Purpose of the Bill

The purpose of the Bill is to amend the provisions in the Road Traffic Acts 1961 to 2011 to:

(a) allow for mandatory alcohol testing at lower drink driving limits in line with the Road Traffic Act 2010;

(b) clarify provisions associated with the production of a licence and alternative verdicts arising from preliminary and mandatory breath testing requirements; and

(c) provide for a number of minor and technical amendments to the Road Traffic Acts.

This Bill will have implications for all drivers.

Provisions of the Bill

PART 1

Section 1 is a standard provision.

Section 2 clarifies the situation where a person fails or refuses to produce a driving licence or learner permit when demanded by a member of the Garda Síochána. Section 40 of the Principal Act (inserted by section 59 of the Act of 2010) is being amended to clarify the provisions.

Subsection (4)(a) of section 40 of the Principal Act is being substituted to include the word “permit” in the last line of paragraph (a).

Subsection (6) of section 40 is being substituted to clarify the type of information that a Garda may demand of a person who refuses or fails to produce a licence. A person may be required to provide all of the following: name and address and date of birth. An offence is committed if a person fails or refuses to provide any of the above or provides false or misleading information in relation to the same.

Subsection (7)(b) of section 40 of the Principal Act is also being substituted to clarify the provisions relating to the power of arrest where a person refuses or fails to give the information specified in the provision or where the Garda suspects that the information being provided is false and misleading.
The amendment of section 40 also inserts a new subsection (9) which dis-applies section 1(1) of the Probation of Offenders Act 1907. This had been included in section 8(3) of the 2010 Act but is more appropriate to the section that provides for the offence, namely section 40.

Section 3 substitutes sections 51A, 52, 53, 54 and 55 of the Principal Act. In doing so, it also amends section 54 to bring clarity to the offences under this section. Section 54 provides for the offence of knowingly driving a dangerously defective vehicle. This offence can apply to either or both the owner and the driver (if not the owner) of the vehicle. It is not a defence for a driver to abdicate responsibility for the vehicle’s condition where the driver is not the owner of the car. It is a defence to the charge if a person can show that someone else was driving the car on the particular occasion and was unauthorised to do so. Subsection (2) provides for the associated repeals to the legislation.

Section 4 amends section 18 of the Act of 1968 in order to correct a referencing anomaly in section 85 of the Road Traffic Act 2010. In doing so, the fines prescribed in the subsection were amended to reflect the categorisation of fines in the Fines Act 2010.

Section 5 amends the Road Traffic Act 2010 by substituting amended text for section 8 of that Act. Section 8, subsection (1) is being amended to bring clarity to circumstances where a person fails or refuses to produce a licence for the purposes of the requirements under sections 9 and 10 of the 2010 Act. In such instances, it shall be presumed that the person does not hold a licence until the contrary is shown. Section 8, subsection (2) is being amended to better describe how the presumption in subsection (1) will cease to apply where a driver produces a driving licence to a Garda Síochána station within 10 days of the requirement and the licence was current at the time of the requirement to drive the category of vehicle concerned. The presumption will also cease where a person can show evidence that he or she held such a licence at the time of the requirement.

Section 5 is also inserting a new section 8A into section 8 of the 2010 Act. Subsection (1) of section 8A brings clarity to the options available to the courts in relation to offences under section 4(2)(b), (2)(c) or (2)(d) of the Road Traffic Act 2010. If a presumption had been made that a person was a “specified person” in line with the definition under section 3 of the Road Traffic Act 2010 and the contrary is shown, then a person can still be found guilty of the offence of drink driving at the higher limits if appropriate under section 4. Similarly, section 8A, subsection (2) brings clarity to the options available to the courts in relation to offences under section 5(2)(b), (2)(c) or (2)(d) of the Road Traffic Act 2010. Again, if a presumption had been made that a person was a “specified person” in line with the definition under section 3 of the Road Traffic Act 2010 and the contrary is shown, then a person can still be found guilty of the offence of drink driving at the higher limits if appropriate under section 5.

Section 6 amends the Road Traffic Act 2010 by substituting section 9 to reflect the provisions in the Road Traffic Act 2011. Subsection (1) provides that a preliminary breath specimen can be taken from a person in charge of a mechanically propelled vehicle in a public place, who in the opinion of a member of the Garda Síochána; (a) has consumed intoxicating liquor, (b) is or has committed an offence under the Road Traffic Acts 1961 to 2010, (c) is or has been involved in a collision with the vehicle and (d) is or has been involved in a collision with the vehicle resulting in the death or injury to a
person, requiring medical assistance. The reference to “death” in this subsection is new to the provision.

Subsection (2) of section 9, as substituted, provides for the mandatory preliminary breath testing of drivers in respect of subsection (1)(a) or (d). In other words, a mandatory breath test will apply where a member of the Garda Síochána is of the opinion that a driver has consumed alcohol or if a driver has been involved in a collision where a death or injury (that requires medical attention) has occurred. A mandatory breath test may not apply where a member of the Garda Síochána is of the opinion that the person should be arrested. However, such an arrest is subject to any overriding medical conditions as per subsections (6) and (7). A member of the Garda Síochána can also require a person to undertake a breath test in respect of subsection (1)(b) and (1)(c) but it is not mandatory on the member to make this requirement in those circumstances.

Subsection (3) of section 9, as substituted, sets out the offence and the associated fine and imprisonment term.

Subsection (4) of section 9, as substituted, provides for the power of arrest under section 9 of the Road Traffic Act 2010.

Subsection (5) of section 9, as substituted, provides for the presumption that the apparatus being used by a member of An Garda Síochána is the appropriate apparatus for the purposes of testing under section 9 of the Road Traffic Act 2010.

Subsection (6) of section 9, as substituted, provides that a requirement shall not be made under subsection (2) in respect of subsection (1)(a) where, in the opinion of a member of the Garda Síochána, such a requirement would be prejudicial to the health of the person.

Subsection (7) of section 9, as substituted, provides that a requirement shall not be made under subsection (2) in respect of subsection (1)(d) where, in the opinion of a member of the Garda Síochána, or on the advice of a doctor or other medical personnel attending the scene of the event, such a requirement would be prejudicial to the health of the person.

Subsection (8) of section 9, as substituted, provides that section 1(1) of the Probation of Offenders Act 1907 does not apply to an offence under this section.

Subsection (9) of section 9, as substituted, provides that nothing in the section affects any power of arrest conferred by law on a member of the Garda Síochána apart from the section.

Subsection (10) of section 9, as substituted, provides that, other than in the case of proceedings under subsection (3), it is not a defence to show in any proceedings that a member of the Garda Síochána did not make a requirement under the section.

Section 7 amends the Road Traffic Act 2010 by substituting section 14 to reflect the provisions in the Road Traffic Act 2011. Subsection (1) of section 14, as substituted, provides for the obligation on a driver to provide a blood or urine specimen while in hospital where that person has been involved in road traffic collision and where the person is, or claims, or appears to have been injured. The subsection also provides that a member of the Garda Síochána shall, subject to subsection (4) and unless the member is of the opinion that the
person should be arrested, require the person either, (a) to permit a designated doctor or designated nurse to take from the person a specimen of his or her blood, or (b) at the option of the person, to provide for the designated doctor or designated nurse a specimen of his or her urine.

Subsection (2) provides for the offence in relation to subsection (1) and the associated fine and imprisonment term.

Subsection (3), as substituted, provides that a person does not commit an offence under this section where a doctor or nurse refuses on medical grounds to take a specimen.

Subsection (4) of section 14, as substituted, provides that before making a requirement under subsection (1) the member of the Garda Síochána shall consult a doctor treating the person and if a doctor treating the person advises the member that such a requirement would be prejudicial to the health of the person, the member shall not make such a requirement.

Subsection (5), as substituted, provides that for the purpose of making a requirement of a person under subsection (1), a member of the Garda Síochána may enter without warrant any hospital where the person is or where the member, with reasonable cause, suspects him or her to be.

Subsection (6), as substituted, provides that a designated doctor or designated nurse may, for the purpose of taking from a person a specimen of his or her blood or being provided by a person with a specimen or his or her urine under subsection (1) enter any hospital where the person is or where the doctor or nurse is informed by a member of the Garda Síochána that the person is.

Subsection (7), as substituted, provides that section 1(1) of the Probation of Offenders Act 1907 does not apply to an offence under this section.

Subsection (8), as substituted, provides that nothing in the section affects any power of arrest conferred by law on a member of the Garda Síochána apart from the section.

Subsection (9), as substituted, provides that, other than in the case of proceedings under subsection (2), it is not a defence to show in any proceedings that a member of the Garda Síochána did not make a requirement under the section.

Section 8 provides for a number of technical and minor amendments to the Road Traffic Act 2010. In particular, section 8(a) substitutes new text for the definition of specified person in section 3 of the Road Traffic Act 2010. Section 3 of the Act of 2010 is being amended under (e) to provide that a person who does not hold a current licence for the vehicle concerned will be categorised as a specified person for the purposes of prosecution relating to intoxicated driving.

Section 9 contains standard provisions regarding the short title, collective citation and commencement of this Act.
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 this Bill was undertaken and is in the Appendix to this Memorandum.
1. **Policy Context/Background**

1.1 The main purpose of the Road Traffic (No. 2) Bill 2011 is to bring cohesiveness to existing legislation in relation to drink driving. The Bill reflects policy decisions already taken in the course of developing the Road Traffic Act 2010 and the Road Traffic Act 2011. It also includes minor and technical amendments to existing legislation, mainly the Road Traffic Act 2010.

1.2 The Road Traffic Act 2010 provided for new lower drink driving limits under sections 4 and 5. It is intended that these new limits will become operational by end October 2011. The 2010 Act also provided for mandatory breath testing in certain circumstances and this provision was interwoven into the fabric of the intoxicated driving provisions. Subsequently, the Road Traffic Act 2011 represented a policy decision to amend existing legislation to expedite the application of the aforementioned mandatory testing provision in advance of commencing the remainder of the intoxicated driving provisions in the Road Traffic Act 2010. This decision ensured that mandatory testing was not delayed by association with the roll-out of the Evidential Breath Testing (EBT) instruments that are required for the introduction of the lower drink driving limits. While drafting the Road Traffic Act 2011, certain amendments were also made to bring clarification to issues associated with mandatory preliminary breath testing and the powers of arrest conferred by law on the Gardaí.

1.3 The Road Traffic (No. 2) Bill 2011 will simply amend the mandatory alcohol testing provision of the Road Traffic Act 2010 to ensure that the current policy is applied to mandatory testing at the lower limits when introduced in October 2011.

1.4 The Bill will also seek to clarify provisions associated with the production of a licence and alternative verdicts arising from preliminary and mandatory breath testing requirements and will provide for a number of minor and technical amendments to the Road Traffic Acts.

2. **Statement of Objectives**

**General**

2.1 The overall objective of the legislation is to reduce road deaths and injuries in line with the core objective of the Road Safety Strategy 2007-2012. That objective 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 2010 was 18. Fatalities on our roads have fallen in recent years, and the number for 2010 at 212 is the lowest since records began.

2.2 The key to reducing injuries and fatalities on our roads is to change driver behaviour. Section 9 of the 2010 Act, which is being amended in this Bill, provides that a driver will be required to give a preliminary breath specimen where a member of An Garda Síochána suspects the driver has consumed an intoxicant. The section also provides for mandatory testing where a driver has been involved in a road traffic collision that has resulted in a death or an injury. The knowledge that such drivers will be
tested in these circumstances will have a positive impact on improving driver behaviour.

2.3 Linked with section 9 of the 2010 Act, section 14 of that Act (also being amended in this Bill) also provides for the mandatory testing of a driver who has been involved in a road traffic collision that has resulted in death or injury and is subsequently removed to hospital. Section 14 provides that a member of An Garda Síochána must test that driver in the hospital unless, following consultation with a doctor treating the driver, such testing would be prejudicial to the health of the driver.

2.4 Section 8 of the Road Traffic Act 2010 is being amended in this Bill to bring clarity to the provisions associated with the production of a licence where a requirement has been made of a driver to undergo breath testing for alcohol under sections 9 and 10 of the Road Traffic Act 2010. It also clarifies the position in relation to alternative verdicts for drivers over the higher drink driving threshold where it was originally presumed that the driver was in the “specified” category. The definition of “specified person” is also being amended in section 8 of the Bill. Such clarification will help to support prosecutions against all drivers but also novice, learner and professional drivers at the lower levels and will render the legislation more robust in the context of legal challenge.

**Immediate Objectives**

2.5 **Implement Government Policy on Drink Driving** — Government have endorsed the policy under the Road Safety Strategy to reduce drink driving limits for all drivers and reduce further those limits for novice, learner and professional drivers. In addition, Government supports mandatory testing in the circumstances prescribed in legislation already, which are being reflected in this Bill. This Bill will have the effect of implementing those policies with almost immediate effect now that all the operational and administrative systems are in place.

2.6 **Increased Awareness on Drink Driving** — This Bill when passed will bring to the fore a strong road safety message that drink driving will not be tolerated. People can expect to be tested for alcohol in more circumstances than before and the chances of committing a drink driving offence will be higher where drink has been taken as the levels being prescribed are significantly lower.

2.7 **Protect Public and Consumers** — The lower limits for novice, learner and professional drivers will ensure that road users and passengers alike will be further protected as the policy and legislation seeks to distinguish between fully experienced non-professional drivers and those who are at higher risk to themselves or others.

3. **Identification of Choices/Options**

3.1 **Option 1 — Do Nothing**

This option is included for benchmarking purposes but the measures are already specified in the approved Road Safety Strategy. Our national policy commitment combined with best practice internationally would deem it unlikely that a “no nothing” option would be pursued. At this juncture, Option 1 would be a retraction of Government policy and would completely jeopardise the successes of recent years to reduce road deaths and injuries. Those successes arose from a multi-disciplinary and strategic approach to change the culture of
driving in Ireland. Accordingly, it is not envisaged to explore this option in detail.

3.2 **Option 2 — Commence All Sections**

This option is the preferred option because it will implement pivotal road safety policies and will act as an aid to implementing legislation that is already in place. All of the issues contained have been explored and examined in previous regulatory assessments connected with the Road Traffic Act 2010 and Road Traffic Act 2011.

5. **Other Impacts**

5.1 **National competitiveness**

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

5.2 **Socially excluded or vulnerable groups**

The proposals are not specific to any socially excluded or vulnerable group.

5.3 **Environmental impacts**

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

5.4 **Economic market/consumers and competition**

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

5.5 **The rights of citizens**

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

5.6 **Compliance burden**

The impact of the primary measures will fall on all drivers.

6. **Consultation**

The Road Safety Strategy 2007-2012, including the specific action to address the testing of drivers involved in collisions, was the subject of a wide public and key stakeholder consultation by the Road Safety Authority, and the final document was approved by Government. The proposed amendments to sections 9 and 14 of the 2010 Act are completely in line with the corresponding provisions in sections 2 and 3 of the 2011 Act, which were the subject of extensive consultations with the key stakeholders, including the Garda Síochána, the Medical Bureau of Road Safety and the Department of Justice and Equality.

7. **Enforcement and Compliance**

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

8. **Review**

While there are no specific provisions for review, road traffic legislation is the subject of ongoing appraisal and is informed by on-the-ground experience, best practice policy going forward as well as legal challenges to the legislation as they arise.

*Department of Transport,*  
*September, 2011.*

Wt.—. 635. 9/11. Cahill. (X58234). Gr. 30-15.