty properly is for the time being impaired; and

- (b) the concentration of a non-specified drug (or of a combination of non-specified drugs) found in the person's blood or urine would usually result in a person being unable to perform any designated duty properly.
- (5) A person who contravenes subsection (1) or (2) commits an offence and is liable—
  - (a) on summary conviction—
    - (i) if the person has never previously been convicted of any Part 3 offence, whether on summary conviction or on conviction on indictment—to a fine at level 3 and to imprisonment for 6 months; or
    - (ii) in any other case—to a fine at level 4 and to imprisonment for 12 months; or
  - (b) on conviction on indictment—to a fine at level 4 and to imprisonment for 3 years.
- (6) If a court or magistrate convicts a person of an offence in accordance with subsection (5), the court or magistrate must order that the person be disqualified—
  - (a) if the person has never previously been convicted of any Part 3 offence—for a period of not less than 6 months; or
  - (b) in any other case—for a period of not less than 2 years.
- (7) However, the court or magistrate may for special reasons order that the person be disqualified for a shorter period, or that the person not be disqualified.

- (8) For the purposes of subsection (5)(a) or (6), if, as at the date on which the offence was committed by a person, at least 5 years have elapsed since the person's last conviction of a Part 3 offence, the person is regarded as having never previously been convicted of any Part 3 offence.

## **Division 2—Supplementary Provisions on Offences under Division 1**

### **19. Defence for offence under section 16 or 17**

- (1) It is a defence for a person charged with an offence under section 16(5) to prove that—
- (a) the specified illicit drug (or the combination of specified illicit drugs) found in the person's blood or urine was lawfully obtained;
  - (b) the person did not know, and could not reasonably have known, that, if consumed or used in accordance with advice, the drug (or the combination of drugs) found in the blood or urine would render the person incapable of—
    - (i) for an offence for contravening section 16(1)—having proper control of the vessel; or
    - (ii) for an offence for contravening section 16(2)—performing the designated duty properly; and
  - (c) the person consumed or used the drug (or the combination of drugs) in accordance with the advice.
- (2) It is a defence for a person charged with an offence under section 17(3) to prove—
- (a) that—
    - (i) if only 1 specified illicit drug was present in the person's blood or urine—that drug; or

- (ii) if more than one specified illicit drug was present in the person's blood or urine—each of the drugs,  
was lawfully obtained; and
- (b) that the person consumed or used that drug or the drug in accordance with advice.
- (3) For the purposes of subsections (1) and (2), a specified illicit drug is lawfully obtained if a healthcare professional prescribes it for, or administers or supplies it to, the person charged.
- (4) In this section—

**advice** (指示), in relation to a specified illicit drug, means written or oral advice given by the healthcare professional who prescribed, administered or supplied the drug;

**healthcare professional** (醫護專業人員) means—

- (a) a medical practitioner;
- (b) a registered dentist;
- (c) a person whose name is entered on the register of pharmacists under section 5 of the Pharmacy and Poisons Ordinance (Cap. 138); or
- (d) a person acting under the direction or supervision of a person mentioned in paragraph (a), (b) or (c).

## 20. Defence for offence under section 18

- (1) It is a defence for a person charged with an offence under section 18(5) to prove that—
  - (a) the non-specified drug (or the combination of non-specified drugs) found in the person's blood or urine was lawfully obtained;

- (b) the person did not know, and could not reasonably have known, that, if consumed or used in accordance with advice, the drug (or the combination of drugs) found in the blood or urine would render the person incapable of—
    - (i) for an offence for contravening section 18(1)—having proper control of the vessel; or
    - (ii) for an offence for contravening section 18(2)—performing the designated duty properly; and
  - (c) the person consumed or used the drug (or the combination of drugs) in accordance with the advice.
- (2) For the purposes of subsection (1), a non-specified drug is lawfully obtained if—
- (a) a healthcare professional prescribes it for, or administers or supplies it to, the person charged;
  - (b) it is a pharmaceutical product as defined by section 2(1) of the Pharmacy and Poisons Ordinance (Cap. 138)—
    - (i) that is registered as mentioned in regulation 36 of the Pharmacy and Poisons Regulations (Cap. 138 sub. leg. A); and
    - (ii) for the sale of which a prescription is not required by Hong Kong law; or
  - (c) it is—
    - (i) a proprietary Chinese medicine as defined by section 2(1) of the Chinese Medicine Ordinance (Cap. 549); and
    - (ii) registered under section 121 of that Ordinance.

(3) In this section—

**advice** (指示)—

- (a) in relation to a non-specified drug described in subsection (2)(a), means—
  - (i) written or oral advice given by the healthcare professional who prescribed, administered or supplied the drug; or
  - (ii) information on a label, as defined by section 2(1) of the Pharmacy and Poisons Ordinance (Cap. 138), that accompanies the prescribed or supplied drug;
- (b) in relation to a non-specified drug described in subsection (2)(b), means information on a label, as defined by section 2(1) of the Pharmacy and Poisons Ordinance (Cap. 138), that accompanies the drug; or
- (c) in relation to a non-specified drug described in subsection (2)(c), means information on the package insert, as defined by section 2(1) of the Chinese Medicine Ordinance (Cap. 549), that is supplied with the drug;

**healthcare professional** (醫護專業人員) means—

- (a) a medical practitioner;
- (b) a registered dentist;
- (c) a registered Chinese medicine practitioner, or a listed Chinese medicine practitioner, as defined by section 2(1) of the Chinese Medicine Ordinance (Cap. 549);
- (d) a person whose name is entered on the register of pharmacists under section 5 of the Pharmacy and Poisons Ordinance (Cap. 138); or

- (e) a person acting under the direction or supervision of a person mentioned in paragraph (a), (b), (c) or (d);

*non-specified drug* (非指明藥物) means a drug other than a specified illicit drug.

**21. Offence under section 17 or 18 instead of section 16**

- (1) If, on the trial of a person charged with an offence under section 16(5) for contravening section 16(1), the prosecution—

(a) proves that—

(i) the person operated, or attempted to operate, a vessel that was underway; and

(ii) a specified illicit drug was present in the person's blood or urine; but

(b) does not prove that the person was under the influence of the drug to such an extent as to be incapable of having proper control of the vessel,

the person must be acquitted of the offence, but may be found guilty of an offence under section 17.

- (2) If, on the trial of a person charged with an offence under section 16(5) for contravening section 16(2), the prosecution—

(a) proves that—

(i) the person performed, or attempted to perform, any designated duty on board a vessel that was underway; and

(ii) a specified illicit drug was present in the person's blood or urine; but

- (b) does not prove that the person was under the influence of the drug to such an extent as to be incapable of performing the designated duty properly, the person must be acquitted of the offence, but may be found guilty of an offence under section 17.
- (3) If, on the trial of a person charged with an offence under section 16(5) for contravening section 16(1), the prosecution proves that—
- (a) the person operated, or attempted to operate, a vessel that was underway; and
- (b) the person was under the influence of a drug, but not a specified illicit drug, to such an extent as to be incapable of having proper control of the vessel, the person must be acquitted of the offence, but may be found guilty of an offence under section 18.
- (4) If, on the trial of a person charged with an offence under section 16(5) for contravening section 16(2), the prosecution proves that—
- (a) the person performed, or attempted to perform, any designated duty on board a vessel that was underway; and
- (b) the person was under the influence of a drug, but not a specified illicit drug, to such an extent as to be incapable of performing the designated duty properly, the person must be acquitted of the offence, but may be found guilty of an offence under section 18.

**22. Alternative offences for person charged under section 16, 17 or 18**

- (1) On the trial of a person charged with an offence in relation to a vessel under section 16(5), 17(3) or 18(5), the person may be acquitted of the offence and be found guilty of one or more offences under—
  - (a) for a local vessel—section 32 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548); or
  - (b) for any other vessel—section 72 of the Shipping and Port Control Ordinance (Cap. 313).
- (2) To avoid doubt, section 19(1) or (2) or 20(1) does not apply to an offence under a provision mentioned in subsection (1)(a) or (b).

**Division 3—Requirements on Tests and Specimens and Related Offences****23. Preliminary drug test**

- (1) An authorized officer may require any of the following persons to undergo one or more preliminary drug tests—
  - (a) a person who is operating, or attempting to operate, a vessel that is underway;
  - (b) a person who is performing, or attempting to perform, any designated duty on board a vessel that is underway;
  - (c) a person whom the officer has reasonable cause to—
    - (i) suspect of having been operating, or attempting to operate, a vessel that was underway—
      - (A) while any concentration of a specified illicit drug was present in the person's blood or urine; or

- (B) while under the influence of any drug;
  - (ii) suspect of—
    - (A) having been operating, or attempting to operate, a vessel that was underway; and
    - (B) having committed a marine traffic offence while the vessel was underway;
  - (iii) suspect of having been performing, or attempting to perform, any designated duty on board a vessel that was underway—
    - (A) while any concentration of a specified illicit drug was present in the person's blood or urine; or
    - (B) while under the influence of any drug; or
  - (iv) suspect of—
    - (A) having been performing, or attempting to perform, any designated duty on board a vessel that was underway; and
    - (B) having committed a marine traffic offence while the vessel was underway.
- (2) Also, an authorized officer may require a person to undergo one or more preliminary drug tests if—
- (a) an accident occurred owing to the presence of a vessel that was underway; and
  - (b) the officer has reasonable cause to suspect that, at the time of the accident, the person was—
    - (i) operating, or attempting to operate, the vessel; or
    - (ii) performing, or attempting to perform, any designated duty on board the vessel.

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- (3) For a requirement under subsection (1) or (2), a preliminary drug test may be carried out—
    - (a) at or near the place where the requirement is made; or
    - (b) at a designated test centre, a police station, or a hospital, specified by the officer.
  - (4) For a Rapid Oral Fluid Test, the authorized officer may require the person under subsection (1) or (2) to provide one or more specimens of oral fluid.
  - (5) An authorized officer must, at the time of requiring a person to undergo a preliminary drug test under subsection (1) or (2), warn the person that—
    - (a) the person may be required to undergo more than one preliminary drug test; and
    - (b) a failure to undergo any of the tests the person is required to undergo, or to provide any specimen the person is required to provide, may render the person liable to prosecution.
  - (6) An authorized officer may arrest a person without a warrant if—
    - (a) as a result of a Marine Field Sobriety Test carried out on the person, the officer has reasonable cause to suspect that the person has committed an offence under section 16(5), 17(3) or 18(5);
    - (b) as a result of a Rapid Oral Fluid Test carried out on the person, the officer has reasonable cause to suspect that any concentration of a specified illicit drug is present in the person's oral fluid; or

- (c) as a result of a urine screening test carried out on the person, the officer has reasonable cause to suspect that any concentration of a specified illicit drug is present in the person's urine.
- (7) An authorized officer may arrest a person without a warrant if the person fails to do any of the following when required to do so under this section—
  - (a) undergo a Marine Field Sobriety Test;
  - (b) provide a specimen of oral fluid for a Rapid Oral Fluid Test;
  - (c) provide a specimen of urine for a urine screening test.

**24. Failure to undergo, or provide specimen for, preliminary drug test**

- (1) A person commits an offence if the person, without reasonable excuse—
  - (a) fails to undergo a Marine Field Sobriety Test when required to do so under section 23;
  - (b) fails to provide a specimen of oral fluid for a Rapid Oral Fluid Test when required to do so under section 23; or
  - (c) fails to provide a specimen of urine for a urine screening test when required to do so under section 23.
- (2) A person who commits an offence under subsection (1) is liable—
  - (a) on summary conviction—

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- (i) if the person has never previously been convicted of any Part 3 offence, whether on summary conviction or on conviction on indictment—to a fine at level 3 and to imprisonment for 6 months; or
    - (ii) in any other case—to a fine at level 4 and to imprisonment for 12 months; or
  - (b) on conviction on indictment—to a fine at level 4 and to imprisonment for 3 years.
- (3) Without limiting subsection (1), a person fails to provide a specimen of oral fluid for a Rapid Oral Fluid Test, or a specimen of urine for a urine screening test, if the specimen—
- (a) is not sufficient to enable the test to be carried out; and
  - (b) is not provided in a way to enable the objective of the test to be satisfactorily achieved.
- (4) If a court or magistrate convicts a person of an offence in accordance with subsection (2), the court or magistrate must order that the person be disqualified—
- (a) if the person has never previously been convicted of any Part 3 offence—for a period of not less than 5 years; or
  - (b) in any other case—for a period of not less than 10 years.
- (5) However, the court or magistrate may for special reasons order that the person be disqualified for a shorter period, or that the person not be disqualified.

- (6) For the purposes of subsection (2)(a) or (4), if, as at the date on which the offence was committed by a person, at least 5 years have elapsed since the person's last conviction of a Part 3 offence, the person is regarded as having never previously been convicted of any Part 3 offence.

## **25. Providing specimen for laboratory test**

- (1) An authorized officer may require any of the persons specified in subsection (2) to provide a specimen of blood or urine, or specimens of both blood and urine, for a laboratory test.
- (2) The following persons are specified for the purposes of subsection (1)—
- (a) a person whose Marine Field Sobriety Test indicates that the person's ability to operate a vessel properly, or to perform a designated duty properly, is for the time being impaired;
  - (b) a person whose Rapid Oral Fluid Test or urine screening test indicates that any concentration of a specified illicit drug is present in the person's oral fluid or urine;
  - (c) a person who, with reasonable excuse, fails to—
    - (i) undergo a Marine Field Sobriety Test;
    - (ii) provide a specimen of oral fluid for a Rapid Oral Fluid Test; or
    - (iii) provide a specimen of urine for a urine screening test.

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- (3) Also, an authorized officer may require a person on whom a preliminary drug test could not be carried out due to a medical reason to provide a specimen of blood or urine, or specimens of both blood and urine, for a laboratory test, if the officer has reasonable cause to suspect that—
    - (a) any concentration of a specified illicit drug is present in the person's blood, urine or oral fluid; or
    - (b) the person is under the influence of any drug.
  - (4) For a requirement under this section to provide a specimen—
    - (a) subject to paragraph (b), the authorized officer who makes the requirement must decide whether the specimen is to be of blood or urine, or specimens of both blood and urine; and
    - (b) if a medical practitioner is of the opinion that, for medical reasons, a specimen of blood cannot or should not be taken, the specimen required to be provided must be a specimen of urine.
  - (5) A requirement under this section to provide a specimen of blood or urine may only be made on the vessel concerned, or at a designated test centre, a police station or a hospital.
  - (6) For a requirement under this section to provide a specimen of urine, the authorized officer who makes the requirement must decide whether the specimen is to be provided on the vessel concerned, or at a designated test centre, a police station or a hospital.
  - (7) If a person is required to provide a specimen of urine under this section, the person must provide it within 1 hour of the requirement.

- (8) An authorized officer must, at the time of requiring a person to provide a specimen under this section, warn the person that a failure to provide it may render the person liable to prosecution.

**26. Supplementary provision on specimen of blood for laboratory test**

- (1) If a person is required to provide a specimen of blood for a laboratory test under section 25, the specimen must be taken from the person by a medical practitioner, a registered nurse, or an enrolled nurse, specified by the authorized officer who makes the requirement.
- (2) A specimen of blood may only be taken from a person with the person's consent.
- (3) However, the authorized officer may request a medical practitioner to take a specimen of blood from a person without the person's consent if—
  - (a) the officer is entitled to require the person to undergo a preliminary drug test under section 23(1) or (2), and it appears to the officer that, for medical reasons, the person may be incapable of undergoing the test and of giving valid consent to the taking of a specimen of blood; or
  - (b) the officer is entitled to require the person to provide a specimen of blood under section 25(1) or (3), and it appears to the officer that, for medical reasons, the person may be incapable of giving valid consent to the taking of a specimen of blood.
- (4) If the medical practitioner to whom a request is made under subsection (3) considers it appropriate, it is lawful for the medical practitioner—
  - (a) to take a specimen of blood from the person without the person's consent; and

- (b) to provide the specimen to the authorized officer who made the request, without the person's consent.
- (5) A specimen of blood may be taken under subsection (4) only on the vessel concerned, or at a designated test centre, a police station or a hospital.
- (6) A specimen of blood taken under subsection (4) may be subjected to a laboratory test only if the person from whom it was taken—
  - (a) has been informed that it was taken;
  - (b) has been required by the authorized officer to give consent to its analysis for the purpose of evidence in the relevant investigation; and
  - (c) has given the consent.
- (7) An authorized officer must, at the time of requiring a person to give consent under subsection (6)(b), warn the person that a failure to give consent may render the person liable to prosecution.

**27. Failure to provide specimen for, or give consent to, laboratory test**

- (1) A person commits an offence if the person, without reasonable excuse—
  - (a) fails to provide a specimen of blood or urine for a laboratory test when required to do so under section 25; or
  - (b) fails to give consent when required to do so under section 26(6)(b).
- (2) A person who commits an offence under subsection (1) is liable—
  - (a) on summary conviction—

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- (i) if the person has never previously been convicted of any Part 3 offence, whether on summary conviction or on conviction on indictment—to a fine at level 3 and to imprisonment for 6 months; or
    - (ii) in any other case—to a fine at level 4 and to imprisonment for 12 months; or
  - (b) on conviction on indictment—to a fine at level 4 and to imprisonment for 3 years.
- (3) Without limiting subsection (1), a person fails to provide a specimen of blood or urine for a laboratory test, if the specimen—
- (a) is not sufficient to enable the laboratory test to be carried out; and
  - (b) is not provided in a way to enable the objective of the laboratory test to be satisfactorily achieved.
- (4) If a court or magistrate convicts a person of an offence in accordance with subsection (2), the court or magistrate must order that the person be disqualified—
- (a) if the person has never previously been convicted of any Part 3 offence—for a period of not less than 5 years; or
  - (b) in any other case—for a period of not less than 10 years.
- (5) However, the court or magistrate may for special reasons order that the person be disqualified for a shorter period, or that the person not be disqualified.

- (6) For the purposes of subsection (2)(a) or (4), if, as at the date on which the offence was committed by a person, at least 5 years have elapsed since the person's last conviction of a Part 3 offence, the person is regarded as having never previously been convicted of any Part 3 offence.

## **28. Protection for hospital patients**

- (1) A person at a hospital as a patient must not be required to provide—
- (a) a specimen of oral fluid for a Rapid Oral Fluid Test;
  - (b) a specimen of urine for a urine screening test; or
  - (c) a specimen of blood or urine for a laboratory test, unless the medical practitioner in immediate charge of the person's case has been notified of the proposal to require such a specimen to be provided at the hospital.
- (2) The requirement must not be made if the medical practitioner—
- (a) objects on the ground specified in subsection (3); and
  - (b) states in writing the diagnosis justifying the objection.
- (3) For the purposes of subsection (2), the ground is that providing a specimen mentioned in subsection (1) would be prejudicial to the proper care and treatment of the patient.
- (4) To avoid doubt, this section does not apply to the taking of a specimen of blood under section 26(4).

## **29. Specimen may also be used to test for alcohol**

A specimen of blood or urine taken under section 25 or 26 may, in addition to being used in a laboratory test for any drug, be used in a laboratory test for alcohol in connection with an alleged offence under Division 1 of Part 2.

**Division 4—Evidential Provisions on Specimens****30. Evidence in relation to specimen**

- (1) Evidence that a specimen of urine was taken from a person under section 25 by an authorized officer or a medical practitioner may be given by producing a document that certifies that fact and purports to be signed by the officer or medical practitioner (as the case may be).
- (2) Evidence that a specimen of blood was taken from a person under section 26(1) with the person's consent by a medical practitioner, a registered nurse or an enrolled nurse may be given by producing a document that certifies that fact and purports to be signed by the medical practitioner, registered nurse or enrolled nurse (as the case may be).
- (3) Evidence that a specimen of blood was taken from a person under section 26(4) by a medical practitioner may be given by producing a document that certifies that fact and purports to be signed by the medical practitioner.
- (4) Evidence that a specimen of blood was subjected to a laboratory test in compliance with section 26(6) may be given by producing a document that certifies that fact and purports to be signed by the authorized officer who made the requirement to give consent under section 26(6)(b).

**31. Evidence in relation to drug in specimen**

- (1) This section applies in relation to a specimen taken under Division 3.
- (2) Evidence of whether a person's ability to operate a vessel properly, or to perform a designated duty properly, was impaired by the consumption or use of a drug may be given by producing a document that—

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- (a) purports to be the opinion of the authorized officer who carried out the Marine Field Sobriety Test as to whether the person's ability to operate a vessel properly, or to perform a designated duty properly, was impaired; and
    - (b) purports to be signed by the officer who carried out the Marine Field Sobriety Test.
  - (3) Evidence of the presence of a drug in a specimen of blood or urine may be given by producing a document that purports to be a certificate under section 25 of the Evidence Ordinance (Cap. 8) as to the presence of the drug found in the specimen of blood or urine identified in the certificate.
  - (4) Evidence of the concentration of a drug in a specimen of blood or urine may be given by producing a document that purports to be a certificate under section 25 of the Evidence Ordinance (Cap. 8) as to the concentration of the drug found in the specimen of blood or urine identified in the certificate.
  - (5) Evidence of the presence of a drug in a specimen of blood or urine provided by a person is evidence of the presence of the drug in the person's blood or urine at the time of the alleged offence.
  - (6) Evidence of the concentration of a drug in a specimen of blood or urine provided by a person is evidence that the concentration of the drug in the person's blood or urine at the time of the alleged offence was not less than that in the specimen.

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- (7) If, at the time a specimen of blood or urine was provided by a person, the person asked to be provided with a part of the specimen, evidence of the presence of, or the concentration of, a drug found in the specimen is not admissible unless—
- (a) the part of the specimen in which the drug was found is one of 2 parts into which the specimen provided by the person was divided at the time it was provided; and
  - (b) the other part was provided to the person.
- (8) If a specimen of blood was taken from a person under section 26(4) and, at the time the person consented to its analysis, the person asked to be provided with a part of the specimen, evidence of the presence of, or the concentration of, a drug found in the specimen is not admissible unless—
- (a) the part of the specimen in which the drug was found is one of 2 parts into which the specimen taken from the person was divided at the time it was taken; and
  - (b) the other part was provided to the person.
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## Part 4

### Enforcement and Related Provisions

#### 32. Power to stop and board vessel

- (1) An authorized officer may at any time stop and board a vessel for requiring a person who has been operating, or has been performing any designated duty on board, the vessel that was underway to undergo a screening breath test or a preliminary drug test.
- (2) An authorized officer may at any time stop and board a vessel for making any examination or investigation that may be necessary if—
  - (a) any offence under this Ordinance has been committed in respect of the vessel or by any person on board the vessel; or
  - (b) the officer has reasonable cause to suspect that any offence under this Ordinance has been committed, is being committed or is about to be committed in respect of the vessel or by any person on board the vessel.
- (3) An authorized officer boarding a vessel under subsection (1) or (2) may take with the officer any persons necessary to assist the officer for the purposes of this section.
- (4) The master of a vessel, when required to stop the vessel by an authorized officer under subsection (1) or (2), must stop the vessel and permit the officer to board the vessel.
- (5) A person who, without reasonable excuse, contravenes subsection (4) commits an offence and is liable on conviction to a fine at level 2.

**33. Power to investigate**

- (1) For the purpose of an investigation made by an authorized officer under section 32(2), the officer—
- (a) may require the vessel that the officer has boarded or any part of it, or anything in it, to be left undisturbed (whether generally or in particular respects) for so long as is necessary to carry out the investigation;
  - (b) may take any measurements and photographs, and make any recordings, that the officer considers necessary;
  - (c) may observe, inspect and search the vessel or the person referred to in section 32(2)(a) or (b) (*suspect*), and seize and remove from the vessel or from a person any article or substance in respect of which the officer has reasonable cause to suspect that an offence under this Ordinance has been committed;
  - (d) may, for an article or substance removed under paragraph (c), detain it for so long as is necessary—
    - (i) to examine it and to cause it to be subjected to any process or test;
    - (ii) to ensure that it is not tampered with before the examination of it is completed; or
    - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under this Ordinance;
  - (e) may require any person whom the officer has reasonable cause to believe to be able to give any information relevant to the investigation (*informant*) to answer (in the absence of persons, other than a person nominated by the informant to be present or

any persons whom the officer may allow to be present) any questions that the officer considers appropriate to ask, and to sign a declaration of the truth of the informant's answers;

- (f) may—
    - (i) require the suspect to give to the officer the suspect's name, address and telephone number and any other personal particulars that the officer may reasonably require; and
    - (ii) require the production by the suspect of, inspect, and take copies of any entry in, the log book of the vessel, or any document (including an identity card issued under the Registration of Persons Ordinance (Cap. 177) or other documentary evidence of identity) that is necessary for the officer to see for the purpose of the investigation; and
  - (g) may detain the suspect for a reasonable period while the officer inquires about the suspected commission of the offence.
- (2) If an authorized officer requires a person to answer any question under subsection (1)(e), neither the question asked, nor the answer given, is admissible in evidence against the person in criminal proceedings other than proceedings for any of the following offences in respect of the answer or the declaration of the truth of the answer—
- (a) an offence for contravening subsection (1)(e);
  - (b) an offence under subsection (3)(b);
  - (c) an offence under Part V of the Crimes Ordinance (Cap. 200).

- (3) A person commits an offence—
  - (a) if the person contravenes a requirement made by an authorized officer under subsection (1);
  - (b) if—
    - (i) the answer given, or the declaration signed, by the person under subsection (1)(e) is false or misleading in a material particular; and
    - (ii) the person knows that, or is reckless as to whether, the answer or the declaration is false or misleading in a material particular; or
  - (c) if the person prevents any other person from appearing before an authorized officer or from answering any question to which an authorized officer may require an answer under subsection (1)(e).
- (4) A person who commits an offence under subsection (3) is liable on conviction to a fine at level 2 and to imprisonment for 6 months.

**34. Authorized officer may require certain information**

- (1) Where—
  - (a) an accident occurred owing to the presence of a vessel that was underway; or
  - (b) a person is suspected of having committed an offence under this Ordinance while operating a vessel or performing any designated duty on board a vessel,an authorized officer may require the owner of the vessel or the owner's agent to comply with the requirements under subsection (2).

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- (2) The requirements are—
- (a) to inform the authorized officer orally the name and address of the master of the vessel, or the person operating the vessel or performing any designated duty on board the vessel, at the time of the occurrence or alleged offence; and
  - (b) to furnish to the authorized officer, within a reasonable time after the occurrence or alleged offence, a written statement signed by the owner or the owner's agent (as the case may be), specifying the name and address of the master of the vessel, or the person operating the vessel or performing any designated duty on board the vessel, at the time of the occurrence or alleged offence.
- (3) Subject to subsection (4), the owner of a vessel or the owner's agent commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 6 months—
- (a) if the owner or the owner's agent (as the case may be) fails to comply with the requirements under subsection (2); or
  - (b) if—
    - (i) the statement furnished by the owner or the owner's agent (as the case may be) under subsection (2)(b) is false or misleading in a material particular; and
    - (ii) the owner or the owner's agent (as the case may be) knows that, or is reckless as to whether, the statement is false or misleading in a material particular.

- (4) In proceedings for an offence under subsection (3), it is a defence to show that the owner of a vessel or the owner's agent (as the case may be) did not know, and could not with reasonable diligence have ascertained, the name or address of the master of the vessel, or the person operating the vessel or performing any designated duty on board the vessel, at the time of the occurrence or alleged offence.
- (5) A person is to be taken to have established a matter that needs to be established for the defence under subsection (4) if—
  - (a) sufficient evidence is adduced to raise an issue with respect to that matter; and
  - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

### **35. Power to arrest and give directions**

- (1) An authorized officer—
  - (a) may arrest and remove from a vessel any person whom the officer has reasonable cause to suspect of having committed an offence under this Ordinance, and take the person to a police station to be dealt with in accordance with the Police Force Ordinance (Cap. 232); and
  - (b) may direct a vessel (in respect of which the officer has reasonable cause to suspect that an offence under this Ordinance has been committed) to proceed together with any persons on board to the nearest Marine Police Base or office of the Marine Department, or any place that the officer directs.

- (2) If an authorized officer has reasonable cause to suspect that an offence under this Ordinance has been committed by a person (*suspect*) in respect of a vessel, the officer—
- (a) may direct—
    - (i) the suspect to stop operating, or attempting to operate, the vessel; and
    - (ii) the owner, agent or master of the vessel to arrange within a specified period a competent person to operate the vessel;
  - (b) may direct—
    - (i) the suspect to stop performing, or attempting to perform, any designated duty on board the vessel; and
    - (ii) the owner, agent or master of the vessel to arrange within a specified period a competent person to perform the designated duty on board the vessel; and
  - (c) may direct the owner, agent or master of the vessel to arrange to bring the suspect ashore immediately.
- (3) A person who, without reasonable excuse, fails to comply with a direction given under subsection (1)(b) or (2) commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
- (4) In this section—
- agent* (代理人), in relation to a vessel, means a person acting in Hong Kong as an agent for the owner of the vessel;
- competent person* (合資格人員)—
- (a) in relation to operating a vessel, means a person who may lawfully operate the vessel; or

- (b) in relation to performing a designated duty on board a vessel, means a person who may lawfully perform the designated duty on board the vessel.

### 36. Power to enter premises

- (1) If an authorized officer knows, or has reason to suspect, that a vessel that relates to an offence under this Ordinance is in or on any non-domestic premises, the officer may, on producing (if so required) a duly authenticated document showing the officer's authority—
  - (a) enter such premises at any reasonable time; and
  - (b) inspect and search any person (*suspect*) whom the authorized officer has reasonable cause to suspect of having committed any offence under this Ordinance, and exercise the powers under section 8 or 23.
- (2) A magistrate may issue a warrant authorizing an authorized officer to enter any non-domestic premises, by force if necessary, if satisfied by information on oath—
  - (a) that—
    - (i) admission to the premises has been refused, or refusal is reasonably expected, and either—
      - (A) notice of the intention to apply for a warrant has been given to the occupier of the premises; or
      - (B) the giving of the notice would defeat the object of the entry;
    - (ii) the premises are unoccupied, or the occupier is temporarily absent; or
    - (iii) the case is urgent; and

- (b) that there are reasonable grounds to enter the premises for any of the purposes specified in subsection (4).
- (3) A magistrate may issue a warrant authorizing an authorized officer to enter any domestic premises at any time, by force if necessary, if satisfied by information on oath—
  - (a) that—
    - (i) the premises are unoccupied, or the occupier is temporarily absent;
    - (ii) the case is urgent; or
    - (iii) either—
      - (A) notice of the intention to apply for a warrant has been given to the occupier of the premises; or
      - (B) the giving of the notice would defeat the object of the entry; and
  - (b) that there are reasonable grounds to enter the premises for any of the purposes specified in subsection (4).
- (4) The purposes are—
  - (a) to ascertain whether any person has committed an offence under this Ordinance;
  - (b) to observe, inspect or search—
    - (i) the vessel or any part of it;
    - (ii) the suspect; and
  - (c) to take any action authorized or required to be taken by or under this Ordinance in respect of the vessel or suspect.

- (5) An authorized officer entering any premises with a warrant issued under subsection (2) or (3), may—
- (a) inspect or search the premises or any part of the premises;
  - (b) observe, inspect or search the suspect;
  - (c) require the suspect to produce to the officer for inspection the suspect's identity card issued under the Registration of Persons Ordinance (Cap. 177) or the suspect's other documentary evidence of identity;
  - (d) take with the officer any persons the officer considers necessary; and
  - (e) take any action authorized or required to be taken by or under this Ordinance in respect of the vessel or suspect.
- (6) On leaving any unoccupied premises, the authorized officer must leave the premises as effectually secured against trespassers as the officer found the premises to be at the time of entry.

- (7) In this section—

***domestic premises*** (住宅處所) means any premises used wholly or mainly for residential purposes and constituting a separate household unit;

***non-domestic premises*** (非住宅處所) means any premises other than domestic premises.

### 37. Notice to appear before magistrate in respect of offences

- (1) Despite section 8 of the Magistrates Ordinance (Cap. 227), if an authorized officer reasonably suspects that an offence under this Ordinance has been committed by a person on board a vessel (***suspect***), the officer may serve a notice on the suspect in accordance with subsection (2)

requiring the suspect to appear before a magistrate to be dealt with according to law.

- (2) A notice under subsection (1) may be served by an authorized officer on a suspect—
  - (a) personally;
  - (b) by handing the notice personally to the senior officer on board the vessel; or
  - (c) by handing the notice personally to the person appearing to be in charge or command of the vessel at the time of such service.
- (3) A notice under subsection (1) must—
  - (a) be in the prescribed form;
  - (b) be signed by an authorized officer by whom it is served; and
  - (c) state—
    - (i) the name of the suspect on whom it is served and the name of the vessel which the suspect is on board;
    - (ii) the offence that is alleged to have been committed with sufficient particulars of the offence;
    - (iii) the time and place at which the offence is alleged to have been committed; and
    - (iv) the time and place at which the suspect is required to appear.
- (4) If a suspect on whom a notice under subsection (1) has been served fails to appear before a magistrate at the time and place stated in the notice, and it is made to appear to the magistrate by oath that the notice was served on the

suspect in accordance with subsection (2), the magistrate—

- (a) may issue a warrant for the apprehension of the suspect and to bring the suspect before the magistrate or another magistrate to be dealt with according to law; and
  - (b) (if a warrant is issued under paragraph (a)) must endorse on the warrant the amount of bail, if any, on which the suspect may be released in the meantime.
- (5) If a suspect on whom a notice under subsection (1) has been served appears before a magistrate in accordance with the notice, or is brought before a magistrate by a warrant issued under subsection (4)—
- (a) the magistrate may hear and determine the offence alleged in the notice as if a complaint had been made or an information had been laid against the suspect in respect of the offence; and
  - (b) (for the purposes of paragraph (a)) the provisions of the Magistrates Ordinance (Cap. 227) relating to the hearing of a complaint or information and the related proceedings are to apply with necessary modifications.
- (6) If a suspect on whom a notice under subsection (1) has been served is brought before a magistrate by a warrant issued under subsection (4), the magistrate may, in addition to any other penalty, order the suspect to pay costs, of not more than \$400, solely in respect of the warrant.

- (7) Any costs ordered to be paid under subsection (6) are recoverable under section 14 of the Costs in Criminal Cases Ordinance (Cap. 492) as a civil debt due to the Government.
- (8) The Director may, by notice published in the Gazette, prescribe the form as mentioned in subsection (3)(a).
- (9) In this section—  
*senior officer* (高級船員), in relation to a vessel, means the master, chief officer, or chief engineer or second engineer, employed or engaged on board the vessel on the business of the vessel.

### 38. Use of log book etc. in evidence

- (1) In any proceedings for an offence under this Ordinance, any specified entry, or a document purporting to be a copy of any such entry and to be certified as a true copy by any of the persons specified in subsection (2), is, until the contrary is proved—
  - (a) to be admitted in evidence and be sufficient evidence of the matters stated in it; and
  - (b) (in the case of such a copy) to be presumed that it is so certified.
- (2) For the purposes of subsection (1), the persons who may certify copies of specified entries are—
  - (a) the Director or any person authorized by the Director in writing in that behalf;
  - (b) a magistrate;
  - (c) a notary public, as defined by section 2(1) of the Legal Practitioners Ordinance (Cap. 159); and
  - (d) a consular officer.

(3) In this section—

*specified entry* (指明記項) means—

- (a) an entry in the log book, if any, of a vessel or any similar document; or
- (b) an entry in a document that is necessary for an authorized officer to see for the purpose of an investigation under section 33(1)(f).

### 39. **Proof of identity of master etc. in proceedings**

If, in any proceedings for an offence under this Ordinance involving a vessel, there is produced to a court or magistrate a statement furnished under section 34(2) that—

- (a) purports to have been signed by the owner of the vessel or the owner's agent; and
- (b) states that the owner or the owner's agent (as the case may be) was the master of the vessel, or the person operating the vessel or performing any designated duty on board the vessel, at the time of the offence,

the court or magistrate must admit, in the absence of evidence to the contrary, the statement as evidence that the owner or the owner's agent (as the case may be) was the master of the vessel, or the person operating the vessel or performing any designated duty on board the vessel, at the time of the offence.

### 40. **Proof of identity of agent in proceedings**

If, in any proceedings for an offence under this Ordinance involving any person appointed as an agent for the owner of a vessel, there is produced to a court or magistrate a notice of appointment signed by the owner and the person so appointed, the court or magistrate must admit, in the absence of evidence

to the contrary, the notice as evidence that the person was the agent for the owner at the time of the offence.

**41. Obstruction**

- (1) Any person who obstructs an authorized officer performing or exercising any function, duty or power under this Ordinance commits an offence.
  - (2) The owner of a vessel, the owner's agent or the master of a vessel who commits an offence under subsection (1) is liable on conviction to a fine at level 5 and to imprisonment for 2 years.
  - (3) Any other person who commits an offence under subsection (1) is liable on conviction to a fine at level 3 and to imprisonment for 6 months.
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## Part 5

### Miscellaneous Provisions

#### 42. Giving of directions and offence of non-compliance

- (1) A direction given under this Ordinance may be given orally or in writing, or by means of signals.
- (2) If requested by any person who is given a direction orally or by means of signals, the person giving the direction must confirm the direction in writing.
- (3) Even if a direction given under this Ordinance has not been confirmed in writing under subsection (2), the direction—
  - (a) must be complied with immediately; or
  - (b) if a time limit for compliance is specified in the direction, must be complied with within the time limit.
- (4) If a direction may be given to the master of a vessel under this Ordinance, it is sufficient for the direction to be given to a person on board the vessel who is on duty to accept any direction on behalf of the master.
- (5) For the purposes of subsection (4), if there is no master for the vessel or the master of the vessel cannot be traced, the direction may be given to the owner of the vessel or the owner's agent, or to any other person who appears to the person giving the direction to be in control of the vessel at that time.

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- (6) The giving of a direction to the master of a vessel under this Ordinance does not diminish or in any way affect the responsibility of the master in relation to any of the following—
- (a) the vessel;
  - (b) the persons on board the vessel;
  - (c) the cargo on the vessel;
  - (d) any other person or property.
- (7) Without limiting any other express penalty for failure to comply with a direction, any person who, without reasonable excuse, fails to comply with a direction given to him or her under this Ordinance commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.

**43. Reasonable excuse**

- (1) This section applies if a provision of this Ordinance that creates an offence makes a reference to a reasonable excuse for an act or omission.
- (2) The reference to a reasonable excuse is to be construed as providing for a defence to a charge in relation to the act or omission.
- (3) A person is to be taken to have established that the person had a reasonable excuse for the act or omission if—
- (a) sufficient evidence is adduced to raise an issue that the person had such a reasonable excuse; and
  - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

**44. Authorizing officers**

The Director may authorize in writing a public officer as an authorized officer for the purposes of this Ordinance.

**45. Protection for authorized officers**

- (1) An authorized officer is not personally liable for any civil liability or claim whatever in respect of any act done or omitted to be done by the officer, if the officer did or omitted to do the act in the honest belief that the act or omission was required, or authorized, by or under this Ordinance.
- (2) The protection conferred by subsection (1) does not in any way affect the liability of the Government for the act or omission of the authorized officer.

**46. Approving instrument types and specifying tests**

- (1) The Director may, by notice published in the Gazette, approve—
  - (a) a type of instrument for analyzing the proportion of alcohol in a specimen of breath;
  - (b) a type of instrument for indicating whether the proportion of alcohol in a person's breath is likely to exceed the prescribed limit;
  - (c) a type of instrument for detecting the presence of any specified illicit drug in a person's oral fluid; or
  - (d) a type of instrument for detecting the presence of any specified illicit drug in a person's urine.
- (2) The Director may, by notice published in the Gazette, specify the tests that are to be carried out by an authorized officer on a person, so as to assist the officer to form an opinion as to whether the person's ability to

operate a vessel properly, or to perform a designated duty properly, is impaired by the consumption or use of drugs.

**47. Designating test centres**

- (1) The Commissioner of Police or the Director may, by notice published in the Gazette, designate a place, vehicle or vessel to be a test centre.
- (2) A notice under subsection (1) is not subsidiary legislation.

**48. Amending prescribed limit**

- (1) The Secretary may, by notice published in the Gazette, amend the definition of *prescribed limit* in section 2(1) by varying the proportion of alcohol that constitutes the prescribed limit.
- (2) A notice under subsection (1) is not to come into operation until after the period mentioned in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) (as may be extended under section 34(3) or (4) of that Ordinance) has expired.

**49. Amending tier 1, tier 2 or tier 3**

- (1) The Secretary may, by notice published in the Gazette, amend section 6(7) by varying the proportion of alcohol that constitutes tier 1, tier 2 or tier 3 under paragraph (a), (b) or (c) of that section.
- (2) A notice under subsection (1) is not to come into operation until after the period mentioned in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) (as may be extended under section 34(3) or (4) of that Ordinance) has expired.

**50. Amending Schedule**

- (1) The Secretary may, by notice published in the Gazette, amend the Schedule.
  - (2) A notice under subsection (1) is not to come into operation until after the period mentioned in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) (as may be extended under section 34(3) or (4) of that Ordinance) has expired.
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## **Schedule**

[ss. 2 & 50]

### **Specified Illicit Drugs**

1. Heroin or any metabolite derived from heroin
  2. Ketamine
  3. Methamphetamine (methylamphetamine)
  4. Cannabis or any active ingredient of cannabis
  5. Cocaine or any metabolite derived from cocaine
  6. 3, 4-methylenedioxymethamphetamine (MDMA)
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## Explanatory Memorandum

The main object of this Bill is to provide for restrictions in connection with operating vessels, and performing certain duties on board vessels, in the waters of Hong Kong after consumption or use of alcohol or drugs. The Bill also provides for—

- (a) procedures to obtain specimens of breath, blood and urine;
- (b) procedures to test for the presence of alcohol and drugs in the specimens and for impairment by drugs;
- (c) disqualification from operating vessels and performing certain duties on board vessels on conviction of certain offences; and
- (d) enforcement powers.

### Part 1—Preliminary

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 2 contains definitions that are necessary for the interpretation of the Bill, including *authorized officer*, *drug*, *Marine Field Sobriety Test*, *operate*, *preliminary drug test*, *prescribed limit*, *Rapid Oral Fluid Test*, *screening breath test*, *specified illicit drug*, *urine screening test* and *vessel*. That clause also gives meanings to the expressions “the performance of a designated duty on board a vessel” and “a vessel that is underway”.

4. Clause 3 gives meaning to the expression “ordering that a person be disqualified” on conviction of an offence under the Bill. For certain offences, it means ordering that the person not be allowed to operate a vessel that is underway in the waters of Hong Kong. For other offences, it means ordering that the person not be allowed to perform any designated duty on board a vessel that is underway in the waters of Hong Kong.
5. Clause 4 provides for the general scope of application of the Bill, namely a vessel in the waters of Hong Kong.

## **Part 2—Operating Vessels or Performing Designated Duties: Restrictions regarding Alcohol**

### *Division 1—Restrictions and Related Offences*

6. Clause 5 creates the offences of—
  - (a) operating a vessel that is underway under the influence of alcohol to an extent that makes the person incapable of having proper control of the vessel; and
  - (b) performing any designated duty on board a vessel that is underway under the influence of alcohol to an extent that makes the person incapable of performing the designated duty properly on board the vessel.

That clause also provides for the penalties, including the person be ordered to be disqualified for not less than 2 years.

7. Clause 6 creates the offences of—
  - (a) operating a vessel that is underway; and
  - (b) performing any designated duty on board a vessel that is underway,

while the proportion of alcohol in the person's breath, blood or urine exceeds the prescribed limit. It also provides for the penalties, including the person be ordered to be disqualified for different minimum periods, depending on the proportion of alcohol in the person's breath, blood or urine.

8. Clause 7 makes an offence under section 32 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) or section 72 of the Shipping and Port Control Ordinance (Cap. 313) a possible alternative conviction on trial of an offence under clause 5 or 6.

*Division 2—Requirements on Specimens and Related Offences*

9. Clause 8 empowers an authorized officer to require certain persons to provide a specimen of breath for a screening breath test (in order to see whether the proportion of alcohol in a person's breath exceeds the prescribed limit), and to arrest a person under certain circumstances.
10. Clause 9 makes it an offence for a person to fail to provide a specimen of breath for a screening breath test when required to do so under clause 8. It also provides for the penalties, including the person be ordered to be disqualified for not less than 2 years.
11. Clause 10 empowers an authorized officer to require certain persons to provide a specimen of breath for alcohol analysis using an approved breath analyzing instrument, or to provide a specimen of blood or urine for a laboratory test under certain conditions (in order to test for the proportion of alcohol in a person's specimen of breath, blood or urine).

12. Clause 11 provides that a specimen of blood required under clause 10 may only be taken from a person with the person's consent. It also empowers an authorized officer to request a medical practitioner to take a specimen of blood from a person without the person's consent if, among other conditions, it appears to the officer that for medical reasons the person may be incapable of giving valid consent. Such a specimen of blood may be subjected to a laboratory test only if the person has been informed that the specimen was taken and has given consent to the analysis of the specimen.
13. Clause 12 makes it an offence for a person to fail to provide a specimen of breath, blood or urine when required to do so under clause 10, or to give consent to the analysis of a specimen of blood taken without consent when required to do so under clause 11. It also provides for the penalties, including the person be ordered to be disqualified for not less than 2 years.
14. Clause 13 prohibits requiring a hospital patient to provide a specimen for testing or analysis for detecting the presence of any alcohol, unless the medical practitioner in immediate charge has been notified and does not object on the ground of prejudice to the proper care and treatment of the hospital patient.

*Division 3—Evidential Provisions on Specimens*

15. Clause 14 provides for the giving of evidence that a specimen of urine or blood was taken or (in the case of blood) subjected to a laboratory test.

16. Clause 15 provides for the giving and admissibility of evidence of the proportion of alcohol in a specimen of breath, blood or urine taken under Division 2 of Part 2 of the Bill.

### **Part 3—Operating Vessels or Performing Designated Duties: Restrictions regarding Drugs**

#### *Division 1—Restrictions and Related Offences*

17. Clause 16 creates the offences of—
- (a) operating a vessel that is underway under the influence of a specified illicit drug (which is a substance specified in the Schedule to the Bill) to an extent that makes the person incapable of having proper control of the vessel; and
  - (b) performing any designated duty on board a vessel that is underway under the influence of a specified illicit drug to an extent that makes the person incapable of performing the designated duty properly on board the vessel.

That clause also provides for the penalties, including the person be ordered to be disqualified for not less than 5 years.

18. Clause 17 creates the offences of—
- (a) operating a vessel that is underway; and
  - (b) performing any designated duty on board a vessel that is underway,
- while any concentration of a specified illicit drug (with or without any other drug) is present in the person's blood or urine. It also provides for the penalties, including the person be ordered to be disqualified for not less than 2 years.

19. Clause 18 creates the offences of—
- (a) operating a vessel that is underway under the influence of a non-specified drug (which is a drug other than a specified illicit drug) to an extent that makes the person incapable of having proper control of the vessel; and
  - (b) performing any designated duty on board a vessel that is underway under the influence of a non-specified drug to an extent that makes the person incapable of performing the designated duty properly on board the vessel.

That clause also provides for the penalties, including the person be ordered to be disqualified for not less than 6 months.

*Division 2—Supplementary Provisions on Offences under Division 1*

20. Clauses 19 and 20 provide for a defence for an offence under clause 16, 17 or 18 based on the consumption or use of the drug in accordance with advice from a healthcare professional or (for an offence under clause 18) information on certain labels or package inserts.
21. Clause 21 makes an offence under clause 17 or 18 a possible alternative conviction on the trial of an offence under clause 16.
22. Clause 22 makes an offence under section 32 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) or section 72 of the Shipping and Port Control Ordinance (Cap. 313) a possible alternative conviction on the trial of an offence under clause 16, 17 or 18.

*Division 3—Requirements on Tests and Specimens and Related Offences*

23. Clause 23 empowers an authorized officer to require certain persons to undergo one or more preliminary drug tests, which may be a Marine Field Sobriety Test (in order to test for impairment by drugs), a Rapid Oral Fluid Test (in order to test for the presence of a specified illicit drug in a person's oral fluid) or a urine screening test (in order to test for the presence of a specified illicit drug in a person's urine). That clause also empowers an authorized officer to arrest a person under certain circumstances.
24. Clause 24 makes it an offence for a person to fail to undergo, or provide a specimen for, a preliminary drug test when required to do so under clause 23. It also provides for the penalties, including the person be ordered to be disqualified for not less than 5 years.
25. Clause 25 empowers an authorized officer to require certain persons to provide a specimen of blood or urine (or both) for a laboratory test under certain conditions (in order to test for the concentration of any drugs in a person's specimen of blood or urine).
26. Clause 26 provides that a specimen of blood required under clause 25 may only be taken from a person with the person's consent. It also empowers an authorized officer to request a medical practitioner to take a specimen of blood from a person without the person's consent if, among other conditions, it appears to the officer that for medical reasons the person may be incapable of giving valid consent. Such a specimen of blood may be subjected to a laboratory test only if the person has been informed that the specimen was taken and has given consent to the analysis of the specimen.

27. Clause 27 makes it an offence for a person to fail to provide a specimen of blood or urine when required to do so under clause 25, or to give consent to the analysis of a specimen of blood taken without consent when required to do so under clause 26. It also provides for the penalties, including the person be ordered to be disqualified for not less than 5 years.
28. Clause 28 prohibits requiring a hospital patient to provide a specimen for testing for detecting the presence of any specified illicit drug, unless the medical practitioner in immediate charge has been notified and does not object on the ground of prejudice to the proper care and treatment of the hospital patient.
29. Clause 29 provides that a specimen of blood or urine taken under clause 25 or 26 may also be used in a laboratory test for alcohol for an alleged offence under Division 1 of Part 2 of the Bill.

*Division 4—Evidential Provisions on Specimens*

30. Clause 30 provides for the giving of evidence that a specimen of urine or blood was taken or (in the case of blood) subjected to a laboratory test.
31. Clause 31 provides for the giving of evidence of impairment by drugs, and for the giving and admissibility of evidence of the presence or concentration of any drugs in a specimen of blood or urine taken under Division 3 of Part 3 of the Bill.

#### **Part 4—Enforcement and Related Provisions**

32. Clause 32 empowers an authorized officer to stop and board a vessel at any time to require a person who has been operating, or has been performing any designated duty on board, the vessel that was underway to undergo a screening breath test or a preliminary drug test.
33. Clause 33 specifies the powers that an authorized officer may exercise for an investigation under clause 32.
34. Clause 34 stipulates that an authorized officer may require the owner of a vessel or the owner's agent to provide information under certain circumstances.
35. Clause 35 empowers an authorized officer to arrest and remove from a vessel any person whom the officer has reasonably cause to suspect of having committed an offence under the Bill, and to give certain directions.
36. Clause 36 empowers an authorized officer to enter any premises other than domestic premises (*non-domestic premises*) for specified purposes. It also empowers an authorized officer, with a warrant issued by a magistrate, to enter by force if necessary any non-domestic premises and any domestic premises.
37. Clause 37 provides for service of a notice to appear before a magistrate in respect of an offence under the Bill.
38. Clause 38 provides for the use of log book, etc. in evidence in proceedings.

39. Clause 39 provides for proof of identity of the master of a vessel, or of the person operating the vessel or performing any designated duty on board the vessel.
40. Clause 40 provides for proof of the identify of an agent for the owner of a vessel.
41. Clause 41 creates an offence of obstruction.

#### **Part 5—Miscellaneous Provisions**

42. Clause 42 provides for how a direction under the Bill may be given and creates an offence of non-compliance.
43. Clause 43 provides that a reference to a reasonable excuse in an offence under the Bill is to be construed as providing for a defence, and that only an evidential burden of proof is required to establish a reasonable excuse.
44. Clause 44 enables the Director of Marine (*Director*) to authorize in writing a public officer as an authorized officer for the purposes of the Bill.
45. Clause 45 provides for protection for an authorized officer from being held liable in respect of an act which the officer did or omitted to do in the honest belief that the act or omission was required or authorized by the Bill.
46. Clause 46 enables the Director, by notice published in the Gazette, to approve types of instrument for testing and analysis for alcohol and drugs, and to specify tests for impairment by drugs.

47. Clause 47 enables the Commissioner of Police or the Director, by notice published in the Gazette that is not subsidiary legislation, to designate a place, vehicle or vessel to be a test centre.
48. Clause 48 enables the Secretary for Transport and Logistics (*Secretary*), by notice published in the Gazette, to amend the definition of *prescribed limit* by varying the proportion of alcohol that constitutes the prescribed limit.
49. Clause 49 enables the Secretary, by notice published in the Gazette, to amend clause 6(7) by varying the proportion of alcohol that constitutes tier 1, tier 2 or tier 3 under clause 6(7).
50. Clause 50 enables the Secretary, by notice published in the Gazette, to amend the Schedule to the Bill.

### **Schedule**

51. The Schedule contains a list of specified illicit drugs.