

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

Synopsis of Consultation Responses

FEBRUARY 2017

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SECTION 1: INTRODUCTION & OVERVIEW

New provisions to tackle the harm caused by drink driving were included in the Road Traffic (Amendment) Act (NI) 2016 ('the 2016 Act') which completed its passage through the Northern Ireland Assembly earlier this year.

The Act makes provision for two new lower drink drive limits, the lowest of which will apply to novice and professional drivers, together with a new graduated penalty regime. It also provides for new police powers which will increase the likelihood of being stopped and tested and removes the right to opt for a blood or urine sample to replace a breath sample, in circumstances where the breath sample is marginally above the limit. It also ensures that a greater number of drink drivers will complete the drink drive rehabilitation course - designed to make offenders take more responsibility for their actions and reduce the risk of them re-offending.

It is important to note that the purpose of this consultation is not to seek comments on the concept of the measures outlined above but rather the secondary legislation now required to enable these provisions to be fully implemented. The secondary legislation will take the form of five draft statutory Rules (SRs) which relate to:

- the introduction of a new fixed penalty system for offences involving lower levels of alcohol;
- 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
- the blood alcohol threshold that applies to the High Risk Offenders Order.

Consultees were asked to consider the Department's proposed approach in each of these areas as well as to provide any comments they might have on the consultation process. The synopsis of responses provides an overview of the **11 responses** received and where appropriate summarises and/or quotes from the responses to highlight any recurring themes and to clarify the main arguments cited for or against the proposals.

SECTION 2: CONSULTATION QUESTIONS, RESPONSES RECEIVED & DEPARTMENTAL RESPONSES

Question 1 – Fixed Penalties

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

FPNs will be offered to first-time offenders whose breath test reading is above the new lower drink drive limit but below the current drink drive limit. If the person accepts a fixed penalty notice the offence will not result in a criminal conviction and will not create a criminal record. There will be no disqualification period for first offences at the new lower limits. A lower fixed penalty notice and number of points will be offered to drivers who agree to complete a Course for Drink Drive Offenders (CDDO).

The policy of using fixed penalties to dispense of lower level drink driving offences – as outlined above - has been approved by the NI Assembly and the primary powers are contained in the 2016 Act.

Question 1 invites consultees to consider the **secondary legislation** required to bring the new fixed penalty system into operation. This requires the introduction of three new Statutory Rules to:

- specify two drink driving offences as fixed penalty offences – **Art 16 (1) (a) and Art 16 (1) (b)** of the Road Traffic (NI) Order 1995
- set the fine amount at **£200 or £100** (if a CDDO is completed)
- set the number of penalty points – **6 or 3** (if a CDDO is completed)

While the focus of this question was not on the concept of FPNs it was encouraging to note that many of the responses indicated support for the use of fixed penalties to dispense of lower level drink driving offences. A sample of the comments received in response to this question is provided below to highlight the various views on the issue.

While consultees recognised that the use of fixed penalties had already been approved by the NI Assembly - both the

Alcohol Health Alliance and road safety charity, **Brake** expressed disappointment/concern that there was not an automatic disqualification for every level of offence.

The Motorcycle Action Group (MAG), viewed the graduated approach as reflecting '*the less serious nature of such an offence – noting that this has been, up to present day, recognised as a legal level of alcohol in the body*'. This was viewed as '*offering a reasonable adjustment to the current alcohol parameters for driving, without being unfairly draconian*'. MAG had no objections to the specific levels at which the penalties were set.

The Scottish Health Action on Alcohol Problems (SHAAP) supports the approach to introducing FPNs but would prefer to see '*the level of FPN the same for all infringements below 80mg/100ml*'. SHAAP would also urge caution to mitigating FPNs if the driver completes an approved course suggesting these '*penalties should be used together, rather than either one or the other, to obtain maximum impact*'.

Brake also welcomes inclusion of a training course but similar to the point raised above - suggests that '*this should run alongside and not replace points and a fine*'.

ROSPA supports a reduced fixed penalty for drivers who agree to take the course and believes this '*represents a good balance*'. The organisation also noted that it was right that offenders who accepted but did not complete the course should pay the higher fixed penalty. ROSPA also highlights that it will be essential to ensure that a sufficient number of courses are available across NI (on days and times that do not make it difficult to attend).

Remaining on the issue of courses, the **Mid and East Antrim Borough Council** point out that offenders could potentially choose to accept the fine of £200 as a more financially viable option as opposed to paying a reduced fixed penalty of £100 and the course fee of £155. The Council would ask that consideration is given as to '*how to encourage offenders to take up the offer of the CDDO rather than be deterred by cost*'.

Analysis of Responses:

The scope of Question 1 is to consider the two offences specified as fixed penalty offences and the proposed level set for the Fixed Penalty Notices i.e. fine + penalty points. The proposed FPNs include a £200 fine + 6 penalty points or a reduced FPN of £100 + 3 penalty points (*if the driver opts to complete a rehabilitation course*). The responses received to this question did not raise any issue in relation to the two offences specified. Likewise no issues were raised in relation to the levels set for the FPNs.

Outside the scope of this consultation - some concerns were raised in relation to (i) the use of a mitigated fixed penalty and (ii) a fixed penalty without a driving disqualification.

As stated, the concept of using FPNs for lower level drink driving offences has already been approved by the NI Assembly and the primary powers to do so are included in the 2016 Act. The following points may provide a useful recap:

- (i) Much consideration was given to how educational intervention could best contribute to an effective drink drive regime. The purpose of a mitigated FPN is to ensure that a greater number of drink drivers will complete the drink drive rehabilitation course - designed to make offenders take more responsibility for their actions and reduce the risk of them re-offending. It is anticipated that this will prove to be a strong incentive leading to a significantly high level of course attendance particularly among novice drivers who will have their licence revoked if they accrue six penalty points within 2 years of obtaining the full licence. The cost and availability of courses are closely monitored by the Department and a lower fee will continue to apply for concessionary categories.
- (ii) Fixed penalty notices are about delivering speedy, effective and proportionate justice to lower level offences and the FPN for lower level drink driving offences is in keeping with FPNs for other driving offences i.e. incurs no disqualification period. It will only apply at the new low level offences – in other words at a level where there is currently no offence i.e. below 80mg. The option will not be available to high level first offences (detected at 80mg or above) or to second or subsequent offences. These drivers will be prosecuted through the courts as is currently the case.

Question 2 – Disqualified Until Tested

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.

Currently if a person is convicted of driving with excess alcohol, the court must order him to be disqualified for a minimum of 12 months (unless for special reasons the judge thinks it is appropriate to order a shorter period or not to disqualify at all). At the end of the period of disqualification, the person is required to apply for a provisional licence **and retake and pass both the theory and practical driving test.**

The 2016 Act contains new graduated penalties including graduated periods of disqualification. In particular, when someone is convicted in court of an offence where the BAC level is above the new limit but below the current limit (80 mg/100mls) - a new minimum disqualification period of 6 months will apply.

Question 2 invites consultees to consider whether it is necessary and appropriate to apply the re-test requirement, in such circumstances, for a disqualification period less than 12 months.

A minority of responses (3 out of 11) provided comments in relation to the Department’s proposed approach to restrict the re-test requirement for offences involving lower levels of alcohol. A sample of the comments received in response to this question is provided below to highlight the various views on the issue.

Motorcycle Action Group (MAG) indicated its support for the proposed approach. The response also referred to the detail provided in the consultation paper which advises that the requirement to re-sit a driving test is not viewed as a punishment as such but rather recognition that the person has not driven a vehicle for a protracted period and would therefore benefit from retraining. MAG suggests that the application of this rationale means ***‘a rider should be able to re-sit a test on the basis of the original testing regime in force at the time the motorcyclist passed their test. Any other arrangement would be essentially punitive’***.

In response to the re-test issue, the **Institute of Public Health in Ireland** believes consideration should be given to whether drink drivers have engaged in other risky behaviours or have acquired penalty points prior to conviction. Where

there is evidence to demonstrate a pattern of risky behaviours, IPH believes there should be a requirement for a convicted driver to re-sit their driving test, providing an opportunity to help modify other dangerous driving behaviours.

Brake, the road safety charity, is not supportive of the proposed restriction. The response from the organisation highlights that '**every drink drive offence is serious and deserves a ban and every ban should entail a re-test**'. **Driving is a privilege, not a right. If that privilege is not exercised responsibly, then it must be revocable.** The response goes on to point out that the change in drink drive legislation is being brought in to reflect evidence that even small amounts of alcohol can have a dangerous impact on driving and this must be echoed by the punishment.

Analysis of Responses:

When a driver is required to re-take a driving test whether Category A (motorcycle) or Category B (car) – the purpose of the test is to assess whether the driver has the skills required to drive unaccompanied in modern day driving conditions which is particularly important when a prolonged period of time has been spent away from driving as a result of a driving disqualification.

Addressing the dangerous driving behaviours of those who continue to commit driving offences on a regular basis is an important issue and continues to be at the forefront of the Department's efforts to improve road safety. There is no question that re-sitting the driving test plays an important role following a period of disqualification - currently a minimum disqualification period of 12 months applies - as a driver's overall ability to drive safely within the rules and regulations is re-assessed. The issue here is whether a re-test is necessary or appropriate for a low level BAC offence which incurs a shorter disqualification period.

It is worth highlighting that drivers who continue to commit driving offences will be picked up in the established penalty point system which allows courts to monitor the effect that punishments are having and impose a totting up disqualification when a driver reaches 12 or more penalty points through the culmination of one or more offences in any 3 year period. The new fixed penalty notice for low level drink drive offences will form part of this established system.

One of the responses highlights the very important point that even small amounts of alcohol can impair driving. The Department's central message has always been 'never ever drink and drive'. However, when someone does exceed the drink drive limit – it is important that the penalty incurred acts as a deterrent and is proportionate to the gravity of the offence as measured by the BAC level. The penalty should also attract public confidence as, generally, if a law is viewed as acceptable then people are more likely to comply with it.

In summary, the proposal to restrict the driving test re-sit requirement would only apply to one specific circumstance - when a person is convicted with a BAC level above the new limit but below the current limit (80 mg/100mls) and a minimum 6 month disqualification applies. In terms of responses to this question - nine out of the eleven responses have either indicated agreement to the proposed restriction or provided no comment.

Question 3 – High Risk Offenders

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

Currently, a person is categorised as a High Risk Offender (HRO) if disqualified for:

- having a BAC of two and a half times the limit (currently 200 mg/100ml) or more;
- failing to provide a sample to police for analysis; or
- being convicted of two drink drive offences within ten years.

Question 3 invites consultees to indicate if they agree with the Department’s approach to reduce the current BAC threshold for HROs based on two and half times the new prescribed limit of **50mg/100ml** for non-specified drivers.

Yes - 8	<p>The majority of respondents to this question indicated that they were in favour of the Department’s approach to reducing the threshold for HROs. A sample of the comments received in response to this question is provided below to highlight the various views on the issue.</p>
No - 1	
Not Specified - 2	
	<p>The Scottish Health Action on Alcohol Problems (SHAAP) indicated its support for the Department’s proposal. However, SHAAP believes that <i>‘the threshold is still too high and should be reduced over time and eventually brought into line with the standard limit’</i>.</p> <p>Rospa is also in support of reducing the threshold for HROs but highlights the point made in Sir Peter North’s June 2010 Report ‘Drink and Drug Driving’:</p> <p><i>A lower HRO threshold of 2 ½ times a new limit of 50 mg/100 ml would encompass a much larger group of offenders than at present, some of whom may not have an alcohol dependency problem which the HRO Scheme is aimed at addressing. The consequence of this is that a larger group of people would be required to be assessed by an approved doctor to ensure that they do not have an alcohol dependency or misuse problem before having their licence</i></p>

reinstated.

The **Institute of Public Health in Ireland** also agrees with the reducing the threshold for HROs and believes '**this is proportionate and will act as an additional deterrent**'. IPH also notes that in the case of HROs it is essential to consider other alcohol related harm and not just the immediate effects of drink driving.

The Motorcycle Action Group (MAG) does not support a reduction to the current HRO threshold and views this '**as an arbitrary increase in the level of punishment**'. MAG points out that it is not clear why increasing the penalties at the higher end is a logical consequence of reducing the threshold at the lower end. The response goes on to suggest that '**the pragmatic thing to do is leave the high risk offender threshold as it currently is, and review it on the basis of the effect of the other changes, with the option to introduce 125mg/100ml if the data points to this as beneficial**'.

Analysis of Responses:

It is important to clarify that the purpose and the scope of the HRO scheme is to determine whether drivers who have been convicted of repeated and/or serious drink driving offences are 'fit to drive' before the driver licence can be renewed. A HRO must complete a medical examination designed to make sure the driver does not have any medical condition that may affect fitness or suitability to drive, with a focus on any past or present alcohol abuse, misuse or dependency problems. Any other alcohol related harm would be outside the remit of this scheme.

The responses received have included valid points in relation to the likely increase in the number of HROs as a result of a new lower threshold and the need to ensure there is sufficient capacity to deal with this. The Department and its Driver Vehicle Agency - which operates the HRO scheme - is working closely with partner organisations to ensure robust procedural and operational systems are in place in advance of any change to the current drink drive regime in Northern Ireland.

Clearly, high-end drink driving is a very real concern in terms of road safety. The relative risk for drink drivers that have a BAC in excess of 200mg/100ml (i.e. two and a half times the current limit of 80mg/100ml) - and the current HRO threshold – has been calculated by NICE as being **501 times** as likely to die in a drink related crash as those who have no alcohol in their body. With a reduced HRO threshold of 125 mg/100 ml - as proposed by the Department - the corresponding relative risk has

	been calculated at 49 times ¹ . It is important to clarify that a second (or lower) HRO threshold will not be applied to the new 20mg/100ml limit which applies to learner, novice and professional drivers.
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¹ <http://webarchive.nationalarchives.gov.uk/20100921035225/http://northreview.independent.gov.uk/docs/NorthReview-Report.pdf>

Question 4 – Consultation Process

Do you have any comments to make on the consultation process?

A sample of the comments provided in response to this question is shown below.

The comments supplied have highlighted no problems or concerns with the consultation process. **Rospa** and the **Alcohol Health Alliance (AHA)** welcomed the opportunity to comment on the draft Statutory Rules while **Brake** advised that the process had been smooth and clear, with comprehensive explanatory notes.

Other comments provided in this section related to the general implementation of the new drink drive regime:

SHAAP would like to see the lower drink drive limits implemented as soon as possible and identified high profile campaigns as being essential to ensure widespread awareness of the legislation. The **Freight Transport Association** requested that industry and the general public is well notified prior to the new legislation coming into force and suggested that advice on drink driving policies could be provided to employers of vocational licence holders pre-implementation.

AHA highlighted a Private Member's Bill introduced to the House of Lords. The purpose of the Bill was to amend the Road Traffic Act 1988 to lower the prescribed limit of alcohol to 50mg / 100ml in line with the new limits applied in Scotland since December 2014. The Bill received its Third reading in the House of Lords on 5 May 2016 but made no further progress as the 2015/16 session of parliament ended.

Some comments provided in this section were outside the scope of the consultation. For example, the **Motorcycle Action Group** raised two areas of particular concern in relation to (i) random alcohol checks and (ii) removal of the right to opt for a blood or urine sample to replace a breath sample, in circumstances where the breath sample is marginally above the limit – known as the **statutory option**.

Analysis of Responses:

Both measures raised by MAG were included in the Road Traffic (Amendment) Bill which was subject to an extensive period of policy development and public consultation. The Bill was passed by the Northern Ireland Assembly early this year and the primary powers for both measures are contained in the 2016 Act. The following points may provide a useful recap:

- (i) The 2016 Act introduces **check point testing** as opposed to random alcohol testing. The key differences are planning, control and proportionality. Checkpoint testing will be intelligence-led. The police will plan targeted operations, at particular locations or close to establishments where alcohol is consumed. The date, time and duration of each operation will have to be approved at Inspector rank or above in advance. **Random breath testing** is a general unrestricted power which means a driver can be stopped randomly and asked to provide a specimen of breath. Following some reservations on the unrestricted nature of random breath testing, it was decided to refine the policy by introducing an element of control - leading to the introduction of checkpoint testing. There is no question - highly visible police enforcement activity in or near to places where alcohol is consumed will act as a deterrent to drink driving.
- (ii) The 'statutory option' refers to the right for a driver to ask for a blood or urine sample to replace a breath test sample where the breath reading is marginally above the legal limit. The blood or urine sample may only be taken by a doctor and obtaining a doctor to take a sample can take some time, particularly in rural police stations or at night and weekends. This could result in some drivers - who were over the limit at the time of driving and detection - falling below the limit by the time the sample is taken and evading prosecution. The decision to remove the statutory option was based on:
 - legal opinion
 - a strong lobby from the Environment Committee in favour of its removal;
 - the high level of public confidence in the reliability of modern breath testing equipment; and
 - the fact that the statutory option is now unique to Northern Ireland; Britain removed it from its legislation through the Deregulation Act in April 2015 and no other jurisdiction in Europe has the equivalent statutory provision.

SECTION 3: LIST OF RESPONDENTS

The Department received 11 responses to the consultation:

1. Freight Transport Association
2. ROSPA
3. Scottish Health Action on Alcohol Problems
4. Northern Ireland Policing Board
5. Alcohol Health Alliance UK
6. Brake, the road safety charity
7. Federation of Passenger Transport NI Ltd
8. Motorcycle Action Group
9. Institute of Public Health in Ireland
10. Federation of the Royal Colleges of Physicians of the United Kingdom
11. Mid and East Antrim Borough Council