



AN BILLE UM THRÁCHT AR BHÓITHRE 2006
ROAD TRAFFIC BILL 2006

EXPLANATORY AND FINANCIAL MEMORANDUM

General

The primary purpose of the Bill is to provide for the necessary statutory background for a range of specific measures set out in the Road Safety Strategy 2004 to 2006.

The principal provisions relate to:

- a framework for the engagement of private sector interests in the provision and operation of cameras and other technology for the detection of speeding offences,
- the introduction of mandatory road side breath testing of drivers for alcohol in a targeted manner,
- the introduction of a statutory basis for the control of the use of mobile phones and in-vehicle communication equipment by occupants of motor vehicles,

The Bill also provides for:

- the adoption of a new fixed charge and disqualification for certain drink driving offences,
- an increase in financial penalties in respect of all offences established under the Road Traffic Acts,
- an increase in periods of disqualifications relating to drink driving offences and other serious driving offences,
- the reform of the driver licensing regime, in particular to reduce long term reliance on provisional licences,
- the introduction of broader powers to the Gardaí to detain vehicles,
- necessary amendments to the Taxi Regulation Act 2003.

Section 1 sets out definitions of various terms which are referred to in the Act.

Section 2 arises from the Browne and Kennedy Supreme Court judgement last year, which held that a provision of domestic legislation cannot be used to transpose EU directives unless it is clear that such delegated legislation is authorised by the principles and policies of the primary legislation. In the absence of such provision all regulations to give effect to EU principles and policies must be made under section 3 of the 1972 European Communities Act. The section will enable EU Directives and other EU instruments to be transposed into Irish law by means of regulations made under the Road Traffic Acts. The use of the Road Traffic Acts (rather than the European Communities Act 1972 as at present) as the basis for making regulations to transpose EU Directives, etc. into national law will provide greater flexibility in relation to the scope of implementing regulations and the application of sanctions for non-compliance with such regulations.

Section 3 provides for the regulation of mobile phones and in-vehicle communication equipment by occupants of motor vehicles.

Subsection (1) prohibits the holding of a mobile phone while driving a motor vehicle.

Subsection (2) exempts members of the Gardaí and the emergency services, when acting in the performance of their duties, from the prohibition contained in *subsection (1)*.

Subsection (4) empowers the Minister to make regulations to restrict or prohibit the use of mobile phones, other communication equipment, and entertainment equipment by occupants of motor vehicles.

Subsections (3) and (6) provide that a person who contravenes *subsection (1)* relating to the use of a hand-held mobile phone or a regulation under *subsection (4)* will be guilty of an offence.

Subsection (7) sets out certain uses of a mobile phone which may be cited as a defence by a person charged with an offence under the section.

Subsection (8) provides that a person convicted of an offence under the section will be liable to a fine not exceeding €2,000.

Subsection (9) defines certain terms referred to in the section.

Section 4 provides for the introduction of a legal basis for the operation of authorised checkpoints by the Gardai for mandatory alcohol testing of drivers, without individual suspicion that the driver had consumed alcohol. *Subsection (1)* defines the concept of both checkpoints and authorisations.

Subsection (2) provides that a member of the Gardai not below the rank of Inspector may authorise the establishment of checkpoints under the section, and *subsection (3)* establishes that the locations and the hours during which checkpoints may be operated must be set out in the authorisation.

Subsections (4) and (5) relate to the specific requirements that may be made of drivers in relation to a mandatory alcohol test; *subsection (6)* establishes that it is an offence not to comply with any of those requirements and *subsection (7)* relates to the arrest of any person charged with that offence.

Subsection (8) establishes a legal presumption that the appropriate apparatus was employed in the carrying out of a test and *subsection (9)* relates to proofs regarding an authorisation issued under the section.

Subsection 10 amends section 13(1) of the Road Traffic Act 1994, which relates to the taking of evidential blood, urine or breath samples from those accused of certain offences, by extending its application to an offence under this section.

Section 5 establishes a new system of fixed charges and disqualifications for certain drink driving offences. *Subsection (1)* provides that those who have a blood alcohol content between 80mg and 100mg per 100ml of blood (and breath and urine equivalents) will be given the opportunity to avail of a fixed charge and a fixed period of licence disqualification, as an alternative to going to court. *Subsections (2)* and *(3)* provide that the administrative option will only be offered to those who have not been convicted of any drink driving offence in the preceding 5 years and will only be made available to an individual once in any 5-year period.

Subsections (4) and *(5)* provide that the payment of a fixed charge of €300 will lead to an automatic disqualification of 6 months.

Subsections (6) and *(7)* relate to the serving of and content of the prescribed notice, which will include a reference to a payment period of 28 days during which no prosecution will be commenced. The section also provides specifically for the recording of the disqualification and a requirement on the person to return their licence to the local authority.

Section 6 provides both for a significant increase in the minimum periods established for consequential disqualification orders and sees the application of such disqualifications to two additional offences. The minimum period of disqualification following a drink driving offence will now be 1 year and for the most serious drink driving offences, and others such as dangerous driving causing death or serious injury, the minimum period will increase from 2 years to 4 years in respect of a first offence and from 4 to 6 years in respect of a second or subsequent offence. The offence of striking a bridge where it results in death or serious injury has been added to the offences that will attract those extensive periods of disqualification.

The minimum period of disqualification that applies following a conviction for one of a range of offences that attract consequential disqualifications, which are listed in the Second Schedule to the Road Traffic Act 1994, is increased from 6 months to 1 year and the offence of driving while disqualified is being added to that group of offences. The section also provides that the offence of dangerous driving, which is tried summarily will in future always attract a disqualification of at least 1 year.

Section 7 provides for the replacement of the current arrangements through which persons who have been subject to an ancillary or a consequential disqualification order may apply to the courts for the restoration of their licence.

Subsection (1) establishes that this facility will only be made available to those who have been disqualified for the first time for a period of more than 2 years. For the purposes of determining that a disqualification can be regarded as “a first time” disqualification, a 10-year threshold is established.

Subsection (2) provides that at least half of the period of disqualification must have elapsed before the application for restoration can be made.

Subsection (3) gives the courts a range of parameters that it can consider in determining an application under the section. In making that determination, the court may only reduce the overall period of the disqualification to a minimum of two-thirds of the period specified in the original disqualification order.

Subsection (5) provides that a person applying under this section must advise the Gardai of the application and *subsection (6)* provides that the applicant must pay all of the costs of the hearing.

Section 8 provides that the Minister may by order recognise a driving licence issued by another country for the purpose of exchanging that licence for an Irish driving licence.

Section 9 provides that where a person undergoing a driving test has already passed a theory test, the statutory requirement for driver testers to satisfy themselves that the person has a satisfactory knowledge of the Rules of the Road no longer applies.

Section 10 re-enacts existing provisions in *section 42* of the 1961 Road Traffic Act and provides for the introduction of a learner permit instead of a provisional licence. In addition it provides that regulations may; require learner drivers to undergo a course of instruction; regulate the content of such courses of instruction; and regulate the charges that driving instructors may charge for such courses. This provision will facilitate the introduction of compulsory initial practical training of motorcyclists before they are allowed on the public road. There is also a provision, which enables a period to be specified, following the granting of a learner permit, during which a learner driver may not apply for a driving test. This is intended to ensure that there will be a minimum period during which a learner driver has to undergo instruction before being allowed to apply for a test.

Section 11 provides for the change from a provisional licence to a learner permit and substitutes the relevant provisions of the Road Traffic Acts to take account of this change.

Section 12 amends section 38 of the Road Traffic Act 1961 to provide that where a person allows their driving licence to lapse for less than a period of twelve months they will be liable to a fine not exceeding €1,000 while if the licence has expired for a period of more than twelve months they will be liable to a fine not exceeding €2,000 and 1 penalty point on payment of a fixed charge or 3 penalty points on conviction as provided for in *section 16* of the Bill. A person guilty of an offence in the circumstances set out in *subsection 5(a)* is liable on conviction to a consequential disqualification order being made by the Court as provided for in *section 6(2)* of the Bill.

Section 13 is a consequential amendment of section 40 of the Principal Act arising from the introduction of a learner permit.

Section 14 amends section 103 of the Road Traffic Act 1961, which relates to the operation of the fixed charge system. The text of section 103 was the subject of a major review through section 11 of the Road Traffic Act 2002 and was amended by section 18 of the Road Traffic Act 2004. The amendment now proposed adds to the range of offences that the Minister can declare to be fixed charge

offences and provides for a number of technical amendments to facilitate the operation of the fixed charge system.

Section 15 introduces a similar set of amendments to those proposed through (section 14), to section 3 of the Local Authorities (Traffic Wardens) Act 1975, which relates to the fixed charge system operated by traffic wardens employed by local authorities.

Section 16 amends the First Schedule to the Road Traffic Act 2002, which lists the offences to which the penalty points system may be applied. It provides for the inclusion of the offence of striking a bridge by a vehicle where there is no resultant death or serious injury, and revises the provisions in the Schedule in respect of offences relating to speed limitation devices, wearing of seat belts, using a vehicle without a certificate of roadworthiness, driving without a licence and use of a mobile phone while driving which are consequent to changes made to the legal basis for those offences.

Section 17 amends section 21 of the Road Traffic Act 2002 to extend the application of the section to provide that evidence from electronic or other apparatus (including a camera) in relation to establishing *prima facie* proof of a constituent of an offence may be tendered in the case of the offence of striking a bridge or other overhead structures in a public place. The Garda Síochána may operate such equipment at present in the detection of the range of section 21 offences and *section 17* provides that the Minister for Justice, Equality and Law Reform may, by agreement in writing, provide for the authorisation of other persons to operate such equipment and, inter alia, the processing of records produced by that equipment.

Section 18 provides for an increase in the maximum penalties provided for in the Road Traffic Act, 1961, the Road Traffic Act, 1968, the Road Traffic (Amendment) Act, 1984, and the Road Traffic Act, 1994. Details of the new penalties are set out in tabular format.

Section 19 provides for the extension of the powers of the Gardaí in relation to the impounding of vehicles. Currently only vehicles registered in the State can be impounded for not having insurance. The Gardaí do not have a power to impound an uninsured vehicle registered outside of the State. There is also no power available to the Gardaí to impound vehicles that do not have a current certificate of roadworthiness.

Paragraph (a) provides for the amendment of section 41 of the Road Traffic Act, 1994 and will allow the Gardaí to impound vehicles registered outside the State which do not have insurance in place.

Paragraph (b) reduces the amount of grace period allowed to vehicles regarding motor taxation from three months to two. In effect this means that the Gardaí can impound a vehicle where it has not been taxed for a continuous period of two months or more.

Paragraph (c) allows the Gardaí to impound vehicles which do not have a current certificate of roadworthiness. Compulsory periodic roadworthiness testing applies to passenger cars, goods vehicles, goods trailers, ambulances, taxis and buses.

Section 20 amends section 115 of the Road Traffic Act 1961 to extend the scope of the section to include a permit issued under the Road Traffic Acts or under associated regulations. This will make it an offence to forge or fraudulently use or alter a permit or lend to, or allow a permit to be used by, any other person.

Section 21 provides for a number of minor amendments to the Taxi Regulation Act 2003, which will give more freedom to the Commission for Taxi Regulation in respect of the establishment of superannuation schemes, and bring greater clarity to section 36 of the Act, which relates to disqualifications for holding licences as a result of the commission of one of a range of serious offences.

Section 22 refers to one provision in the Road Traffic Act 1961 (section 69) which is being repealed.

Section 23 contains standard provisions regarding the short title of this Act, and details of its commencement. It also provides for this Act (other than section 21) to be construed along with the Road Traffic Acts, 1961 to 2005, as one Act, and to be referred to as the Road Traffic Acts, 1961 to 2006.

Financial implications

The proposals contained in the Bill to widen the scope for the operation of road side breath testing of drivers for alcohol could have resource implications for certain agencies, in particular the Medical Bureau of Road Safety. However the proposed introduction of a system of administrative charges for drink driving offences, the engagement of private sector interests in the operation of a camera enforcement programme and the outsourcing of much of the administration of the fixed charge system will have positive impacts in terms of increasing income (although of course the objective is to alter behaviour and save lives and not to generate income) and in relation to the allocation of Garda resources. Moreover, the decrease in the level of deaths and injuries from the implementation of the measures contained in the Bill will lead to significant savings in expenditure on the health service in particular.

*An Roinn Iompair,
Meitheamh, 2006.*