GENERAL SCHEME OF A

ROAD TRAFFIC BILL 2015
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PART I
PRELIMINARY AND GENERAL

Head 1 - Short title, Commencement, Collective Citation and Construction

Provide that -

(1) This Act may be cited as the Road Traffic Act 2015.

(2) This Act comes into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes and different provisions.

(3) The Road Traffic Acts 1961 to 2014 and this Act may be cited as the Road Traffic Acts 1961 to 2014 and shall be read together as one.

Explanatory Note
These are standard provisions.
Head 2 - Definitions

Provide that –

Definitions are set out for Key Terms used in the Bill

Explanatory Note
These are standard provisions.
PART II
INTOXICATED DRIVING

Head 3 - Functions of the Medical Bureau of Road Safety

Provide that –

Section 26 of the Road Traffic Act 2010 is amended to expand the functions of the Medical Bureau of Road Safety to allow the Bureau to test, approve and supply devices, for the purpose of testing by An Garda Síochána for the presence of illicit or licit but potentially intoxicating drugs in a driver's body.

Explanatory Note

The MBRS will be empowered to test, approve, and supply to An Garda Síochána, devices to test for a range of drugs likely to cause impaired driving. The device will be selected by the MBRS after a competitive tendering process and will test for the presence of a number of drugs with a known potential to impair driving.

It is not yet established what drug(s) the selected device(s) will be able to detect. For this reason the legislation will need to be drafted in such a way as to allow for the drugs tested by the devices to be subject to change, without recourse to primary legislation.

It is intended that the new device should be used alongside, and in a broadly similar manner to, the current evidential breath testing devices used to detect alcohol.
Head 4 - Prohibition on Driving Mechanically Propelled Vehicle While Under the Influence of Intoxicant

Provide that –

Section 4 of the RTA 2010 is expanded to

(i) prohibit, and create an offence of, driving a mechanically propelled vehicle with the presence of an illicit drug in the driver’s body; and

(ii) prohibit, and create an offence of, driving a mechanically propelled vehicle while impaired due to the presence of a licit but potentially intoxicating drug in the driver’s body.

Explanatory Note

This head will expand section 4 of the RTA 2010 to prohibit, and create an offence of, driving or attempting to drive a mechanically propelled vehicle with the presence of an illicit drug. This will be determined by failing a test administered by a device provided for in Section 26 of the RTA 2010, as amended by this Act, and by the detection of an illicit drug in a specimen of blood provided by the driver under sections 12 or 14 (as amended by section 12 of the Road Traffic Act 2014) of the Road Traffic Act 2010.

It will also be made an offence to drive while impaired due to the presence of a licit but potentially intoxicating. Impairment will be determined via impairment testing as set out in section 11 of the Road Traffic Act 2010 (as amended by section 11 of the Road Traffic Act 2014).

For the sake of further clarity:

- It will not be an offence for a driver to have the presence in his/her body of a prescribed drug taken licitly in accordance with a prescription and advice of a medical practitioner as long as they are not impaired.

- It shall be an offence to drive, or attempt to drive, a mechanically propelled vehicle in a public place where a test, administered by an approved device, shows the presence of an illicit drug(s) in the driver’s oral fluid.

It will be necessary to define an “illicit drug”, perhaps on the lines of “a controlled drug [with no medicinal or therapeutic value or] which has not been prescribed by a doctor, nurse, midwife or dentist, or dispensed by a pharmacist”. 

Head 5 – Prohibition on Being in Charge of Mechanically Propelled Vehicle While Under Influence of Intoxicant

Provide that –

Section 5 of the RTA 2010 is expanded to:

(i) prohibit, and create an offence of, being in charge of a mechanically propelled vehicle with the presence of an illicit drug in the driver’s body; and

(ii) prohibit, and create an offence of, being in charge of a mechanically propelled vehicle while impaired due to the presence of a prescribed drug in the driver’s body.

Explanatory Note

This Head will expand section 5 of the RTA 2010 to prohibit, and create an offence of being in charge of a mechanically propelled vehicle with an illicit drug in the individual’s system. This will be determined by failing a test administered by a device provided for in Section 26 of the RTA 2010, as amended by this Act, and by the detection of an illicit drug in a specimen of blood provided by the driver under sections 12 or 14 (as amended by section 12 of the Road Traffic Act 2014) of the Road Traffic Act 2010.

The Head will also create an offence of being in charge of a mechanically propelled vehicle while impaired due to the presence of a licit but potentially intoxicating drug in the individual’s system. Impairment will be determined via impairment testing as set out in section 11 of the Road Traffic Act 2010 (as amended by section 11 of the Road Traffic Act 2014).

For the sake of further clarity:

- It will not be an offence for a driver to have the presence in his/her body of a prescribed drug taken licitly in accordance with a prescription and advice of a medical practitioner as long as they are not impaired.

- The taking of prescription drugs in accordance with the terms of the prescription will not be a defence under this legislation if the driver fails an impairment test administered under Section 11 of the Road Traffic Act 2014.

- It shall be an offence to be in charge of a mechanically propelled vehicle in a public place where a test, administered by an approved device, shows the presence of an illicit drug(s) in the driver's oral fluid.

It will be necessary to define an “illicit drug”, as per previous Head.
Head 6 - Obligation to Provide Oral fluid Sample

Provide that -

Section 9 of the Road Traffic Act 2010 is expanded to provide the Gardaí with the necessary powers to require a sample of oral fluid as well as, or instead of, a breath sample at the roadside in cases where a Garda forms the opinion that the person in charge of a vehicle in a public place has consumed intoxicants or suspects that a person may be unfit to drive due to intoxication.

The section should also provide for the driver(s) to be required to await the arrival of a device for up to one hour so that the same provisions which apply to evidential breath testing will apply to oral fluid sampling devices.

Insert after section 9 (1) (a) (i) -

1. Where a Garda is
   A. of the opinion that a person in charge of a vehicle (mechanical or animal drawn) in a public place has consumed an intoxicant
   or
   B. attends at the scene of a road traffic collision on in a public place in which injury appears or is claimed to have been caused to a person,

that member **shall** require a person or persons in charge of a vehicle, or vehicles, to provide a sample of oral fluid **AND** a sample of the driver’s breath for testing for the presence of an intoxicant.

2. At a duly authorised Mandatory Intoxicant Testing Checkpoint, a member of An Garda Síochána **shall** require a person or persons in charge of a vehicle, or vehicles, to provide a sample of oral fluid **AND/OR** a sample of the driver’s breath for testing for the presence of an intoxicant.

Include in section 9 (1) (a) (ii)

At the scene of a collision or road traffic offence, a member of An Garda Síochána **may** require a person or persons in charge of a vehicle, or vehicles, to provide a sample of oral fluid **AND/OR** a sample of the driver’s breath for testing for the presence of an intoxicant.

Explanatory Note
To extend the provisions of Section 9(1)(a) to provide a Garda with the necessary powers to require a sample of oral fluid in specified circumstances. In cases where a Garda forms the opinion that a person in charge of a vehicle in a public place is under the influence of an intoxicant, the Garda will required the person to provide a sample of breath for testing for alcohol and a sample of oral fluid for testing for drugs. The same will apply at the scene of a road traffic collision in which injury to a person has occurred or is alleged to have occurred.

At a Mandatory Intoxicant Testing (MIT) Checkpoint, a Garda may require a specimen or breath or oral fluid or both. Neither requirement should negate the power to make the other. For clarity’s sake –

Where at a MIT checkpoint a member has conducted a breath test for alcohol they may, whether the test was positive or negative, conduct an oral fluid test for intoxicants;

Where at a MIT checkpoint a member has conducted an oral fluid test for intoxicants they may, whether the test was positive or negative, conduct a breath test for alcohol.
Head 7 - Mandatory Intoxicant Testing

Provide that –

Section 10 of the Road Traffic Act 2010 is expanded to provide for mandatory intoxicant testing. This will allow for the use of oral fluid testing devices alongside or instead of alcohol testing thereby mirroring the established procedures for mandatory roadside testing for alcohol.

Mandatory Alcohol Testing Checkpoints (or MAT Checkpoints) will become known as Mandatory Intoxicant Testing Checkpoints (or MIT Checkpoints) in order to emphasise the concentration by the Gardaí on detections of intoxicated driving as opposed to just drunk driving.

A Garda operating a Checkpoint under this Section shall require a person to provide a sample of oral fluid for testing in an approved device where he forms the view that the person is under the influence of an intoxicant.

It will be made an offence for a driver to refuse to provide an oral fluid sample when required.

Section 10 (8) will be amended so that it applies equally to oral fluid sampling devices.

Explanatory Note

It is intended to amend Section 10 of the 2010 Act to allow for the use of oral fluid testing devices at the roadside alongside, or instead of, alcohol testing devices, thereby mirroring the established procedures for mandatory roadside testing for alcohol.

Mandatory Alcohol Testing Checkpoints (or MAT Checkpoints) will become known as Mandatory Intoxicant Testing Checkpoints (or MIT Checkpoints) in order to emphasise the concentration by the Gardaí on detections of impaired driving (through the consumption of drugs and alcohol) as opposed to drunk driving alone.

In the course of drafting, it will be necessary to consider whether the issue of moving the person to a safe place for testing should be addressed.
Head 8 – Obligation to Provide a Blood Specimen Following Arrest Under Part 2 of the Road Traffic Act 2010

Provide that –

Section 12 of the Road Traffic Act 2010 is amended –

1. So that where

   (i) a person provides an oral fluid specimen at the roadside that shows a positive reaction for the presence of an illicit drug, or
   (ii) a person provides an oral fluid specimen at the roadside that shows a positive reaction for the presence of a licit but potentially intoxicating drug AND tests positive for impairment according to impairment tests conducted under section 11 of the Road Traffic Act 2010 (as inserted by section 11 of the Road Traffic Act 2014)

and has been brought to a Garda Station, he/she must provide a blood sample to a designated medical practitioner or nurse at a Garda Station.

Refusal to provide or co-operate with the taking of a blood sample shall be an offence.

2. Where a person provides an oral fluid specimen at the roadside that shows a negative or inconclusive reaction for the presence of an illicit drug or a licit but potentially intoxicating drug a Garda, having reasonable grounds for believing the driver to be intoxicated, may demand that the person perform impairment tests as prescribed in section 11 of the Road Traffic Act 2010 (as inserted by section 11 of the Road Traffic Act 2014). If the result of impairment testing determines that the person is impaired, the Garda shall require a sample of blood to be provided to a designated medical practitioner or nurse at a Garda Station.

Refusal to provide or co-operate with the taking of a blood sample shall be an offence.

3. Section 12(1) is amended to restore the original intention of the section following the interpretation of the section adopted by the High Court in the case of DPP v Anna McMahon. The original intention in this section was that, if there was a failure to provide urine, the Garda could request a specimen of breath and/or blood. However, in the case in question Mr Justice Hedigan interpreted the law in this case to refer to breath only, i.e. once a person had chosen to provide a urine sample rather than blood, the law as interpreted in this case did not allow a reversion to the taking of a blood sample where the urine could not be provided. The Department wishes to amend the 2010 Act to make clear the original intention.

Explanatory Note
To allow the RTA 2010 to be updated/amended for testing to include testing for drugs, thereby mirroring the established procedures for mandatory roadside testing for alcohol (MAT).

This Head will expand the procedures in relation to providing a specimen at a Garda station to include a requirement to provide a blood sample where a person has provided an oral fluid
specimen which has tested positive for the presence of an illicit drug, or has tested positive for the presence of a licit but potentially intoxicating drug and failed an impairment test under section 11 of the 2010 Act as amended.

It will also address the case where the person tests negative for drugs but the Guard remains of the view that the person is intoxicated/impaired. In such a case the Garda will administer impairment tests. If the person tests positive for impairment, they may be arrested and brought to the Garda station, where there will be provision for the taking of a blood sample (as opposed to offering a choice of a blood or urine as in alcohol intoxication cases; MBRS recommends blood as being the sample of choice due to detection issues for drugs in urine samples).

It will be an offence to refuse to provide a specimen of blood, as for refusal in the case of tests for alcohol.

On point 3 - Under the provisions of section 12 of the Road Traffic Act 2010 (obligation to provide a specimen of breath, blood or urine following arrest under Part 2 of the Act), a person believed to be intoxicated due to alcohol, arrested and brought to a Garda Station may be required to provide a specimen of breath, and/or a specimen of blood. In the case of a requirement to provide blood, the person may opt to provide a specimen of urine instead. If they prove unable to produce a specimen of urine, the member of An Garda Síochána may make another requirement for a specimen. The intention was that in this case the member could ask for a specimen of breath or of blood. The law as it currently stands has been interpreted as meaning that, once a person has opted to provide urine rather than blood, the member can ask only for a specimen of breath if they fail to provide a specimen of urine. This was not the intention behind the original provisions, which were meant to allow that in such a case a member could request a specimen of breath OR blood. It is therefore proposed to revise the text here to meet the original intent.
Head 9 - Subsequent Consumption of an Intoxicant

Provide that –

It will not be a defence to have ingested drugs subsequent to detection (either by a Garda forming the opinion or as a result of a roadside impairment or device test).

Section 18 of the Road Traffic Act 2010 is amended to provide that it shall not be necessary to show that a defendant had not consumed an intoxicant after the time when the offence was detected and before a test was carried out or a blood sample taken.

Explanatory Note

To provide that it will not be a defence to have ingested drugs subsequent to detection (either by a Garda forming the opinion or as a result of a roadside impairment or device test). This parallels existing provisions in relation to alcohol.
Head 10 - Penalties for drug driving

Provide that -

(1) Penalties for drug driving will be similar to those applying to drink driving (in sections 4, 5 and 6 of the 2010 Act). This includes a fine not exceeding €5,000 and/or a term of imprisonment not exceeding 6 months for offences relating to a mechanically propelled vehicle (driving or being in control of). There will be an automatic ban on driving for three months for a first offence for those found to be driving with drugs in their system. In the case of driving, attempting to drive or being in charge of an animal-drawn vehicle while under the influence of drugs, the penalty will be a fine not exceeding €3,000 and/or a term of imprisonment not exceeding 1 month for a first offence, and a fine not exceeding €5,000 and/or a term of imprisonment not exceeding 3 months for a second or subsequent offence. In the case of driving or attempting to drive a pedal cycle, the penalty will be a fine not exceeding €2,000.

(2) In the event that a driver is convicted of being intoxicated by alcohol and a drug or combination of drugs, the ban, the fine, or other penalty may be increased to a maximum of 50% of the penalty for either substance alone.

(3) It will be necessary to amend section 26 and the Second Schedule of the Principal Act to provide for consequential disqualifications for the new offences.

Explanatory Note
This provision is required to create penalties for drug driving. It is also required to mark the seriousness of a driver being intoxicated by a combination of alcohol and drugs and to act as a serious deterrent to such activity.

The current penalties for drink driving and being in charge of a vehicle while above the alcohol limit are set out in Sections 4, 5 and 6 of the 2010 Act. These will be the basis of penalties for drug-related offences. The maximum penalty for driving while under the influence of drugs AND drink will be the maximum penalty for either alone in that case plus 50%.

These are all maxima, at the discretion of the judge – having regard to circumstances it would, for example, remain open to a judge to impose a lower fine on a person convicted of driving under the influence of drink and drugs than the maximum penalty for drink or drugs.

Consequential disqualifications are addressed in section 26 and Schedule 2 of the Principal Act, as amended by Section 65 of the 2010 Act. The period of disqualification could be treated as if it were a second offence (see Table with Section 65).
Head 11 – Amendment of Section 11 of the Road Traffic Act 2010 - Impairment Testing

Provide that –

Section 11 of the Road Traffic Act 2010, as substituted by section 11 of the Road Traffic Act 2014, is amended to allow that

(a) a member of An Garda Síochána may require a person to accompany him/her to a safe location to conduct the impairment test; and

(b) Refusal or failure to comply with this requirement is an offence.

Explanatory Note
Section 11 empowers members of An Garda Síochána to require drivers to undergo impairment testing under certain circumstances. However, it may not be practicable to conduct the tests safely at the roadside. In such circumstances, the member has no power to require people to move elsewhere for the test to be conducted. The present amendment is to remedy this situation. It is intended that the test would be conducted at a nearby safe location or at a Garda Station.
Head 12 – Amendment of Sections 12 and 14 of the Road Traffic Act 2010 – Testing for Intoxicants

Provide that –

Sections 12(1) and 14(1) are amended to remove any ambiguity attending on the referent of the phrase ‘first requirement.’

Explanatory Note
Sections 12 and 14 relate to provision of specimens of blood and urine (and breath, in the case of section 12). Both sections provide, in the same language, an option for a person of whom a requirement to provide a specimen of blood has been made, to provide a specimen of urine instead. In both sections, it is stated that where the specimen cannot be provided, a requirement in relation to a specimen ‘other than the first requirement’ may be made.
Recent case law has indicated that the reference to a ‘first requirement’ is ambiguous. In section 12, there is a reference to a requirement to provide a specimen of breath or a requirement to provide a specimen of blood, with urine as an alternative to blood. Section 14 relates only to blood and urine.
PART III
PENALTY POINTS

Head 13 - Amendment of First Schedule of Road Traffic Act 2002 – Penalty Points

Provide that –

(a) The Schedule to the RTA 2002 is amended to provide penalty points for a breach of the new provisions on use of electronic devices, including mobile phones, when driving being introduced in this Bill.

(b) The Schedule is amended by the insertion, after Part 11 (as inserted by section 10(h) of the Road Traffic Act 2014) of the following:

“PART 12

Contravention of Regulation 3 of the Road Traffic (Licensing of Trailers and Semi-Trailers) Regulations 1982 (S.I. No. 35 of 1982)

In this Part –

(a) ‘offence’ means an offence under section 10 of the Act of 1968,

(b) a reference to a Regulation is a reference to a Regulations of the Road Traffic (Licensing of Trailers and Semi-Trailers) Regulations 1982 (S.I. No. 35 of 1982)

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<th>General Description of Offence</th>
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<th>Penalty Points on Conviction</th>
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<td>(2)</td>
<td>(3)</td>
<td>(5)</td>
<td>(6)</td>
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<td>1</td>
<td>Offence consisting of contravention</td>
<td>Using a trailer or semi-trailer with a</td>
<td>2</td>
<td>4</td>
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<td>of Regulation 3</td>
<td>maximum permissible weight exceeding 3,500 kgs without a licence</td>
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(c) The Schedule is amended in Part 1 at reference number 2A (as inserted by section 44 of the Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012) by the insertion of the number “3” in column 4.

Explanatory Note

The penalty points regime was introduced under the Road Traffic Act 2002. In 2012, the Department conducted a comprehensive review of the system, and this led to a series of changes introduced via the Road Traffic Act 2014. Some changes were not ready to be implemented at that stage and are now being introduced. Other small necessary or consequential changes are also being made.

(a) Since the 2014 RTA, new regulations have been introduced making it an offence to text from a hands-free mobile phone. It was originally intended that we would, in this Head, amend the schedule to the RTA 2002 in order to add this to the list of penalty point offences. However, the Department’s intention now is to introduce a comprehensive measure dealing with use of electronic devices while driving, which will be included in the present Bill. It is therefore intended to amend the Schedule to the 2002 Act to provide for penalty points under that section.

(b) The proposed amendment creating a new Part 12 regarding trailers and semi-trailers arises as a result of experience following from the Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012. This amendment had been considered as a possible committee stage amendment to the 2014 Act, but was deferred due to lack of time.

It may be necessary to introduce additional amendments to reflect changes to regulations.

It is possible that some additional proposals for changes to penalty points may arise from subgroups of the Criminal Justice Working Group. These could be included in the Bill if ready in time.

(c) The offence of failure to have a certificate of roadworthiness was introduced into the Schedule to the 2002 Acts in two different places, via Part 8 and as offence number 2A in Part 1, inserted by the Act of 2012. This happened because the legislative basis for the offence changed. The latter is correct, and therefore Part 8 will be deleted under subhead (c) above. At the time of the 2012 Act, it was not intended to make this a fixed charge offence. Now, however, it is intended to so. Subhead (d) will therefore provide that a person paying the fixed charge for this offence will receive 3 penalty points.
PART IV
MISCELLANEOUS

Head 14 - Written-Off Vehicles/End of Life Vehicles

Provide that -

The Minister may make regulations in relation to the use, detention and destruction of a written-off mechanically propelled vehicle. A register of written-off vehicles should henceforth be maintained by the Minister in conjunction with the National Vehicle and Driver File.

The regulation-making powers should cover what criteria will have to be met for a vehicle to be written off, classification, use, detention and destruction of written-off vehicles, the records to be maintained, specification of who may determine that a vehicle is to be written-off, and conditions under which a vehicle may be removed from the written-off register (e.g. restoration of vintage cars).

It should be made an offence to use a written-off vehicle in a public place unless permitted in regulations.

Proposed Draft –

Provide that

(1) The Minister may make regulations in relation to the use, detention and destruction of a disabled mechanically propelled vehicle.

(2) Regulations under this section may, in particular and without any prejudice to the generality of subsection (1), provide for all or any of the following matters:

(a) the specification of different classes of mechanically propelled vehicles regarded as disabled;

(b) the specification of criteria for classification of disabled mechanically propelled vehicles;

(c) the prohibition on use of certain classes of disabled mechanically propelled vehicles;
(d) the destruction of certain classes of disabled mechanically propelled vehicles;

(e) the impounding of certain classes of disabled mechanically propelled vehicles;

(f) the conditions applying to the use of certain classes of disabled mechanically propelled vehicles.

(3) A person shall not use in a public place a vehicle which does not comply with a regulation under this section applying in relation to the vehicle.

(4) (a) A person who contravenes subsection (3) commits an offence and, where the person is not the owner of the vehicle, such owner also, in such cases as may be prescribed, commits an offence.

(b) Where a person who contravenes subsection (3) is not the owner of the vehicle and the owner is charged with an offence under this section, it is a defence to the charge for such owner to show that the use of the vehicle on the occasion in question was unauthorised.

Explanatory Note

This is a new section that will allow the Minister to make regulations in relation to the use, detention and destruction of a disabled or written off vehicles. At present there is no register of written-off vehicles, and the matters to be dealt with in regulations under the proposed new legislation are not presently addressed in law.
Head 15 - Amendment to Section 61 Finance Act 1993

Provide that -

Section 61 of the Finance Act, 1993 is amended to enable An Garda Síochána to have a service provider print "Court packs" which would include copies of the summons, certificate of posting of the Fixed Charge Notice, photos, and certificate of ownership.

Explanatory Note
Section 61 of the Finance Act 1993 provides for certification of NVDF data, typically in relation to vehicle ownership on the date of an offence, in support of court proceedings for road traffic and other violations. As matters currently stand these certificates are produced by AGS using the same data generated for the penalty notice etc and sent to the licensing authority for verification and signature. In practice the licensing authority merely signs/stamps and return them. AGS would like to get to a situation where a printing service provider will print "Court packs" which would include copies of the summons, certificate of posting of the FCN, photos, and certificate of ownership.

To ensure that the prosecution element and the evidential certificates remain separate and to maintain the spirit of the provision, it will probably be necessary to provide a separate NVDF data stream to the service provider for the certificates. The arrangement would also require digital signatures to be put in place between the NVDF (Minister) and the service provider and the details can be considered and decided at a later date.

More immediately it will be necessary to give legal footing to enable service providers and other parties in addition to the Minister and licensing authority to issue the certificates.

The proposed amendment will enable An Garda Síochána to have a printing service provider print "Court packs" which would include copies of the summons, certificate of posting of the FCN, photos, and certificate of ownership.

The section should specify that a certificate under Section 61 of the Finance Act 1993 may be issued by or on behalf of the Minister or a licensing authority or an administrative office of the Minister designated in that behalf by the Minister, or a person authorised under an agreement in writing entered into with the Minister and upon such terms and conditions as may be specified in the agreement. A certificate under this section may contain the signature of the authorised officer in electronic form and shall be deemed for the purposes of this section to have been signed by the officer.
Head 16 – Use of Public Roads for Racing of Animals and Animal-Drawn Vehicles

Provide that –

The racing of animals and animal-drawn vehicles on public roads is subject to approval by the relevant Local Authority, in consultation with An Garda Síochána. It will be made an offence to participate in such an event where it has not received prior approval of the Local Authority.

This will be achieved by amending the Roads Act 1993.

Powers will be required to demand name, address and date of birth etc from people participating in unlawful/unlicensed activities of this kind, along with a power of arrest if a member of AGS believes the information to be false or misleading. This will mirror provisions of section 107 of the Road Traffic Act 1961.

Explanatory Note

Racing of animals or animal-drawn vehicles on public roads can cause a major road safety hazard. This has been underlined by a number of cases in which races were conducted with sulkies on public roads which were open to public use at the time. Currently, the law allows action against the organiser of an unlicensed race. In many cases, particularly with sulky races, there is no formal organiser. The present provision will enable prosecution of those participating in such races. Events of this type will be subject to approval by the relevant local authority, which will be required to consult with An Garda Síochána before approving the said events.
Head 17 - Employer Responsibility to Test for Intoxicants

Provide that –

Employers of drivers who drive buses, minibuses or heavy goods vehicles will have a legal responsibility to test their drivers for intoxicants.

The provisions will include –

- Placing a duty on such drivers not to drive while unfit, as defined in relation to levels of alcohol or other intoxicants;
- Place a duty on employers in consultation with staff representatives, to draw up a code of conduct for such drivers, including sampling procedures to test for the presence of alcohol;
- Sampling for testing may take place when –
  (a) a supervisor has reason to believe that a driver who has reported for work is under the influence of an intoxicant;
  (b) at random;
- Employers will be required, where appropriate, to provide counselling where requested to facilitate workers who have difficulties with compliance;
- Sampling procedures allow for the testing of such drivers;
- That only a medical practitioner may take a specimen of blood or be provided with a specimen of urine;
- Arrangements for sampling where the individual has been hospitalised, and arrangements for testing;
- Employers to establish disciplinary procedures in relation to intoxication, and also an appeals process.

Explanatory Note
Measures to counter drink/drug driving have been strengthened in a number of ways in the past decade. This proposal will further strengthen the law by placing a responsibility on employers to test employees who drive buses, minibuses or heavy goods vehicles (HGVs). The focus on these classes of vehicles and HGVs reflects the particular responsibility for passenger safety involved in driving buses and minibus, the potentially danger to other road users posed by buses, minibuses and HGVs. The measures concerned will not affect small business, nor will they apply to taxis. These measures are similar to those applied in respect of ‘safety critical workers’ in railway undertakings, under the terms of Part 9 of the Railway Safety Act 2005.
Head 18 - Amendment of Section 38(1) of RTA 2010

Provide that -

Section 38(1)(a) of the Road Traffic Act 2010 is substituted to state that there is a presumption, until the contrary is shown, that the accused person received the relevant notice relating to the offence.

Explanatory Note

This is a technical amendment requested by the Director of Public Prosecutions. The DPP raised concerns about the wording of subsection 38(1) of the Road Traffic Act 2010 Act. The proposed new formulation is to create a simple presumption that a Fixed Charge Notice has been served, and follows the form of presumption set out in section 103(15) of the Road Traffic Act 1961 (as inserted by section 11 of the RTA 2002).

Section 38(1) creates a presumption that a Fixed Charge Notice (FCN) was served on the accused. The difficulty is that section 38(1) as currently structured requires the prosecution to be able to prove either (a) that the notice was served personally or affixed to the vehicle or (b) that there is evidence that it was posted (by producing the certificate of posting or delivery). It might also be necessary to prove in a case coming within (b) that the notice was not served personally or affixed to the vehicle. This is because the presumption that the notice "has been served" by post only arises in any case if the notice is "being served by post". This makes the presumption somewhat circular.

Section 38, it should be noted, has not yet been commenced. This is because many sections of Parts 3 and 5 of the 2010 Road Traffic Act are inter-linked and cross-referenced. Specifically, the delay in commencing the provisions to the third payment option (i.e. a further option to pay a fixed charge after a court summons but in advance of the hearing) has had implications for other provisions in the Act including Section 38 (1). The Department intends to introduce the third payment option in the course of 2016.
Head 19 - Amendment of Road Traffic Act 2010

Provide that -

Part 3 of the Road Traffic Act 2010 is amended -

(a) in section 35 -

(i) by substituting for subsection (2) the following:

“(2) A prosecution in respect of a fixed charge offence shall not be instituted unless a fixed charge notice in respect of the alleged offence has been served on the person concerned under this section and the person fails to pay the appropriate payment of the fixed charge in accordance with the notice at the appropriate time specified in the notice in relation to the payment.”,

and

(ii) in subsection (3)(a), by substituting for subparagraph (ii) the following:

“(ii) where the person is not identified and the offence involves the use of a mechanically propelled vehicle, by delivering it or leaving it at the address at which the vehicle is registered at the time of the alleged offence,”,

(b) in section 36(2) by substituting for paragraphs (c) and (d) the following:

“(c) if the person does not make the payment specified in paragraph (b) during the period so specified, the person may, during the period of 28 days beginning on the expiration of that period, make a payment of a fixed charge as specified in the notice of an amount 50 per cent greater than the prescribed amount referred to in paragraph (b), and

(d) a prosecution in respect of the alleged offence will not be instituted during the periods specified in the notice or, if a payment so specified in accordance with the notice is made during the appropriate period so specified in relation to the payment, at all.”,
(c) in section 37(1), by substituting for paragraph (a) the following:

“(a) a person or the person to whom the notice applies may, during the period specified in the notice and in accordance with the notice, make a payment specified in the notice, at the appropriate time so specified in relation to the payment,.”.

**Explanatory Note**

During the drafting of the Vehicle Immobilisation Bill, the Office of the Parliamentary Counsel to the Government observed that there was a need to improve the wording of the 2010 Act in relation to fixed charge notices. The necessary changes are now being proposed in the present Bill.
Head 20 - Restriction on Use of Electronic Communications Devices while Driving

Provide that –

The use of electronic devices to send or read text messages, to use smartphone apps or to connect with the internet or access social media while driving a mechanically propelled vehicle or an animal-drawn vehicle on a public road is prohibited.

Explanatory Note

Section 3 of the Road Traffic Act 2006 prohibits holding a mobile phone while driving. The same section permits the Minister to make regulations for a number of other situations regarding electronic communications, including uses of a mobile phone other than when it is held. The latter power has been used to prohibit text from a hands-free mobile phone while driving.

However, technology has advanced rapidly in this area, and is likely to do so in future. Information and communications technology can, if used in conjunction with driving, create a serious risk of distraction and therefore of accident.

The Department has considered the best way in which to address the rapidly changing information and communications technology environment and the risk it poses to driving. While it is difficult to cover all possible present and future technologies, the Department has decided to act to eliminate all texting and internet access via the present amendment. The intention is that contacting emergency services would be exempt.

This will involve extending prohibitions under the law to use of various smartphone apps, as well as extend the coverage of the law to other kinds of devices, e.g. tablets, as well as mobile phones.
Head 21 - Mutual Recognition of Driving Disqualifications

Discussions have been completed with the UK on the text of an agreement on mutual recognition of driving disqualifications. The Agreement is now being submitted through Department of Foreign Affairs to Government seeking formal approval to sign the Agreement. A Head will be included in the Bill to facilitate the entry into force of the Agreement.

Provide that –

Where a UK competent authority notifies the Irish central authority in accordance with Article 3 of the Agreement that a person normally resident in Ireland or holding an Irish driving licence has been disqualified for a period in the UK for a specified offence, and transmits the documents specified in Article 6.1 of the Agreement, and where appropriate, the evidence referred to in Article 6.2 of the Agreement and the supplementary evidence referred to in Article 6.3 of the Agreement - the Irish central authority may make an application to the appropriate judge for an order of disqualification. The judge may make an order disqualifying the person from holding an Irish driving licence.

The specified offences to be covered, which are set out in Annex 1 of the Agreement, are:-

1. Reckless or dangerous driving (whether or not resulting in death, injury or serious risk).
2. Wilful failure to carry out the obligations placed on drivers after being involved in road accidents.
3. Driving a vehicle while under the influence of alcohol or other substances affecting or diminishing the mental and physical abilities of a driver.
4. Refusal to submit to alcohol and drug tests
5. Driving a vehicle faster than the permitted speed
6. Driving a vehicle whilst disqualified.
7. Other conduct constituting an offence for which a driving disqualification has been imposed by the State of the offence:
   a. of a duration of six months or more, or
   b. of a duration of less than six months where this has been agreed between the UK and Ireland.

The period of disqualification in the State

- Shall take into account any part of the period of disqualification that has already elapsed in the UK by deducting that from the period of disqualification from holding a licence in this State.

- Shall be from a date specified in the order.

- Shall not extend beyond the duration of the driving disqualification in the UK.

- shall not be imposed beyond the date of expiration of the disqualification in the UK

The duration of the disqualification may be reduced but only to the maximum term provided for acts of the same kind under the law of the State.
An order shall not be made where:

- The driving disqualification has already been fully served in the UK.
- The offender has already had a driving disqualification imposed on him in Ireland for the same acts and that disqualification is being or has been served.
- The period of limitation for prosecuting the offence would have expired under Irish legislation, or
- the Judge considers, in the circumstances of the particular case after reviewing any information supplied under Article 6 of the Agreement, that the person did not have adequate opportunity to defend him/herself [in the proceedings in the state in which the offence was committed].

The judge may refuse to make an order if the specific conduct for which the disqualification was imposed does not constitute an offence in this State. The judge may also refuse to make an order if less than three months of the period of disqualification remains to expire or if the disqualification is not a measure available under the legislation of the State for the acts giving rise to the driving disqualification imposed by the UK.

Where the appropriate judge refuses to make an order of disqualification, the registrar or clerk of the court concerned or other designated member of the Courts service staff shall notify the Irish central authority of same, and the Irish central authority will inform the UK central authority of same.

Where a driving disqualification is imposed in the State on a person normally resident in the UK or holding a UK driving licence the registrar or clerk of the court concerned or other designated member of the Courts service staff shall notify the Irish central authority of the disqualification.

The Irish central authority shall notify the UK central authority of the disqualification and shall ensure that Article 6 of the Agreement [regarding appropriate documents and information relating to the disqualification] is complied with. The Irish central authority shall, if necessary, request the courts service to provide any necessary supplementary information required.

The Irish central authority shall not be obliged to carry out the actions in the preceding paragraph (notify the UK central authority, request supplementary information from the Courts Service, etc) if the circumstances of the case fall within the circumstances set out in Article 5 2. of the Agreement.

Judicial notice shall be taken of the Agreement

Definitions for certain terms used here to be set out including “appropriate judge”, “the Agreement” and “specified offence”, and that a word or expression that is used here and is
also used in the Agreement has the same meaning as in the Agreement unless the context otherwise requires

Explanatory Note
The section in the Bill relating to the above is designed to facilitate the entry into force of an Agreement between Ireland and the UK in applying driving disqualifications for a number of specified serious road traffic offences committed by persons normally resident in or holding a driving licence from one State where the offence was committed in the other State.

The decision by the UK to withdraw from EU arrangements on mutual recognition of driver disqualifications (the EU Convention on Driving Disqualifications) with effect from 1 December 2014 has necessitated the negotiation of a bilateral agreement between the UK and Ireland. Prior to 1 December 2014 mutual recognition of driving disqualifications between Ireland and the UK was in place for almost five years based on the EU Convention and Section 9 of the Road Traffic Act 2002 as amended. Discussions have been completed with the UK on the text of an agreement on mutual recognition of driving disqualifications. The Agreement is now being submitted through Department of Foreign Affairs to Government seeking formal approval to sign the Agreement. This agreement will require to be underpinned by primary legislation. The Minister therefore wishes to incorporate the necessary provisions in the present Bill.
Head 22 - Amendment of Section 47 of the Road Traffic Act 1961 – Speeding Offences

Provide that -

“Section 47 of the Road Traffic Act 1961 is amended by the deletion of subsection (3).”

Explanatory Note

Section 47 makes it an offence to exceed the speed limit applicable to a vehicle, or to the road on which it is used, where the latter is lower. Currently, section 47(3) defines the term ‘speed limit’ for the purpose of section 47 as referring to one of seven different types of speed limit. This is not necessary, and creates needless complexity.

If considered as defining the use of the term ‘speed limit’, section 47(3) is circular, to the extent that the words ‘speed limit’ appear in each of the seven cases. It is not in fact a definition of ‘speed limit’ – a term not defined in Road Traffic legislation – but a limit of the use of the term in this case to certain types of speed limit. The Road Traffic Acts presume the meaning of ‘speed limit’ – as opposed to different classes of speed limit – to be intelligible without definition.

Taken in its own terms, 47(3) is inadequate as well as unnecessary. Section 47(1)(a) expressly applies to the ‘speed limit’ which applies to a vehicle, yet 47(3) does not include the limit applying to a vehicle as coming within the meaning of ‘speed limit’ for the purposes of the section.

Having considered observations received, the Department on reflection believes that the deletion of section 47(3) will best achieve the intended goal.
Head 23 – Amendment of section 78A of the Road Traffic Act 1961 - Sharing of Insurance Information by Insurers

Provide that -

Section 78A of the 1961 Act, as inserted by section 77 of the Road Traffic Act 2010 to include information on –

- Particulars (Name & Address of person to whom the policy of insurance has been issued)
- Period of cover
- Limitations as to Use
- Persons, or Classes of Persons, whose liability is covered,
- Vehicles, or Classes of Vehicles, the use of which is covered, (including Registration No.)
- Drivers, or Classes of Drivers, whose driving is covered,

This list parallels information which may be requested under section 106 of the 1961 Act, as amended.

Explanatory Note

Section 78A provides for insurers to provide certain details to the Minister, An Garda Síochána, and the Motor Insurance Bureau of Ireland (MIBI) details of new policies issued and existing policies cancelled. However, the section does not at present specify what details are to be provided. This will be amended by the current proposal.
Head 24 – Amendment of section 107 of the Road Traffic Act 1961

Provide that -

Section 107 of the Road Traffic Act 1961 is amended –

- In subsection (1) to apply to a person using a pedal cycle as well as a person using a mechanically propelled vehicle;
- In subsection (4) to refer to the use of a pedal cycle as well as a mechanically propelled vehicle.

Explanatory Note

Section 107 creates a duty for a person using a mechanically propelled vehicle to provide their name, address and date of birth to a member of An Garda Síochána in certain circumstances. It is offence to refuse to give such information or to give false information. There is a power of arrest in such cases, with a maximum prescribed fine of €2,000. It is the policy of the Department that road traffic offences committed by pedal cyclists should be brought within the fixed charge notice regime. In order to enable this policy to operate, the current powers to demand information of a cyclist under section 108 of the 1961 Act will be insufficient, as that section does not contain reference to an offence, power or arrest, or a fine. It is therefore proposed to amend section 107 so as to give An Garda Síochána the necessary powers to ensure proper enforcement of the fixed charge regime on cyclists.
Head 25 – Road Works Speed Limits

Provide that –

Section 10 of the RTA 2004 is amended to provide enabling powers to allow for strengthening the ability to set and manage road works speed limits by city and county councils in accordance with any regulations, directions or guidelines issued by the Minister.

Explanatory Note

The current provision for road works speed limits has proved difficult to operate by local authorities. This is particularly so in relation to notification requirements as well as the timing of roadworks and location of work-zones. This head will allow the Minister to amend or vary these requirements as well as to set other requirements that will help in the provision of Speed Limits at road works.