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**AN BILLE UM THRÁCHT AR BHÓITHRE (UIMH. 2), 2013  
ROAD TRAFFIC (NO. 2) BILL 2013**

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**EXPLANATORY MEMORANDUM**

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**Purpose of the Bill**

The Bill provides for a number of measures to improve safety on our roads:

- Further Graduated Driver Licensing Measures through creation of a category of Novice driver, provision for a novice plate and for a lower penalty point disqualification threshold for learners and novices;
- Provision to test incapacitated drivers for intoxication following a road traffic collision where death or injury has occurred;
- Introduction of intoxication impairment testing;
- Adjustment of the penalty points regime in light of the 2012 review of the system;
- A number of amendments to legislation regarding Commercial Vehicle Roadworthiness Testing;
- A number of technical amendments.

This Bill will have implications for all drivers.

The main provisions are summarised below. In this Memorandum, a reference to “the Minister” is to the Minister for Transport, Tourism and Sport. A reference to the Principal Act is a reference to the Road Traffic Act 1961.

**PART 1**

**PRELIMINARY AND GENERAL**

*Sections 1 and 2* are standard provisions.

**PART 2**

**DRIVER LICENSING**

This Part introduces a number of measures towards the completion of a Graduated Driver Licensing System (GDLS) for Ireland. A new

category of Novice Driver is introduced, with provision that novices will be required to display a distinguishing N-Plate. Novice and learner drivers will also face a lower penalty point disqualification threshold. In future, learner drivers will have to record a minimum amount of accompanied driving before taking the driving test.

*Section 3* creates a new category of Novice driver, being a driver during the first two years after qualifying for a full driving licence. This Novice period applies only once, that is, if a person is already a full licence holder in one category and then qualifies in another they do not become a Novice in the new category.

Subsection (2) provides that any period of disqualification or ceasing to hold a licence is not counted as part of the two years as a Novice.

*Section 4* provides for the display of an N-Plate by novice drivers, or N-Tabard in the case of novice motorcyclists.

Subsection (2) makes it an offence not to display an N-Plate or Tabard.

*Section 5* provides for the Minister to allow, subject to conditions which the Minister may set, that vehicle insurers may have access endorsements on a person's entry on the National Vehicle and Driver File. This is a slightly amended version of a provision made in Section 53 of the Road Traffic Act 2010. Section 53 of the 2010 Act is being repealed by section 7 of the present Act. It was deemed more appropriate to repeal section 53 of the 2010 Act and replace the required provisions than to amend it. Further amendments replacing the previous section 53 of the 2010 Act are provided below in section 8 of this Bill.

*Section 6* amends the Principal Act by introducing a new requirement that a learner driver must have a minimum period of accompanied driving recorded before they are permitted to take the driving test. If a person presents for a test without the appropriately completed record, they will be refused a test and will forfeit the test fee.

Subsection (b) makes a change of procedure following conviction and disqualification of a driver so that the particulars of the disqualification rather than the particulars of both disqualification and the conviction will be communicated to the National Vehicle and Driver File. This reflects a change in policy in relation to recording other criminal convictions, where a mechanically propelled vehicle was used in the commission of those offences, on the driver licence record.

Subsection (c) provides a power of arrest for a member of An Garda Síochána in cases where an individual who has been disqualified from holding a driving licence is detected driving.

Subsection (d) amends section 42 (as amended) of the Principal Act by adding an enabling power for the Minister to prescribe in regulations the minimum amount of driving experience to be undergone before taking a driving test and the form of record of the experience. The Minister will make regulations prescribing minimum driving experience and a logbook of learner experience to be completed before the test.

## PART 3

### PENALTY POINTS

*Section 7* repeals section 53 of the Road Traffic Act 2010. Section 53 of the 2010 Act amends the Road Traffic Act 2002, and has been partially commenced. It was intended to amend section 53 but, in the course of drafting, it was deemed more logical to repeal it and to provide for the intended changes separately. Those changes are provided in sections 5 and 8 of the current Bill.

*Section 8* amends the Road Traffic Act 2002 to take account of the repeal of section 53 of the Road Traffic Act 2010 and to allow for a lower penalty point disqualification threshold for learner and novice drivers.

Subsection (1)(a) and subsection (1)(b)(i) replicate amendments from section 53 of the 2010 Act, while subsection (1)(b)(ii) provides for the definition of endorsement of penalty points in cases where a second record relating to the same individual is identified or created. Subsection (1)(b) reflects the changes provided for in the 2010 Act (not yet commenced) for the fixed charge system, and provides a legal basis for the “matching” of penalty point entries as additional information becomes available, allowing for identification of driver records.

Subsection 1(c) and (d) amend the 2002 Act in respect of endorsement of penalty points to provide for the lower disqualification threshold of six points in respect of learner and novice drivers.

*Section 9* amends section 54 of the Act of 2010 by deleting paragraph (c). This paragraph substituted a new Part 5 for the first schedule of the 2002 Act. Section 10(d) of the present Bill will substitute a revised Part 5.

*Section 10* amends the penalty points regime in the light of a review undertaken by the Department in 2012.

Subsection (a) introduces penalty points on payment of a fixed charge for some offences and increases penalty points following conviction for others.

Subsection (b) introduces penalty points for Novice Drivers who fail to display an N-Plate or Tabard.

Subsection (c) makes a number of amendments to Part 4 of the Schedule to the Road Traffic Act 2002. (c)(i) changes the reference to regulations governing cycle tracks to match the most recent version of the regulations; (c)(ii) changes descriptions of offences to match the most recent version of the regulations; (c)(iii) raises penalty points on payment of fixed charge in respect of nine offences; (c)(iv) raises penalty points on conviction in respect of seven offences; (c)(v) adds a new penalty point offence of violating a prohibition on U-turns.

Subsection (d) substitutes Part 5 of the Schedule to the 2002 Act. This Part relates to violation of terms of a learner permit. The newly substituted version updates references to the most recent regulations and adds a new penalty point of non-display of an L-Plate.

Subsection (e) raises by one the points for each of the six offences listed in Part 7 of the Schedule to the Road Traffic Act 2002.

Subsection (f) introduces penalty points on payment of fixed charge for using a vehicle without a certificate of roadworthiness.

Subsection (g) inserts a new Part 10 to the Schedule to the 2002 Act. This Part relates to contravention of new measures introduced in regulations in 2012, and provides for seven new penalty point offences.

## PART 4

### INTOXICATED DRIVING OFFENCES

*Section 11* substitutes a new section 11 for the existing section 11 of the Road Traffic Act 2010 to provide for intoxication impairment testing. This replaces and represents a significant advance on measures in the Road Traffic Act 2010 which were never commenced due to the advancement of policy in this area. Members of An Garda Síochána will now be empowered to require people driving or attempting to drive, or in charge of with intent to drive or to attempt to drive, a mechanically propelled vehicle in a public place, to undertake intoxication impairment testing. This involves non-technology-based cognitive tests (i.e. walking a straight line, tipping one's nose, counting while standing on one leg etc.). The results of these tests may be used in evidence in support of the Garda forming an opinion that the person is intoxicated.

Under the new section 11(3) of the 2010 Act, the Minister will be empowered to prescribe in regulations the nature of the tests and their manner of administration, as well as a form for recording the observations made during the tests. The new section 11(4) makes it an offence to fail to comply with a requirement to undergo intoxication impairment testing. The new section 11(5) provides a power of arrest in the case of an offence under this section.

*Section 12* amends the Road Traffic Act 2010 to allow for the taking, subject to medical approval, of a specimen of blood from an incapacitated (e.g. unconscious) person following a road traffic collision involving death or injury.

Subsection (a)(i) amends section 14 of the Act of 2010 (as inserted by section 8 of the Road Traffic (No. 2) Act 2011) to clarify the circumstances in which section 14 applies. (a)(ii) inserts a new subsection (3A) after subsection (3) of section 14 to provide that a Member of An Garda Síochána may direct a designated doctor or nurse to take a specimen of blood from a driver who is incapable of giving or withholding consent to the taking of a specimen. (a)(iii), (iv) and (v) are consequential amendments following on (a)(ii). (a)(vi) provides that the taking of blood by a doctor or nurse in the specified circumstances shall be lawful.

Subsection (b) amends section 15 of the Road Traffic Act 2010. (b)(i) is an amendment consequential on that in subsection (a)(ii). (b)(ii) substitutes section 15(3) of the 2010 Act to provide for procedures to be followed by An Garda Síochána after the taking of a specimen from an incapacitated driver as well as from a driver who is not incapacitated.

Subsection (c) is a consequential amendment to section 17(3) of the 2010 Act following from the introduction of new procedures for taking specimens from incapacitated drivers.

Subsection (d) amends the 2010 Act by the introduction of a new section 17A. This establishes the procedure to be followed where a specimen has been taken from an incapacitated driver and that driver has subsequently regained capacity. The person in question will be required to give consent to the issuing by the Medical Bureau of Road Safety of a certificate certifying the result of analysis of the specimen. Failure to consent will be an offence. This puts incapacitated drivers as nearly as possible on a par with drivers who are not incapacitated. The Minister will be empowered to prescribe forms necessary for the operation of the new section 17A.

Subsections (e) and (f) are consequential amendments adding references to the new procedures.

Section 13 amends the Principal Act in consequence of the new procedures introduced in respect of incapacitated drivers in section 10 of the present Bill.

Subsection (a) amends section 26(4)(a)(v) of the Principal Act, which relates to consequential disqualification orders, to include reference to the new section 17A of the 2010 Act.

Subsection (b) amends the second schedule of the Principal Act, which lists offences involving consequential disqualification orders, to add failure to comply with a requirement to perform impairment test (as provided for in section 11 of the present Bill) and failure to give permission to forward a specimen test certificate (as provided in section 12 of the present Bill for the case of a driver incapacitated at the time of a collision and from whom a specimen of blood has been taken).

## PART 5

### MISCELLANEOUS

Section 14 amends the Principal Act by introducing a new section 78B, which relates to recovery of sums paid by the Motor Insurance Bureau of Ireland (MIBI). This amendment will underpin actions taken by MIBI to recover moneys paid from uninsured drivers and give legal basis to the Agreement in this regard between the Minister and MIBI reached in 2009. The section gives legal effect to that Agreement and any amendment or replacement of that Agreement. The Amendment also provides for the use of procedure by summary summons in cases of this kind.

Section 15 amends section 20(5) of the Road Safety Authority Act 2006, which relates to pensions, in order to bring it into line with the internal dispute resolution provisions of the Pensions Act 1990, as amended, and the Pensions Ombudsman Regulations, as amended (S.I.s Nos 397 of 2003 and 183 of 2007).

Section 16 amends the Road Traffic Act 2010 to delete the words “not being a specified person” from section 29(11)(e). Section 29 of the 2010 Act relates to fixed penalty notices and drink driving. Subsection (11) specifies the content of the fixed charge notice, with subsection (11)(e) indicating consequences following payment of a fixed charge within 28 days. The words “not being a specified person” were included here in error. Subsection (11)(e) in fact already makes reference back to subsection (8)(b) of section 29, which relates to specified persons. It was intended that subsection (11)(e) should cover specified persons, and therefore the reference to excluding them is being deleted.

*Section 17* makes two minor amendments to section 81 of the Road Traffic Act 2010. Subsection 15(a) amends a reference to electronic apparatus for measuring speed — such as cameras — so that it will now be presumed until the contrary is shown that the apparatus was provided, maintained and operated by a member of An Garda Síochána. The word ‘operated’ is new. Subsection 15(b) corrects an erroneous reference in the existing text.

*Section 18* amends section 87 of the Road Traffic Act 2010 to provide greater clarity on the meaning of the term “ambulance service”. Section 87 contains an exemption from certain road traffic legislative provisions for the emergency services. The current reference to an “ambulance service” is expanded by the addition of an explanation that it is a service provided by a pre-hospital emergency care service provider recognised by the Pre-Hospital Emergency Care Council.

*Section 19* amends the Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012 in the light of experience since the passage of that Act.

Subsection (a) is a technical amendment.

Subsection (b) amends section 17(6)(a) of the 2012 Act to expand the Minister’s power to make regulation in respect of CVR testers, so that the Minister may prescribe in regulations the conditions to which a CVR Tester authorisation is subject.

Subsection (c) amends subsection 19(b) of the 2012 Act to allow the Road Safety Authority to revoke an authorisation of a CVR tester in cases of repeated breaches of conditions.

Subsection (d) inserts a new section 19A into the 2012 Act. This will allow for the revocation of an authorisation as a CVR test operator or a CVR tester where it is discovered that the person, when applying for an authorisation, provided false or misleading information. In addition, the provision of information which the applicant knows to be or should reasonably know to be false or misleading is made an offence.

*Section 20* amends section 13(1) of the Road Transport Act 2011. This amendment allows the Minister, in making regulations for road transport operator fees, to vary the fees according to the manner in which the application is made. This would allow the Minister, should he so wish, to prescribe lower fees for those applying online.

*Section 21* repeals section 5 of the Road Traffic Act 2006, section 32 of the Road Traffic Act of 2010, and section 53 of the Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012. These sections taken together in effect cancel each other out and are no longer relevant. The opportunity is being taken here to tidy the legislation by repealing them.

*Department of Transport, Tourism and Sport,  
Meitheamh, 2013.*