Driving: alcohol

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Section Business and Transport

This note sets out the offences associated with driving and drinking and the policies of successive governments.

The first drink driving offence was introduced in 1925. At present there are seven drink driving offences in Great Britain, with the tariff ranging from a £1,000 fine for refusing to cooperate with a preliminary test, to 14 years in prison and an unlimited fine for causing death by careless driving while under the influence.

It is an offence to drive or be in charge of a vehicle after consuming so much alcohol that the proportion of it in the breath, blood or urine exceeds the 'prescribed limit'. The blood alcohol level has remained at 80 mg/100 ml of blood since it was first introduced in 1967. There have been various reviews of the limit, most recently in June 2010 by Sir Peter North. Successive governments have rejected calls to reduce the blood alcohol limit.

The issue of the drink drive limit was devolved to Scotland under the *Scotland Act 2012* and the Scottish Government has indicated that it intends to lower the limit north of the border.

Information on other driving offences and related matters can be found on the Roads Topical Page of the Parliament website.

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1 Drink driving law

1.1 History

Early attempts to legislate on the subject of drinking and driving all had defects preventing proper enforcement. In the absence of an objective definition of the offence and a mandatory test on the driver, only those who were manifestly drunk were likely to be convicted:

- Section 40 of the *Criminal Justice Act 1925* extended the offence of being 'drunk in charge' to cover mechanically propelled vehicles;
- Section 15 of the *Road Traffic Act 1930* created the offence of being "under the influence of drink or a drug to such an extent as to be incapable of having proper control of a vehicle";
- Sections 1 and 2 of the *Road Traffic Act 1962* stated that it was sufficient to prove that the suspect's ability to drive was "for the time being impaired"; it also made provision for the first time for analytical tests on bodily fluids though no specific limit was mentioned as an indicator of impairment; and
- Sections 1-5 of the *Road Safety Act 1967* brought Britain into line with a number of other countries which enforced a statutory limit which made it illegal to drive with a blood alcohol concentration of more than 80 mg per 100 ml and introduced roadside screening for alcohol for the first time.

The 1967 Act came into force on 7 October 1967. Some of the anomalies ware tidied up in the *Road Traffic Act 1972,* which was largely a consolidating measure and superseded the 1967 Act.

The law relating to drinking and driving was later discussed during the proceedings of what became the *Road Traffic Act 1974*. For example, at Committee stage in June 1974, the then Lord Chancellor, Lord Elwyn-Jones, outlined the concerns of the new Labour Government

regarding the incidence of alcoholism in relation to road accidents and road safety and the "diminishing therapeutic effect of the 1967 Act". He stated that "the whole position now needs to be seriously reappraised and examined in relation to the causes of a deteriorating situation and the various social and legal measures which ought to be used to combat it".[1] Consequently, in July 1974 the then Minister of Transport, Fred Mulley, announced the setting up of the committee under Frank Blennerhassett QC to "review the operation of the law relating to drinking and driving and to make recommendations".[2] The report was published in 1976.[3] The new Conservative Government consulted on the proposals in 1979-80 and changes such as evidential breath testing, stiffer penalties and the introduction of a scheme for high-risk offenders were included in Part IV of the *Transport Act 1981*. These measures were implemented in May 1983.

The Road Traffic Law Review, set up in 1985 under the chairmanship of Dr Peter North, looked again at the treatment of offences caused by drunk drivers. The report was published in 1988. There was a general view that those who caused death were frequently dealt with too leniently. Under the legislation at the time, a driver who was over the prescribed alcohol limit (or who was unfit by virtue of driving under the influence of drink or drugs) and whose driving caused an accident in which someone was killed, was often charged only with an alcohol or drugs offence, or with this offence coupled with one of careless driving. The fact that the driver had been drinking was not by itself sufficient to establish the offence of causing death by reckless driving (under section 1 of the *Road Traffic Act 1988*). If the standard of the driving itself did not very clearly possess the quality of 'recklessness', the prosecuting authorities often settled for a drink driving charge as being easier to prove in the knowledge the driver would at least be taken off the road for a year, rather than for the more serious charge.[4] The Review looked at the possibility of introducing a specific offence - causing death by careless driving while affected by drink or drugs - linking the consequences of death with the fact of having drunk more than the legal limit.[5]

The Conservative Government published a White Paper, *The Road User and the Law,* in February 1989.[6] The Government agreed with the Review that drink drivers posed a serious social problem and endorsed the Review's proposal that a new offence of causing death by careless driving while affected by drink or drugs should be created. The legislation on serious driving offences was consequently recast by the *Road Traffic Act 1991*, which amended the 1988 Act.

1.2 Current offences, charging and sentencing

Offences and maximum tariffs

There are a number of drink driving offences that can be charged, with the tariff ranging from a £1,000 fine for refusing to cooperate with a preliminary test, to 14 years in prison and an unlimited fine for causing death by careless driving while under the influence.

Under section 3A of the *Road Traffic Act 1988*, as amended by the 1991 Act, the offence of 'causing death by careless driving while under the influence of drink or drugs' requires the prosecution to show that the driving in question:

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1 HL Deb 11 June 1974, c448GC

2 HC Deb 31 July 1974, c295W

3 Department of the Environment, *Drinking and driving: report of the departmental committee*, 16 February 1976

4 DoT and Home Office, *Road Traffic Law Review Report*, 12 April 1988, para 6.18

5 ibid., paras 6.20-6.23

6 DoT, *The road user and the law*, Cm 576, February 1989

- caused the death of another person;
- fell below the standard expected of a reasonable, prudent and competent driver in the circumstances; and
- the driver was unfit through drink or drugs or the level of alcohol was over the prescribed limit, or there was a failure to provide a specimen.

The charge can only be heard in the Crown Court.

The maximum penalty is an unlimited fine and/or 14 years imprisonment; an obligatory disqualification for at least two years (three years if there is a relevant previous conviction); and the obligatory endorsement of the driver's licence with 3-11 penalty points. The maximum penalty was originally five years imprisonment and/or an unlimited fine but this was doubled to ten years imprisonment from August 1993 by section 67 of the *Criminal Justice Act 1993* and increased again to 14 years in February 2004 under section 285 of the *Criminal Justice Act 2003*.

There are also drink drive offences for which there is a mandatory three year minimum period of disqualification for repeat offences committed within a ten year period.[7] Other offences under the 1988 Act include:

- to drive or be in charge of a vehicle while unfit to drive through drink or drugs;
- to drive if one is over the prescribed limit, currently 80 mg in 100 ml of blood;
- to refuse to take a breath test; and
- to refuse to supply specimens of breath, blood or urine for testing.

The penalties for these offences are given in the table on the following page:[8]

[7] section 34 of the *Road Traffic Offenders Act 1988*

[8] *Wilkinson's Road Traffic Offences* (25th ed.), 2011, paras 4.323 and 5.117

Offence	Section of 1988 Act	Maximum tariff	Fine+	Disqualification	Penalty points
Causing death by careless driving while under the influence	3a	14 years	Unlimited	Obligatory (min. 2 yrs)	3-11*
Driving or attempting to drive while unfit	4(1)	6 months	Level 5	Obligatory	3-11*
In charge while unfit	4(2)	3 months	Level 4	Discretionary	10
Driving or attempting to drive with excess alcohol	5(1)(a)	6 months	Level 5	Obligatory	3-11*
In charge with excess alcohol	5(1)(b)	3 months	Level 4	Discretionary	10
Failing to co-operate with a preliminary test	6(6)		Level 3	Discretionary	4
Failing or refusing to provide an evidential specimen when 'driving or attempting to drive'	7(6)	3 months	Level 4	Discretionary	10
Failure to allow specimen to be subjected to laboratory test when ‘driving or attempting to drive’	7A	6 months	Level 5	Obligatory	3-11*
Failure to allow specimen to be subjected to laboratory test when not ‘driving or attempting to drive’	7A	3 months	Level 4	Discretionary	10
* No points may be imposed when offender is disqualified + On the standard scale a Level 3 fine is £1,000, Level 4 is £2,500, and Level 5 is £5,000					

Charging policy

In September 2012 the CPS launched a consultation on revised, consolidated bad driving guidance and policy. On the charging policy for causing death while under the influence, it said:

> **Charging Practice**
>
> Proper procedures must be adopted and applied in the requesting and/or obtaining of any sample of breath, blood or urine. In cases where the procedures are flawed, there is a risk that the evidence may be excluded. R v Coe [2009] EWCA Crim 1452.
>
> Where this is possible, careful consideration must be given to whether the remaining evidence will support an alternative allegation of causing death by careless driving while unfit to drive through drink/drugs, in which case, evidence other than that from an intoximeter machine can be relied upon to demonstrate the defendant’s unfitness to drive.
>
> It is not necessary to add a further charge relating to drink/driving when the defendant is charged with causing death by careless driving when under the influence of drink/drugs, because a guilty verdict to the relevant drink/drive offence can be returned by the jury under the statutory provisions.
>
> This is also true of the offence of causing death by careless or inconsiderate driving. See the section on Alternative verdicts.
>
> There may be rare occasions where the only issue to be decided is the degree to which the driving fell below the required standard and there is a genuine triable factual issue between the prosecution and the defence. As section 3A of the RTA 1988

(causing death by careless driving when under the influence of drink/drugs) is not an available alternative verdict to section 1 of the RTA 1988 (causing death by dangerous driving), it may be necessary to put both counts on the indictment to give effect to the ability of a jury to reach a verdict.

Such situations will be rare and must be capable of justification, especially since section 2B RTA of the 1988 (causing death by careless driving) is a statutory alternative verdict to section 1 of the RTA 1988 (causing death by dangerous driving). See the section on Alternative verdicts.

Consumption of alcohol or drugs

Assessing the relevance of the consumption of alcohol or drugs is a difficult area. In R v McBride (James) (1961) 45 Cr. App. R. 262, two principles were set out in relation to alcohol consumption:

- the mere fact that the driver has consumed alcohol is not of itself relevant to or admissible on the question of whether his driving is careless or dangerous. For such evidence to be admissible, it must tend to show that the amount of alcohol taken was such as would adversely affect a reasonable driver or alternatively that the driver was in fact adversely affected; and
- the court retains an overriding discretion to exclude such evidence if its prejudicial effect outweighs its probative value.

The principles were applied in R v Woodward (Terence) [1995] 1 WLR 375 (CA).[9]

The consultation closed on 8 November 2012. The CPS has yet to publish its conclusions.

Sentencing policy

The Sentencing Guidelines, published in 2008, addresses the offences of causing death by careless driving when under the influence of drink or drugs; or having failed without reasonable excuse either to provide a specimen for analysis or to permit the analysis of a blood sample. It provides the information on factors to take into consideration when determining sentence for a "first-time offender" aged 18 or over convicted after trial, who has not been assessed as a dangerous offender:

> When assessing the seriousness of any offence, the court must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness as well as those set out on the facing page as being particularly relevant to this type of offending behaviour.
>
> This offence can be committed through:
>
> i. being unfit to drive through drink or drugs;
>
> ii. having consumed so much alcohol as to be over the prescribed limit;
>
> iii. failing without reasonable excuse to provide a specimen for analysis within the timescale allowed; or
>
> iv. failing without reasonable excuse to permit the analysis of a blood sample taken when incapable of giving consent.

[9] CPS, *Public consultation on the CPS Guidance on Charging Offences arising from Driving Incidents*, September 2012, pp19-20

In comparison with causing death by dangerous driving, the level of culpability in the actual manner of driving is lower but that culpability is increased in all cases by the fact that the offender has driven after consuming drugs or an excessive amount of alcohol. Accordingly, there is considerable parity in the levels of seriousness with the deliberate decision to drive after consuming alcohol or drugs aggravating the careless standard of driving onto a par with dangerous driving.

The fact that the offender was under the influence of drink or drugs is an inherent element of this offence. [...]

The guideline is based both on the level of alcohol or drug consumption and on the degree of carelessness.

The increase in sentence is more marked where there is an increase in the level of intoxication than where there is an increase in the degree of carelessness reflecting the 14 year imprisonment maximum for this offence compared with a 5 year maximum for causing death by careless or inconsiderate driving alone.

A refusal to supply a specimen for analysis may be a calculated step by an offender to avoid prosecution for driving when having consumed in excess of the prescribed amount of alcohol, with a view to seeking to persuade the court that the amount consumed was relatively small. A court is entitled to draw adverse inferences from a refusal to supply a specimen without reasonable excuse and should treat with caution any attempt to persuade the court that only a limited amount of alcohol had been consumed. The three levels of seriousness where the offence has been committed in this way derive from the classification in the Magistrates' Court Sentencing Guidelines.

Sentencers should take into account relevant matters of personal mitigation; see in particular guidance on good driving record, giving assistance at the scene and remorse...[10]

As stated above, the maximum penalty for causing death while under the influence is 14 years in prison, a two year disqualification and a compulsory re-test. However, in practice, the guidelines recommend the following approach for this offence:

The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)	**Careless/ inconsiderate driving arising from momentary inattention with no aggravating factors**	**Other cases of careless/ inconsiderate driving**	**Careless/ inconsiderate driving falling not far short of dangerousness**
71µ or above of alcohol/ high quantity of drugs OR deliberate non-provision of specimen where evidence of serious impairment	**Starting point:** 6 years custody **Sentencing range:** 5–10 years custody	**Starting point:** 7 years custody **Sentencing range:** 6–12 years custody	**Starting point:** 8 years custody **Sentencing range:** 7–14 years custody
51–70 µg of alcohol/ moderate quantity of drugs OR deliberate non-provision of specimen	**Starting point:** 4 years custody **Sentencing range:** 3–7 years custody	**Starting point:** 5 years custody **Sentencing range:** 4–8 years custody	**Starting point:** 6 years custody **Sentencing range:** 5–9 years custody
35–50 µg of alcohol/minimum quantity of drugs OR test refused because of honestly held but unreasonable belief	**Starting point:** 18 months custody **Sentencing range:** 26 weeks–4 years custody	**Starting point:** 3 years custody **Sentencing range:** 2–5 years custody	**Starting point:** 4 years custody **Sentencing range:** 3–6 years custody

[10] Sentencing Guidelines Council, *Causing Death by Driving: Definitive Guideline*, July 2008, p12

It lists the following aggravating factors:

1. Other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence; driving while disqualified; driving without insurance; taking a vehicle without consent; driving a stolen vehicle

2. Previous convictions for motoring offences, particularly offences that involve bad driving or the consumption of excessive alcohol before driving

3. More than one person was killed as a result of the offence

4. Serious injury to one or more persons in addition to the death(s)

5. Irresponsible behaviour such as failing to stop or falsely claiming that one of the victims was responsible for the collision[11]

And the following mitigating factors:

1. Alcohol or drugs consumed unwittingly

2. Offender was seriously injured in the collision

3. The victim was a close friend or relative

4. The actions of the victim or a third party contributed significantly to the likelihood of a collision and/or death resulting

5. The driving was in response to a proven and genuine emergency falling short of a defence[12]

1.3 Blood alcohol level

As set out above, it is an offence to drive or be in charge of a vehicle after consuming so much alcohol that the proportion of it in the breath, blood or urine exceeds the 'prescribed limit'. The prescribed limits are set out in section 11(2) of the 1988 Act as:

- 35 micrograms of alcohol in 100 millilitres of breath; or

- 80 milligrams of alcohol in 100 millilitres of blood; or

- 107 milligrams of alcohol in 100 millilitres of urine.

The blood alcohol level has remained unchanged since it was first introduced in 1967. The decision to set the limit at 80 milligrams in 100 millilitres (80mg/100ml) of blood was a pragmatic one taking into account the public attitudes at the time to what was then a novel and controversial measure.

The argument for retaining this limit has usually focused on the fact that at the 80mg/100ml level virtually any driver is significantly more likely to be involved in an accident than when sober and most drivers are manifestly impaired in their ability to drive. When a driver is found to have exceeded the legal limit, the evidence is difficult to dispute and high conviction rates are obtained. However, there are many who argue that the limit should be reduced to 50mg/100ml or even 20mg/100ml as a way of reducing accident rates.

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[11] ibid., p13
[12] ibid., p13

By way of recent background, the Labour Government said in 1998 that it was minded to make it an offence to drive with a blood alcohol limit of 50mg or over. However, this never happened, and in 2002 it announced that it would not change the drink-drive limit.[13] It stuck to this statement for the remainder of its time in office. For further information on Labour's policy, see section 2.2, below.

Before leaving office Labour commissioned Sir Peter North to look into the whole question of drink and drug driving. His report, published in June 2010, recommended a reduction in the limit to 50mg/100ml on the grounds that:

> Research conclusively shows the much higher risk posed by drink driving. With a blood alcohol level between my proposed new limit of 50mg/100ml and the current 80mg/100ml limit, a driver has a 6 times greater risk of road death than a non-drinking driver. Having considered the issues carefully and considered views from all quarters, I not only believe that it is right to reduce the limit, but that the public is ready for a lower limit. It is time to give them what they want.
>
> Surveys also tell us that the public is in favour of lengthy bans for drink drivers and witnesses have told me that the current ban is the major deterrent to drink driving. I am therefore clear that the 12-month ban needs to be maintained at a 50 mg/100ml limit.[14]

In chapter 4 of his report, Sir Peter set out his reasoning for rejecting a 20mg/100ml limit and opting for the 50mg/100ml level instead, stating that this 'struck the right balance' between bringing more drink drivers within the law but not unduly penalising the 'casual' drinker.[15] Detailed research on the blood alcohol limit was published alongside the main report:

- Centre for Public Health Excellence NICE, *Review of effectiveness of laws limiting blood alcohol concentration levels to reduce alcohol-related road injuries and deaths*, March 2010; and:

- School of Health and Related Research (ScHARR), University of Sheffield, *Modelling methods to estimate the potential impact of lowering the blood alcohol concentration limit from 80 mg/100ml to 50 mg/100ml in England and Wales*, January 2010[16]

The Coalition Government rejected Sir Peter's recommendation to lower the blood alcohol limit. In a statement to the House in March 2011 the then Secretary of State for Transport, Philip Hammond, said:

> A staggering proportion of drink-drivers are well over the current limit—40% of those caught by the police are 2.5 times the limit. The proportion of drivers over the limit who are killed is the same. Their behaviour is entrenched and displays a flagrant disregard for the law and the safety of other road users. We have concluded that improving enforcement is likely to have most impact on these dangerous people, and will

[13] HC Deb 20 March 2002, c362W

[14] North Review press notice, ""Time to give the public what they want": North proposes crack down on drink and drug driving", 16 June 2010

[15] *Report of the Review of Drink and Drug Driving Law*, June 2010, pp92-97

[16] for older research and reports see, e.g.: Borkenstein RF et al, *The role of the drinking driver in traffic accidents*, 1964 (revised 1974); Maycock, G, *Drinking and driving in Britain - a review* (TRL report 232), 1997; and House of Lords Select Committee on the European Communities, *Blood Alcohol Levels for Drivers* (fourteenth report of session 1997-98), HL paper 82, 17 March 1998 and *Drinking and driving* (twenty-fourth report of session 2001-02), HL paper 140, 2 July 2002

> therefore be the most effective use of scarce resources, rather than lowering the prescribed alcohol limit for driving.[17]

One area where it seems the law will change is in Scotland. Under section 20 of the *Scotland Act 2012*, Scottish Ministers now have the power to change the drink drive limit, by prescribing a new blood alcohol threshold. In September 2012 the Scottish Government published a consultation proposing to lower the limit to 50mg/100ml, per the recommendation in the North Review.[18] In March 2013 the Scottish Justice Secretary Kenny MacAskill confirmed that "I will be asking the Scottish Parliament to approve regulations to lower the limit." This would require

> ... formal discussions with the police and the UK Government on the recalibration and testing of drink drive enforcement devices to ensure prosecutions are as robust as possible. Before a lower limit is introduced we will also consider issues such as how motorists driving into Scotland from England will be made aware of the lower limit. We are exploring options with Transport Scotland, police and justice and road safety partners as we move forward with our plans.[19]

1.4 Breath testing

A preliminary breath test may be required by a police constable in uniform under section 6 of the 1988 Act when he suspects that a person is driving or has been attempting to drive a vehicle with alcohol in his body or when there is an accident. It is an offence to refuse to cooperate with a preliminary test without 'reasonable excuse'. The police have powers to require evidential breath specimens elsewhere than at a police station under sections 2, 2A and 2B of the 1988 Act, as amended by section 154 of the *Serious Organised Crime and Police Act 2005* and as read with section 6(5) of the 1988 Act as amended by Schedule 7 of the *Railways and Transport Safety Act 2003*. It has not, however, been possible to conduct evidential roadside breath tests because no appropriate device was available.

Sir Peter North explained the current procedure for taking breath test in his 2010 report to Government:

> Turning to the procedure in drink drive cases, the current system involves a screening breathalyser test, normally at the roadside, followed by an evidential breath test on a fixed machine in the police station. It appears that type approval of a mobile evidential machine is close to being achieved. It is important that that process be concluded without delay. Mobile evidential testing machines should then be made available for use both at the roadside and at any convenient place in a police station or elsewhere. That should speed up the process of dealing with drink driving very considerably.
>
> In a case where the evidential breath recording in the police station is between 40 and 50 microgrammes (mcg) per 100 ml of breath, there is then available to the arrested driver the "statutory option" of requiring a blood or urine test to see whether the driver is under the limit for the chosen test. This option was introduced some thirty years ago, at a time when there were doubts as to the accuracy of breath testing machines and because of concerns then expressed over the conversion of breath readings into blood or urine test levels which resulted in the use of a blood breath ratio of 2300:1.[20]

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[17] HC Deb 21 March 2011, c45WS

[18] Scottish Government, *Reducing the drink drive limit in Scotland*, 6 September 2012

[19] Scottish Government press notice, "Drink drive consultation", 21 March 2013

[20] op cit., *Report of the Review of Drink and Drug Driving Law*, p8

In November 2008 the Labour Government asked for views on rescinding the right of drivers to request a blood or a urine test in place of a breath test, due to the increased reliability and accuracy of the breath test (this was echoed in the North Review).[21] No changes were implemented before the 2010 General Election.

However in May 2011 the Coalition Government published its road safety framework document, which indicated the Government's intention to remove the option for drivers who provide a breath sample that is within 40 per cent of the prescribed alcohol limit to request a blood or urine test. It also stated that the Government aimed to approve portable evidential breath testing equipment.[22]

In November 2012 the Government published a consultation on the removal of the option for a blood or urine test following a preliminary breath test (as stated above) and about removing the requirement for preliminary testing where evidential testing is undertaken away from a police station. This latter proposal would mean that a preliminary breath test would not to have to be taken in addition to two evidential breath tests, when mobile evidential breath testing devices are used away from a police station. At the moment there are no mobile, evidential breath testing devices type approved for use by the police. The paper states that "such devices may be type approved and available for use within the next two years".[23] The consultation closed in January 2013; the Government has yet to publish its conclusions.

1.5 Drink-Drive Rehabilitation Scheme (DDRS)

Sections 34A, 34B and 34C of the *Road Traffic Offenders Act 1988* gave courts the power to reduce the period of disqualification imposed on an offender if he completes a course approved by the Secretary of State. A pilot scheme began in 1993 when 175 court areas were designated to refer offenders to courses. TRL monitored the results and concluded that offenders who had attended an approved rehabilitation course were three times less likely to re-offend.[24] The scheme was consequently made permanent throughout Great Britain from 1 January 2000.[25]

Section 34A(3) of the 1988 Act states that the reduction to the ban may be "not less than three months and not more than one quarter of the unreduced period". Section 34A(4) sets out what would have been explained to offenders when they are offered the opportunity of attending the course. A court cannot make an order under this section unless the offender is over the age of 17.

In November 2011 the Driving Standards Agency (DSA) published a consultation paper proposing to update the existing arrangements for providing training DDRS, including the funding arrangements, by implementing section 35 of the *Road Safety Act 2006*. Section 35 provides for the replacement of the existing DDRS with more flexible arrangements and enables reduced periods of disqualification to apply to both drink-drive related offences and other specified offences.[26] The DSA published the outcome of the consultation in November

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[21] DfT, *Road Safety Compliance Consultation*, November 2008, p36

[22] DfT, *Strategic Framework for Road Safety*, May 2011, p60

[23] DfT, *Enforcement Procedures against Drink Drivers and Other Offenders – A Consultation Document*, November 2012, p4

[24] TRL, *Drink/driver rehabilitation courses in England and Wales* (TRL report 426), January 1999; and: TRL, *The drink/drive rehabilitation scheme: evaluation and monitoring. Final Report* (TRL report 613), September 2004

[25] *Courses for drink-drive offenders (experimental period) (termination of restrictions) order 1999* (SI 1999/3130); debated in the Second Standing Committee on Delegated Legislation, 26 July 1999

[26] DSA, *New Approval Arrangements For Drink-Drive Rehabilitation Courses*, November 2011, p10

2012. This announced that the Government intends to introduce the new reformed scheme from 24 June 2013.[27] New guidance was also published in November 2012, this states:

> The new section 34A RTOA expands the range of drink-related offences which fall within the DDRS and these are now referred to as 'relevant drink offences'. This new section 34A is, in respect of relevant drink offences, fully in force on 24 June 2013. At the time of sentencing for a relevant drink offence a court may make a referral order, reducing the period of disqualification by not less than three months, and no more than one quarter, of the disqualified period on satisfactory completion of a DDRS course.
>
> DDRS courses offered must be approved by the Secretary of State (section 34A(6)RTOA). The courses are intended to offer an educational opportunity to those convicted of relevant drink offences, in order to reduce the likelihood they will reoffend. The approved DDRS courses are not available to those who have committed drug-drive offences.
>
> The significance of the guidance in section 'The conduct of approval courses' is twofold: under section 34C(1)(a) RTOA, course providers must have regard to it. Failure to follow this guidance may result in the withdrawal of course approval. Under section 34C(1)(b) the courts shall have regard to the guidance when deciding whether any instructions or requirements of a course provider are reasonable.
>
> [...] The aim of the DDRS is to provide drink-drive offenders with appropriate education to help them recognise the problems associated with drink-driving. The information and experience provided by the course is intended to enable individuals to change their behaviour, in order to prevent further offending. It is intended to reduce reoffending and contribute positively to improved road safety.[28]

The relevant legislation is the *Rehabilitation Courses (Relevant Drink Offences) Regulations 2012* (SI 2012/2939).[29]

1.6 High Risk Offenders (HRO) scheme

The High Risk Offenders (HRO) scheme deals with drivers whose dependence on alcohol presents a serious road safety risk and means that convicted drink-drivers have to satisfy the Secretary of State they do not have a drink problem and are otherwise fit to drive.

Under section 94 of the 1988 Act and regulation 74 of the *Motor Vehicles (Driving Licences) Regulations 1999* (SI 1999/2864), as amended, serious drinkers who have lost their licence as a result, are considered to have a medical disability and most be evaluated before they can resume driving. The DVLA's at-a-glance guide to the medical guidelines for fitness to drive explains the procedure:

> High Risk Offender Scheme for drivers convicted of certain drink/driving offences and meeting any of the following:
>
> (a) One disqualification for driving, or being in charge of a vehicle, when the level of alcohol in the body equalled or exceeded:
>
> i) 87.5 microgrammes per 100 millilitres of breath, or

[27] DSA, *New approval arrangements for drink-drive rehabilitation courses: Response to consultation report*, November 2012, p7

[28] DSA, *Drink Drive Rehabilitation Scheme (DDRS): guidance for course providers from June 2013*, November 2012

[29] Section 35 of the 2006 Act is brought into force by the *Road Safety Act 2006 (Commencement No.9 and Transitional Provisions) Order 2012* (SI 2012/2938)

> ii) 200 milligrammes per 100 millilitres of blood, or
>
> iii) 267.5 milligrammes per 100 millilitres of urine.
>
> (b) Two disqualifications within the space of ten years for drinking and driving, or being in charge of a vehicle whilst under the influence of alcohol.
>
> (c) One disqualification for refusing/failing to supply a specimen for analysis.
>
> DVLA will be notified of such offenders by the courts. When an application for licence re-instatement is made, an independent medical examination will be conducted, which includes a questionnaire, serum AST, ALT, GGT and MCV assay and may include further assessments as indicated. If favourable, a "Till 70" licence is restored for Group I and a recommendation can be made regarding the issue of a Group 2 licence.
>
> If a High Risk Offender has a previous history of alcohol dependence or persistent misuse, but has satisfactory examination and blood tests, a short period licence is issued for ordinary and vocational entitlement but dependent on their ability to meet the standard as specified.
>
> A High Risk Offender found to have a current history of alcohol misuse/dependence and/or unexplained abnormal blood test analysis will have the application refused.[30]

Section 14 of the *Road Safety Act 2006* corrects an oversight in the *Police Reform Act 2002* to bring the drink drive offences created under that Act into line with others and permit the DVLA to retain details of the records of repeat drink drivers for a period of 11 years. Section 13 of the 2006 Act would remove the right of HROs to drive while an application is being processed: drivers would have to wait until the Secretary of State is satisfied that the offender is fit to drive. However, section 13 has yet to be brought into force. In November 2008 the Labour Government consulted on bringing section 13 into force and/or requiring that an HRO submit a medical report with their reapplication for a licence.[31]

There was no further progress before the 2010 General Election. However, in March 2011 the then Secretary of State, Philip Hammond, announced the Coalition Government's intention to bring forward legislation to close the loophole used by high risk offenders to delay their medical examinations.[32]

2 Government strategy since 1997

In February 1998 the Labour Government issued a consultation paper containing proposals to tackle drink driving, including improving enforcement; providing a better system of dealing with offences; more appropriate penalties; and better education, publicity and information.[33] The Government published its road safety strategy in March 2000. This promised to introduce new measures to further reduce incidence of drink-driving.[34]

The first three-year review of the road safety strategy was published in April 2004. It highlighted problems with enforcement and stated that by 2010 the Government expected to

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30 DVLA, *Drug and alcohol misuse and dependence chapter appendix* [accessed 11 April 2013]
31 op cit., *Road Safety Compliance Consultation*, para 3.35
32 HC Deb 21 March 2011, c45WS
33 DETR, *Combating drink driving: the next steps*, 2 February 1998
34 DETR, *Tomorrow's roads: safer for everyone*, March 2000, chapter 4

see, subject to legislation, the introduction of roadside evidential breath testing.[35] The second three-year review was published in February 2007. It pledged to explore ways that enforcement might be made easier for the police, including the possibility of allowing fully random breath testing.[36]

In April 2009 the Government published a consultation document on the preparation of its road safety strategy from 2010 to 2020. While this document contained no new proposals to tackle drink driving, it did recap those issues contained in the November 2008 consultation paper (mentioned above), the outcome of which would be woven into the new road safety strategy, to be published in 2010. They were: removing an outdated loophole around breath-testing; improving the High Risk Offenders scheme; and improving evidence on drink drivers, including through a new roadside survey of drinking and driving.[37] In the event, Labour did not publish its road safety strategy for 2010-20 before the 2010 General Election.

The Conservative-Liberal Democrat Coalition Government that took power in May 2010 published its road safety framework in May 2011. This stated its broad intention to reduce drink driving by streamlining the enforcement process 'to relieve pressure on the police and other enforcement resources'.[38] As stated above, this would involve changes to the breath test, the ability to request a blood or urine test and rehabilitation courses. Further details were published in the November 2012 consultation, also described above.[39]

[35] DfT, *Tomorrow's Roads – safer for everyone: The first three-year review*, April 2004, para 132
[36] DfT, *Tomorrow's Roads – safer for everyone: The second three-year review*, February 2007, para 166
[37] DfT, *A safer way: consultation on making Britain's roads the safest in the world*, April 2009, p76
[38] op cit., *Strategic Framework for Road Safety*, p59
[39] op cit., *Enforcement Procedures against Drink Drivers and Other Offenders – A Consultation Document*