

Gearing up



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Legislative Proposals on Drink / Drug Driving

12th April 2019

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NATIONAL ALCOHOL POLICY 2018- 2023

“The National Alcohol Policy identifies measures addressed to the entire population as well as specific measures targeting young people and **drink driving**... The policy per se is thus an attempt to reduce and prevent the potential harm and negative consequences of alcohol on the individual, the family and society in its widest sense. “

3.3 Policy actions to reduce drink driving

*The context discussed in the previous sections calls for the undertaking of the **following actions to reduce drink driving** which are geared to further support those related to the penalty point system that is currently in force.*

Action 18:** Ensure that the necessary legislative support is always adequate so as to enable law enforcement officers to carry out random breath testing and behavioural road side tests as well as **compulsory road testing following a road accident.

Action 19: Introduce a Blood Alcohol Content (BAC) limit of 0.2 g/l for: learner drivers, novice drivers having held a driving licence for less than two years, motorcyclists, drivers of lorries weighing more than 3.5 tonnes, or carrying dangerous goods, any passenger vehicle fitted with more than eight passenger seats and taxis.

Action 20: Reduce BAC from 0.8g/l to 0.5g/l for all other drivers.

Act XIV of 2017 – has already made the prescribed limit stricter

Action 21: Work to ensure that penalties for drink driving offences are increased.

Action 22: Introduce mandatory assessment, education and treatment for drink driving offenders.

Action 23: Further promote and encourage the concept of “designated driver” whereby amongst a group of friends driving together to an event, one takes it in turn not to drink prior to or at the event and thus drive the group safely to and from the event.

Section 15C of Chapter 65 – Traffic Regulation Ordinance

“Where a Police officer reasonably suspects that –

- (a) a person is driving or attempting to drive or is in charge of a motor vehicle or other vehicle on a road or other public place and has alcohol or drugs in his body or has committed an offence against the provisions of this Ordinance or against any regulations made there under whilst the motor vehicle or other vehicle was in motion; or
- (b) a person has been driving or attempting to drive or has-been in charge of a motor vehicle or other vehicle on a road or other public place with alcohol or drugs in his body and that that person still has alcohol or drugs in his body; or
- (c) a person has been driving or attempting to drive or has-been in charge of a motor vehicle or other vehicle on a road or other public place and has committed an offence against the provisions of this Ordinance or against any regulations made there under whilst the motor vehicle or other vehicle was in motion; or
- (d) a person was driving or was attempting to drive or was in charge of a motor vehicle or other vehicle on a road or other public place when that motor vehicle or other vehicle was involved in an accident,

he may require that person to provide a specimen of breath for a breath test.”

Section 15C of Chapter 65 – Traffic Regulation Ordinance is based on reasonable suspicion and affords discretion to the Police officer on whether or not to carry out a breath test. It is sufficient the Police officer has reasonable suspicion that a person was driving a motor vehicle on a road or other public place when that motor vehicle was involved in an accident (paragraph d).

However the breath test is not compulsory in the case of a traffic accident even it involves death or bodily.

*Action 18 of the National Alcohol Policy: Enable law enforcement officers to carry out **compulsory road testing following a road accident***

MIA Legislative Proposal:

Where a motor vehicle is involved in an accident which gives rise to death or personal injury of any person, the Police officer shall in all cases require the person in charge of the motor vehicle to submit to an alcohol and / or drug test.

Action 18 of the National Alcohol Policy: Ensure that the necessary legislative support is always adequate so as to enable law enforcement officers to carry out random breath testing and behavioural road side tests

Ireland: Road Traffic Act 2016

Section 11

**“Mandatory intoxicant testing”
amending section 10 of the 2010 Act**

Irish Road Traffic Act

Mandatory intoxicant testing

A member of the Garda Síochána, who is on duty at a checkpoint, may stop any vehicle at the checkpoint and, without prejudice to any other powers (including the functions under section 9) conferred on him or her by statute or at common law, may require a person in charge of the vehicle to do one or more of the following:

- (a) to provide a specimen of his or her breath (by exhaling into an apparatus for indicating the presence of alcohol in the breath) in the manner indicated by the member;
- (b) to provide a specimen of his or her oral fluid (by collecting a specimen of oral fluid from his or her mouth using an apparatus for indicating the presence of drugs in oral fluid) in the manner indicated by the member;
- (c) to accompany him or her or another member of the Garda Síochána to a place (including a vehicle) at or in the vicinity of the checkpoint and there to provide a specimen of his or her breath, as specified in paragraph (a), a specimen of his or her oral fluid, as specified in paragraph (b), or both, in the manner indicated by him or her or that other member;
- (d) to (i) leave the vehicle at the place where it has been stopped, or (ii) move it to a place in the vicinity of the checkpoint, and to keep or leave it there until the person has complied with a requirement made of him or her under any of paragraphs (a), (b) and (c).

Section 355 of the Criminal Code

Road Checks

Grants power to the Police to organise a road check where there are reasonable grounds for believing that a check on vehicles in or passing through to a locality may lead to one of the situations contemplated in paragraphs (a) to (g).

The Police has the express power to stop vehicles and to search vehicles pursuant to Article 355A of the Criminal Code, but there is no express power to carry out compulsory alcohol or drug tests on the drivers stopped in the road block.

MIA Legislative Proposal: Testing at Road Blocks

355A (1) For the duration of the road check the Police may stop all or any vehicles passing through or in the locality where the road check is being organised.

(2) Where a vehicle has been stopped in pursuance of the provisions of this sub-title that vehicle may be searched by the Police.

(3) Where a a vehicle has been stopped in pursuance of the provisions of this sub-title, the Police may require the person in charge of the motor vehicle to submit to an alcohol and / or drug test and the provisions of articles _____ of the Traffic Regulation Ordinance shall apply.

MIA Legislative Proposal

Testing for Drugs

Section 15A of Chapter 65 of the Laws of Malta provides that no person shall drive or attempt to drive or be in charge of a motor Vehicle or other vehicle on a road or other public place if he is unfit to drive through drink or **drugs**.

However Section 15B of Chapter 65 of the Laws of Malta only covers alcohol, and does not cover drugs:

“No person shall drive, attempt to drive or be in charge of a motor vehicle or other vehicle on a road or other public place after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit.”

MIA Legislative Proposal

Testing for Drugs

Proposed amendment to Section 15B of Chapter 65 of the Laws:

15B (1) No person shall drive, attempt to drive or be in charge of a motor vehicle or other vehicle on a road or other public place after consuming so much alcohol or drugs that the alcohol or drugs in his body exceeds the prescribed limit.

Testing to cater both for alcohol and for drugs

15C Where a Police officer reasonably suspects that:

he may require that person to submit to an alcohol and / or drug test and for this purpose require that person-

(i) to provide a breath specimen and / or oral fluid specimen from the mouth for analysis by means of an approved device, according to regulations made under this Ordinance; and / or

(ii) to provide a specimen of blood and / or urine for laboratory analysis, which shall take place at an approved laboratory, according to regulations made under this Ordinance:

Provided that the Police may require more than one specimen.

MIA Legislative Proposal

Increase in fines

Article 15(H)

(1) Every person who contravenes any of the provisions of articles 15A and 15B shall be guilty of an offence and shall on conviction for such an offence be liable –

- (a) in the case of a first conviction, to a fine (multa) of not less than three thousand euro (€3,000) or to imprisonment not exceeding six months, or to both such fine and imprisonment; [currently EUR 1,800]
- (b) in the case of a second or subsequent conviction, to a fine (multa) of not less than five thousand euro (€5,000) or to imprisonment not exceeding one year, or to both such fine and imprisonment. [currently EUR 3,000]

THE END

Thank-you for your attention

Dr. Paul Cachia