

Title: Drink Driving: Removal of Statutory Option (North reforms) IA No: Lead department or agency: Department for Transport Other departments or agencies: Home Office Ministry of Justice	Impact Assessment (IA)		
	Date: 08/10/2012		
	Stage: Development/Options		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
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Summary: Intervention and Options	RPC: RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£10.4m	0	0	No
			NA

What is the problem under consideration? Why is government intervention necessary?

The current prescribed limit for driving with excess alcohol is expressed in terms of alcohol concentrations in breath, blood and urine. The statutory option currently allows suspects whose breath alcohol concentrations readings do not exceed 50 microgrammes of alcohol per 100 millilitres of breath (the prescribed limit is 35 by comparison) to ask for a blood or urine test (named 'the statutory option'). The results of this test replace those of the breath test. The option is a redundant provision, which uses significant resources. It also enables some people with positive breath tests to avoid the drink drive offence; because it can take a long time to organise a blood test and they have sobered up sufficiently.

What are the policy objectives and the intended effects?

The overall policy aim is to contribute to streamlining the enforcement process for drink driving to ensure the more efficient use of police resources. More detailed objectives of the proposal are: to make the application of the drink driving law fairer to suspects, regardless of how they are tested and their knowledge of the law; to ensure that people who are driving above the prescribed limits for drink are prosecuted successfully; to increase the efficiency and effectiveness of enforcement activity using current equipment; to increase the efficiency and effectiveness of enforcement activity using mobile evidential breath testing equipment; and to contribute towards more credible and effective drink driving law.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

The independent North review considered a wide range of changes associated with the drink driving law and there has been a Government response proposing to implement many of its recommendations, including to abolish the statutory option. This would involve a change to primary legislation. Besides doing nothing, the options considered have been:

- **Option 1:** removal of the statutory option without any changes in prescribed limits; and
- **Option 2:** removal of the statutory option with revised prescribed limits for blood and urine based on a different implied blood to breath alcohol concentration ratio.

Option 1 is the preferred option with 2 not being proposed for implementation.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 12/2016					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro No	< 20 No	Small No	Medium No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded:	
				Non-traded:	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:  Date: 26/10/2012

Summary: Analysis & Evidence

Policy Option 1

Description: Removal of the Statutory Option without any changes to prescribed drink drive limits

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low (high vol of cases): £7.4m	High (low vol of cases): £12.7m	Best Estimate: £10.4m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	£1.1m	£8.7m
High	Optional	£0.1m	£0.9m
Best Estimate	0	£0.5m	£4.4m

Description and scale of key monetised costs by 'main affected groups'

The Crown Prosecution Service, court, legal aid, probation and prison combining will incur net present costs of £3.5m due to cases proceeding to court and conviction with the abolition of the statutory option, which would otherwise have been stopped due to the lack of a timely statutory option test. There will be extra costs to the police of about £0.8m, which relate to cases proceeding to court.

Other key non-monetised costs by 'main affected groups'

Note: The net present value is lower for the higher forecast of the volume of cases affected compared to the low forecasts, as costs increase more substantially than benefits with the rise in volumes going to court.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	£2.0m	£16.2m
High	Optional	£1.7m	£13.6m
Best Estimate	0	£1.8m	£14.7m

Description and scale of key monetised benefits by 'main affected groups'

The Police are estimated to save just over £13m as a result of not conducting statutory option tests. Given the additional Police costs from more offenders attending court, the net benefit to the Police are approximately £12.5m. The Exchequer is expected to accrue approximately £1.3m in court fine revenue and the victim surcharge will raise about £70,000.

Other key non-monetised benefits by 'main affected groups'

- Assists the efficient and effective deployment of mobile evidential breath testing equipment by police as the police do not need to take suspect to the police station for taking alternative sample.
- The removal of the statutory option will enable more publicity about drink driving enforcement, to increase the fear of detection, reduce the behaviour and improve road safety.
- Assists ensuring people driving above the prescribed limit are prosecuted following a timely test, hence protecting the credibility and perceived fairness of the law.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

(a) Projected volume of drink drive cases, including volumes of proceedings involving the statutory option.
 (b) Forecasting police working practices related to: the deployment of medical personnel to ensure timely tests if the statutory option continues. Timely tests mean very few statutory option cases cannot proceed to court already. Delayed tests mean a lot of proceedings stop and how custody nurses are deployed by the police affects this rate. (c) The costs used for police time and criminal justice costs are also important in the analysis. (d) Implementation date, which is subject to securing time in Parliament.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0 Benefits: 0 Net: 0	No	NA

POLICY OPTION 2

Option 2: Removal of the Statutory Option with revised prescribed limits for blood and urine based on a different implied blood to breath alcohol concentration ratio.

Same costs and benefits as option 1.

Evidence Base (for summary sheets)

There is discretion for departments and regulators as to how to set out the evidence base. However, it is desirable that the following points are covered:

- Problem under consideration;
- Rationale for intervention;
- Policy objective;
- Description of options considered (including do nothing);
- Monetised and non-monetised costs and benefits of each option (including administrative burden);
- Rationale and evidence that justify the level of analysis used in the IA (proportionality approach);
- Risks and assumptions;
- Direct costs and benefits to business calculations (following OIOO methodology);
- Wider impacts (consider the impacts of your proposals, the questions on pages 16 to 18 of the IA Toolkit are useful prompts. Document any relevant impact here and by attaching any relevant specific impact analysis (e.g. SME and equalities) in the annexes to this template)
- Summary and preferred option with description of implementation plan.

Problem under consideration

1. The problem under consideration is that the procedures for the evidential testing of drink drivers include a redundant provision, known as the statutory option. The statutory option is also resulting in some suspects who would have exceeded the limit had tests been completed in a timely way being tested as not exceeding the limit.
2. Breath tests had been allowed for screening but not for evidential tests in 1967 legislation. The legislative provision to enable evidential breath testing was introduced in 1981, with devices being used soon afterwards. At the time of the 1981 legislation, breath test machines had not been used on an evidential basis in Britain. There were concerns about their reliability and there had been challenges in court about the use of breath test machines as screening devices. Statutory option was therefore introduced to allay fears on over reliance of breath testing equipment at lower end of drink driving limit.
3. The current procedures for evidential specimens are outlined.
4. Evidential specimens for alcohol in relation to road traffic offences can be of breath, blood or urine. The evidential specimen required of suspects must be a specimen of breath except where one of several specific circumstances exists. These exceptions are:
 - a. when a police officer has reasonable cause to believe a breath specimen cannot be taken for medical reasons;
 - b. when a reliable breath testing device is not available; and
 - c. when a police officer has reasonable cause to believe a breath testing device has not produced a reliable reading.
5. Therefore the vast majority of evidential specimens are of breath. Where breath is used, two evidential specimens are required. The evidential breath specimen with the lower proportion of alcohol is used and the other one disregarded.
6. No change to any of these provisions is being proposed in this consultation.
7. The 'statutory option' provides people with the right to replace their breath alcohol specimens with either a specimen of blood or specimens of urine in cases where the lower of the two breath readings provided is less than 50 mcg of alcohol per 100 ml of breath. (The prescribed breath alcohol limit is 35, although there is a charging threshold of 40 in operation).
8. It is this provision which the Department is consulting about repealing. This would involve the repeal of sections 8(2), 8(2A), and 8(3) of the Road Traffic Act 1988 (RTA) and making a number of consequential amendments including to section 8(1) RTA.

Rationale for Intervention

9. This impact assessment relates to the proposal to withdraw the 'statutory' option.
10. For around 30 years, there has been extensive use and development of evidential breath testing machines, which have been used following robust and revised type approval processes. We therefore consider that the concerns about reliability and challenges to evidential breath test results no longer justify the retention of the statutory option.
11. The withdrawal of the 'statutory option' is one of the legislative changes the Government proposed in its response of March 2011 to the reports by Sir Peter North and the Transport Select Committee on drink and drug driving ("the Government's response"). The report by Sir Peter North itself recommended (recommendation 11 about drink driving) that: "The statutory option contained in Section 8(2) of the Road Traffic Act 1988 should be removed."
12. The Government response (Executive Summary) indicated that:

"Our strategy is to focus resources and any legislative changes on measures which will have the most impact in reducing dangerous behaviours. There are therefore two main priorities to continue the successful abatement of drink-driving and achieve similar success against drug-driving:

 - a. to give the police effective tools to identify and proceed against drug-drivers;
 - b. to streamline the enforcement process for drink and drug driving to ensure the most efficient use of police and other enforcement resources.

"We will implement the following measures [full list includes other changes not requiring changes to primary legislation]:

- revoke the right people have to opt for a blood test when their evidential breath test result is less than 40% over the limit (the 'statutory option')*;
- streamline the procedure for testing drink-drivers in hospital*;
- provide for preliminary testing not to be required where evidential testing can be undertaken away from the police station*; and
- delegate to custody nurses the assessment police doctors are now required to make of suspected drug-drivers*.

"We have concluded that improving enforcement is likely to have more impact on the most dangerous drink-drivers, whereas it would not be value for money - or the most effective use of resources - to lower the prescribed alcohol limit for driving. The reasons are explained in detail in the attached paper.

"We will progress work on a new offence relating to driving with a specified impairing drug in the body.

"Primary legislation is required in relation to those items marked *, and to enable any new drug offence, and we will seek a slot for this at the earliest opportunity. Full impact assessments, including among other things the potential impacts on enforcement and the judicial system, will be prepared in the usual way when legislation is brought forward."

13. We therefore are proposing to consult about the changes to legislation. The item related to the assessment of suspected drug-drivers is the subject of stakeholder consultation. The proposals related to preliminary testing and testing in hospitals relate to procedures and have no significant impacts for the public, businesses or the criminal justice system. They are proposed to bring procedures into line with those adopted in other contexts and to avoid the possibility of procedural mistakes jeopardising prosecutions.
14. Indeed a recent survey, taken in a police force area where all major custody centres have resident nurses, indicated that virtually all statutory option cases there resulted in a positive blood or urine specimen.
15. However, where a police custody centre does not have a resident nurse and therefore the specimen of blood cannot be taken at effectively the same time as breath was provided, there may be a negative statutory option result due to delays in taking the specimen. There are two phases for the behaviour of alcohol in the body: absorption (when the alcohol concentration will be increasing) and elimination (when the alcohol concentration will be decreasing). It is likely that most drivers arrested

for drink driving will be in the elimination phase during any period of time between the provision of breath and the arrival of a doctor to take any blood specimen.

16. During that time, some of the suspects who have provided breath specimens where the lower does not exceed 50 mcg of alcohol /100ml of breath and are therefore eligible for the 'statutory option' will have sufficient alcohol eliminated naturally from their bodies to pass the further evidential test. Indeed research prior to, and for, the North review (and done prior to the routine establishment of resident custody nurses) indicated that about a quarter of statutory option tests resulted in specimens below the prescribed limit. Almost invariably these tests relate to people who would also have been in excess of the prescribed limit had a blood (or urine) specimen been taken at the time of their evidential breath test.

Policy Objectives

17. The overall policy aim for the proposal related to the 'statutory option' is to contribute to streamlining the enforcement process for drink driving to ensure the most efficient use of police resources. This objective was the overall priority relevant to drink driving set in the Government response of March 2011 to the North review about drink and drug driving law.
18. More detailed objectives of the proposal are:
- to make the application of the drink driving law fairer to suspects, regardless of how they are tested and their knowledge of the law;
 - to ensure that people who are driving above the prescribed limits for drink are prosecuted successfully;
 - to increase the efficiency and effectiveness of enforcement activity using current equipment;
 - to increase the efficiency and effectiveness of enforcement activity using mobile evidential breath testing equipment; and
 - to contribute towards more credible and effective drink driving law.

Description of options considered (including do nothing)

19. Two policy options, besides doing nothing, have been assessed for the removal of the statutory option. A third has been rejected on policy grounds. Any of the three would require a primary legislative slot for the amendment of the Road Traffic Act 1988.
20. The options also took into account review of blood and breath alcohol ratios when considering removal of the statutory option as committed by the government in its response to the North report.
21. Besides doing nothing, the options are:
- **option 1:** removal of the statutory option without any changes in prescribed limits;and
 - **option 2:** removal of the statutory option with revised prescribed limits for blood and urine based on a different implied blood to breath alcohol concentration ratio.
22. **Option 1** involves the removal of the statutory option and the retention unchanged of the statutory prescribed limits, which make it an offence to drive with alcohol concentrations in excess of:
- (a) 35 microgrammes of alcohol in 100 millilitres of breath, or
 - (b) 80 milligrammes of alcohol in 100 millilitres of blood, or
 - (c) 107 milligrammes of alcohol in 100 millilitres of urine.
23. This implies a breath alcohol to blood alcohol ratio of 1:2,300.
24. **Option 2** involves the removal of the statutory option and the amendment of the blood alcohol limit to 70 microgrammes of alcohol in 100 millilitres of blood (with the urine alcohol limit changing to 94 milligrammes of alcohol in 100 millilitres of urine). However, this also implies a breath alcohol to blood alcohol ratio of 2000:1.
25. We also considered a further option that involves the removal of the statutory option and the amendment of the breath alcohol limit to 40 micrograms of alcohol in 100 millilitres of breath. This implies a breath alcohol to blood alcohol ratio of 2000:1. This option was rejected to be considered as a viable option due to following reasons:

- drivers with a blood alcohol concentration just above the legal limit are eleven times more likely to be involved in a fatal crash.
 - raising a breath limit sends a wrong message on drink driving
26. The cost benefit effects of the two proposed options would be very similar to each other. Some of the issues associated with the differences between the two options are discussed in **annex 2** and the Department will present the reasons for option 1 being the preferred option more fully in the consultation document.

Costs and Benefits

27. The major effects quantified are:
- a. the effects on police costs;
 - b. the effects of criminal justice costs, including court, legal aid, probation, prison and Crown Prosecution Service costs; and
 - c. the effects of fines collected.
28. Police costs are affected in two ways. Firstly there would be savings with the options compared to the 'do nothing' due to suspects not having to have additional blood (or urine tests), but instead the breath tests already administered being used. Secondly there would be extra police costs, criminal justice costs and fines related to cases that would have not proceeded to prosecution due to the statutory option but would do under any of the three options for change.
29. The estimation of the effects depends on the numbers of statutory option cases and the proportion that would have proceeded to court anyway.
30. The costs and cost savings have been calculated on the basis that evidential breath tests have to be carried out in police stations.
31. However mobile evidential breath testing equipment for use at the roadside is likely to be available for use from 2014. The removal of the statutory option would improve the efficiency of police procedures to a greater degree if mobile evidential breath test equipment were in use, compared to when it is not in use. It would also be likely to facilitate the greater use of mobile evidential breath test equipment, compared to the position if the statutory options were retained. We have therefore taken a cautious approach in respect of the assessment of the extra costs and cost savings related to the withdrawal of the statutory option. In reality it may contribute more efficiency savings and increases in effectiveness. Because the effects interact with the effects of introducing mobile evidential breath testing devices, it is difficult to ascribe which extra effects are attributable specifically to the withdrawal of the statutory option.

Risks and Assumptions – Volumes of Cases

32. The effects have been assessed for England and Wales, although the changes would apply to the whole of Great Britain. The number of proven proceedings related to drink driving in 2010 was 6,837¹ [Scots Gov stats] in Scotland compared to 57,418² in England and Wales. The England and Wales results have therefore been scaled up by a factor of 1.12 to represent the effects across the whole of Great Britain. The costs and benefits discussed in this document related to the whole of Great Britain, not just England and Wales, as the change would affect all of Great Britain.
33. The number of positive or refused breath tests in 2010 in England and Wales was 83,932³. A survey of Devon and Cornwall police activity in 2012, done for ACPO suggests about 7.4% of people then opt for statutory option blood tests. Across Great Britain this represents about 6,950 cases in 2010 opting for the statutory option.
34. The police started recording all breath data on digital breathalysers in 2009. This provides us with 3 years of data for which the volume of cases is highly variable. Due to this limited data, we have been

¹ <http://www.scotland.gov.uk/Publications/2011/12/12131605/0>

² MOJ stats: <http://www.justice.gov.uk/downloads/information-access-rights/foi-disclosure-log/corporate-services/foi-76912-annex-b.xls>

³ HO stats : <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/police-research/immigration-tabs-q4-2011/breath-tests-1011-tabs?view=Binary>

unable to add a trend to the forecast. We have therefore used an average of three year data and assumed that the number of statutory option cases remains constant throughout the appraisal period.

35. Of the 580,545 average preliminary breath tests recorded between 2009 and 2011⁴ in England and Wales, 17,694 result in readings of 35 to 50 microgrammes per 100 millilitres of breath or 17,906 in Great Britain (if the 1.12 factor is used to represent Scotland on top of England and Wales). Statutory option cases almost invariably relate to readings of 41 to 50 microgrammes (about 10/16ths of this range). The data suggests that the distribution of the number of tests within the 36 to 51 band is unlikely to be skewed heavily towards either end of it, in which case about 11,191 motorists in GB would be eligible for the statutory option, provided evidential and preliminary breath tests followed a similar distribution. 52% of those eligible in Devon and Cornwall opted for the statutory option. If replicated across the country there would be 5,819 statutory option cases in Great Britain.
36. We have added a sensitivity test to the volume assumptions of plus or minus ten percent, in case the Devon and Cornwall data is not wholly representative, although we have no strong grounds to suspect that is it not representative.
37. There are two versions of the drink drive offence – one involves driving (about 97.5% of cases, MoJ Stats) and the other being in charge of a vehicle (about 2.5% of cases) and we have assumed statutory option cases are distributed in the same proportion between them.
38. The survey of Devon and Cornwall police activity indicates that 98% of statutory option cases resulted in blood or urine samples tested above the prescribed limit, so only 2% of cases could not then proceed to court.
39. The figures quoted from Devon and Cornwall police cover a period where all their major police stations had a resident custody nurse and minor police stations had a travelling custody nurse. This means that there were minor or no delays experienced in acquiring a blood or urine sample. The tests were therefore timely and nearly always resulted in blood or urine specimens showing readings above the prescribed limit.
40. A similar study conducted (by the police liaison officer in DfT) with police stations in Surrey in 2004 indicated 75% of statutory option results to be above the prescribed limit. This is comparable to the research commissioned for the North review in 2009 where 73% of results were above the prescribed limit.
41. The numbers of nurses embedded in the police stations has increased in recent years. However, there are currently no plans to increase recruitment of nurses in the police stations. Therefore we assume that the routine stationing of nurses at police stations does not change over the appraisal period.
42. For the analysis we have therefore considered a range of assumptions:
 - a. low (costs) – the 2% rate of statutory option tests resulting in the discontinuation of proceedings and as observed in Devon and Cornwall becomes the average due to the systematic deployment of custody nurses across the country;
 - b. high (costs) – a 20% rate (similar to the rate observed in older surveys) is the average, due to routine custody nurse deployment being rare; and
 - c. central (costs) – a 10% rate representing the continuation of a mixture of practices within or between police forces.
43. Therefore the estimated rate of positive results of blood and urine test due to statutory option is between 80% and 98%. A more accurate current figure can only be achieved by conducting a customised sample survey of every police force in the country as there are no centralised records held on number of blood and urine tests resulting from the taking of the statutory option. We consider this would be disproportionately expensive and a burden on the police. The figure would also be liable to change over time due to changes in practices related to the deployment of custody nurses and doctors and therefore the forecasting of the future rate would still be subject to some assumptions.

44. The 2011 volumes of cases are therefore:

⁴ DfT stats : <http://assets.dft.gov.uk/statistics/tables/ras51018.xls>

GB Volumes 2010	All statutory option cases	Statutory Option Cases (proceedings stopped due to negative results after taking blood / urine tests owing to taking statutory option who may be other wise guilty)		
		Low Scenario	Central Scenario	High Scenario
All	5,819	116	582	1164
- Driving	5,674	113	567	1135
- In Charge	145	3	15	29

45. Both the size of the drink drive casualty problem and the number of proceedings have been reducing in recent years. Proceedings and positive breath tests were both significantly lower in the last full year of information available than before. The estimated number of drink drive casualties reduced from 20,100 in 2002 to 9,990 in 2011 (which exceeds the rate of reduction in road casualties as a whole). Casualties (including drink-drive casualties) are forecast to reduce further. For example the central projection of the strategic road safety framework is for a 40% reduction in serious casualties over the 13 years to 2020 (ie an average reduction of 3.85% per year, compound). A low projection envisages a reduction of 50% over the 13 years (ie an average reduction of about 5.2% per year, compound).
46. This impact assessment considers effects over the 2014 to 2025 period, assuming implementation would be at the beginning of 2014. This depends on the legislation being taken forward in the next parliamentary session.

Risks and Assumptions – Unit Costs of Cases

47. The analysis makes the following assumptions about the time and cost savings to the police service related to the tests that would not be required if the statutory option were abolished. Using 2012 prices and values these costs total approximately £253 per case and include:

	Cost per Offender - Blood Sample	Cost per Offender - Urine Sample	Comments
Police Officer time	£55	£55	It takes on average 90 minutes for the police from getting roadside preliminary to evidential breath/blood/urine test at police station
Forensic Medical Examiner Call Out Charge	£102	£0	FME is not required to collect Urine Sample
Custody nurse	£49	£0	Custody Nurse is not required to collect urine sample
Blood Test Kit	£6.50	£6.50	
Lab Test + Analysis	£32.00	£32.00	
Cost of a cell	£100.00	£100.00	Average cost for detaining suspect in cell or questioning room until blood or urine test is taken
Total Cost of processing drink drive case per Offender with Nurses	£243	£194	
Total Cost of processing drink drive case per Offender with FME	£296		

- a. the statutory option tests require an average of 1.5 hours to allow samples to be taken. This costs about £156 per case (this custodial cost including costs of police cells, about £100, plus officer time of 1.5 hours at £37/hour); and
- b. custody nurse, forensic medical examiner (FME), testing kit and laboratory analysis: an average of about £97 per case (note: when urine samples are taken as is the case in 12% of cases no nurse or FME is required, in the other 88% an FME or nurse is needed).
48. The availability of medical staff at custody suites is partly dependent on operational practice and affects the rate of timely tests and hence the rate of statutory option cases that cannot proceed to court. Hence the assessment is based on:
- a. in the low (cost) case where 2% of statutory option cases result in the discontinuation of proceedings;
- b. in the central (cost) case where the rate is 10%; and
- c. in the high (cost) case where the rate is 20%.
49. The costs of completing proceedings that would not have continued to court and conviction due to the statutory option tests, but would do if the statutory option were abolished are:

Type of Cost	Average per case	Derivation of average
Police	£156	0.5 hours to complete case file plus 5 hour's court attendance for ¾ of cases (ie on average $(5 \times 0.75) + 0.5 = 4.25$ hours). Average cost £36.81/hour.
CPS (Magistrates Cases)	£142	Costs provided by MoJ from CPS (about £143/case at magistrates court). 99.1% of cases were tried at Magistrates' Courts.
CPS (Crown Court)	£2,509 (£23 average across all cases)	Costs provided by MoJ from CPS. 0.9% of cases were tried at Crown Court.
Community Service	£350	11.67% of cases result in a community sentence, whose average cost is £3,000.
Prison	£37	1.4% of offenders go to prison, each for an average of about one month at an average cost of £31,611 per prison place per year.
Magistrates Court	£91	Costs provided by MoJ from HMCTS (about £92/case at magistrates' court). 99.1% of cases were tried at Magistrates' Courts.
Crown Court	£639 (£6 average across all cases)	Costs provided by MoJ from HMCTS. 0.9% of cases were tried at Crown Court.
Legal Aid	£27	£483 average legal aid cost in 2010/11 over the 5% of cases eligible, factored up to 2012 prices £509 plus an allowance for Crown Court cases (0.9% of all, based on £4,215 per eligible case). Average cost per case = $0.05 \times (509 + [0.009 \times 4215]) = £27$
Cumulative Total	£832	

50. The average fine income from magistrates' court cases is assumed to be £254 based on the average fines collected for drink drive offences. Average fines from Crown Court cases are £409. (*Ref: MOJ table 2011*) The offenders will also have to pay £15 victim surcharge in addition to the fine.
51. The estimates for prison costs and probation costs are based on the assumption that the sentencing for offenders who would have been covered by the statutory option (and hence not far above the prescribed limit) follow the average for 'in charge' offenders rather than the average for all offenders.
52. The unit costs have been up-rated from the 2012 base to the assessment years using the forecast GDP per capita growth rate [*table 3a, DfT Webtag 3.5.6 'Values of Time and Operating Costs'*]. The

forecast GDP per capita rate has been used because the primary determinant of the unit costs is staff costs and the index is a measure of income growth.

53. Proceedings related to the section 3A offence in the Road Traffic Act (1988) are also subject to the statutory option procedure. A negative statutory option test could in theory result in theory downgrading of a charge under the section 3A offence of causing death by careless driving when under the influence of drink or drugs to a section 2B charge (causing death by careless driving). However this is unlikely in practice, due to the high priority likely to be given to securing a timely test and the possibility of proving impairment even if a suspect were just under the drink drive limit.

Appraisal – Low, Central and High Scenarios

54. The net present benefit of the new offence under the central estimate is approximately £10.4m over the appraisal period 2014-2023. The total benefits and costs are estimated at approximately £14.7m and £4.4m respectively.

£m 2012 Prices Discounted	Total 2014-2023 Central Scenario	Total 2014-2023 Low Scenario	Total 2014-2023 High Scenario
Costs			
Police (Court Attendance)	£0.8m	£1.6m	£0.2m
Criminal Justice and CPS	£3.6m	£7.1m	£0.7m
Total Present Value Costs	£4.4m	£8.7m	£0.9m
Benefits			
Police (removal of Statutory Option)	£13.3m	£13.3m	£13.3m
Exchequer (Fines and Victims Surcharge)	£1.4m	£2.8m	£0.3m
Total Present Value of Benefits	£14.7m	£16.2m	£13.6m
Net Present Value of Benefits	£10.4m	£7.4m	£12.7m

55. Within the criminal justice and CPS costs, the extra CPS costs are about one quarter of the total. About one half of the total extra costs related to probation services, 15% for the costs of running courts and about 5% related to each of legal aid and prison.
56. Under the central scenario the extra criminal justice and CPS costs total to about one quarter of the cost savings and benefits. About 90% of the benefits in the central scenario relate to savings in police costs, with the remaining 10% being fine income to Government from offenders.
57. The low scenario relates to low proportions of statutory option cases that were not associated with timely tests and being few cases that would not have proceeded to court anyway. The net police cost savings are slightly higher than the central scenario because savings are being made in relation to all statutory option cases in the early stages. These costs savings are being offset less by the costs of taking more cases to court. In the high scenario more cases going to court than would otherwise have done contribute to slightly lower net savings to the police.
58. The low and high scenarios result in a far greater proportionate difference from the central scenario in respect of criminal justice and CPS costs and fine revenues, compared to their effects on police

costs. This is because criminal justice costs and fines are related solely to the numbers of cases proceeding to court, which would have been stopped because timely tests were not taken under the statutory option.

Sensitivity Test

59. Due to the uncertainty surrounding the baseline estimate of the number of statutory option tests undertaken, we have performed a sensitivity test. The sensitivity test estimates the change to the costs and benefits in the central scenario, if the number of statutory option tests were to differ by 10% from the assumed baseline number of 5819.
60. The table below shows the change in the number of offenders and court cases relative to the central scenario, if the number of statutory option cases were 10% higher than the baseline. For example, the number of urine tests no longer required would be 70 greater than in the central scenario.
61. As a result of the linear nature of the calculations, if the number of statutory option cases were 10% lower than the baseline, the number of urine tests no longer required would be 70 fewer than in the central scenario.

				Additional Court Cases	Court cases breakdown	
Additional Offenders	Urine Tests	Blood FME	Blood Nurses		Mags	Crown
582	70	171	341	58	57	1

62. So, summary costs of the impact of the sensitivity test on account of extra 10% cases who would have been eligible for the statutory option will be:

Benefits:

- Savings to the police from removing statutory option would increase as 10% cases no longer required = £1.3m
- Exchequer revenue would increase by 10% as more suspects pay fines and victim surcharge = £0.14m

Costs:

- Costs to the Police from attending court would increase, as more suspects taken to court. = £0.08m
- Criminal Justice Costs increase as more court cases = £0.35m

Therefore NPV change = £1.02m. The figures are in the attached spreadsheet.

Direct costs and benefits to business calculations (following OIOO methodology)

63. There are none. The costs and cost savings relate exclusively to the police, criminal justice system, the Government and offenders.

Wider impacts

64. The removal of the 'statutory option' is one part of a wider approach to reducing the drink driving problem. This overall approach is designed to have significant road safety benefits. The value of preventing all the drink drive casualties reported in 2011 would have been approximately £880m.

Type of Casualty	Number reported related to drink-drive (2011)	Value of preventing a casualty (2012 prices and values, £s)	Total preventable value (2012 prices and values £ms)
Fatal	280	1,767,873	495
Serious Injury	1,290	198,634	256
Slight Injury	8,430	15,319	129
Total	9,990		880

65. The statutory option is an important enabling measure for the spread of mobile evidential breath testing equipment. This equipment will improve police efficiency by enabling many offenders to be dealt with at the roadside. Its presence (plus the withdrawal of the statutory option) may enable publicity capitalising on offenders' fears of detection to be mounted, in turn influencing their behaviour and reducing the number of casualties.
66. The police cost savings associated with the withdrawal of the statutory option have been estimated on the basis that all evidential breath tests will continue to be done in police stations. However the legislation is already in place to allow evidential breath testing (as well as screening breath tests) to be done outside police stations, including at the roadside. In these instances the savings achieved by the removal of the statutory option would be even greater.
67. A Home Office type approval process for mobile evidential breath testing equipment is planned to conclude in 2014. If devices achieve type approval, mobile evidential breath testing will also offer significant opportunities for improving the manner, timeliness and the efficiency with which police deal with offenders in some circumstances. With the removal of the Statutory Option, the police do not need to escort the suspect to the police station and prepare for alternative blood test.
68. These benefits would be significantly undermined and compromised by the continuation of the statutory option. Statutory option tests would require some offenders to be taken to police stations and then tested, when they could otherwise have been dealt with at the roadside. Mobile evidential breath tests may be particularly useful in localities remote from major custody centres. The retention of the statutory option would compromise efficiency gains in these localities in particular.
69. This larger difference in police costs between retaining and withdrawing the statutory option, when there is mobile evidential breath testing equipment available compared to now, has not been quantified in the impact assessment. However the extra costs would be significant where mobile evidential breath testing equipment is deployed and they may also reduce the uptake of such equipment.
70. Previous international experience (summarised in 'The Handbook of Road Safety Measures, Elvik et al 2009, section 7.3) suggests a legislative/enforcement package for drink driving (for example the statutory option plus mobile evidential breath testing) could, if combined with publicity, reduce drink drive casualties by 10% more than just publicity. If such an effect were in place for just a single year it would be large in comparison with the quantified costs and cost savings of this legislative change. However these benefits have not been quantified in this impact assessment, because they also depend on the equipment being deployed and publicity being mounted.

Equalities and Human Rights

71. This Equality Impact Assessment (EIA) relates to the proposal to remove the statutory option for drink drivers.

Equality duties

72. Under the Equality Act 2010, when exercising its functions, the Department for Transport has an ongoing legal duty to pay „due regard" to:

- the need to eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity between different groups; and
- foster good relations between different groups.

73. The payment of "due regard" needs to be considered against the nine protected characteristics – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender identity, pregnancy and maternity. The Department for Transport has a legal duty to investigate how policy proposals are likely to impact on the protected characteristics and take proportionate steps to mitigate the most negative ones and promote the positive ones. The Department for Transport records how „due regard" has been exercised by completing an Equality Impact Assessment (EIA).

Aims and outcomes for the policy

74. It is already an offence to drive with alcohol concentrations in excess of the prescribed limits. The proposal aims to make the application of drink driving law fairer to suspects, regardless of how they are tested and their knowledge of the law. The intention is that people driving above the prescribed limit are prosecuted successfully.
75. In addition the changes aim to increase the effectiveness and efficiency of enforcement activity using current equipment and also mobile evidential breath testing equipment, as well as contributing towards a more credible and effective drink driving law.

Methodology and evidence sources:

76. Data on court disposals are from the Court Proceedings Database. This holds information on defendants proceeded against, found guilty and sentenced for criminal offences in England and Wales. It includes information on the age of the defendant, their gender, ethnicity, the police force area and court where proceedings took place as well as the offence and statute for the offence. Information on gender reassignment, disability, pregnancy and maternity, sexual orientation, religion or belief or marriage and civil partnership for criminal offences may be held by the courts on individual case files. However, it has not been possible to collate these data for this Equality Impact Assessment because of practical difficulties.

Stakeholder consultation and engagement

77. The proposal is being brought forward following the recommendation of the independent North Review into the law on drink and drug driving, which reported to the Secretary of State for Transport in June 2010. The Review drew on large amounts of research and consulted widely with interested experts and stakeholders.

Analysis - Impact on victims:

78. The introduction of the new offence is expected to have an impact on reducing the numbers of road casualties. For the purpose of assessing the possible impact on victims we have looked at the data on road casualties where drugs were recorded as a contributory factor. In 2010, drink driving was estimated to have been a factor in road traffic incidents resulting in nearly 10,000 deaths and injuries, including 280 deaths.

79. Young people between the ages of 17 and 29 are over-represented among Killed and Seriously Injured (KSI) casualties in road traffic accidents which had a contributory factor of drink driving ascribed to them. The rate of licence holders in the 17 to 29 age groups being involved in drink drive incidents in 2009 was between ten and twenty times the rate of people older than 60.

80. More than two thirds of drink drive casualties are male.

Analysis - Impact on offenders:

Potential Age Impacts:

81. Offenders are disproportionately male and young. 80% of people failing were men. About 46% of people failing breath screening tests following road traffic collisions in 2010 were aged between 16 and 29. This suggests there are potential impacts related to age.

Potential Disability Impacts:

82. Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Gender Reassignment Impacts

83. Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Marriage and Civil Partnership Impacts

84. Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Pregnancy and Maternity Impacts

85. Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Race Impacts

86. Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Religion or Belief Impacts

87. Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

Potential Sex Impacts

88. Offenders are disproportionately male and young. 80% of people failing breath screening tests following road traffic collisions in 2010 were men. This suggests that there are potential impacts in relation to gender.

Potential Sexual Orientation Impacts

89. Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

Mitigation

90. We consider the potential impacts on equality groups among offenders to be justified on the basis that it is a proportionate means of achieving the legitimate aim of enforcing effectively against drink driving and its impact on road safety. We also consider that the disproportionate benefits for the same equality groups in terms of casualty savings provides an additional justification.

Summary and preferred option with description of implementation plan

91. The preferred option is to withdraw the statutory option, without changing any of the prescribed limits for drink driving (ie option 1). The preferred timing would be at a similar time to the introduction of mobile evidential breath testing equipment in 2014. This is dependent on parliamentary time being found for the legislative changes.

92. The legislative changes would be likely to be commenced shortly after the Royal Assent of the relevant legislation. The Department is working with ACPO to ensure the timing of implementation is co-ordinated with the necessary changes to police procedures. It is also considering the implications for the far rarer police testing arrangements in the aviation, rail and shipping sectors.

93. Post-legislative scrutiny requirements for primary legislation require a review five years after the relevant Act is passed. Drink drive casualties, proceedings and breath tests are all monitored continuously with annual statistics being produced. The department would propose to use these and work with CPO to monitor the effects of removing the statutory option and introducing mobile evidential breath testing equipment, when the changes are made and after two and five years.

ANNEX 1: References

No.	Legislation or publication
1	The Government's Response to the Reports by Sir Peter North CBE QC and the Transport Select Committee on Drink and Drug Driving: Command Paper 8050 (March 2011) at: http://www.official-documents.gov.uk/document/cm80/8050/8050.pdf
2	Report of the Review of Drink and Drug Driving Law: Sir Peter North CBE, QC (June 2010) http://webarchive.nationalarchives.gov.uk/20100921035225/http://northreview.independent.gov.uk/docs/NorthReview-Report.pdf
3	Report of the Transport Select Committee: Drink and Drug Driving Law (November 2010) http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtran/460/46002.htm
4	Ministry of Justice: Criminal Justice Statistics 2011 – volume 6 motoring http://www.justice.gov.uk/statistics/criminal-justice/criminal-justice-statistics
5	Home Office Statistics about Breath Tests http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/police-research/police-powers-procedures-201011/breath-tests-1011
6	Criminal Proceedings in Scotland 2010-11 (A National Statistics Publication for Scotland) (December 2011) http://www.scotland.gov.uk/Publications/2011/12/12131605/0
7	Reported road casualties in Great Britain: 2011 provisional estimates for accidents involving illegal alcohol levels (Department for Transport) http://www.dft.gov.uk/statistics/releases/road-accidents-and-safety-drink-drive-estimates-2011/
8	Road Traffic Act 1988 http://www.legislation.gov.uk/ukpga/1988/52/contents

ANNEX 2: Blood and Breath Alcohol Concentrations

1. The Department has examined the case for changing the ratios between the limits. This is because alcohol proportions can be tested from specimens of breath, blood (from veins) and urine. However there is not a single, universal and fixed ratio between these concentrations. For example variations in physiology between people will result in people with identical blood alcohol concentrations having different breath alcohol concentrations.
2. The same quantity of alcohol affects and impairs people differently and the effects of a specific concentration on a particular individual can also vary. However the studied and documented impairment effects on people are more closely connected with alcohol proportions in blood, rather than with alcohol in breath or urine.
3. The current drink drive limit in Great Britain was set in the light of evidence, including primarily from the USA, about impairment related to blood alcohol concentrations. The evidence established that drivers collectively would be impaired, and therefore more hazardous, when they had concentrations in their bloodstreams in excess of 80 milligrammes (mg) of alcohol in 100 ml of blood.
4. On average the ratio between blood alcohol concentrations and urine alcohol concentrations was established as averaging about 3:4. Hence a urine alcohol concentration of 107 mg per 100 ml was established in the prescribed limit.
5. Likewise research suggested that a ratio between blood and breath of alcohol concentrations of 2,300:1 was appropriate and hence the breath alcohol limit of 35 mcg per 100 ml was established in the prescribed limit.
6. There is a prescribed limit in law for each of breath, blood and urine; as such no priority is given to one particular bodily fluid's concentration for individual cases. It is therefore not a defence for an individual to attempt to establish that an evidential test in one medium, for example breath, that is legitimately presented to court in excess of the prescribed limit, might have been equivalent to a lower concentration in another medium, such as blood.
7. However the 2,300:1 ratio is not the average ratio between blood and breath alcohol concentrations. The average ratio of drink drivers is about 2,400:1. The ratio of 2,300:1 was set in Britain for the prescribed limit. Research indicates that about a quarter of drink drive offenders would have been disadvantaged by using breath as opposed to blood with the 2,300:1 ratio.
8. Other countries use ratios of 2,100:1 and 2,000:1, possibly in some cases because the average blood to breath ratio was considered to be lower than 2,400:1 when they legislated. The ratios may also be used to virtually avoid the possibility of anyone being disadvantaged by a blood specimen. A 2,000:1 ratio would for example disadvantage only 0.5% of people.
9. The ratio of 2000:1 is used in Austria, France and Spain (where the corresponding breath alcohol concentration and blood alcohol concentration are 25 mcg/100 ml and 50 mg/100 ml respectively). A ratio of 2100:1 is used in Germany, Scandinavian countries, Australia, Canada and the USA.
10. A ratio risks one of two kinds of problem (as discussed by in the Government's response of March 2011 to the reports by Sir Peter North and the Transport Select Committee on drink and drug driving):
 - a. some drivers risk being convicted unfairly because a breath test will over-estimate their blood alcohol level (compared to the result of a timely blood test properly conducted);
 - b. if the limit is set high to avoid this problem, then many drivers are likely to be treated too leniently – and will avoid prosecution even though a timely blood test (if conducted properly) would have found them in excess of the prescribed limit
11. Therefore we propose (in option 1) to retain the prescribed limit at its current levels in blood, breath and urine, upon the withdrawal of the statutory option. This retains the use of the 2,300:1 ratio.
12. A theoretical alternative of retaining the current blood alcohol level, but increasing the breath alcohol limit to 40 mcg per 100 ml would represent an excessively lenient approach to the enforcement. It would effectively increase the drink drive limit, by increasing the prescribed limit in breath, the most commonly used type of evidential specimen.
13. Research suggests that the risks of a driver being involved in a fatal crash are at least six times higher for drivers with a blood alcohol concentration of between 50 and 80 mg per 100 ml, when compared to a driver with no alcohol in their blood. This risk increases to eleven fold for blood alcohol concentrations of 80 to 100 mg per 100 ml.

14. Increasing the breath alcohol limit could have the effect of condoning this highly risky behaviour and would be excessively lenient.
15. A further theoretical alternative (option 2) of slightly lowering the current prescribed limit in blood (and urine), whilst leaving the breath limit unchanged, would also ensure nearly all suspects just above the prescribed breath limit would also fail a timely blood test.