

Public consultation on
**Regulations to tackle drink driving
in Northern Ireland**



Section 1 – Background

The Road Traffic (Amendment) Bill

- 1.1 Over the last two decades significant improvements have been made in reducing drink driving in Northern Ireland. Unfortunately, however, more needs to be done. In the five years between 2010 and 2014, 53 people have been killed and 334 seriously injured in collisions where drivers impaired by drink or drugs was the primary cause of the collision. In the same five year time period, driver/rider alcohol or drugs was the primary cause for 18% of all road fatalities.
- 1.2 In May 2014, the Environment Minister introduced the Road Traffic (Amendment) Bill to the Assembly. The Bill included a range of measures aimed at reducing the harm caused by drink driving. It followed an extensive period of policy development and public consultation that indicated strong support for many of the measures.
- 1.3 In brief terms, the package of drink driving measures in the Bill included:
 - New drink drive limits of 50mg/100ml for most drivers and 20mg/100ml for learner and novice (i.e. first two years after passing the driving test) drivers and for professional drivers;
 - A new graduated penalty regime that include fixed penalties for first offences at lower limits and court prosecution for high alcohol level first offences or any second or subsequent offences;
 - New breath testing powers to enable police to breathalyse the drivers of vehicles at roadside check-points without the need to have ‘reasonable cause to suspect’ that the driver has consumed alcohol;
 - Automatic referral onto an approved Course for Drink Drive Offenders (CDDO) unless a District Judge decides that attendance would be inappropriate. While an offender may be referred automatically, attendance will remain voluntary;
 - Removal of the right to opt for a blood or urine sample to replace the breath test sample where the breath reading is marginally above the limit.
- 1.4 The Bill completed its passage through the Northern Ireland Assembly in January and, on receiving Royal Assent, will gain its permanent title of the Road Traffic (Amendment) Act (Northern Ireland) 2016 (‘the 2016 Act’).

The need for secondary legislation

- 1.5 This consultation paper considers the secondary legislation, a set of five draft Statutory Rules (SRs), needed to enable the provisions of the Act to be fully brought into operation.

- 1.6 The SRs relate to:
- i. the introduction of a new fixed penalty system for offences involving lower levels of alcohol;
 - ii. the restriction of the requirement to re-sit the driving test to those disqualified for 12 months or more for offences involving higher levels of alcohol; and
 - iii. the blood alcohol threshold that applies to the High Risk Offenders Scheme.
- 1.7 Certain provisions contained in the Act, including the new lower drink driving limits, do not need secondary legislation to be brought into operation. As such, these issues do not form part of this consultation. However, they will be described as necessary to help place the new Regulations in context.
- 1.8 A response form is available at **Annex A**. This will take you through the issues identified in the consultation paper and help ensure that your comments are given full consideration.
- 1.9 A series of 'Frequently Asked Questions' is attached at **Annex B** while a copy of each draft SR can be found at **Annex C**. The list of consultees can be found at **Annex D**.

Section 2 – Fixed Penalties

Background

- 2.1 The current Blood Alcohol Concentration (BAC) limit (the drink driving limit) in Northern Ireland is 80 milligrammes of alcohol in 100 millilitres of blood (80mg/100ml). This is a common limit applicable to all drivers, regardless of their licence status.
- 2.2 All excess alcohol related driving offences (i.e. in excess of the limit) are prosecuted in court where a convicted offender currently faces penalties ranging from a minimum 12 month driving disqualification up to 14 years imprisonment and unlimited fines for the most serious offences.
- 2.3 The 2016 Act introduces two new lower limits, each applicable to different categories of driver licence holder:
 - The first limit is 50mg/100ml and applies to most drivers.
 - The second limit is 20mg/100ml and applies to what is expressed as a 'specified person' – this will include a learner driver, novice driver (subject to the two year probationary period under the New Driver's Order 1998) and a professional driver (the holder of certain bus, lorry and taxi driver licences).
- 2.4 The new penalty regime includes fixed penalties for first offences at the new lower limits and court prosecution for high-level first offences or second or subsequent offences. Graduated periods of disqualification, linked to the level of alcohol consumed, will be available to the court.
- 2.5 This section will consider the secondary legislation required to bring the fixed penalty system into operation. Introduction of graduated periods of disqualification does not require secondary legislation and, therefore, is not included in this consultation.
- 2.6 It is important to note that the policy of using fixed penalties to dispense of lower level drink driving offences has been approved by the NI Assembly and the primary powers to do so are contained in the 2016 Act. **As such, the Department is not seeking comments on the concept of fixed penalties for drink driving offences in this consultation.**
- 2.7 Fixed penalties will only apply to offences under Article 16(1)(a) and (b) of the Road Traffic (NI) Order 1995 ('the 95 Order') - driving (or attempting to drive) with excess alcohol, and being in charge of a vehicle with excess alcohol respectively. They will not be available for other alcohol or drug related driving offences.
- 2.8 At the core of the new system, drivers will be encouraged, through the offer of a mitigated Fixed Penalty Notice (FPN), to complete an approved Course for Drink Drive Offenders (CDDO). The course has been operating since 1998 and delivers expert training, in a group situation, on the problems associated with drink driving. The objective is to enable the driver to develop future non-offending behaviour and thereby reduce the risk of re-offending.

2.9 Penalty points and a fine will apply at BAC levels below the current 80mg limit, where there is no current offence. There will be no disqualification period for first offences. Briefly, this is how the system will work:

- If a person is detected with a BAC level between 50mg - 79mg /100ml – or in the case of a specified person between 20mg - 79mg/100ml – the police officer will consider if the person is suitable for offering a FPN (for example, if it is a first offence within 10 years; if the person already has penalty points on their licence for totting-up purposes).
- The driver will be offered the opportunity to attend and complete a CDDO.
- If the driver does not accept the offer to complete a course, the police officer will issue an FPN that will include a £200 fine and 6 penalty points.
- If the driver accepts the offer, the police officer will issue an FPN that will include a fine of £100 and 3 penalty points. The course fee (currently £155 or £110 concessionary) would have to be paid on top of the penalty. If the driver subsequently fails to complete the course, a further FPN amounting to a £100 fine and an additional 3 penalty points will be issued.
- As with all fixed penalties, the option will be available to have the case dealt with at court.

2.10 In order to make all this happen, the Department needs to introduce secondary legislation in the form of three new SRs. Each of the three SRs is described below.

Specifying two drink driving offences as fixed penalty offences

The Road Traffic (Fixed Penalty) (Offences) (Amendment) Order (Northern Ireland) 2016

2.11 The power to specify an offence as a fixed penalty offence, and to specify the amount of the fixed penalty, is included in the Road Traffic Offenders Order 1996 ('the Offenders Order').

2.12 The Department has already exercised that power by specifying a range of existing road traffic offences as fixed penalty offences in Schedule 1 to the Road Traffic (Fixed Penalty) (Offences) Order (NI) 1997 [SR. 1997 No.369], as amended.

2.13 This SR will amend Schedule 1 to add the two drink drive offences to that list. They are:

- (i) Article 16(1)(a) of the 95 Order – '*driving or attempting to drive with excess alcohol in breath, blood or urine*'; and
- (ii) Article 16(1)(b) of the 95 Order – '*being in charge of a motor vehicle with excess alcohol in breath, blood or urine*'.

- 2.14 The FPN will apply only in the circumstances described in the Schedule.
- 2.15 Firstly, the fixed penalties will apply to first time offences within 10 years (*'first relevant drink drive offence....during the period of 10 years..'*). The reference to *'relevant drink drive offence (within the meaning of Article 36 of the Road Traffic Offenders (Northern Ireland) Order 1996)'* is necessary to link the offences to the legislation that provides for the reduction in penalty where the offender completes the CDDO.
- 2.16 Secondly, the fixed penalties will apply where the BAC level (*'the proportion of alcohol'*) did not exceed 79mgs/100mls i.e. below the current BAC limit of 80mg/100mls.
- 2.17 This SR will be subject to the NI Assembly's negative resolution procedure (meaning it will not require formal approval of the full Assembly).

Setting the fine amount

The Road Traffic (Fixed Penalty) (Amendment) Order (Northern Ireland) 2016

- 2.18 The Road Traffic (Fixed Penalty) Order (NI) 2007 [SR. 2007 No. 319], as amended, prescribes fixed penalties for a range of specified offences. For certain offences, the amount of the fixed penalty is determined according to the nature of the contravention constituting the offence and, in certain cases, its seriousness.
- 2.19 This SR sets out the amount of fine that will be included in the FPN by amending Schedule 2 to insert a new item 2A prescribing the fixed penalty for contravention of Article 16(1) (a) and (b) of the 1995 Order.
- 2.20 Column 1 describes the nature of the two separate offences while Column 2 describes the differing circumstances that will attract either a £100 fine or a £200 fine for each of the two offences. The £100 fine will apply where the offender completes the CDDO and the £200 fine will apply where the offender fails to complete the course (either by refusing the offer at the outset or by not completing the course having accepted the offer at the outset).
- 2.21 Column 3 contains the monetary fines.
- 2.22 The nature of the offence and the circumstances that would attract either a £100 or £200 fine were set out in the public consultation completed in 2012. No comments were received.
- 2.23 This SR will be subject to the NI Assembly's negative resolution procedure (meaning it will not require formal approval of the full Assembly).

Setting the number of penalty points

The Road Traffic (Graduated Fixed Penalty Points) Order (Northern Ireland) 2016

- 2.24 The number of penalty points attributable to certain road traffic offences is shown in the entry against each specific offence as listed in Schedule 2 to the Offenders Order. Where a range of numbers is shown in Schedule 2 the number of penalty points to be attributed, for the purposes of an FPN, is the lowest number in the range.
- 2.25 Article 30 of the Offenders Order enables the number of penalty points for specific offences to be graduated, depending on the circumstances. The offence, the number of penalty points to be attributed and the differing circumstances must be specified in secondary legislation.
- 2.26 This SR sets out the number of fixed penalty points that will be included in the FPN. It is a new SR and does not amend an existing SR. It contains a Schedule that sets out the details of the offence and the number of penalty points that are attributable.
- 2.27 Column 1 describes the nature of the two separate offences – Article 16(1) (a) *‘Driving...with excess alcohol in breath....’* and Article 16(1) (b) *‘Being in charge of a motor vehicle with excess alcohol in breath.....’*
- 2.28 Column 2 describes the differing circumstances that will attract either 3 penalty points or 6 penalty points for each of the two offences. Three points will apply where the offender completes the CDDO and 6 points will apply where the offender fails to complete the course (either by refusing the offer at the outset or by not completing the course having accepted the offer at the outset).
- 2.29 Column 3 includes the number of penalty points.
- 2.30 The nature of the offence and the circumstances that would attract either 3 or 6 penalty points were set out in the public consultation completed in 2012. No comments were received.
- 2.31 This SR will be subject to the NI Assembly’s negative resolution procedure (meaning it will not require formal approval of the full Assembly).

Q1 - Do you have any comments on the Department’s approach to introducing fixed penalties for lower level drink driving offences?

Section 3 – Disqualified Until Tested

- 3.1 Currently, if a person is convicted [under Article 16(1)(a) of the 95 Order] of driving with excess alcohol, the court must [under Article 35 of the Offenders Order] order him to be disqualified for a minimum period of 12 months - unless for special reasons the judge thinks it is appropriate to order a shorter period or not to disqualify at all.
- 3.2 Where Article 41 of the Offenders Order applies, the court must further order him to be disqualified until he passes the appropriate driving test. The Road Traffic Offenders (Appropriate Driving Test) Order (NI) 1997 [SR 1997 No 370] prescribes the circumstances in which Article 41 will apply. It includes being convicted under Art 16(1)(a).
- 3.3 In short, therefore, if a person is convicted of driving with excess alcohol, he or she will currently be disqualified for a minimum 12 months and will have to apply for a provisional licence and retake and pass both the theory and practical driving test.
- 3.4 The requirement to re-sit a driving test is not viewed as a punishment as such. Rather, it is recognition that the person has not driven a vehicle for a protracted period and would therefore benefit from retraining.
- 3.5 The 2016 Act contains new graduated penalties including graduated periods of disqualification. In particular, Section 12 provides that anyone convicted of an offence where the BAC level is above the new limit but less than 80mg/100mls (the current limit) will face a minimum disqualification of 6 months.
- 3.6 The Department considered it unnecessary and inappropriate to apply the re-test on anyone disqualified, in such circumstances, for a period less than 12 months. This reflects both the lower level of alcohol consumed and the lesser time spent away from driving.
- 3.7 In order to disapply the requirement to re-sit a driving test, it is necessary to amend the existing SR.

The Road Traffic Offenders (Appropriate Driving Test) (Amendment) Order (Northern Ireland) 2016

- 3.8 The Order contains a short but significant amendment to the parent Order, the Road Traffic Offenders (Appropriate Driving Test) Order (NI) 1997 that applies the retest requirement to a number of drink drive offences.
- 3.9 In particular, it amends Article 2(c) which applies the re-test to offences under Article 16(1) (a) of the 1995 Order (driving or attempting to drive with excess alcohol).
- 3.10 This amendment means that a person, who has been convicted with a BAC level above the limit but below 80mg/100ml and disqualified under new Article 35 (1ZA) of the 1995 Order for less than 12 months, will not be subject to the 'disqualified until tested' court order.
- 3.11 This SR will be subject to the NI Assembly's affirmative resolution procedure (meaning it will require formal approval of the full Assembly).

Q2 Do you have any comments on the Department's approach to the restriction of the requirement to re-sit the driving test to those disqualified for 12 months or more for offences involving higher levels of alcohol?

Section 4 – High Risk Offenders

- 4.1 The High Risk Offenders (HRO) Scheme was introduced in 2005. It is aimed at dealing with drivers whose dependence on, or persistent misuse of, alcohol presents a serious road safety risk. Currently, a person is categorised as a HRO if disqualified for:
- Having a BAC of two and a half times the limit (currently 200mg/100ml) or more;
 - Failing to provide a sample to police for analysis; or
 - Being convicted of two drink drive offences within ten years.
- 4.2 In such circumstances, the person will face higher sanctions. They will not be able automatically to apply for a provisional driving licence at the end of the disqualification period. Satisfactory medical reports, following independent medical examination and blood tests, must first be obtained. There is a higher fee for applying for a provisional licence in such circumstances to cover the additional administration and the offender must cover the cost of their medical examination. If the medical assessment shows no apparent dependency on alcohol, the person's licence may be issued.
- 4.3 However, if there is evidence of persistent alcohol misuse within the past six months or alcohol dependency within the past 12 months or there is evidence of current ongoing alcohol misuse or dependency, then a HRO's application for a driving licence will be refused. The person must wait for a period of 6 or 12 months before another application and medical can be carried out. There is a right of appeal.
- 4.4 Drink drivers who have a BAC in excess of 200mg/100ml (i.e. two and a half times the current limit of 80mg/100ml) are more than 500 times as likely to die in a drink related crash as those who have no alcohol in their body¹.
- 4.5 The current HRO threshold of 200mg/10ml would seem high given the extremely elevated levels of risk at such a level. Clearly, high-end drink driving is a very significant road safety risk and those who commit such an offence should be subject to additional sanctions.
- 4.6 In the 2009 public consultation, the Department sought views on reducing the threshold BAC level for the purposes of defining a HRO. There was strong support for reducing the BAC threshold to 125mg/100ml.
- 4.7 Following the consultation, the Environment Minister announced plans to bring forward a package of measures to tackle drink driving including reducing the BAC threshold to 125mg/100mls – thus retaining a ratio of 2½ times the new lower limit of 50mg/100ml.
- 4.8 An amendment to the existing secondary legislation - the Motor Vehicles (Driving Licences) Regulations (Northern Ireland) 1996 - is needed to bring this into effect.

¹ NICE correspondence May 2010: paragraph 3.56 of the Report of the Review of Drink and Drug Driving Laws: Sir Peter North 2010

The Motor Vehicles (Driving Licences) (Amendment) Regulations (Northern Ireland) 2016

- 4.9 This SR contains a short but significant amendment to Regulation 52(1) of the Motor Vehicles (Driving Licences) Regulations (Northern Ireland) 1996 that provides for the HRO Scheme.
- 4.10 It inserts new alcohol limits for the purposes of the operation of the HRO Scheme, based on 2½ times the prescribed limit for the non-specified person introduced by Section 2 of the 2016 Act.
- 4.11 This SR will be subject to the NI Assembly's negative resolution procedure (meaning it will not require formal approval of the full Assembly).

Q3 Do you agree with the Department's approach to reducing the threshold for High Risk Offenders to 125mg/100mls?