

Title: Drink Driving: Removal of Statutory Option (North reforms) IA No: DFT00187 Lead department or agency: Department for Transport Other departments or agencies: Home Office Ministry of Justice	Impact Assessment (IA)		
	Date: 28/11/2012		
	Stage: Consultation		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Nehal Thakore – 020 7944 5113			

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?
£11.7m	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, because there has been about 30 years' experience of the use of evidential breath testing equipment, which is highly reliable and precise (to 0.1 mcg/100 ml). The statutory option 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 necessarily involve a change to primary legislation. The Government is also implementing and supporting a range of other changes related to drink and drug driving recommended by the review. Some of these are non-regulatory. The proposal is to remove the statutory option without any changes to any element of the prescribed drink drive limit. The associated consultation document discusses but does not recommend, removing the statutory option and at the same time making modest changes to one or more of the elements of the prescribed limit (alcohol concentrations in breath, blood and urine). The reasons for not making modest changes to any of the limits are not appraised in this impact assessment.

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	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Mt CO ₂ eq/lt)	Traded: 0		Non-traded: 0		

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: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Removal of the Statutory Option (No Change in the Prescribed Drink Drive Limit)

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £3.2m	High: £17.3m	Best Estimate: £11.7m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NA	£2.0m	£16.3m
High	NA	£0.2m	£1.5m
Best Estimate	NA	£0.9m	£7.2m

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

The costs, herein described, are present values. The majority of the costs are borne by the Justice System; £4.2m in the central scenario varying from £9.5m in the low scenario to £0.9m in the high scenario. Police costs, from attending court, are estimated to be £1.3m in the central scenario, varying from £2.9m in the low scenario to £0.3m in the high scenario. Costs to Offenders are estimated at £1.7m, £3.9m and £0.4m in the central, low and high scenarios respectively. These costs are related to additional proceedings in court.

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

None identified.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NA	£2.4m	£19.5m
High	NA	£2.4m	£18.8m
Best Estimate	NA	£2.4m	£18.9m

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

The benefits, herein described, are present values. The majority of the monetised benefits accrue to the Police and relate to fewer blood and urine tests being conducted; £17.2m in the central scenario varying from £15.7m to £18.5m in the low and high scenarios respectively. Exchequer benefits from fine revenue are estimated at £1.6m in the central scenario and vary from £3.7m in the low scenario to £0.3m in the high scenario. The Victim Surcharge is estimated to raise £0.09m in the central scenario, varying from £0.2m in the low scenario to £0.02m in the high scenario.

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

This will ensure more people driving above the prescribed limit will be prosecuted successfully. It will also enable the more efficient and effective introduction of mobile evidential breath testing equipment (by allowing more testing to be completed at the roadside). It is part of a continuing deterrent against drink driving and as part of that may influence behaviour and hence improve road safety.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
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Key assumptions include the percentage of eligible suspects opting for the statutory option (currently assumed to be 52%) and the percentage of additional cases proceeding to the Magistrates Court instead of Crown Court (currently assumed to be 100%). For a full explanation of all assumptions see Risks and Assumptions – Volume of Cases and Risks and Assumptions – Unit Cost of Cases. A summary of the key assumptions can be found in the List of Assumptions.

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

Evidence Base (for summary sheets)

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 appear to have driven with drink in excess of the limit and have provided positive evidential breath tests, to be not guilty of the offence.
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. The statutory option was therefore introduced to allay fears about an over reliance on automated breath testing equipment, at a time when more enforcement did not rely on the results of machines.
3. The current procedures for evidential specimens are outlined below.
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 not greater 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. There has now been nearly 30 years' widespread use of evidential breath testing machines and significant case law confirming their accuracy. Equipment has to pass a rigorous type approval process. The precision of current evidential breath testing equipment is 0.1 mcg of alcohol per 100 ml of breath¹. The use of automatic equipment in road traffic and other criminal enforcement and testing processes is more prevalent and established than it was 30 years ago. Therefore the statutory option has become an increasingly redundant provision.
9. Besides its redundancy, it is associated with a number of problems. Statutory option tests involve either usually a blood test or less frequently a urine test². In both cases this takes a significant time, is associated with extra costs and there is the risk that some suspects' alcohol concentrations will fall sufficiently (by the time they are tested, many suspects are in the process of eliminating alcohol from their body), whilst they wait, to enable them to pass the blood or urine statutory option test.
10. The process is for the Police Officer in charge to decide whether the statutory option samples should be of blood or urine. Blood samples can only be taken by a Forensic Physician or a Registered Health Care Professional (HCP). The provision of a urine sample requires the attendance of an officer of the same sex to be present, which may therefore involve another officer.
11. It is not standard practice at all police stations to have an HCP in permanent attendance and Forensic Physicians still less so. Instead Forensic Physicians and HCPs are on call with a call out regime possibly covering more than one police station. So often, it will be an hour or more before a blood sample is taken. Suspects have one hour to provide a urine sample from the time requested.

¹ Evidence provided to the North review of drink and drug driving law, see section 4.47 of the review

² The results of 16,100 tests were reported to the North review by the two largest testing laboratories at the time (LGC and FSS), section 4.56 of the review. The results provided to the review included a split between results derived from blood samples (88%) and from urine samples (12%)

Where Forensic Physicians of HCPs have had to be brought in, up to 25%³ of statutory option cases result in blood or urine alcohol concentrations being below the prescribed limit. In these cases, motorists had been tested as being over the prescribed limit using evidential breath testing equipment with a precision of 0.1 mcg/100ml.

12. Some police custody centres have HCPs based at them and average delays are shorter. A survey of locations where this is the case showed that almost all statutory option cases confirmed suspects were over the prescribed limit, supporting the case that the provision is a redundant one.⁴
13. It is this provision of the statutory option 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

14. This impact assessment relates to the proposal to withdraw the 'statutory' option.
15. 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 specifications and 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.
16. The withdrawal of the 'statutory option' is one 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."
17. 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."

³ DfT (Police Liaison)

⁴ 2012 survey information from a single police force provided to DfT

18. We therefore are proposing to consult about the changes to legislation. This impact assessment is about the proposed withdrawal of the 'statutory option'." 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 we do not anticipate any 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. However, this assessment will be confirmed after the consultation.
19. With respect to the statutory option, a recent survey⁵, taken in a police force area where all major custody centres have a resident HCP, indicated that virtually all statutory option cases there resulted in a positive blood or urine specimen.
20. However, where a police custody centre does not have a resident HCP 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). Given that of those who take the statutory option, 2-25%⁶ return negative blood or urine tests, despite having previously failed an evidential breath test, it is likely that a significant proportion of 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 Forensic Physician or HCP to take any blood specimen.
21. 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 review⁷ (and done prior to the routine establishment of resident HCPs) 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 test⁸.

Policy Objectives

22. 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.
23. 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)

24. The proposal is to remove the statutory option without any changes to any element of the prescribed drink drive limit. This is the option compared to the 'do nothing' option. 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 necessarily involve a change to primary legislation.

⁵ DfT (Police Liaison)

⁶ Sources for the 2% to 25% range discussed later in this impact assessment, but come from various returns from police forces

⁷ See section 4.56 of the North Review

⁸ See also section 5.12 to 5.14 of the consultation document, this impact assessment is associated with.

25. The associated consultation document discusses but does not recommend, removing the statutory option and at the same time making modest changes to one or more of the elements of the prescribed limit (alcohol concentrations in breath, blood and urine). The reasons for not making modest changes to any of the limits are not appraised in this impact assessment.
26. **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.
27. This implies a breath alcohol to blood alcohol ratio of 1:2,300. Implied breath to blood ratios are discussed further in annex 2.

Costs and Benefits

28. This section sets out the assessment of the additional costs and benefits of the removal of the statutory option and the retention unchanged of the statutory prescribed limits (Option 1) that has been produced by the Department. The costs and benefits of removing the statutory option (Option 1) are estimated relative to retaining the statutory option, the 'do nothing' option.
29. Two types of impact of Option 1 have been quantified and expressed as monetary values. The first type of impact is the savings in costs (included in the benefits summary) to the police from not having to do the extra procedures associated with the statutory option. The second type of impact is related to the motorists with positive evidential breath tests, but whose statutory option test would be negative under the 'do nothing' option (usually because their bodily alcohol concentrations have reduced between the tests). For these motorists with the statutory option in place under the 'do nothing' option, their positive evidential breath test result would be set aside and they would be not guilty of a drink driving offence and would not be taken to court. With the statutory option removed under Option 1, the evidential breath tests results would stand and these motorists would be liable to be taken to court, convicted and punished. This impact assessment estimates the extra costs related to these court cases and punishments as a cost related to the removal of the statutory option. The fines related to these cases are treated as a benefit related to it.⁹
30. The major impacts of Option 1 that have been quantified are:
 - a. the impacts on police costs;
 - b. the impacts on criminal justice costs, including court, legal aid, probation, prison and Crown Prosecution Service costs; and
 - c. the impacts of fines collected.
31. Police costs are affected in two ways. Firstly there would be savings under Option 1 compared to the 'do nothing' option 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 under Option 1 related to cases that would have not proceeded to prosecution due to the statutory option under the 'do nothing' option but would do under Option 1.
32. The estimation of the impacts of Option 1 depends on the numbers of statutory option cases and the proportion that would have proceeded to court anyway under the 'do nothing' option.
33. It is anticipated that mobile evidential breath testing equipment will be available from 2014. This may alter police drink drive practices, as they will no longer have to take a suspect to the police station in order to gain an evidential breath sample. All evidential breath tests are currently done in police stations, as are statutory option blood and urine tests. In addition to the impacts quantified in this impact assessment, the continuation of the statutory option is likely to result in the police being unable to complete the testing of some suspects at the roadside, once the mobile breath testing equipment is available. An efficiency saving that would otherwise have been possible would be been partially not obtained under the 'do nothing' option. The continued need to transport some suspects back to police stations for statutory option tests under the 'do nothing' option may also reduce the level of uptake of the equipment amongst police forces, further jeopardising the anticipated benefits

⁹ These are also included as costs borne by offenders, see paragraph 69.

of equipment to the effectiveness, efficiency and deterrent value of enforcement. These effects, which favour introducing Option 1 (the abolition of the statutory option), have not been quantified or expressed in money values, partly because they depend on future operational police practice and decisions, which are difficult to forecast.

Risks and Assumptions – Volumes of Cases

34. The number of statutory option cases each year and the results are not recorded at the national level and usually not recorded at the police station level. For this reason it is not possible to forecast with certainty the precise number of statutory option cases and the proportion that would proceed to court under the 'do nothing' option.
35. Since 2009 police forces throughout England and Wales have used electronic breathalysers which automatically record the outcome of the preliminary breath test. Table 1 below, shows the total number of preliminary breath tests recording results between 35mcg and 50mcg per 100 ml of breath. In order to calculate the number of evidential breath tests recording results between 35 and 50mcg we have assumed they are identical to the preliminary test results, row A Table 1.

Table 1: Number of suspects recording a preliminary breath test between 35mcg and 50mcg per 100ml of breath (rows A-C relate to England and Wales, Row D – Great Britain)

		2009	2010	2011	Average
A	Breath Test (35mcg – 50mcg per 100ml) ¹⁰	17,966	19,008	16,107	17,694
B	Estimated Breath Test (40mcg – 50mcg per 100ml, assumed to be 11/16 th of the breath tests between 35mcg and 50mcg ¹¹)	12,352	13,068	11,074	12,164
C	Estimated number of statutory option tests (assumed 52% of those between 40mcg and 50mcg)	6,423	6,795	5,758	6,325
D	Estimated GB Statutory option tests (factor of 1.12 applied to row C)	7,188	7,605	6,444	7,079

ie $B = A \times (11/16)$; $C = 0.52 \times B$; $D = C \times 1.12$; where:

A = the number of preliminary breath tests in England and Wales in the range 35 to 50 mcg/100ml (derived from data covering a large proportion of the preliminary breath tests conducted, factored up to also represent those where a reading was not recorded for the statistical return);

B = the estimated number of preliminary breath tests in the range covered in the statutory option:

¹⁰ Roadside breath alcohol screening devices – PМЕQ211

¹¹ 11/16th is used because breath testing equipment usually rounds down to the nearest whole number; hence the ranges quoted are inclusive

C = the estimated number of statutory option cases in England and Wales

D = the estimated number of statutory option cases in Great Britain

(with the assumptions related to B, C and D discussed further below)

36. It is standard police practice to give a 5mcg charging threshold, to ensure that cases do not proceed to court and subsequently dropped due to uncertainty regarding the accuracy of the device. As already mentioned in 'Problem Under Consideration' section, the machines are precise to 0.1mcg/100ml which means that even police practice is overly generous to suspects. However, on a practical level it means that suspects will not be charged with drink driving unless they have recorded alcohol in breath of 40mcg per 100 ml or above.
37. Given that suspects are only charged above 40mcg, it would be wrong to assume that all the cases reported in Table 1, will be subject to the statutory option. There is no evidence that breath test results in the 35mcg to 50mcg/100ml range are systematically biased within that range. So an even distribution has been assumed in table 1. Thus we have applied a factor of 11/16th to the data to estimate the number of breath tests recorded between 40mcg to 50mcg, for which the statutory option would be available. In addition the records of the level of breath tests apply to preliminary breath tests and we have assumed that any preliminary breath tests dropping out of the range from 40 to 50 mcg when evidential breath tests were taken are balanced by extra evidential breath tests following from preliminary tests outside the range.
38. Not all suspects offered the statutory option take up their right to request a further blood or urine test. The evidence we have for the number of suspects, for which the statutory option is available and subsequently take the statutory option comes from a single police force where data was recorded. This data suggests that on average 52% of suspects recording an evidential breath test between 40mcg and 50mcg opt for the statutory option.¹² This estimate is from a single police force and may not be representative of all Police Forces in England and Wales. However, due to the lack of other sources, we have used this for our central, low and high scenarios.
39. In order to estimate the number of statutory option tests under the 'do nothing' option, we have therefore assumed that of those in Table 1 estimated to be have recorded alcohol content in breath between 40mcg and 50mcg, 52% will opt for the statutory option. Whilst this is based on the result from one police force area, a range of scenarios for the number of statutory option cases under the 'do nothing' option has been included in this assessment. The impact of more people taking up statutory option cases under the 'do nothing' option would be to increase both the estimated costs and benefits of Option 1 in direct proportion to each other.
40. The data in Table 1 only relates to England and Wales, whereas the removal of the statutory option under Option 1 would apply GB wide. To estimate the GB figure including Scotland, we have applied a factor of 1.12 to the estimates in the row C. This factor is based on the proportion of drink drive cases, proven at Court, for Scotland (6,837)¹³ relative to the England and Wales figure (57,418)¹⁴ in 2010.
41. The Central, Low and High Scenarios for the number of statutory option cases each year under the 'do nothing' option are as follows:
- Central Scenario = 7,079 cases - the average of the estimated cases in Table 1.
 - Low Scenario = 6,444 cases – the lowest number of estimated statutory option cases from 2011 data (Table 1).
 - High Scenario = 7,605 cases – the highest number of estimated statutory option cases from 2010 data (Table 1).
42. 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. Furthermore, we have assumed that the unit costs of these two charges are identical. As a result we treat all suspects as if they were charged under the driving offence.

¹² 2012 survey information from a single police force provided to DfT

¹³ <http://www.scotland.gov.uk/Publications/2011/12/12131605/0>

¹⁴ Criminal Justice Statistics England and Wales 2010, supplementary tables volume 6 <http://www.justice.gov.uk/statistics/criminal-justice/criminal-justice-statistics/criminal-justice-statistics-editions>

43. For costing purposes we have assumed that 12% of all statutory option tests will be urine and the remaining 88% blood tests. Of the blood tests, it is assumed that 33% will be performed by a Forensic Physician and 67% by an HCP.¹⁵ Applying these proportions to row D in Table 1 produces a breakdown of the reduction in urine, blood HCP and blood Forensic Physician tests that we estimate would occur, if the statutory option were removed under Option 1 (Table 2).

Table 2: Reduction in Urine, Blood HCP and Blood Forensic Physician tests from Removing Statutory Option

	Central Scenario	Low Scenario	High Scenario
Urine	849	773	913
Blood HCP	4,153	3,780	4,461
Blood Forensic Physician	2,076	1,890	2,231
Total ¹⁶	7,079	6,444	7,605

44. Removing the statutory option under Option 1 would reduce the number of blood and urine tests. However, it would also increase the number of drink drive cases proceeding to court. We assume that all of the negative statutory option tests would proceed to court, if the statutory option were removed.

45. Table 3 outlines our assumptions of the percentage of statutory option tests which record a negative result and would not proceed to court under the 'do nothing' option. As we assume all of these suspects would proceed to court, if the statutory option were removed, this represents additional court cases under Option 1.

46. The high scenario relates to the highest Net Benefit (Present Value) of Option 1. This means combining the assumptions which lead to the highest reduction in statutory option cases and the lowest additional costs. As additional court cases will increase costs, the assumption which produces the fewest additional court cases is combined with the high scenario. The opposite applies for the low scenario.

Table 3: Additional Court Cases under Option 1 as Percentage of Statutory Option Tests under the 'do nothing' option

	Central Scenario	Low Scenario	High Scenario
Additional Court Cases	10%	25%	2%

47. The high scenario, 2% of statutory option cases not proceeding to court, as the result of blood or urine tests returning a negative results, under the 'do nothing' option is based on evidence a single police force.¹⁷ This figure is from evidence a single Police Force and may not be representative of England and Wales and for this reason is used to form one side of the range of possible outcomes. The percentage is very low because the particular Police Force has a resident HCP at all major police stations and a travelling HCP minor police stations, which allows for timely blood samples to be obtained.

¹⁵ The results of 16,100 tests were reported to the North review by the two largest testing laboratories at the time (LGC and FSS), section 4.56 of the review. The results provided to the review included a split between results derived from blood samples (88%) and from urine samples (12%). The relative prevalence of HCPs and Forensic Physicians is based on a DfT judgement about the deployment of these professionals now and changes likely in the foreseeable future

¹⁶ Numbers may not add up due to rounding.

¹⁷ 2012 survey information from a single police force provided to DfT

48. Data from the North Review suggested approximately one quarter¹⁸ of statutory option tests, returned blood or urine tests with negative results, and therefore did not proceed to court. A similar study conducted by the police liaison officer in DfT with police stations in Surrey in 2004, indicated 25% of statutory option results were below the prescribed limit and therefore did not proceed to court. Therefore we have assumed in the low scenario 25% of statutory option cases return negative results, that is below the prescribed limit, and are not proceeded at court under the 'do nothing' option.
49. For the central scenario we have assumed 10% of statutory option tests return negative results and do not proceed to court under the 'do nothing' option. This reflects the increased stationing of HCPs in police stations over the last few years (information from DfT police liaison), which would increase the likelihood of a timely blood test being obtained.
50. Therefore the assumed rate of positive results of blood and urine test due to the statutory option is between 75% and 98% under the 'do nothing' option. 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 the 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 HCPs and Forensic Physicians and therefore the forecasting of the future rate would still be subject to some assumptions.
51. Table 4 below contains our forecast of the annual reduction in the number of statutory option tests and the additional court cases for the period 2014-2023 under Option 1 (i.e. if the statutory option were removed).

Table 4: Annual forecast reduction in number of statutory option cases and additional court cases 2014 – 2023 under Option 1

		Central Scenario	Low Scenario	High Scenario
A	Reduction in number of statutory option cases	7,079	6,444	7,605
B	Additional court cases	708	1,611	152

52. This impact assessment considers impacts over the 2014 to 2023 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

53. The unit costs of Tables 5, 6 and 7 have been up-rated into 2012 values and prices using the real GDP per capita growth¹⁹ and the GDP Deflator^{20, 21}. For the appraisal we have up-rated the figures in the tables by the forecast real GDP per capita growth for the period 2014-2023 using the forecasts in Webtag.²² Table 5, 6 and 7 relate to the unit costs of the provision of urine and blood samples, the unit costs of police attending court and to the unit costs of court proceedings, respectively.
54. As we are proposing the removal of the statutory option under Option 1, the unit costs in Table 5 represent the savings per urine/blood sample to the police from a reduction in these tests. The unit costs are estimates of the current costs involved in obtaining a urine/blood sample from a suspect.

Table 5: Police Unit Costs²³ per Statutory Option Drink Drive Case

¹⁸ North review, section 4.56

¹⁹ DfT WebTAG 3.5.6 'Values of Time and Operating Costs' Table 3a <http://www.dft.gov.uk/webtag/documents/expert/pdf/unit3.5.6.pdf>

²⁰ ONS GDP Deflators at Market Prices and Money GDP http://hm-treasury.gov.uk/data_gdp_fig.htm

²¹ The analysis was conducted in July/August 2012 and these up-rate factors were correct at that time.

²² DfT WebTAG 3.5.6 'Values of Time and Operating Costs' Table 3a <http://www.dft.gov.uk/webtag/documents/expert/pdf/unit3.5.6.pdf> (as in August 2012)

²³ Unit costs of police officer time from Annual Survey of Hours and Earnings. Information about Forensic Physician charges supplied to DfT (police liaison) in 2007 values and prices and inflated. HCP charges estimated following input from police healthcare representative. Kit and analysis costs based on costs quoted from the DfT (police liaison) and LGC labs respectively. Police cell cost and average police officer times estimated by DfT following advice from its police liaison officer.

		Cost per Offender - Blood Sample	Cost per Offender - Urine Sample	Comments
A	Police Officer time	£71	£71	An estimated average per suspect of 90 minutes extra police time with the statutory option compared to without it
B	Forensic Physician Call Out Charge	£102	£0	Forensic Physician is not required to collect Urine Sample
C	HCP	£49	£0	HCP is not required to collect urine sample
D	Blood/Urine Test Kit	£6.50	£6.50	
E	Lab Test + Analysis	£32.00	£32.00	
F	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
G	Total Cost of processing drink drive case per Offender with HCP	£258	£209	
H	Total Cost of processing drink drive case per Offender with Forensic Physician	£311		

55. The unit cost per statutory option offender ranges from £209 for a urine test to £311 for a blood test involving a Forensic Physician.
56. It is estimated that from the time the offender opts for the statutory option to the provision of a urine sample takes 90 minutes on average.²⁴ Throughout this time the arresting officer must remain in the police station, and is therefore diverted from his/her patrol duties. On the basis of Police Sergeant costs of £47 per hour²⁵ (2012 value and prices), this suggests £71 per urine sample directly related to police officer time (row A).
57. In addition there will be costs related to the urine test kit, £6.5 per test²⁶ (row D), and the analysis of the urine sample, £32 per test (row E).²⁷
58. Prior to the provision of the urine sample, suspects are held in a cell.²⁸ Cell costs are estimated at £100²⁹, based on factors such as duty police sergeant stationed in the police station (row F).
59. The unit costs associated with urine tests also apply for blood tests; the only difference between the costs of a urine test and a blood test is the requirement for either an HCP or a Forensic Physician to be present to take the blood sample. A blood test, performed by an HCP, is £49³⁰ higher than a urine sample (row C) and a blood test performed by a Forensic Physician £102³¹ higher (row B).
60. The removal for the statutory option will lead to more drink drive cases proceeding to Court under Option 1. The average costs per case, which will be borne by the police and the criminal justice system are outlined in Tables 6 and 7, respectively.

Table 6: Police Court Costs per case – all costs 2012 values and prices

	Type of Cost	Average Cost per case	Derivation of average
A	Police	£200	0.5 hours to complete case file plus 5 hour's court attendance for $\frac{3}{4}$ of cases (ie on average $(5 \times 0.75) + 0.5 = 4.25$ hours). Average cost £47/hour

61. The arresting Police Officer must complete a case file prior to the case proceeding to court. It has been estimated that this requires 30 minutes of time.³² In addition, if the drink driver does not plead guilty prior to the court hearing, the arresting Police Officer must attend. We have assumed that the arresting Police Officer must attend in 75% of cases and is diverted from other work related duties for approximately 5 hours.³³ Given an estimated Police Officer cost of £47 per hour (see previously) this produces an average cost of police attendance at court of £200.

Table 7: Statutory Option case disposal; unit costs and expected costs per case (2012 values and prices³⁴)³⁵

	Type of Cost	Unit cost	Unit cost	Percent of statutory option	Expected cost per
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²⁴ Estimate provided by DfT (police liaison)

²⁵ Average wage for a police sergeant and below, taken from the Annual Survey on Hours and Earnings. This has been adjusted by 21.2% to account for Non-Wage Labour Costs in accordance with WebTag guidance, WebTag 3.5.6 paragraph 1.2.4.

²⁶ DfT (police liaison)

²⁷ Estimate provided by LGC the main lab for blood and urine tests

²⁸ Estimate provided by DfT (police liaison)

²⁹ Estimate provided by DfT (police liaison)

³⁰ Estimated following input from police healthcare representative

³¹ Estimates from DfT (police liaison)

³² Estimates from DfT (police liaison)

³³ Estimates from DfT (police liaison)

³⁴ Excluding community service and the victim surcharge, the unit costs and fines have been up-rated from 2010-11 prices and values into 2012 prices and values using the forecast real GDP per capita growth from DfT's Transport Appraisal Guidance (<http://www.dft.gov.uk/webtag/>) and the GDP deflator (http://hm-treasury.gov.uk/data_gdp_index.htm) NB/ The analysis was conducted in July/August 2012 and these up-rate factors were correct at that time.

³⁵ Assumptions used to derive the expected cost per statutory option case have been made in light of discussions with MOJ.

			description	cases resulting in this cost	statutory option case
A	CPS – Magistrates court ³⁶	£147	Cost per defendant in a Magistrates Court	We have assumed that 100% of the additional cases are tried at Magistrates' Courts.	£147
B	CPS – Crown court ³⁷	£2,570	Cost per defendant in a Crown Court	We have assumed that none of the additional drink drive cases are held at the crown court	£0
C	Community Service ³⁸	£3,000	Cost per offender per year	We have assumed that only 11.67% of drink drive cases result in a community sentence.	£350
D	Prison ³⁹	£32,356	Cost per offender per year	To calculate the average prison cost per offender, we have assumed that 1.4% of offenders go to prison for about 4 weeks.	£35
E	HMCTS – Magistrates court ⁴⁰	£1,416	Cost per sitting day	We have assumed 15 cases are heard per day at the Magistrates Court, which is approximately 20 minutes per case, and 100% of cases would be tried at Magistrates' Courts.	£94
F	HMCTS – Crown court ⁴¹	£2,180	Cost per sitting day	We have assumed 0% of cases would be heard at Crown Court.	£0
G	Legal Aid ⁴²	£521	Cost of a legal aid trial in the Magistrates Court	We have assumed 5% of drink drive cases are eligible for legal aid.	£26
H				Total expected cost per statutory option case^{43 44}	£652

[Note: Proportions of offenders given community service, prison sentences and legal aid based on MoJ statistics and other information].

62. The standard sentencing for a drink drive conviction is a fine, estimated at approximately £252 in 2012 prices and values.⁴⁵ As the level of the fine is means-tested, we have up-rated the average fine by the real GDP per capita (Webtag 3.5.6)⁴⁶, in accordance with our earlier assumption regarding the real value of blood/urine tests and court costs.

63. In addition to the fine, Offenders are required to pay the victim surcharge of £15. We have not up-rated the victim surcharge as this is set by the Ministry of Justice and does not change annually.

³⁶ MoJ: Cost Benefit framework

³⁷ MOJ's cost benefit framework which provides average CPS costs for 2008/09.

³⁸ Ministry of Justice Cost Benefit Framework

³⁹ NOMS management accounts addendum published in 2011

⁴⁰ HMCTS Finance

⁴¹ HMCTS Finance.

⁴² Legal Services commission (2012) Crime Lower Summary Report

⁴³ Please note that this total expected cost of a statutory case only incorporates the weighted costs of community and prison sentences. It does not include the costs of all disposals (the method that a court case is completed) and as a result the true total expected cost of a statutory case could be higher or lower than presented

⁴⁴ Please note that the actual cost of a statutory option case could vary widely from the expected cost per statutory option case cost presented. For example a single case at a Magistrates Court which involved legal aid and also resulted in a community sentence would be expected to cost £3,744.

⁴⁵ £241 (£252 when updated to 2012 prices and values) <http://www.justice.gov.uk/statistics/criminal-justice/criminal-justice-statistics/criminal-justice-statistics-editions> - volume 6 (table s6.05)

⁴⁶ The analysis was conducted in July/August 2012 and these up-rate factors were correct at that time.

64. 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) under the 'do nothing' option follow the average for 'in charge' offenders rather than the average for all offenders.
65. 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. For this reason, we have assumed that it has no impact upon the current appraisal.

Appraisal – Low, Central and High Scenarios

66. Table 8 contains the estimated present value of the Net Benefit of Option 1 (i.e. removing the statutory option) for the Central, Low and High scenarios. The Net Benefit (Present Value) of Option 1 is estimated at £11.7m, £3.2m and £17.3m in the Central, Low and High Scenarios respectively.
67. The additional Police Costs of attending court proceedings (row A) have been estimated by applying the forecast number of additional court cases, row B Table 4, to the average cost per case to the Police, row A Table 6.
68. The additional Criminal Justice and CPS costs (row B) have been estimated by applying the forecast number of additional court cases, row B Table 4, to the average cost per case to the Criminal Justice System, row H Table 7.
69. Offenders will incur costs as a result of courts imposing fines and victim surcharges. These costs (row C) have been estimated by applying the average fine level, £252, and victim surcharge, £15, to the forecast number of additional court cases, row B Table 4. As these costs represent a transfer of resources from the offender to the Exchequer they have been offset by an Exchequer Benefit in row F.
70. The benefits to the Police of removing the statutory option have been estimated by applying the forecast reduction in Urine, Blood HCP, and Blood Forensic Physician, rows A-C Table 2, to the respective unit costs in rows G and H Table 5.
71. As mentioned above, the benefits to the Exchequer represent a transfer of resources from the offender. For this reason they are exactly equal to the costs to the offender (i.e. calculated in precisely the same manner).
72. Due to a lack of information, we have been unable to forecast the number of statutory option tests and court cases avoided under the 'do nothing' option. For this reason, we have assumed that of each of the scenarios the reduction in urine and blood tests, and the increased number of court cases remains constant throughout the appraisal period.
73. Excluding the victim surcharge, the unit costs and fines, which are in 2012 prices have been up-rated by the forecast real GDP per capita growth for the period 2014-2023 using the forecasts in Webtag⁴⁷.

Table 8: Estimated Net Benefits (Present Value) of Option 1 (i.e. Removing the Statutory Option)

	£m 2012 prices Discounted	Total 2014-2023 Central Scenario	Total 2014-2023 Low Scenario	Total 2014-2023 High Scenario
	Costs			

⁴⁷ As published in August 2012

A	Police (Court Attendance)	£1.3m	£2.9m	£0.3m
B	Criminal Justice and CPS	£4.2m	£9.5m	£0.9m
C	Offender Costs (Fines and Victim Surcharge)	£1.7m	£3.9m	£0.4m
D	Total Present Value Costs	£7.2m	£16.3m	£1.5m
Benefits				
E	Police (removal of Statutory Option)	£17.2m	£15.7m	£18.5m
F	Exchequer (Fines and Victims Surcharge)	£1.7m	£3.9m	£0.4m
G	Total Present Value of Benefits	£18.9m	£19.5m	£18.8m
H	Net Present Value of Benefits	£11.7m	£3.2m	£17.3m

74. 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.
75. Under the central scenario the extra criminal justice and CPS costs total to 22% of the present value of 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.
76. The low scenario relates to the low estimate of statutory option cases in the 'do nothing' option and the high proportion of additional court cases. This produces the low range of the estimate of Net Benefits (present value). The opposite holds for the high scenario.
77. The low and high scenario estimates differ from the central scenario due to the following two factors:
- a. The forecast reduction in the number of blood and urine tests; and
 - b. The number of additional court proceedings.
78. The latter of these two factors dominates the differences in Net Benefits.
79. There is also the possibility of costs to offenders, in addition to the fine and victim surcharge, such as a driving ban, imprisonment or community service. Whilst these represent real costs to offenders, they are not included as part of this cost benefit analysis⁴⁸. There is also the possibility that there will be indirect costs to employers; however we have no evidence on this issue. If businesses would like to comment on this treatment of indirect costs (for example if they view that this proposal places indirect costs on to them), please respond to the consultation.

List of Assumptions

80. Below is a list of the key assumptions used in the analysis, other assumptions are detailed in the relevant tables.

⁴⁸ This treatment has been chosen in discussions with Ministry of Justice

81. Forecasting Assumptions:

- a. The number of preliminary breath test results in the statutory option's range are the same as number of evidential breath tests.
- b. The results for drink drive tests between 35mcg to 50mcg are evenly distributed throughout this range.
- c. 52% of those eligible suspects opt for the statutory option.
- d. The percentage of Scottish proven drink drive cases relative to English and Welsh, is a proxy for the percentage of Scottish statutory option cases relative to English and Welsh estimates.
- e. 12% of statutory option tests will be urine and the remaining 88% blood. Of the blood tests, 33% will be taken by a Forensic Physician and the remaining 67% by an HCP.
- f. Between 2% and 25% of statutory option tests do not proceed to court. With the removal of the statutory option, all of these cases proceed to court.

82. Forecasting Sensitivities - Where ranges have been available we have incorporated these into the scenarios to model the sensitivity of the net benefits to removing the statutory option, such as the number of statutory option tests returning negative results. However, some of the forecast assumptions are only point estimates, such as the percentage of statutory option tests which are urine, and the percentage of blood tests that are taken by a Forensic Physician. Where only point estimates are available, it has not been possible to estimate the sensitivity of the net benefits.

83. Unit Cost Assumptions:

- a. 90 minutes required to obtain blood/urine test after the evidential breath test.
- b. Suspects will be held in a cell prior to the blood or urine test.
- c. Police Officer spends approximately 4 hours at court per drink drive case.
- d. 100% of court cases held at Magistrates Court. If some of the additional cases were to proceed to the Crown Court, this would increase the costs borne by the Crown Prosecution Service (CPS) and Her Majesty's Courts and Tribunals Service (HMCTS).
- e. 11.67% of offenders attend community service.
- f. 1.4% of cases result in prison sentence with an average duration of 4 weeks.
- g. 5% of suspects are eligible for legal aid.

84. Unit Cost Sensitivities - There are uncertainties regarding the unit costs borne by the Police and Criminal Justice System. As we only have point estimates, there is no basis on which to make sensible assumptions regarding how they differ. For this reason it has not been possible to estimate the impact of unit cost changes on the net benefits of removing the statutory option. We will have discussion with MOJ and the Home Office during the consultation to better understand the costs and the range of uncertainties.

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

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

Wider impacts

86. 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) ⁴⁹	Value of preventing a casualty (2012 prices and values, £s) ⁵⁰	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

87. 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.

88. 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 is likely to be even greater, as without the statutory option more suspects could be dealt with wholly at the roadside. Keeping the statutory option will mean suspects taking it up have to be transported back to police stations.

89. 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.

90. 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.

91. 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.

92. The annual value of preventable drink drive casualties is running at £880m. This individual measure is part of a package of road safety measures including both publicity campaigns and enforcement of legislation to tackle this cost. Evidence on the impact of single measures such as this is difficult to isolate, as most evidence reflects broader packages of measures. For example, the evidence in 'The Handbook of Road Safety Measures, Elvik et al 2009, section 7.3) shows that a campaign together with enforcement (for example the statutory option plus mobile evidential breath testing) could lead to a reduction in the number of injuries by 13%⁵¹. However the benefits of this measure have not been quantified in this impact assessment, because they also depend on the equipment being deployed and publicity being mounted.

⁴⁹ Reported Road Casualties Great Britain 2011 Annual Report: Drinking and Driving
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9276/rrcgb2011-03.pdf

⁵⁰ Reported Road Casualties Great Britain 2011 Annual Report: A Valuation of Road Accidents and Casualties in Great Britain 2011 (Valuations for June 2011 updated by 4.8% to 2012 prices and values)
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9275/rrcgb2011-02.pdf

⁵¹ Table 7.3.1, Handbook of Road Safety Measures, Elvik et al 2009.

Equalities and Human Rights

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

Equality duties

94. 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.

95. The duty to pay “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

96. 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.

97. 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:

98. 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

99. 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:

100. The removal of the ‘statutory option’ 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 drink was 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.

101. 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.

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

Analysis - Impact on offenders:

Potential Age Impacts:

103. 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:

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

Potential Gender Reassignment Impacts

105. 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

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

Potential Pregnancy and Maternity Impacts

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

Potential Race Impacts

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

Potential Religion or Belief Impacts

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

Potential Sex Impacts

110. 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

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

Mitigation

112. 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 anticipate the benefits of removing the statutory option will fall to those most likely to be affected by the policy.

Summary and preferred option with description of implementation plan

113. 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.

114. The legislative changes would be likely to be commenced shortly after the Royal Assent of the relevant legislation. The Department is working with Association of Chief Police Officers (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.

115. 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 ACPO to monitor the impacts 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 impacts 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 evidence⁵², 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 research⁵³ 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 ratio⁵⁴.
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):

⁵² This evidence is outlined in the North Review of Drink and Drug Driving Law (2010)

⁵³ ¹⁴ North review ref 97: Cobb P, Dabbs M. The Paton Review: Report on the performance of the Lion intoximeter 3000 and the Camic Breath Analyser evidential breath alcohol measuring instruments during the period 16 April 1984 to 15 October 1984. 1985.

⁵⁴ North review paragraph 3.75: Around the time when the statutory breath limit was set, studies showed that people with a ratio less than 2300:1 were disadvantaged by taking a breath test compared with the position if they had given a specimen of blood for analysis. Information from the Paton Report suggested that 26% of offenders would be disadvantaged when a ratio of 2300:1 was used to set the statutory breath alcohol concentration limit. If a ratio of 2000:1 was used to set the UK's breath alcohol concentration limit, only 0.5% of suspects would be disadvantaged compared with a blood test. To allow for both the varying ratio and any instrument error, the actual prosecution limit was set at 40 mcg/100 ml (instead of enforcing the statutory limit of 35 mcg/100 ml) which effectively corresponds to a **de facto** ratio of 2000:1 (rather than the 2300:1 ratio implied in the law in this country). The Paton Report [Cobb P, Dabbs M. The Paton Review: Report on the performance of the Lion intoximeter 3000 and the Camic Breath Analyser evidential breath alcohol measuring instruments during the period 16 April 1984 to 15 October 1984. 1985] concluded that the variability of the ratio (or factor as it was referred to) justified the allowance of 4 mcg/100 ml over the 35 mcg/100 ml limit and the option of giving a blood (or urine) sample for a suitable range above 40 mcg/100 ml.

- 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. In light of the above, 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 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.