



## HOME OFFICE

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Our reference: HOC 46 /1983  
Your reference: 02

25 March 1983

The Circuit Administrator  
The Courts Administrator  
The Chief Clerk of the Crown Court  
The Clerk to the Justices (with a copy for the Chairman of the  
Bench for the information of the Justices)  
The Clerk to the Magistrates' Courts Committee

Sir

HOME OFFICE CIRCULAR NO 46/1983

I TRANSPORT ACT 1981 AND TRANSPORT ACT 1982: DRINKING AND DRIVING  
II AMENDMENT OF DVLC NOTIFICATION GUIDELINES

I am directed by the Secretary of State to inform you that Commencement Orders are to be made to bring into force certain provisions in the Transport Acts 1981 and 1982. The Orders will be circulated to courts in the usual way. The Commencement date will be 6 May 1983.

2. The main provisions of the 1981 Act now being brought into force are section 25, Schedule 8 (whole), Schedule 9 (paragraphs 1, 3, 12 (remainder), 17, 18 (remainder), 19, 20, 21, 23 and 24) and, in Schedule 12, the repeals of section 189(1)(g) of the Road Traffic Act 1972 and paragraph 1 of Part V of Schedule 4 to that Act. The relevant 1982 Act provisions to be brought into force at the same time are section 59 (which amends section 12(3) of the 1972 Act as inserted into that Act by Schedule 8 to the 1981 Act) and paragraph 13 of Schedule 5. The most important effect of these new provisions will be to substitute for the present sections 6 to 12 of the Road Traffic Act 1972 the new sections 6 to 12 set out in Schedule 8 to the 1981 Act. These sections are largely concerned with police powers and with procedures for taking breath and other specimens from drivers. The following changes are, however, of special interest to courts.

3. Section 25 amends section 5 of the 1972 Act in such a way that, in determining under subsection (3) whether there was no likelihood of the accused driving a motor vehicle so long as he remained unfit to drive through drink or drugs, the court may disregard any injury to him and any damage to the vehicle. Section 25 also provides that an offence under the new section 7(4) (failure to provide specimen for breath test) shall be included among the offences involving discretionary disqualification (within the meaning of Part III of the 1972 Act).

4. With the amended section 5 and the new sections 6 to 12 inserted by Schedule 8, offences are now described at:

- Section 5(1) (driving or attempting to drive motor vehicle when unfit through drink or drugs)
- Section 5(2) (being in charge of motor vehicle when unfit through drink or drugs)
- Section 6(1)(a) (driving or attempting to drive a motor vehicle with alcohol above the prescribed limit)
- Section 6(1)(b) (being in charge of motor vehicle with alcohol above the prescribed limit)
- Section 7(4) (failing to provide specimen for breath test)
- Section 8(7) (failing to provide specimen for analysis)

5. The new section 10 makes provision as to evidence in respect of proceedings for an offence under sections 5 and 6 of the 1972 Act as amended. It provides that, subject to conditions and exceptions laid down in the section, evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by the accused shall be taken into account in all cases and that it shall be assumed that the proportion of alcohol in the accused's breath, blood or urine at the time of the alleged offence was not less than in the specimen.

6. The major change which this provision allows is the introduction in evidence of a statement produced by a breath testing machine. The Home Secretary will be approving two devices of this type for use in England and Wales, the Lion Intoximeter 3000 and the Camic Breath Analyser. These devices are quite distinct from the electronic and other breath testing devices which the police are currently authorised to use to obtain an indication of a person's blood alcohol level, which they will continue to use for this purpose under section 7 of the substituted provisions. The devices to be approved under section 8(1) will analyse the breath specimen provided to them and the results of the analyses may be given in evidence in the manner described in section 10(3). The equipment consists of an analytical part, with a facility for printing out the results of the analysis, and a simulator. Both parts are certified by the British Calibration Service (BCS). The instrument's sequence runs automatically. First, the calibration is checked by means of a simulated breath sample produced by the simulator. The instrument then analyses the two breath specimens provided by the suspect and, finally, checks the calibration again. Between each stage the machine "purges" (ie cleans itself) to ensure that any traces of alcohol are removed. The reading produced by the calibration check test must fall within  $\pm 3$  micrograms of 35 (ie within the range 32-38 inclusive) to establish that the instrument is working correctly. To cater for those occasions where the machine may be reading high, albeit within this range, the police will not proceed against offenders with a result of less than 40 micrograms. This will ensure that any offender prosecuted will have a result in excess of the prescribed limit. This allowance is comparable to the allowance currently subtracted from specimens analysed in the laboratory.

7. The print-out produced automatically by the machine shows each of these stages. It incorporates "the statement" and is designed so as to incorporate "the certificate" defined by section 10(3). The equipment will be operated only by specially trained police officers. The suspect will be handed a copy of the certified statement and invited to sign it. The Annex to this circular shows the form of print-out from each instrument and indicates what information is given at each entry.

8. New section 12 sets out the interpretation of certain terms used in sections 5 to 11. In particular, it sets out the prescribed limits for alcohol content in breath, blood and urine. It may be helpful to note that section 12(3) as amended by section 59 of the 1982 Act now reads:

"A person does not provide a specimen of breath for a breath test or for analysis unless the specimen is sufficient to enable the test or the analysis to be carried out and provided in such a way as to enable the objective of the test or analysis to be satisfactorily achieved."

9. Section 93(4) of the Road Traffic Act 1972 is amended by paragraph 3 of Schedule 9 to the 1981 Act and by paragraph 13(1) of Schedule 5 to the 1982 Act. The effect of the amendment is that the sequence of references in that subsection to other parts of the Act will now read "sections 5(1), 6(1) (a) or 8(7)". In addition, the remainder of the paragraph in the 1982 Act's Schedule provides that for the purposes of section 93(4) a previous conviction of an offence under the corresponding provision of the old law shall be treated as a conviction of an offence under the new provision. It stipulates that the old offence corresponding to one under the new section 6(1)(a) was one under section 6(1), and that the old offence corresponding to one under the new section 8(7) was one under section 9(3) of the 1972 Act.

10. Courts will wish to note that the amendments of the references to certain sections of the 1972 Act in column 1 of Part II of Schedule 7 (Penalty Points), which were contained in paragraph 26 of Schedule 5 to the 1982 Act, brought into force by the Transport Act 1982 (Commencement No 1) Order 1982 (SI 1982 No 1561(c47)), lapse upon the coming into force of Schedule 8 of the 1981 Act.

#### AMENDMENT OF DVLC NOTIFICATION GUIDELINES

11. A new page 33 is attached which should be substituted for the present page 33 of the "Guidelines for Courts on Notification to DVLC of Endorsements, Disqualifications and Appeal Results". The revised page includes a new code BA30 for the notification of convictions of attempting to drive while disqualified.

I am, Sir  
Your obedient Servant

*Bronwen Fair*

MRS B H FAIR

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POLICE STATION

NEW TOWN

LOCATION OF TEST

NAME OF SUBJECT

CT. SMITH

TEST RECORD

LION INTOX. 3000/183  
LION LABS  
DEMONSTRATION

FRI FEB 11, 1983

SUBJECT NAME=  
JONES, T. P.  
DOB. = 301040

SUBJECTS SIGNATURE

*CT Smith*

*T.P. Jones*

SIGNATURE

\*\* RESULTS \*\*

CAL CHECK NO.1

034UG/100ML

\* ZERO CHECK \*

000UG/100ML

FIRST CALIBRATION CHECK RESULT

PURGE RESULT

BREATH TEST NO.1

000UG/100ML

DATE 24/02/83

TIME 16:35 GMT.

SUSPECTS FIRST SPECIMEN RESULT

\* ZERO CHECK \*

000UG/100ML

PURGE RESULT

BREATH TEST NO.2

000UG/100ML

DATE 24/02/83

TIME 16:36 GMT.

SUSPECTS SECOND SPECIMEN RESULT

\* ZERO CHECK \*

000UG/100ML

PURGE RESULT

CAL CHECK NO.2

034UG/100ML

SECOND CALIBRATION CHECK RESULT

	TEST UG%	TIME
STD	35	18:11BST
BLK	0	18:11BST
ONE	13	18:12BST
BLK	0	18:12BST
TWO	11	18:13BST
BLK	0	18:13BST
STD	35	18:14BST

OPERATOR

*B. Gange*

OPERATOR NAME=  
WILLIAMS, R

I CERTIFY THAT IN THIS STATEMENT READING 1 RELATES TO THE FIRST SPECIMEN OF BREATH PROVIDED BY THE SUBJECT NAMED ABOVE AND READING 2 TO THE SECOND, AT THE DATE AND TIME SHOWN HEREIN

I CERTIFY THAT IN THIS STATEMENT READING ONE RELATES TO THE FIRST SPECIMEN OF BREATH PROVIDED BY THE SUBJECT NAMED ABOVE AND READING TWO TO THE SECOND, AT THE DATE AND TIME SHOWN HEREIN.

*B. Gange*

*R. Williams*

SIGNATURE

CODE	OFFENCES	PENALTY POINTS
CU60	Undefined failure to comply with construction and use regulations	3
	RECKLESS DRIVING OFFENCES	
DD30	Reckless driving	10
DD60	Manslaughter or, in Scotland, culpable homicide while driving a motor vehicle	†
DD70	Causing death by reckless driving	†
	DRINK OR DRUGS OFFENCES	
DR10	Driving or attempting to drive with alcohol concentration above limit	†
DR20	Driving or attempting to drive when unfit through drink or drugs	†
DR30	Driving or attempting to drive then refusing to provide a specimen for analysis	†
DR40	In charge of a vehicle with alcohol concentration above limit	10
DR50	In charge of a vehicle when unfit through drink or drugs	10
DR60	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive	10
DR70	Failing to provide specimen for breath test	4
	INSURANCE OFFENCES	
IN10	Using a vehicle uninsured against third-party risks	4-8
	LICENCE OFFENCES	
LC10	Driving without a licence	2

APPENDIX 1

ENDORSEABLE OFFENCE CODES AND PENALTY POINTS

† indicates obligatory disqualification except for special reasons when 4 points imposed

CODE	OFFENCES	PENALTY POINTS
OFFENCES IN RELATION TO ACCIDENTS		
AC10	Failing to stop after an accident	5-9
AC20	Failing to give particulars or to report an accident within 24 hours	4-9
AC30	Undefined Accident Offence	4-9
OFFENCES OF DRIVING WHILE DISQUALIFIED		
BA10	Driving while disqualified by order of Court	6
BA20	Driving while disqualified as under age	2
BA30	Attempting to drive while disqualified by order of Court	6
CARELESS DRIVING OFFENCES		
CD10	Driving without due care and attention	2-5
CD20	Driving without reasonable consideration for other road users	2-5
CD30	Driving without due care and attention or without reasonable consideration for other road users (primarily for use by Scottish Courts)	2-5
CONSTRUCTION AND USE OFFENCES (VEHICLES OR PARTS DANGEROUS)		
CU10	Using a vehicle with defective brakes	3
CU20	Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in dangerous condition	3
CU30	Using a vehicle with defective tyres	3
CU40	Using a vehicle with defective steering	3
CU50	Causing or likely to cause danger by reason of load or passengers	3