An Bille um Thrácht ar Bhóithre, 2016
Road Traffic Bill 2016

Meabhrán Minitheach
Explanatory Memorandum
Purpose of the Bill

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

• Provision for roadside tests of oral fluid for the presence of drugs;
• A new offence of driving with the presence of certain specified drugs in the blood;
• Measures to give effect to agreement between Ireland and the UK on mutual recognition of driver disqualifications;
• The creation of a new special speed limit of 20km/h;
• 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.

Financial Implications - The Bill will not have an impact on revenues. The introduction of new roadside tests for drugs will involve expenditure for procurement of devices to test for the presence of a drug or drugs in the oral fluid. The Medical Bureau of Road Safety (MBRS) was allocated €500,000 for capital spend in 2014 towards their toxicology programme, including developing the technology to test suitable devices as part of the tendering process for the roadside devices. A further €200,000 capital allocation was provided in 2015, and €100,000 capital allocation has been made for 2016.

The oral fluid devices for testing for drugs will be considerably more expensive than the breath analysis equipment currently in use for alcohol. It is planned to purchase 150 devices in the first phase. Each device costs approximately €700 and each tester cassette costs approximately €15, compared to a cost per breath alcohol test mouthpiece of around €0.16.
PART 1

Preliminary and General

Sections 1 and 2 are standard provisions.

PART 2

Intoxicated Driving Offences

This Part addresses a number of matters relating to driving with drugs in a person’s system. Provision is made for roadside testing of oral fluid for the presence of drugs. A new offence of driving with the presence of certain specified drugs is also created, and a number of necessary additional amendments made to assist in tackling driving under the influence of drugs.

Section 3 amends the definitions in the Road Traffic Act 2010 in three ways to take account of the changes made in the present Bill. Section 3(a) amends the 2010 Act’s definition of “analysis” – which relates to the operations carried out by the Medical Bureau of Road Safety when analysing specimens for intoxicants – to add that the term includes determining the concentration of specified drugs in specimens of blood. This is necessary in order to enable the Bureau to perform its functions in relation to the new offences created in section 4 of the present Bill.

Subsection 3(b) is a technical amendment.

Subsection 3(c) creates a new definition for the term “medical exemption certificate.” This is necessary to allow for cases where a person who has tested positive for a specified drug has been prescribed that drug lawfully for medical reasons.

Section 4 amends sections 4 and 5 of the Road Traffic Act 2010 – which deal respectively with driving and being in charge of a mechanically propelled vehicle - by introducing a new offence in each case. It is currently an offence under sections 4 and 5 of the 2010 Act to drive or be in charge of a mechanically propelled vehicle while under the influence of an intoxicant – this means that both presence of the intoxicant and impairment must be proven. The current legislation also makes it an offence to drive or be in charge of a mechanically propelled vehicle while the person has in their system more than a certain level of alcohol – in this case proof of presence only is necessary. Section 4 of the current Bill will make the presence of specified drugs, at or above specified levels, while driving or in charge of a mechanically propelled vehicle, an offence analogous to that for presence of alcohol.

Subsection 4(a) amends section 4 of the 2010 Act by introducing a new subsection (1A). This establishes the new offence of driving with the presence of certain specified drugs – these are cannabis, cocaine and heroin (see below under subsection 4(c)) - at or above a specified concentration in the blood. The levels are to be measured in blood - by contrast to alcohol, where concentrations of breath, blood or urine may be used - based on scientific advice that blood is the best indicator of recent use in the case of drugs.

A new subsection (1B) provides a medical exemption where a person has been prescribed a drug covered by the new offence - the specified drug in question is a medicinal cannabinoid.

The Department is of the view that it is necessary to provide such an exemption to a person who is prescribed medicinal cannabinoids and who therefore may test positive for the presence of delta-9-tetrahydrocannabinol.
(THC) or 11-nor-9-carboxy-delta-9-tetrahydrocannabinol (THC acid) in a preliminary drug test.

Currently a brand of medicinal cannabinoids (Sativex) has regulatory approval in Ireland since 18 July 2014 but it is not yet available on prescription. It is indicated for prescribing to patients with multiple sclerosis (MS) for the purposes of symptom improvement in adult patients with moderate to severe spasticity due to MS who have not responded adequately to other anti-spasticity medication and who demonstrate clinically significant improvement in spasticity-related symptoms during an initial trial of the therapy. It estimated that there are approximately 8,000 people with MS in Ireland. The number of people who will be prescribed Sativex is expected to be a much smaller number of this cohort of patients.

This exemption applies only to the new offence of presence of the drug only – if a person has the presence of the drug and is impaired they will still be liable to charge under the existing legislation. It will be an offence to sign a medical exemption certificate containing information which the person knows to be false (new subsection (1C))

Subsection 4(b) amends section 5 of the 2010 Act in a manner identical to the amendment of section 4 of the 2010 Act in subsection 4(a) above. The offence of presence of specified drugs above a specified level is provided for in a new subsection 5(1A), while the medical exemption and offence of knowingly signing a medical exemption containing false information are created in new subsections (1B) and (1C) respectively.

Subsection 4(c) appends a Schedule to the 2010 Act setting out the drugs specified. These are cannabis, cocaine, and heroin. Also included are two metabolites which are indicative, respectively, of the recent presence of cannabis and of cocaine.

Section 5 amends section 7 of the 2010 Act by extending Garda powers of entry in relation to alcohol testing so that they also apply to the new preliminary drug testing introduced in section 6(c) of the present Bill.

Section 6 amends section 9 of the 2010 Act – which deals with preliminary breath testing for alcohol – to provide the necessary powers for members of An Garda Síochána to conduct preliminary testing for the presence of drugs, using devices which test for the presence of drugs in oral fluid.

Subsection 6(a) amends section 9 of the 2010 Act so that the section relates to people who have consumed ‘an intoxicant’ rather than ‘intoxicating liquor’. As a result, the provisions of section 9 will henceforth apply to people who have consumed alcohol (as at present) AND people who have consumed drugs.

Subsection 6(b) amends the existing provisions of subsection 9(2)(b) of the 2010 Act. The current power for a member of the Garda Síochána to require a person to accompany them to a place at or in the vicinity in order to undergo a preliminary breath test for alcohol is amended by allowing that the person may be required to accompany the member or another member.

Subsection 6(c) creates a new power for Gardai to require a person to provide a specimen of oral fluid, using an apparatus for indicating the presence of drugs in oral fluid. This is a preliminary test for the presence of drugs, and is analogous to the preliminary breath test for alcohol under section 9 of the 2010 Act. Garda powers which parallel those relating to preliminary breath tests for alcohol are also created in relation to the new oral fluid tests for drugs - the power to require a person to accompany them (or another Garda) to a place at or in the vicinity in order to conduct the oral
fluid test, and the power to require them to wait for up to one hour if the oral fluid test apparatus is not available to the member at that time.

Subsection 6(d) creates a presumption in a prosecution, until the contrary is shown, that an apparatus provided by a Garda for the purpose of taking an oral fluid specimen is an apparatus for testing for the presence of drugs in oral fluid. This mirrors the existing presumption in law regarding the apparatus used for preliminary testing for alcohol in the breath.

Section 7 substitutes section 10 of the 2010 Act to expand the powers of Gardaí at Mandatory Alcohol Testing (MAT) checkpoints, so that preliminary oral fluid testing for drugs can be undertaken at these checkpoints as well as the current preliminary breath tests for alcohol. Such checkpoints will in future be known as Mandatory Intoxicant Testing (MIT) checkpoints. Substitution rather than amendment of section 10 is required in order to change the heading of section from ‘Mandatory Alcohol Testing’ to ‘Mandatory Intoxicant Testing’.

The amendment of subsection 10(4) will enable Gardaí to test for drugs in oral fluid at checkpoints, in addition to the current power to test for alcohol in breath. The change to the structure of subsection 10(4) necessitates a consequential change to subsection 10(6), while the presumption in subsection 10(8) that an apparatus provided by a Garda to take a specimen of breath is an apparatus for indicating the presence of alcohol in breath is mirrored in a new subsection 10(9) which creates a presumption that an apparatus provided by a Garda for taking a specimen of oral fluid is an apparatus for indicating the presence of drugs in oral fluid.

Section 8 amends section 11 of the 2010 Act (as amended by section 11 of the Road Traffic Act 2014) regarding impairment tests to allow a Garda to require the person to accompany him or her, or another Garda, to a place at or in the vicinity in order to conduct impairment tests safely.

Section 9 inserts a new section 13A and a new section 13B into the Road Traffic Act 2010. The new section 13A creates a power for Gardaí to require a person who has been arrested under section 4 or section 5 of the 2010 Act to provide an oral fluid specimen for testing for the presence of drugs. These tests are not evidentiary, but will be of assistance to Gardaí in cases where a person has been arrested on suspicion of presence of an undetermined intoxicant. In a case where oral fluid tests confirm the presence of drugs, the Gardaí may then choose to require a blood specimen under the new section 13B (see below), rather than allowing the person the option of providing a urine specimen under the existing provisions of section 12 of the 2010 Act (which will continue in force).

The new Section 13B which is being inserted into the 2010 Act will allow the Garda to require provision of a specimen of blood in cases where a member of the Garda is of the opinion that a person has committed an offence under the new section 4(1A) or 5(1A) of the 2010 Act, inserted by section 4 of the present Bill. These offences relate to the presence of specified drugs, and medical and scientific advice indicates that blood only, rather than an option of blood or urine, can enable specific concentrations of these substances based on recent use to be established. There is no such relationship between recent drug use and urine. The existing legislation, which empowers Gardaí to ask for blood but allows the person to offer urine instead, will remain in force for existing offences under sections 4 and 5 of the 2010 Act and is therefore unchanged in its effect. The power to require blood only will relate only to the new drug offences.

Section 10 amends section 17 of the 2010 Act by substituting section 17(1). This deals with the analysis of specimens by the Medical Bureau
of Road Safety, and expands the Bureau’s procedures to allow for
determination of concentrations of drugs. This is necessary to establish
the evidential base for cases under the new ‘presence only’ drug offences
created by section 4 of the Bill (see also section 16 below).

Section 11 amends section 18 of the 2010 Act in consequence of the
creation of the new drug offences created by section 4 of the Bill. Section
18 deals with presumptions in cases taken under sections 4 and 5 of the
2010 Act. Subsection 11(a) amends section 18(1), which currently says
that in a case under section 4 or 5 of the 2010 Act it is not necessary to
prove that the person did not consume intoxicating liquor after the time
of the alleged offence but before a specimen (of breath, blood or alcohol)
was taken. This is now amended to replace ‘intoxicating liquor’ with ‘an
intoxicant’ and to add a reference to the new power to take a specimen of
blood only, as inserted by section 9 of this Bill.

Subsection 11(b) further amends the presumptions in section 18 in
relation to new drug offences. Section 18(2) addresses circumstances where
a person charged with the presence of alcohol in their system may argue
that they had consumed alcohol after the alleged offence and before giving
a specimen, and that but for that consumption the concentration of alcohol
in their system would have been lower than that registered in the test and
therefore below the threshold for charges brought. As presence of specified
drugs at or above a specified concentration is now to be an offence, these
provisions will be replicated in the case of specified drugs. The effect is that
a court shall disregard evidence of consumption of drugs after the alleged
offence but before the taking of a specimen, unless it is proven by or on
behalf of the defendant that but for that consumption they would have been
below the specified concentration of the drugs.

Subsection 11(c) replaces ‘alcohol’ with ‘an intoxicant’ in subsections
(3)(a) and (4).

Section 12 is a consequential amendment necessary to add reference to
the new measures in this Bill to section 19 of the 2010 Act. Section 19 relates
to written statements by Gardaí regarding compliance with procedures for
taking of specimens, and is therefore amended to take account of the new
requirement to provide a specimen of blood under the new section 13B
inserted by section 9 of this Bill.

Section 13 is a further consequential amendment, which substitutes
subsections (4) and (5) of section 20 of the 2010 Act. Subsection (4)
establishes presumptions relating to who is to be considered a designated
doctor or nurse for the purpose of taking specimens. Reference is now added
to the taking of specimen of blood under the new procedures created in
section 13B (see section 9 of this Bill). Subsection (5) relates to statements
of refusal by a designated doctor on medical grounds to take a specimen,
and once again reference is added to the taking of specimens under the new
section 13B.

Section 14 is a technical and consequential amendment, which adds
reference to the new section 13B of the 2010 Act (inserted by section 9
of this Bill) to section 21 of the 2010 Act. Section 21 relates to costs of
prosecutions under various sections of the 2010 Act.

Section 15 amends section 22 of the 2010 Act. Section 22 provides for
a person to offer a defence that there was a ‘special and substantial reason’
why they refused or failed to comply with a requirement to provide an
evidential specimen of breath or blood under existing legislation. This is
now amended to include a similar defence in the case of refusing or failing
to comply with the new requirement under section 13B (section 9 above).
Section 16 amends the functions of the Medical Bureau of Road Safety under section 26 of the 2010 Act, in order to take account of the new drug offences and new preliminary drug tests. Section 16(a) amends the Bureau’s functions to include testing for the concentration of drugs in blood. This will enable the Bureau to test specimens of blood for the new drug offences (section 4 above), and reflects the amendment to sections 3 and 17 of the 2010 Act (sections 3 and 10 above).

Section 16(b) empowers Bureau to arrange for the supply and testing of apparatus to test for the presence of drugs in oral fluid (see sections 6 and 7 above). The Bureau already supplies and tests preliminary breath test apparatus (i.e. the roadside breath test apparatus) and evidential breath test apparatus (i.e. evidential breath test machines in Garda stations).

Section 17 amends the Principal Act in respect of consequential disqualifications. Section 26 of the Principal Act, and the Second Schedule to the Principal Act, provide for driving disqualifications consequent on conviction for certain offences. Three new offences are being created in this Bill – presence of a specified drug while driving, presence of a specified drug while in charge of a mechanically propelled vehicle (both in section 4 above), and failure to provide a blood specimen when required (section 9 above). Section 17 therefore amends section 26 and the Second Schedule of the Principal Act to create consequential disqualifications for these offences. The period of disqualification for the new drug offences is a minimum of one year for a first offence, and 2 years for a second or subsequent offence under section 4 or 5 of the 2010 Act. For refusal or failure to provide blood, disqualification will be for four or six years, which are the same periods which apply for refusal or failure to provide specimens under existing legislation.

PART 3

Speed Limits

Section 18 will amend section 9(2) of the Road Traffic Act 2004 to create a new ‘special speed limit’ of 20km/h. This means that local authorities will in future have the option of lowering speed limits in built-up areas from the default limit of 50km/h to 40km/h, 30km/h, and 20km/h.

PART 4


Section 19 amends section 78A of the Principal Act, which requires vehicle insurers to share details of motor insurance with the Minister, the Gardai and the Motor Insurer’s Bureau of Ireland, by setting out what specific information is to be shared.

Section 20 amends section 107 of the Principal Act so that it applies to pedal cyclists as well as motorists. Section 107 empowers Gardai to require name, address and date of birth from motorists in specified circumstances and to arrest a person who refuses or who gives what the Garda believes to be false or misleading information. Section 108 provides Garda powers related to cyclists which are more limited and do not involve a power of arrest. As Gardai may now issue fixed charge notices to cyclists, it is necessary to enhance Garda powers in dealing with cyclists. Section 107 is therefore being extended to cover cyclists as well as motorists, while section 108 remains in force.

Section 21 makes two changes to penalty points. Section 21(a) creates a new penalty point offence of using a trailer or semi-trailer with a maximum permissible weight of 3,500kg without a licence. The offence will carry
two penalty points on payment of a fixed charge and four penalty points on conviction in court. Section 21(b) amends the points for the offence of using a vehicle without a certificate of roadworthiness. This currently incurs five points on conviction in court but is not a fixed charge offence. It is intended to make it a fixed charge offence, and therefore the penalty points are amended by providing that, when it becomes a fixed charge offence, there will be three points for the offence on payment of a fixed charge.

Section 22 makes an amendment to the fixed charge regime. Certain offences under the Road Traffic Acts and some other Acts may be declared by the Minister to be fixed charge offences. At present, the basis for this system lies in section 103 of the Principal Act. This will in due course be replaced by section 34 of the 2010 Act, as and when it is commenced. Currently, neither section includes offences under the Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012, and section 22 will therefore provide for this.

Section 23 makes a number of technical amendments to sections 35, 36, 37 and 42 of the Road Traffic Act 2010. None of these sections has yet been commenced. The amendments are intended to ensure greater clarity in the procedures concerned.

Section 24 is a technical amendment to section 50 of the 2010 Act, which relates to payment deposits. It is intended to provide greater clarity to the section, which has not yet been commenced.

PART 5

Agreement on Mutual Recognition of Driving Disqualifications Between the State and the United Kingdom of Great Britain and Northern Ireland

Section 25 provides the necessary legislative underpinning to give effect to the agreement on mutual recognition of driving disqualifications signed between Ireland and the United Kingdom on 30 October 2015. Under this agreement, where holders of Irish driving licences are convicted of road traffic offences in the UK and disqualified from driving in that jurisdiction, the appropriate authority in Ireland – the Road Safety Authority – will be notified and will be able to apply to the Irish courts to have the person disqualified in this jurisdiction. UK licence holders who are disqualified in Ireland will also be disqualified in the UK.

Department of Transport, Tourism and Sport,