



**AN BILLE UM THRÁCHT AR BHÓITHRE 2009
ROAD TRAFFIC BILL 2009**

EXPLANATORY MEMORANDUM

Purpose of the Bill

The purpose of the Bill is to:

- provide for a reduction in the Blood Alcohol Content (BAC) level for drivers;
- revise associated penalties, including driver disqualifications;
- provide for the mandatory alcohol testing of drivers of mechanically propelled vehicles involved in road traffic collisions;
- clarify the minimum disqualification period that must be served before a driver may apply to the courts for the restoration of their licence, following the imposition of a disqualification order;
- provide powers to assist the Gardaí in forming the opinion that the driver is or is not under the influence of an intoxicant (drug or drugs) and to carry out a Preliminary Impairment Test on such drivers;
- provide a consolidation and restatement of the provisions of the Road Traffic Acts relating to intoxicated driving;
- provide for amendments to certain fixed charge and penalty point matters;
- improve certain provisions relating to driving licences;
- provide for a number of minor amendments to the Road Traffic Acts.

Provisions of the Bill

PART 1

PRELIMINARY AND GENERAL

Section 1 contains standard provisions regarding the short title of this Act, commencement and citation.

Section 2 sets out definitions of various terms used in the Act.

PART 2

INTOXICATED DRIVING OFFENCES

This Part, while introducing some new provisions relating to a reduction in the Blood Alcohol Content (BAC) and preliminary roadside breath testing at the scene of collisions, restates the core intoxicated driving provisions of the Road Traffic Acts and restates them in consolidated and clearer format.

CHAPTER 1

General

Section 3 provides for certain interpretations in respect of this Part.

CHAPTER 2

Intoxicated driving offences

Section 4 restates the provisions relating to the prohibition on driving a vehicle while under the influence of an intoxicant. It also provides for the lowering of the Blood Alcohol Concentration (BAC) in relation to a person driving or attempting to drive a mechanically propelled vehicle, from 80mg to 50mg (and the equivalent levels in urine or breath) for most drivers and from 80mg to 20mg (and the equivalent levels in urine or breath) for specified persons (novice and professional drivers).

Section 5 restates the provisions relating to the prohibition on being in charge of a vehicle while under the influence of an intoxicant. It also provides for the lowering of the Blood Alcohol Content (BAC) in relation to a person in charge of a mechanically propelled vehicle, from 80mg to 50mg (and the equivalent levels in urine or breath) for most drivers and from 80mg to 20mg (and the equivalent levels in urine or breath) for specified persons (novice and professional drivers).

Section 6 restates the provisions relating to the prohibition on driving an animal-drawn vehicle or pedal cycle while under the influence of an intoxicant.

CHAPTER 3

Roadside breath and impairment testing

Section 7 is a new provision under which a person who is required to undergo a preliminary breath test but who cannot produce his or her driving licence at that time will be deemed to be a driver to whom the lower limit of 20mg applies until such time as he/she produces his/her licence or evidence that he/she holds such a licence.

Section 8 provides for the mandatory preliminary breath testing of drivers, involved in road traffic collisions, at or near the scene of the collision, where injury is caused to another person that requires medical assistance, subject only to overriding medical considerations in respect of the driver.

Section 9 restates the provisions relating to mandatory breath testing of drivers at authorised checkpoints by members of the Garda Síochána.

Section 10 provides that the driver of a mechanically propelled vehicle may be required by a Garda to perform tests (“Preliminary Impairment Testing”) to assist the Garda in forming the opinion that the driver is or is not under the influence of an intoxicant to such an extent as to be incapable of having proper control of the vehicle. *Subsection (3)* provides for the making of regulations by the Minister to prescribe the manner and type of tests to be carried out.

CHAPTER 4

Procedure in relation to providing specimen and undergoing impairment testing at Garda Síochána station etc.

Section 11 provides for the obligation for a driver to provide breath, blood or urine specimens and perform tests following arrest under Part 2, or for offences relating to certain careless driving, dangerous driving, failure of duties on occurrence of a collision or taking a vehicle without authority. *Subsection (8)* provides that, in forming an opinion under the section, a Garda may take the advice or opinion of others where the test under the section is performed in the presence of another member, a designated doctor or a designated nurse.

Section 12 provides for the procedure following the provision of a breath specimen under *section 11* and restates the provisions of section 17 of the Act of 1994.

Section 13 in restating section 15 of the 1994 Act, provides for the obligation on a driver to provide a blood or urine specimen while in hospital where that person has been involved in a road traffic collision and where the person is, or claims, or appears to have been injured.

Section 14 restates section 18 of the Act of 1994 and provides for the procedure regarding the taking of specimens of blood and the provision of specimens of urine by designated doctors or nurses.

Section 15 restates section 16 of the Act of 1994 and provides for the detention of intoxicated drivers for a period not exceeding 6 hours where the Garda in charge of the Garda station is of the opinion that the person is under the influence of an intoxicant to such an extent as to be a threat to his/her own safety or the safety of others.

Section 16 provides for the procedure at the Medical Bureau of Road Safety, after a specimen has been received under *section 15*, regarding the analysis of the specimen, and restates the provisions of section 19 of the Act of 1994.

CHAPTER 5

Evidential matters, etc.

Section 17 sets out the provisions regarding certain evidence in prosecutions under *sections 4, 5 and 6* and restates the provisions of section 20 of the Act of 1994.

Section 18 provides for the use of a written statement by a member of the Garda Síochána as evidence in proceedings for offences under *sections 4, 5 and 6* following a requirement under *section 11(1)*. *Subsection (2)* provides for the serving of a copy of the statement on persons in such proceedings.

Section 19 restates section 21 of the Act of 1994 and sets out the provisions regarding certain evidence, including the Evidential Breath Testing Instrument statement under *section 12*, the form completed by a designated doctor or nurse under *section 14*, and the certificate of analysis by the Medical Bureau of Road Safety under *section 16*, in proceedings under *Part 2* of the Bill.

Section 20 provides for the ordering by the court of person convicted of an offence under *sections 4, 5, 6, 11* or *13* to pay to the court, unless there are special or substantial reasons for not doing so, a contribution towards the costs and expenses incurred by the Medical Bureau of Road Safety in the performance of its functions and restates the provisions of section 22 of the Act of 1994.

Section 21 restates section 23 of the Act of 1994 and provides for the defence to a refusal to permit the taking of specimens of blood by a designated doctor or nurse or to provide two specimens of breath or to the performance of a test under *section 11*, where there are special or substantial reasons for the person's refusal.

Section 22 restates section 24 of the Act of 1994 and provides a bar to offences under *section 4(1), 5(1)* or *6(1)*.

CHAPTER 6

Functions of the Bureau

Section 23 provides, through restating section 38 of the Act of 1968, for the functions of the Medical Bureau of Road Safety and removes the requirement that the Medical Bureau of Road Safety, in making arrangements for research or for the supply and testing of equipment or apparatus for the obtaining or testing of specimens of breath, first obtains the consent of the Minister.

Section 24 restates section 42 of the Act of 1968 as amended by section 8 of the Act of 1994 and provides for the protection of the Director or any member, officer or employee of the Medical Bureau arising out of any analysis or determination under *section 16* or *Chapter 6* of the Bill.

Section 25 amends section 39(2) of the Act of 1968, which provides for the functions of the Director of the Medical Bureau of Road Safety.

CHAPTER 7

Fixed penalty notice — drink driving

Section 26 provides for an administrative fixed penalty in the case of certain drink driving offences. Drivers (including holders of learner permits, novice and professional drivers), who are detected at BAC levels 0 - 50mg and 51mg - 100mg and who are not disqualified for holding a driving licence at the time of detection or have not availed of the administrative fixed penalty option in the preceding 5 years, will be served with a fixed penalty notice. Court proceedings will not be initiated if payment of the fixed charge, as specified in the notice, is made. *Subsection (7)* sets out the various penalties in respect of the different BAC levels and drivers.

CHAPTER 8

Transitional measures

Section 27 provides for the introduction of the provisions similar to those of *section 18*, prior to the commencement of that section, in respect of proceedings for offences under sections 49 and 50 of the Principal Act.

Section 28 provides for amendments to section 5 of the Act of 2006 to facilitate the commencement of that section prior to the lowering of BAC levels and the commencement of *section 26*. *Subsection (2)* provides for the repeal of section 5 of the Act of 2006 on the commencement of *section 26*.

CHAPTER 9

Repeals (Part 2)

Section 29 provides for the repeal of certain provisions of the Road Traffic Acts consequent on the restatement of the provisions in *Part 2*.

PART 3

FIXED CHARGE OFFENCES AND NOTICE

This Part, while introducing some new provisions in relation to fixed charges, repeats the core fixed charge provisions (primarily section 103 of the Principal Act, as amended by a number of subsequent Road Traffic Acts) and restates them in consolidated and clearer format.

Section 30 provides for the application of the fixed charge system to certain offences.

Section 31 provides for the service of fixed charge notices and the requirements contained therein relating to a person driving the vehicle at the time of the commission of the alleged offence.

Section 32, in restating the fixed charge provisions of previous Road Traffic Acts, sets out detailed provisions for the content of a fixed charge notice, including the provision of a two tiered charge through which the level of charge will increase by 50 per cent if payment is not made within 28 days of the issue of the notice. *Subsection (4)* is a new provision and provides for the fixed charge notice served under *section 40(1)* on a person who is served with a summons in respect of a fixed charge offence.

Section 33 provides for the payment of a fixed charge notice and the initiation of prosecutions where payment is not made during the period specified in the notice.

Section 34 provides for certain presumptions in relation to a prosecution for a fixed charge offence and includes a provision to deal with alleged offences where the registered owner of the vehicle, at the time of the commission of the alleged offence, is a body corporate or unincorporated body and places certain obligations on the body to furnish details of the person who was driving or otherwise using the vehicle at that time.

Section 35 provides for making of regulations by the Minister regarding the information to be given for the purposes of *section 31*. This is a new provision in relation to fixed charges.

Section 36 provides for the offences in relation to fixed charge notices and the penalty associated with such offences.

Section 37 provides for the making of regulations to prescribe the amount of a fixed charge.

Section 38 provides for the authorisation by the Minister for Justice, Equality and Law Reform of the performance of the functions conferred on traffic wardens (of the Garda Síochána) for the purposes of this Part or on other such persons, as he may be determine.

Section 39 provides for the making of arrangements by the Minister for Justice, Equality and Law Reform for the performance of the function of the Garda Commissioner in respect of the serving of fixed charge notices or any of the functions of a member of the Garda Síochána or traffic wardens under Part 3 of the Bill, other than the functions specified in *section 31(1)*.

Section 40 is a new provision. It provides a final option of payment in relation to a fixed charge offence on receipt of a Court summons in respect of that offence, not later than 7 days before the date specified in the summons on which the charge is to be heard by the Court. *Subsection (1)* also provides that where such a payment is made, proceedings in respect of the alleged offence will be discontinued and the person need not attend the Court on the day specified in the summons. *Subsection (7)* provides that evidence given by the person, who is served with a summons, that he or she was not served with a fixed charge notice in accordance with *section 31*, is not a defence to the alleged offence.

Section 41 provides for proceedings to be taken, where a fixed charge offence has been committed, against a body corporate, a person acting on behalf of such a body or of an unincorporated body.

Section 42 provides for certain interpretations in respect of this Part.

Section 43 provides for the repeal of certain sections of the Road Traffic Acts relating to fixed charge offences.

PART 4

PENALTY POINTS

Section 44 provides for the amendment of sections 1 and 2 of the Road Traffic Act 2002 to facilitate the endorsement of penalty points where a licence record does not exist and for foreign driving licence holders. The section also provides at *subsection (3)* for the transfer of any penalty points accumulated from such a record to a pre-existing record, at the discretion of the Minister.

Section 45 updates the references in the First Schedule to the Act of 2002 to reflect the current legislative basis for the offences listed therein.

Section 46 provides that the Probation of Offenders Act 1907 does not apply to penalty point offences.

PART 5

DRIVING LICENCE

Section 47 amends section 3(1) of the Principal Act by providing for a new definition of a driving licence to include ‘foreign driving licences’ which will bring such licence holders into the scope of the application of sanctions for road traffic offences, including a disqualification for holding a driving licence.

Section 48 substitutes section 21 to 23 of the Principal Act to reflect the changes to the definition of a driving licence and repeals sections 24 and 25 of that Act. The section also provides that in applications for a driving licence or learner permit (which includes renewals), the applicant must provide their Personal Public Service Number (PPSN).

Section 49 substitutes section 39 of the Principal Act to provide for the offence of applying for a driving licence or learner permit while disqualified for holding a licence.

Section 50 provides powers to the Garda Síochána to seize and make a copy of a driving licence or permit where the person has been disqualified for holding a driving licence, including a foreign driving licence holder, or where the licence has been fraudulently obtained or is forged or altered. It also prohibits the person from whom the licence has been seized from driving a mechanically propelled vehicle. *Subsection (6)* provides for the detention of a driving licence for the purposes of translation into Irish or English and having the validity of the licence confirmed.

Section 51 amends section 22 of the Act of 2002 to require a person on the first day of appearance before the Court to produce both their licence and a copy of their licence to the Court and empowers the Court to demand the production of both the licence and the copy and retain the copy of the licence for the purposes of establishing and recording the licence details.

PART 6

DISQUALIFICATIONS

Section 52 amends section 30 of the Principal Act to provide that a person who is in receipt of a consequential, ancillary or special disqualification order stands disqualified for holding a driving licence, whether the person holds an Irish driving licence or a foreign driving licence. *Subsection (2)* amends section 3 of the Act of 2002 to provide for a disqualification of a person, on accumulating 12 penalty points, whether the person holds an Irish driving licence or a foreign driving licence.

Section 53 repeals sections 26 and 49(1)(1) of the Act of 1994, the Road Traffic Act 1995 and section 6 of the Act of 2006, and restates the provisions of section 26 (Consequential Disqualification Orders), in order to reflect the intoxicated driving provisions of this Bill and to provide the range of penalties associated with reduced Blood Alcohol Concentration levels (and associated levels in breath and urine) provided for in *Sections 4* and *5*. The section also provides for the substitution of the Second Schedule to the Principal Act, which sets out the offences under the *Road Traffic Acts 1961 to 2009* involving Consequential Disqualification Orders.

Section 54 provides that where a person who has been subject to an ancillary or a consequential disqualification order applies to the Court for the restoration of their licence under section 29 of the Principal Act, a minimum disqualification period of two years must be served by that person before their licence can be restored.

Section 55 provides for technical amendments to Section 9 of the Act of 2002 to facilitate the mutual recognition of driving disqualifications for specified offences by providing for notification to the relevant authority in another EU Member State of the disqualification in Ireland of a person normally resident in that State.

PART 7

CERTAIN DRIVING OFFENCES

Section 56 provides for the substitution of sections 51A, 52, 53, 54 and 55 of the Principal Act in relation to inconsiderate, careless and dangerous driving, driving a dangerously defective vehicle and parking a vehicle in a dangerous position.

Repeals (Part 7)

Section 57 provides for the repeal of section 35 of the Offences against the Person Act 1861, sections 49 to 52 of the Act of 1968, section 13 of the Act of 2004 and the matters at reference numbers 11 to 16 in Part 1 of the Table to section 18 of the Act of 2006.

PART 8

MISCELLANEOUS

Section 58 provides for the amendment of section 3(1) of the Principal Act in relation to the definition of “the Minister”, “road authority” and “vehicle”.

Section 59 amends the definition of mechanically propelled vehicle, in the context of a vehicle which has been substantially disabled following a road traffic collision.

Section 60 amends section 47 of the Principal Act by inserting a rebuttable presumption provision in relation to the application of speed limits (indicated on speed limit signs).

Section 61 provides for making current third party motor insurance data available as soon as possible for the purposes of enforcing the requirements of the Principal Act and to meet the information needs of the 4th and 5th Motor Insurance EU Directives in providing insurance and ownership details to the victims of motor accidents by means of an Information Centre (operated by the Motor Insurers' Bureau of Ireland).

Section 62 repeals section 21 of the Act of 2002, section 15 of the Act of 2004 and section 17 of the Act of 2006 and restates the provisions in respect of evidence in relation to speeding and certain other offences and clarifies those relating to the development, production and viewing of records produced by safety cameras by Garda civilian personnel designated by the Garda Commissioner under section 19 of the Garda Síochána Act 2005.

Section 63 provides for the ordering by the Court of costs of prosecutions, incurred by the Court, in relation to the investigation,

detection and prosecution of offences under the *Road Traffic Acts 1961 to 2009*.

Section 64 repeals section 28 of the Act of 2004 and provides for any reference to the Commissioner in the Road Traffic Acts 1961 to 2009 or the Roads Acts 1993 to 2007 to be read as a reference to the Commissioner or another member of the Garda Síochána not below the rank of Chief Superintendent authorised by the Commissioner to act or carry out a function or requirement on his or her behalf.

Section 65 replaces the Table to section 15 of the Act of 1968 in relation to obligatory maximum penalties for offences relating to excess weight of vehicles.

Section 66 amends section 18(2) of the Act of 1968 and clarifies that Regulations made by the Minister for Transport in relation to Approved Driving Instructors may include conditions relating to assessment of applicants, including the fitness of applicants to operate as an Approved Driving Instructor.

Section 67 amends section 9 of the Road Traffic Act 2004 to permit the use of lower speed limits to be applied by speed limit bye-laws on the off-ramps of motorways.

Section 68 repeals section 27 of the Act of 2004 and restates the provisions relating to exemptions from the *Road Traffic Acts 1961 to 2009* for emergency vehicles.

Section 69 amends section 30 of the Act of 2004 to provide for the penalty for the offence of supplying a mechanically propelled vehicle to a minor.

Section 70 provides for the amendment of section 35 of the Act of 1994 to allow regulations made under the section to specify the manner in which permits issued by a local authority must be displayed on the vehicle concerned.

Exchequer and Financial Implications

There are no costs associated with the proposals at this stage.

Regulatory Impact Assessment

A Regulatory Impact Assessment (RIA) in relation to the proposed reduction in blood alcohol levels was undertaken and is in the Appendix to this Memorandum.

Appendix
Road Traffic Bill 2009
Regulatory Impact Assessment

Road Traffic Bill 2009
Regulatory Impact Analysis

Reduction in Blood Alcohol Content Level (BAC)

1. Policy Context/Background

1.1 The Road Safety Strategy 2007 to 2012, approved by the Government and launched by the Taoiseach in October 2007, identifies the need to legislate for and introduce a reduction in the legal Blood Alcohol Content (BAC) level for drivers (Action No. 76), but does not specify what that level should be.

In determining what the BAC limit should be reduced to, the advice of the Road Safety Authority (RSA) was sought. The RSA's recommendations were received in 2008 and the Government, in noting the contents of the Authority's report, agreed that it be taken into account in preparing this Bill.

2. Statement of Objectives

2.1 The overall objective, which sets the context for a reduction in the BAC level, is to reduce road deaths and serious injuries. The core objective of the Road Safety Strategy 2007-2012 is to reduce road fatalities to not greater than 60 fatalities per million. This would equate to an average of 21 road deaths per month or 252 per year. The average number of road deaths per month in 2008 was 23 and the monthly average for the first nine months of 2009 is 20.

2.2 Fatalities on our roads have fallen in recent years, and the number for 2008, at 279, is the lowest since records began. The number of fatalities in 2009 to 30th September is 178, which is 41 less than on the same date last year.

2.3 The key to reducing injuries and fatalities is to change driver behaviour, and a reduction in the BAC level reinforces the message that any alcohol level impairs driving.

3. Identification of Choices/Options

3.1 Option 1 — Do Nothing This option is included for benchmarking purposes, but the Government has already decided to reduce BAC levels, in the context of its approval of the Road Safety Strategy.

3.2 Option 2 — Reduce the BAC levels to a level between 50mg and the current 80mg The Minister for Transport is mindful that both this country, the UK and Malta are the only remaining EU countries with an 80mg limit. All other countries have adopted a limit of 50mg or lower.

The Minister is also conscious that the Northern Ireland Authorities published a consultation document in April 2009, which advocates a reduction from 80mg to 50mg (and 20mg for novice drivers) in that jurisdiction. It would be important for road safety and enforcement on both sides of the border to have the same BAC levels if possible. A move to a level other than the proposed 50mg would further isolate us in terms of moving into line with best practice countries in Europe, in addition to causing difficulties in enforcement in relation to cross-border drivers.

3.3 Option 3 — Reduce the level to below 50mg While a limit of 20mg is proposed for inexperienced and professional drivers, it is not being considered as an appropriate level for all drivers at this time as it would not have the support of the public at large.

3.4.1 Option 4 — Reduce the BAC level to 50mg This is the advice of the Road Safety Authority (RSA), and its Policy Advisory Panel, in relation to the most appropriate BAC level to deliver the optimum road safety dividend.

The Minister for Transport proposes to accept the RSA's advice and reduce the BAC levels from 80mg to 50mg. This is the preferred option, and the view is that it will have the support of the general public.

4. Identification of Costs, Benefits and Impacts

(i) Risks and assumptions

The Road Safety Strategy 2007-2012, approved by Government, identifies the need to legislate for and introduce a reduction in the legal Blood Alcohol Content (BAC) level for drivers. If not proceeded with, the risk is that the Road Safety Strategy itself, and by extension Government policy on road safety in general, will be seriously compromised.

(ii) Costs

Whereas there may be no additional costs with option 1, the overall impact and cost of serious injuries and deaths on the roads will remain, as changes to driver behaviour will not be addressed. The Road Safety Authority estimates that, as well as the human and social costs of road deaths and injuries, road collisions have an economic cost each year of the order of €1.3 billion.

Options 2-4 will each have similar costs associated with them in that any change in BAC level will require the replacement and recertification of testing equipment (Evidential Breath Testing Instruments and roadside breathalysers) by the Medical Bureau of Road Safety.

These costs will be identified by the Bureau following their research into the changes required to existing equipment. A procurement process will be required and while costs are not known, an indicative estimated cost (capital) at this stage is €800,000 for 2010/2011.

(iii) Benefits

The successful introduction of Mandatory Alcohol Testing in July 2006 and associated noticeable drop in road fatalities¹ shows the immediate and direct impact of drink driving interventions on driver behaviour. As any level of alcohol consumption impairs driving, it is considered that a reduction to 50mg will significantly reinforce the road safety message and underline drink driving as socially

¹Reduction in fatalities from 38 in July 06 to 17 in August 06, and reduction in fatalities from 396 in 2005 to 365 in 2006.

unacceptable, with the support of the public in general. A reduction to 50mg will not only bring us into line with best practice countries (i.e. those with a proven road safety record), it will also align us with our closest neighbours in Northern Ireland, who published a consultation document in April 2009 advocating a reduction from 80mg to 50mg in that jurisdiction. With drink driving being one of the key causal factors in road collisions, a change in driver behaviour in this area will result in lives saved. The safety imperative requires that even a modest reduction in injuries and fatalities, which can be expected from the reduction in the BAC level from 80 to 50 mgs, must be pursued.

(iv) Other Impacts

National competitiveness

The proposals will not have an impact on national competitiveness as the proposed provisions in the Scheme relate to domestic activity.

Socially excluded or vulnerable groups

The proposals are not addressed to any particular group, and as their objective is to change driver behaviour in relation to driving having taken alcohol, they do not have an impact on socially excluded or vulnerable groups per se.

The argument has been made as to the potential social impacts if social interactions dependent on driving are affected by a lower BAC level than currently applies, particularly in the case of rural areas. However, the extent to which social life revolves around drinking is a wider cultural issue but not one which changes the relationship between alcohol levels and driving impairment, or the fact that that even a modest reduction in road injuries and fatalities is in itself a huge societal gain.

Environmental impacts

There are no environmental impacts associated with the proposed provisions in the Scheme.

Economic market/consumers and competition

The proposals do not involve a significant policy change in the economic market and will not have any significant impact.

The rights of citizens

There will be no impact on the rights of the citizens.

Compliance burden

The impact of the measures will be on all driver behaviour, and will fall on all drivers.

5. Consultation

The Road Safety Strategy 2007-2012, including the specific actions to reduce the BAC limit for drivers, was the subject of a wide public and key stakeholder consultation by the Road Safety Authority, and the final document was approved by Government.

6. Enforcement and Compliance

The Garda Síochána will have responsibility for enforcing the reduced levels, supported through testing technology (Evidential Breath Testing equipment and breathalysers) supplied by the Medical Bureau of Road Safety.

7. Review

While there are no specific provisions for review of the proposed BAC provisions over time, road safety provisions in general are very high profile and regularly updated through new legislation, as best practice and capacity develop.

*Department of Transport,
Deireadh Fómhair, 2009.*