

# **Drinking and driving : report of the Departmental Committee [on Drinking and Driving].**

## **Contributors**

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**DEPARTMENT OF  
THE ENVIRONMENT**

**DRINKING AND DRIVING**

**REPORT OF THE  
DEPARTMENTAL COMMITTEE**

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Department of the Environment

DRINKING AND DRIVING

Report of the  
Departmental Committee



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DEPARTMENT OF THE ENVIRONMENT

Report of the  
DEPARTMENTAL COMMITTEE ON  
DRINKING AND DRIVING

To John Gilbert Esq MP  
Minister for Transport

Sir,  
Your predecessor appointed us in July 1974

*To review the operation of the law relating to drinking and driving and to  
make recommendations,*

and we now present our report.

The untimely death of Graham Hill overshadowed the concluding stage of our work. He fully shared the Committee's concern at the increasing toll of road casualties attributable to drinking and our desire to see urgent measures to reverse this trend.

We are grateful to the many persons and bodies who made representations to us. The amount of care thought and time they have devoted to the subject is a token of the widespread anxiety it causes. Not only were our own conclusions unanimous: they largely reflect, and are supported by, the vast majority of those who submitted evidence.

Most countries have a similar problem, and have much to gain by sharing their experience. We would especially mention the help we received from Dr R Voas, who came over from Washington, and from the many people whom the Chairman and members met during visits to Northern Ireland and Sweden.

The Committee is very conscious of the debt it owes to its Secretary for his diligence skill and perseverance, to the assessors from several Departments, and to other members of the secretariat who gave invaluable help.

Our hope is that the proposals in this report will contribute to a reduction in road casualties, and thus achieve the purpose for which we were appointed.

FRANK BLENNERHASSETT  
Chairman

W P BLAIR  
STANLEY BOWEN  
E G DAVIES  
GRIFFITH EDWARDS  
MARTIN L EDWARDS

PATRICK HALNAN  
JAMES K McLELLAN  
ANDREW RAFFLE  
BARBARA E SABEY  
GEORGE W R TERRY

DENNIS BALDRY  
Secretary

16 February 1976

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1. The author's main argument is that the current legal system is fundamentally flawed and needs to be reformed. This is supported by several key points: the complexity of legal procedures, the high cost of litigation, and the slow pace of justice. The author argues that these issues are not merely technical problems but are symptomatic of a deeper systemic failure. To address these concerns, the author proposes a series of reforms, including the creation of a judicial council to oversee the judiciary, the implementation of a case management system to streamline proceedings, and the establishment of a public defender system to ensure access to legal representation for all. The author also emphasizes the need for a cultural shift within the legal profession, where efficiency and cost-effectiveness are valued alongside traditional notions of legal formality. The book is well-structured, with clear chapters that build upon each other to present a comprehensive case for reform. The author's use of real-world examples and data adds significant weight to the arguments presented. Overall, this is a highly informative and persuasive work that is essential reading for anyone interested in the future of the legal system.

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# 1 A new attack on drinking and driving

1.1 Alcohol accounts for at least one in ten of all deaths and injuries on the roads and its share is growing. The success of the Road Safety Act 1967 sharply, but only temporarily, arrested this deplorable trend. The proportion of drivers killed in accidents who have a blood alcohol concentration (BAC) above the legal limit is higher than it has ever been, and the social cost of road accidents involving alcohol now exceeds £100 million a year. Although numbers of breath tests and convictions have risen, the police and the courts work under handicaps and cannot stem the tide. Our report analyses this grave situation and proposes remedies.

## **The impact of the Road Safety Act, and its decay**

1.2 The early impact of the Road Safety Act showed what could be achieved. Over a thousand lives were saved in the first year, and a further 4,000 in later years. In no other country have laws against drinking and driving led to such large demonstrable savings. The effect on public attitudes was equally marked and more lasting: opposition to strong and effective measures against the drinking driver has virtually disappeared.

1.3 The fall in casualties—which was largely accounted for by a reduction of a third in accidents between ten at night and four in the morning—has since worn off. Before the Act, 25% of drivers who died in accidents had over 80 mg/100ml of alcohol in their blood. This fell to 15% in 1968, but was back to 26% by 1971 and had risen to 35% by 1974. The deterioration in the position is particularly marked among young male drivers: by 1971 40%, and by 1974 45%, of those in their twenties who were killed were over the legal limit. Drinking and driving was one of the commonest circumstances leading to death in this age-group.

## **The wider context**

1.4 The inability or unwillingness of some drivers to exercise a proper degree of restraint in their drinking and the futility of the resulting loss and suffering are a source of wide public concern. We have been forced to recognise that drinking and driving is part of a wider problem of alcohol abuse in Britain today. National consumption of alcohol rose by 39% between 1968 and 1974 and among young people it is believed to be rising even more rapidly. Not only drinking and driving but other alcohol-related offences and alcohol-related diseases have increased alarmingly. It is not part of our task to recommend countermeasures against these wider problems, but we feel it must be recognised that the growing abuse of alcohol is a major factor—possibly the major factor—in the declining effectiveness of the 1967 Act. Those whose responsibility it is to consider the wider problems should bear in mind the heavy social cost of road accidents due to alcohol.



## **How can the attack be renewed and intensified?**

1.5 We are convinced that the other major factor in the decay of the law's effectiveness is the drinking driver's growing appreciation that the real risk of being detected and convicted, though higher than before, remains low. It is impossible for the police, within the limitations of the law and of their resources, to test more than a small proportion of drivers on the road at any time. A growing inclination to take a chance has been reinforced by well-known technical defects in the Act, which suggest that even a positive test need not cost a driver his licence. The falling-off in Government publicity since 1967 has permitted this complacency to take root; it has allowed ignorance about the effects of alcohol on driving to grow, especially among young drivers who missed the publicity in 1967. If there is to be a significant reduction in accidents caused by alcohol, the public, and especially drivers, must be better informed about its effects on driving ability and the extent of casualties which result from its abuse. This of itself would provoke a responsible reaction, which needs to be backed by stronger enforcement of the law. There is abundant evidence that this would be very widely welcomed.

1.6 The level of enforcement has to be *seen* to be increased. Since police resources are limited, that can be achieved only if the obstacles to their task are cleared away. At present, the police are hampered by the need to follow, to the letter, a complicated and time-consuming procedure, and to prove in court that they have done so. Moreover, a driver cannot be convicted unless the constable required the initial roadside breath test in circumstances which are closely and restrictively defined in the statute. Thus a first step in combating the effects of alcohol on the roads is to change features of the law which frustrate its enforcement, and to give the police the improved technical aids now available. We believe this can be done while maintaining essential safeguards for the citizen.

### **Breath analysis**

1.7 In considering simplification of procedure and making enforcement more effective we have been greatly encouraged by the recent progress in techniques of breath analysis. Breath is already used for assessing BACs, with satisfactory results, in several countries; and we are recommending (para 4. 10) that it should replace the sampling of blood as the normal procedure in this country also. It is more convenient both to police and to suspects, is equally fair, and would lead to economies by largely eliminating the need to take blood samples for laboratory analysis. We are however proposing (para 4. 7) that a suspect whose breath analysis is positive shall have the right to provide a blood sample if he wishes. The option of giving urine can and should be dispensed with, and its omission would lead to a considerable simplification of procedure.

1.8 Breath is already the medium for the screening test. The Alcotest device used for this purpose is not always easy to read, especially at night. New devices which are under development are designed to give clearer fail or pass indications, and when one of these meets performance and cost criteria its adoption would be a marked advance (para 4. 11).



### **The prescribed limit**

1.9 A reduction in the legal limit from 80 to 50 mg/100 ml is sometimes advocated as a way of strengthening the law. This would broaden the field of potential offenders, and thus magnify the enforcement task. The advice we received was that 80 mg/100 ml remains appropriate. It is a level which we believe commands the respect of the general public, and we found no sufficient evidence to justify a change at this time (para 5.2).

### **Defects of the present law**

1.10 Defects in the 1967 law have hampered not only the police but the courts. The difficulties largely stem from the decision to define and prescribe both the circumstances in which a test may be required and the procedure to be followed thereafter. Proof of the offence has become inextricably bound up with proof that the procedure has been rigidly followed, with the result that many acquittals are on grounds which have no relevance to the merits of the case; loopholes and limitations in the law have been discovered and exploited.

1.11 The most frequent theme in representations to us was one of frustration and impatience at these shortcomings. There can be little doubt that they have blunted enthusiasm for enforcing the law. Both in the lower courts and in courts of appeal, including the House of Lords, the drinking and driving legislation has generated more case law than almost any other recent enactment. The absurdity of this situation is the more keenly felt since the offence is defined in terms of the result of accurate analysis, and this finding has seldom been the matter in dispute.

### **Circumstances in which testing is valid**

1.12 A major source of difficulty is that unless a person has been involved in an accident the screening breath test can only be required if he is 'driving or attempting to drive'. Not only does this defy literal interpretation; it excludes those who have ceased to drive—perhaps only minutes before—yet have clearly driven with excess alcohol in their blood. We are therefore proposing that there should be a power to test a person who has been driving or attempting to drive, provided the requirement is made as soon as reasonably practicable (para 5.17). We also consider there should be power to test a person who is merely in charge of a motor vehicle, though it should continue to be a defence that he was not likely to drive while unfit through drink or drugs (para 5.18).

1.13 Further difficulty has arisen from the limited circumstances in which a person who is driving or attempting to drive may be required to take a breath test. The constable must have reasonable cause to suspect the driver either of having alcohol in his body or of having committed a moving traffic offence. An experienced police officer may well see instances of driving which suggest that a test would be appropriate, without being able to satisfy a court that the driver fell within these categories. We have considered carefully whether any alternative definition is possible, which would widen the circumstances in which the police may require a breath test, and whether in the light of experience limitations are indeed necessary. We could find no form of words limiting police discretion to test which would not create similar difficulties; and we received no evidence that existing powers to test, which are in many respects quite wide, have been abused.



### **Roadside testing**

1.14 We also had to consider the extent to which limitations on the powers of the police to stop and test drivers inhibit enforcement. If the police are to be efficient in detecting offenders, and their limited means are to be deployed to best effect in deterring those who might drink excessively before driving, they need discretion to test those who are most likely to be over the limit. The present categories do not allow the police to develop policies which are relevant to drinkers' behaviour, or to rely on their trained judgment in the individual situation: instead they must conform to an artificial ritual, in the knowledge that, if they deviate from this, a prosecution is likely to fail, however dangerously unfit the suspect may subsequently prove to have been.

1.15 Thus both to remedy the defects in the law and to provide the basis for appropriate and effective enforcement of it, the present limitations on the power to stop and test drivers have to be removed (para. 5.16). We regard this as an essential and integral part of our proposals.

### **'Random testing'**

1.16 Although it is a vital reform, removal of these limitations may be criticised as a return to the provisions of the original Road Safety Bill, which were opposed because many feared they would lead to 'random testing' without the suspicion of impairment. The Bill was certainly intended to transform a situation in which only manifestly drunken drivers were arrested, into one in which those whose impairment was less obvious could be identified by a breath test. But the police were never likely to operate in a completely 'random' way, because this would have meant testing many drivers for every one who was found to be over the limit.

1.17 The compromise which was adopted in response to this opposition did not, despite impressions to the contrary, actually forbid 'random testing': the sponsors of the Bill made this clear at the time. Nor would it have been feasible to rule it out, since the police had to be left with considerable discretion which, within the specified categories, they could have exercised 'randomly'. That they have not operated in this way is the result, not of the law, but of practical considerations. But the legal restrictions on police discretion have had the effect of securing the acquittal of many who were over the limit, thereby discrediting the law, and of handicapping the police in their proper function of detecting drinking drivers.

1.18 Removing the limitations on the power to test drivers would permit police discretion to be exercised in relation to the actual patterns of drinking and driving behaviour, rather than to artificial criteria. Enforcement strategy could be directed purposefully, flexibly, and to maximum effect.

1.19 Moreover, this change would do much to dispel the dangerous illusion under which a person often drinks more than is consistent with safe driving. He does not realise how alcohol has reduced his ability to respond suitably to the actions of other road users—the pedestrians, cyclists, and other drivers whom he may encounter on the way home. Until he meets an unexpected hazard and has—or narrowly misses—an accident, he thinks he is driving safely. This notion is fostered by the idea, to which the present law gives substance, that, barring an accident or moving traffic offence, he is 'safe' from being stopped and tested. Removal of the limitations which encourage that idea would thus have a salutary effect on drivers' attitudes.



## **Publicity and Education**

1.20 More effective enforcement alone is not enough. It is essential that the police should have the full support of public opinion for their work to be practical and effective. Although there is strong public support for action against drinking and driving in general, there is still a great deal of ignorance about the particular effects of alcohol and much complacency on the subject among drivers. The danger is emphasised by the fact that there are still people who believe that they drive better after a few drinks, despite the fact that this delusion has been shown to make a major contribution to the danger. Alcohol is a depressant drug (not a stimulant as popularly supposed), and one of its first effects is to suppress the self-monitoring function which inhibits dangerous behaviour. It may thus induce a driver to feel that his performance has improved at the very time when it has actually deteriorated. There is an urgent necessity for the Government to counteract this ignorance and complacency by undertaking a heavy and continuing campaign of public education through the media. Consideration should also be given to including information about the effects of alcohol and its dangers in connection with driving, in schools' social and road safety curricula (para 9.8).

## **Sentencing the offender**

1.21 The other major element in creating respect for the law and in deterring potential offenders is the sentence which drivers expect to receive if they are detected. The evidence we have studied indicates that for the great majority, a mandatory period of disqualification is an effective deterrent; and after reviewing the arguments we concluded that one year remains the appropriate minimum period (para 6.14). (We discuss below the main limitation on the efficacy of normal sanctions). The courts have full discretion to impose longer periods in bad cases, and we welcome their growing use of this. Other measures, such as imprisonment, probation, and community service, are used exceptionally, but cannot be an important element in the deterrent force of the law.

## **High-risk offenders**

1.22 Several organisations, whose views must carry considerable weight, pointed out that the present law allows a person with a drinking problem to have his licence returned to him automatically at the end of a period of disqualification, notwithstanding that his condition may be undiagnosed and untreated. We were urged to recommend new measures both to help the offender, and to protect other road users. Analysis of convictions shows that of those who are disqualified at least one in ten repeats the offence within 10 years, and it is unlikely that mere recklessness is the only explanation. Repeat offenders also show on average a significantly higher BAC than first offenders. We are in no doubt that, as in other countries which have studied the characteristics of drinking drivers, alcoholism is a factor in the situation; and that special measures are needed in response to it.

1.23 It is not easy, however, to devise appropriate measures. There is no satisfactory way of identifying those whose drinking is out of control without their co-operation, which they are likely to withhold if the consequences are to be indefinite loss of their licences. After careful consideration, we propose instead (para 7.12) to identify a new category of 'high-risk offenders', defined



as those who have BACs over 200 mg/100 ml (a level hardly ever reached in normal social drinking) together with second offenders and those who refuse specimens for analysis. These would be subject to a special type of order (in addition to the ordinary penal disqualifications for at least 12 months), as a result of which they would be put on notice that, to get their licences back at the end of that period, they must satisfy the court that as drivers they would not present undue risks. They would be encouraged to seek advice and, if they have drinking problems, appropriate help.

### **Our central proposals**

1.24 The proposals outlined in this chapter are developed in the rest of this report; here we have been concerned to bring them together in connected form. The main recommendations we make are:

1. That, as at present, there should be an offence defined in terms of a blood alcohol limit of 80 mg/100 ml (para 5.2; but see also 8.11).
2. That a breath sample should normally be used to determine a driver's BAC, as well as for roadside screening tests, but with a fall-back option of providing blood if the breath analysis is over the limit (para 4.10).
3. That a constable at his discretion should have power to require a breath test of a person who is or has been driving or attempting to drive or in charge of a motor vehicle (paras 5.16-18).
4. That proof of an offence should not be unreasonably dependent on compliance with procedural requirements (para 8.2).
5. That an order of disqualification for a year (or longer at the court's discretion) should continue to be the main penalty, in conjunction with fines, but that in 'high-risk' cases (ie those with very high BACs and repeat offenders) licences should not be restored until the court is satisfied that the offender does not present undue risks as a driver (paras 6.14 and 7.12).
6. That there should be a continuing programme of publicity, having particular regard to the education of young drivers, to develop informed and responsible attitudes to drinking and enlist public support for the law. Social and road safety education should prepare pupils for what has become a major hazard of young adult life (para 9.8).

Further recommendations on subsidiary matters will be found in appendices 3 (para 8) and 6.

1.25 We here make two recommendations of a general nature. First, we would stress the importance of treating our recommendations as a related package. Not only are many of them closely connected, but the experience of the Road Safety Act showed how, suitably presented, drinking and driving counter-measures can have dramatic results. Although it would be wrong to look for an instant solution and to neglect the need for longer-term efforts, the opportunity of saving thousands of lives and injuries by giving measures real impact should not be passed over, and *we recommend* that if at all feasible they should be synchronized.

1.26 Second, we are conscious that the extent of drinking among drivers is affected by the availability of alcohol. This was recognized by Parliament when it forbade the issue of liquor licences to motorway service areas (see appendix 5). While it would not be practicable to withdraw the opportunities which already exist for people, if they are so disposed, to drink to excess before driving, decisions are sometimes taken which may extend those opportunities. Whether the matter under consideration is a change in the licensing laws (for instance to alter opening hours or minimum ages) or an application to sell liquor in a type of premises where it has not previously been generally available, *we consider* that any road safety implications should be given due weight in reaching a decision.



## 2. Alcohol and road safety

### **Alcohol and driving ability**

2.1 Most drivers are imperfectly aware of the ways in which drinking affects them. As alcohol enters the blood-stream it affects the higher centres of the central nervous system, blunting perception, impairing co-ordination and, in particular, diminishing the power of evaluating one's own performance. Being imperfectly aware of his condition, the driver who is so affected does not sufficiently compensate for his slower mental processes, and may take more risks on the road. These results of taking alcohol have been measured both in practical tests, and by studying the accident records of drivers in relation to their drinking.

2.2 There have been a number of experiments in which drivers' performance has been compared when completely sober, and after drinking measured doses of alcohol. One in 1959, using experienced Manchester bus drivers, found for instance that some were willing, after taking only 2 oz of whisky, to attempt to drive through a gap 14 inches narrower than their vehicles. A more extensive study of driving performance after drinking carried out for the Medical Research Council in the same year found that some impairment was detectable at levels as low as 20-30 mg/100 ml, and that for a level of 80 mg/100 ml (which was to be chosen as the legal limit in 1967) the mean deterioration in performance was 12%. Swedish tests in 1950, showing an even more marked deterioration at levels as low as 40 mg/100 ml, were recently confirmed in a demonstration test (mentioned in para 9.6 below): particularly striking was the inability of drivers at these relatively low BACs to avoid hitting unexpected obstacles which were raised in their path, whereas sober drivers were almost all able to do so. The British Medical Association summed up research findings in 1960 by advising that 50 mg/100 ml was the highest BAC that could be accepted as entirely consistent with the safety of other road users, even in the case of hardened drinkers and experienced drivers; they confirmed this advice in 1965, adding that 'there can be very few persons in whom impairment of the ability to drive properly and increased risk of being involved in accidents are not present to a significant extent at blood alcohol concentrations in excess of 80 mg/100 ml.

### **Blood alcohol and accident risk**

2.3 Assessments of performance in experimental conditions were complemented by studies in which the accident involvement of drivers at various BACs was compared with that of control samples, and their drinking habits were noted. The largest of such surveys was conducted by Borkenstein at Grand Rapids, Michigan, in 1962-3. It found that drivers were significantly more likely to be involved in accidents by the time they reached 80 mg/100 ml, and that the curve of accident involvement rose steeply, so that the risk was ten times higher than normal at 150 mg/100 ml and twenty-fold at 200 mg/100 ml.



Although regular drinkers were on average less likely than occasional drinkers to have accidents at lower BACs, they were nevertheless significantly less safe around 80mg/100 ml than the control group. Moreover, young drivers and others who were inexperienced drinkers incurred markedly higher accident risks at levels well below 80 mg/100 ml.

2.4 Recently, detailed investigation of accidents by the Transport and Road Research Laboratory (TRRL) has shown that drinking drivers were at least twice as likely to have been driving too fast, and significantly more likely than average to be involved in ill-judged overtaking.

### **Drinking and casualties**

2.5 Alcohol is thus shown to affect the ability to drive safely. It interacts with other factors, multiplying the chances that accidents will result. In how many accidents in this country is alcohol actually a factor?

2.6 In the TRRL investigations of 2000 accidents, a drinking driver was involved in 25% and his condition was a major factor in 9%. Another indication of the magnitude of this cause of accidents was the 11% reduction in casualties which followed the Road Safety Act 1967. The effect of alcohol on road safety is thrown into sharp relief by the coroners' returns of alcohol levels in drivers who die in accidents in England and Wales. By 1974, over one in three—about 900—drivers had BACs over 80 mg/100 ml when they were killed, and one in ten—about 250—were over 200 mg/100 ml. The vast majority of deaths occur in the hours between 10 pm and 4 am, when the proportion over the legal limit rises to 58% on Monday to Friday, and to 71% on Saturday nights. Thus the relatively small number who drive while intoxicated are a very large factor in road casualties.

### **The pattern of drinking and driving**

2.7 Among those who are convicted of drinking and driving offences or killed as a result of driving while intoxicated, some groups are very heavily represented—they are overwhelmingly male and predominantly young. But it should not be supposed that countermeasures have to reckon with an isolated and atypical group of aberrant drivers. Offenders who appear before the courts come from every social group, even if some are represented more frequently.

2.8 The consumption of alcohol has been increasing in recent years. In some contexts, it may have little effect on road safety; but a growing general use of alcohol is the background against which drinking by drivers causes an increasing number of accidents. Road accidents, however, mostly involve drivers who make a habit of drinking outside the home, and occur mainly at the times when they return (see appendix 2).

2.9 There is a clear link between road accidents and social activities. The level of accidents is high after 10 in the evening, and increases dramatically on Friday and Saturday nights; other evidence shows that alcohol is a factor in far more accidents at these times than during the rest of the day. Those involved are almost all male because men both drive and drink more than women. They are predominantly young, but this is partly because young people go out more than others. The result is that road accidents cause half of all male deaths between

the ages of 15 and 24 and the largest factor in these casualties is alcohol. While their mobile social life and their comparative inexperience both as drinkers and as drivers puts young men particularly at risk, their prominence in the pattern is only an extreme manifestation of widespread social customs in which many others participate.

2.10 The short-term success of the 1967 Act was most clearly shown in its effect on accidents between 10 at night and 4 in the morning. The proportion of drivers killed in accidents between these hours who were over the legal limit was twice the average for the day; following the Act, these casualties were reduced by a third. But recent TRRL accident investigations have found that drivers who had been drinking were involved in 67% of accidents at these hours, and alcohol was a major factor in 30% of these accidents.

2.11 While such reductions can be achieved, this is not the whole story. At least one in ten of those who are disqualified for drinking and driving is likely to repeat the offence. These persistent offenders are likely to be people with drinking problems, and to be unreceptive to both publicity and deterrent measures. Here, as in many other countries, this factor in the situation is now being increasingly recognized, and needs to be dealt with.



### 3. The successes and failures of the Road Safety Act

#### **Origins of the present law**

3.1 The 1967 Act was the most recent of many attempts, over several decades, to legislate on this subject. The earlier laws (parts of which still survive) had crippling defects that prevented their adequate enforcement. In the absence of an objective definition of the offence, and a mandatory test on the driver, only those who were manifestly intoxicated were at all likely to be convicted; police surgeons faced an unenviable task in preparing and giving evidence.

3.2 For a better law, the Government looked to the advice of doctors and scientists and to Scandinavian experience. An offence of driving with blood alcohol above a prescribed limit, together with a mandatory screening breath test on the road and compulsory provision of blood or urine samples at the police station, was the vital innovation that the 1967 Act brought to Britain.

#### **Immediate results of the new law**

3.3 The Road Safety Act had greater demonstrable benefits than any other drinking and driving legislation, anywhere in the world. It came into force on 9 October 1967. A major publicity campaign to instruct the public on its provisions ran from 25 September to 31 December, and there was much editorial comment. Surveys before and after the campaign confirmed that drivers' behaviour had been affected favourably, but suggested that this change was not deeply rooted in their knowledge and attitudes.

3.4 Enforcement began immediately, and the number of drivers required to take breath tests rose quickly to over 4000 a month. There were 26 000 convictions for the whole group of drinking and driving offences in 1968, compared with about 10 000 (for the earlier offences) in 1966.

3.5 The effects on behaviour were immediate and manifest. Though the fall in business at country inns was very temporary, and total alcohol consumption was unaffected, road casualties fell immediately by 11%, deaths alone by 15%. This was mainly accounted for by a 34% fall in casualties between 10.00 pm and 4.00 am (40% on Saturday night/Sunday morning). Of 12 300 fatal or serious casualties saved in the first twelve months, 8 800 were during these six hours. This drop in numbers occurred mainly in the age-group 30-59. Coroners' returns showed a marked improvement, however, in all age-groups except 25-29.

#### **Longer-term effects**

3.6 It has been estimated that, since 1967, the Road Safety Act has saved 5 000 lives and nearly 200 000 other casualties. Enforcement has continued at a high level: breath-test requirements rose at an annual rate of 21% to a peak of 11 000 a month in 1973. Convictions rose at a similar rate to 69 000 a year.



Recent public opinion surveys indicate that, perhaps as a result of the demonstrated casualty savings, public support for an effective drinking and driving law and strong sanctions is overwhelming. The Automobile Association's surveys found that over 60% of drivers were satisfied with the law both in 1968 and 1974; but the percentage thinking it should be *stronger* rose from 9 to 23, and those who considered the law unnecessary fell from 16% to 1%.

3.7 On other fronts the situation was not so happy. By the end of 1968 it was evident that the benefits were wearing off, and publicity campaigns before Christmas in that and succeeding years had no noticeable effect. Analysis of what happened is hampered by lack of data, notably on distribution of BACs among the total driving population before and after the Act. It seems likely however that developments since 1967 have been the product of:

1. continued growth in use of personal transport and in alcohol consumption, especially among young people;
2. decay in that awareness of the nature of the risks of impairment by alcohol which had been fostered by publicity and controversy in the 1960s; and
3. growing appreciation by drinking drivers that the risks of being detected on any particular occasion were quite low (surveys suggest that many drinking drivers are now prepared to take a chance of avoiding the attention of the police).

3.8 The Act was passed in the middle of a period when use of both personal transport and alcohol was increasing. Registrations of private cars and vans were going up by 4.5% a year, estimated numbers of substantive licence-holders by 3%. Both use of cars and social drinking are believed to have risen particularly fast among the young, who as we have seen are especially at risk on the roads because of their social habits and their inexperience. In the community, consumption of wines and spirits has recently been rising at about 10% annually: it would have been remarkable if this had not had some effect on road safety.

3.9 Moreover the under-30 age-group of drivers is constantly recruiting new members who were too young to be influenced by the 1967 publicity campaign. As publicity since then has been on a declining scale, there must be a growing number of people of all ages who are only dimly aware of the way alcohol affects driving ability. That enforcement has actually been stepped up is not widely realised. The unsatisfactory state of the law had diminished its efficacy and may have discouraged further initiatives such as major publicity and enforcement campaigns.

3.10 As a result of these factors, the number of casualties associated with drinking started to rise again. This is most clearly seen in the coroners' reports; the proportion of drivers killed with excess blood alcohol had returned to its previous level of 25% by 1971, and has since risen to 34%. There are indications that the effects of the Act were more lasting in the 40-60 age group, and that they wore off most rapidly among those under 30. In this last group, a new development was the rise in the proportion of drivers under 20 killed in accidents who had been drinking. The present situation, while different in many ways from that which preceded the Road Safety Act, is even more serious overall.



### **Legal loopholes and anomalies**

3.11 The defects, anomalies and limitations of the law have led to widespread dissatisfaction and frustration, and inhibited its enforcement. Calls for the law to be simplified and made more effective are a feature which is common to evidence from the Bar Council, the Law Society, individual judges, barristers and solicitors, and the motoring organisations. It was inevitable that a novel law which so greatly increased the likelihood of conviction and of losing one's licence would be challenged and probed for technical defects. There is now a disposition among eminent lawyers to question some of the earlier decisions which have shaped much of the case law, but certain deficiencies remain.

3.12 We have already indicated that difficulties arose from the undue limitations on the circumstances in which a breath sample can be taken at the roadside, and the undue dependence on procedural requirements. A blood sample can be required of a person arrested after a positive breath test or failure to provide a specimen of breath. The courts have held that 'arrested' means lawfully arrested—so that if a person was arrested for failing to give a specimen of breath when in fact the crystals had changed colour, the subsequent actions of the police were invalid and the evidence of BAC inadmissible.\* Moreover the arrest can only be of a person within the defined categories who can be required to give breath specimens; in one instance the courts have held that the peculiar driving behaviour of the suspect did not necessarily create a reasonable suspicion that he had consumed alcohol; again the analysis went for naught. These examples can be multiplied.

3.13 We can think of no other offence where matters of this kind are an integral part of proof, and can lead to unmeritorious acquittals. These tend to discredit the law. They have frequently led to accused persons electing trial for the sole purpose of examining the evidence in detail to see whether the prosecution has avoided all the rocks on which its case may founder. By 1970, the drafting defects of the Act had come close to making it unworkable. That this did not happen was due to a series of decisions on appeal which struck down many of the more extravagant defences and made the best of difficulties of interpretation we have just outlined; but also to the fact that many defendants are prepared to admit their guilt and are disinclined to contest cases with an uncertain outcome. The police have gone to much trouble to train staff in the prescribed routines, and prosecuting solicitors have exercised much skill and some ingenuity in anticipating technical defences. But the state of the law remains profoundly unsatisfactory, and must be remedied.

### **Positive results of the Road Safety Act**

3.14 The efforts which have gone into enforcing the drinking and driving law are a testimony to the lasting change in attitudes produced by its impact on road casualties. The divided opinions about restricting the freedom of social drinkers that existed in most sections of the community before the 1967 Act have since then been transformed into overwhelming support for its intentions. The continuing determination to control the drinking driver is shown not only in opinion surveys but in the steady rise in breath tests and prosecutions—which cannot be entirely accounted for by a decline in compliance with the law's

\*This position will be reviewed by the House of Lords in a forthcoming case.



demands. While the basic rights of the suspect must be safeguarded, we consider that other road-users' right to be protected from dangerously unfit drivers is paramount. Those who have done so much to combat the drinking driver should now be given better tools to continue the job, and relieved of the handicaps under which they work.

## 4. Ways of testing for alcohol

### **The need for improved technical procedures**

4.1 The procedures introduced by the Road Safety Act have a number of disadvantages, and we found a widespread desire for improvements in the technical means for screening drivers and determining their blood alcohol levels. Criticisms of the present procedure relate to the accuracy of the screening process, the length and complexity of the procedures for obtaining samples for analysis, their demands on skilled manpower, and the delay in establishing a driver's BAC. Techniques of breath analysis have advanced since 1967 to a point where they could form a basis for new procedures which would overcome these disadvantages, while being equally fair to the suspect. In fact, since they would be expeditious and painless, suspects would find them more acceptable, and the numbers who refused to give samples would probably be considerably reduced.

4.2 The disadvantages of the present procedures are:

(1) The *screening procedure* is not sufficiently reliable. About 10% of those whose breath test is positive at the roadside are eliminated by the second breath test that is offered on arrival at the police station; and on laboratory analysis of their blood or urine specimens a further 20% are found to be below the prescribed limit. (The number of false negative readings is of course unknown). These apparent discrepancies cannot all be attributed just to the time-lag between the screening tests and the time when specimens are taken: many are likely to be due to misreading (often in poor light) the extent of the colour change in the crystals in the Alcotest tube.

(2) *Subsequent stages* in the procedure take too long and are too cumbersome. There is the second breath test offered on arrival at the police station. Then, if this is positive, the officer requires a sample of blood, with the statutory warning of the consequences of failing to provide this or urine. The suspect who refuses to have blood taken must be required to provide two samples of urine within the hour. If he fails to do so, he must again be asked to give a sample of blood. To take blood samples a police surgeon must be called; the specimen of blood or urine must be divided, and part offered to the suspect for independent analysis. By the time the relevant sample is taken, his BAC may have changed considerably from that when he was driving.

(3) The result of *laboratory analysis* of the specimen is not available to the driver for perhaps two weeks after it is taken, during which period he does not know if he is to be charged. The law would make a stronger impression, and those who are below the limit would be spared unnecessary anxiety, if justice could be swift as well as sure.

(4) *The procedures are manpower-intensive*, requiring doctors and laboratory scientists for tasks which are purely routine.



## **Evidential breath analysis**

4.3 The advantages of establishing a driver's BAC from breath samples rather than blood or urine are such that a number of organisations including the British Medical Association and the Association of Police Surgeons have recommended introducing this method as soon as possible. Instruments for this purpose are not new. The Breathalyzer (not to be confused with currently used screening device, which is the Alcotest) was invented twenty years ago as a laboratory instrument. In recent years this and a number of new devices with other operating principles have been adapted for use by trained officers in police stations or special vans. They have been introduced in many countries including Canada and States of the USA and Australia, and also in Northern Ireland:\* all report satisfactory results in the enforcement of their laws (see appendix 4). We are satisfied that a suitable instrument can be selected for use in this country.

4.4 A change to breath analysis does more than overcome the dislike some have for giving blood. It makes possible the elimination of the option to provide urine. It has always been recognised that this specimen may not accurately reflect alcohol concentration in the body at the time it is taken, and the procedure associated with this option lends itself to delaying tactics, in the hope that when a specimen is eventually taken one's BAC may have dropped below the limit.

4.5 Samples of breath can be readily given by all suspects unless they are suffering from serious injuries. Other obvious advantages are that the procedure is simpler, quicker, cheaper, and less irksome: the result is known immediately, instead of several days later. The second screening test at the police station would be unnecessary. There would be no need for a doctor to take the sample, or to attend unless illness was suspected. Analysis of the breath specimen would not involve a technician. While the suspect would not be given a sample for independent analysis, it could be arranged that the calibration of the machine was checked before he blew into it, and he would be in no doubt that the specimen that was analysed in his presence was his own.

4.6 In comparing the advantages of breath and blood as specimens for ascertaining BACs, it is important to avoid selecting the particular merits of the more familiar method as a standard by which to assess the alternative. It would be misleading to conclude, solely because breath analysis as a means of determining BACs is not so accurate as direct analysis of a single sample of blood, that, overall, blood is a more satisfactory specimen. The two methods are only fairly assessed by reviewing each as part of a total procedure. The object of any method is to indicate the level of alcohol which circulated in the arteries of the brain at the time of driving: but the blood which is analysed is taken from a vein where, during the absorption phase, the BAC lags behind that in the arteries; moreover, while the result of analysing a single blood sample is very accurate, if specimens were to be taken from several parts of the body simultaneously the BACs would not necessarily be identical. Because a doctor has to be called, at least one hour generally elapses after driving before the blood specimen is taken. The breath sample can be taken nearer to the relevant time and the BAC thus obtained is closer to that of the blood which circulates in the brain.

\*Where separate road traffic legislation applies from that in the rest of the UK.



4.7 For these reasons (see also appendix 3) we concluded that breath analysis would be as fair a method as blood analysis, and that the many advantages it offers justify its adoption as the normal method of determining BACs. It would not however be possible to dispense entirely with blood as a specimen. There should be a right to require a blood sample if the suspect is unable to give a sample of breath or an instrument for analysing it is not available. We also think that a suspect whose breath analysis is over the limit should be entitled to offer a specimen of blood; analysis of this would then determine whether he was over the limit and be used in any proceedings instead of the breath reading. We realize that some suspects might think it worthwhile to opt to give blood, in order to take advantage of the possibility that their BACs would drop in the interval before a doctor arrived. This could be of real interest to those who are marginally over the prescribed limit of 80 mg/100 ml or the figure of 200 mg/100 ml proposed in connection with the special procedure in chapter 7. But even for these drivers there would be a considerable chance of the result of the blood analysis being higher, and in practice we would expect the numbers who took up this option to be relatively small.

4.8 The exact details of the operating procedure would depend upon the selected device. When the suspect arrives at the station he should be required to blow into the device and warned that if he fails to do so he will be liable to penalties at least as severe as if the analysis showed him to have a very high BAC\*. The device would show the results of the analysis and might also print it out—or it might be recorded on a prescribed form in his presence. The police officer would inform the suspect of the figure that resulted and, if this was over the prescribed limit, would then inform him that, if he is dissatisfied with the analysis, he has the right to give a specimen of blood; and that if he does so, analysis of this will decide whether he is over the limit.

4.9 Adaptations to this procedure would operate in hospitals, where breath-analysis devices would not necessarily be available, and the police would be entitled to require either breath or blood, according to the circumstances, but subject to the consent of the doctor in charge of the case. Although the procedure of checking for a drinking and driving offence must not be allowed to prejudice the proper care and treatment of a patient, and there can be no question of allowing a specimen of any kind to be taken for forensic analysis without his consent, it would equally be wrong—and unfair to others who may have been involved in the accident—for a driver whose impairment led to injuries to himself to be automatically immune from investigation and prosecution or to be protected by unduly complex procedural requirements. (We discuss other aspects of hospital cases in paras. 8.7-8 below.)

4.10 *We recommend* that BACs should normally be determined for forensic purposes by analysis of breath, using devices which would be kept at police stations. To this end, action should be put in hand to select suitable instruments and test them in realistic conditions, in anticipation of the necessary changes in the law. Blood analysis, used mainly as a fallback option, would be conducted as at present, but sampling of urine should be abandoned as a test for alcohol. In hospitals, the specimen that the police could require would be either breath or blood, according to the driver's condition and the availability of breath-analysis devices.

\*cf para. 7.7



### **The screening test**

4.11 A device which gave a clearer fail/pass indication would be easier to use than the Alcotest, and reduce the number of false positive results. Several recently developed devices are claimed to be simpler to use and to give more reliable results in practice. *We recommend* that they should be evaluated and that if an instrument is found which is consistently reliable in field conditions, robust, and available at a satisfactory price, it should be substituted for the Alcotest. No additional legal powers are needed to do this, but the necessary trials and subsequent introduction of a device would necessarily take some time. *We therefore recommend* that this action should be put in hand without delay.

### **Impairment by drugs or by drugs with alcohol**

4.12 Little is known of the extent to which drugs, or drugs combined with drink, cause road accidents. There is no doubt that they are a source of danger, though on a far smaller scale than alcohol itself, and it must remain an offence to drive while unfit through drugs or drink. Although drugs account for perhaps 100 cases detected each year, as compared with over 50 000 of driving with excess blood alcohol, impairment by them is unlikely to be as rare as this disparity would imply. The reason is that proof of this offence is even harder than proving unfitness through alcohol was before 1967. Even if a doctor suspects a drug, and the driver gives a specimen for analysis, it is necessary to identify which among hundreds of possible substances is present—and, for many, standard routine tests are not yet available. Moreover, in the present state of knowledge it is not sufficient to establish by analysis or by questioning the suspect that any particular substance is present. By contrast with alcohol, the concentration of a drug in blood or urine is not necessarily an indication of the degree of impairment at the time the sample was taken and little is known about the correlation of blood-drug levels and impairment. This remains a matter of clinical observation.

4.13 The danger to road-users does not arise only, or even primarily, from drivers taking drugs obtained illicitly. Vast quantities of drugs are prescribed, many of which may affect driving, especially if they are not taken in accordance with instructions or if the patient drinks after taking them. Doctors have a duty to warn their patients of these dangers. Antihistamines carry a warning that they may cause drowsiness and make it unsafe to drive. These precautions must be maintained. Police officers dealing with cases in which there is a negative breath test have to bear in mind the possibilities of impairment by drugs, and also of illness. The usual procedure in such cases is to call in a doctor if unexplained symptoms or behaviour are present. He will seek to establish whether this is due to illness or drugs—or both. The police have power in the present law to request, but not to require, a specimen for analysis. In the case of drugs, other than alcohol, analysis of a specimen may produce relevant evidence, but cannot of itself show conclusively that an offence has been committed. The present position is that failure to provide a sample may be treated as supporting prosecution evidence of impairment, or as rebutting defence evidence. This should continue to be the position but the existing law requires amendment in one particular. At present the police are required to start by requesting a specimen of blood. If the defendant consents then blood must be provided, even though the circumstances are such that it would be preferable for the police to be able to demand a specimen of urine. We have been advised



that in some cases it is more appropriate for urine to be analysed and in others both blood and urine should be available for analysis. *We therefore recommend* that the police should have the power to request either urine or blood or both where the presence of drugs is suspected.

### **Self-assessment**

4.14 People often ask for guidance as to how much drink they can take before reaching the legal limit. The factors and circumstances involved are so diverse that any general advice that could be given would be heavily qualified and of limited practical value. Such requests also suggest a widespread and dangerous assumption that it is safe to drink up to that level. Yet by the time he reaches it a driver's ability is virtually certain to be impaired by drink. It ought to be far more widely understood that impairment is progressive and begins to develop at a level much lower than the legal limit.

4.15 The difficulties in advising what a person's BAC would be after a given quantity of drink are numerous. It depends on the type of drink, the rate at which drink is consumed, the person's weight, and whether or not it is taken on an empty stomach. It is constantly changing as a result of further consumption, absorption, distribution through the body, and the various processes of elimination. Thus two pints of beer taken within half an hour on an empty stomach will produce a very different curve of changing BACs over the next few hours from a similar quantity with a meal, taken over two hours. We suggest (para 9.6) that authoritative information should be made available, to enable drivers to appreciate the factors which account for these variations.

4.16 The difficulties would not be surmounted by giving people access to breath-testing equipment—installed for instance at the doors of public houses, or sold as kits. Even if such equipment was in good order it would give misleading results: used too soon after drinking even a very small quantity, it would fail a driver because of the alcohol lingering in his mouth; if this had cleared, it might, more seriously, give a deceptively low reading because too little of what he had drunk had yet been absorbed into the blood-stream.

4.17 We explain the difficulties of predicting BACs more fully in appendix 3: they do not however affect the case for having a legal limit. It is not unrealistic to demand of people that they should regulate their consumption so as to remain well within that limit. With the better understanding of the effects of alcohol and its consequences for road safety, which we hope this report will help to convey, drivers should be asking not whether they can consume another drink without passing the legal limit, but how they can ensure that their faculties are unimpaired and that they will be placing no-one in jeopardy. To that question, the only general answer that can be safely given is that drink and driving do not mix.



## 5. The prescribed limit and roadside tests

### **The present limit**

5.1 We have considered whether the present prescribed maximum blood alcohol concentration of 80 mg/100 ml should be changed. The only alteration which could be contemplated would be in the downward direction, and we do not think that change would be justified.

5.2 The present limit was set in 1967 on the advice of the Medical Research Council and the British Medical Association. It is a level above which the curve of accident risk rises steeply. It is one which, we believe, commands general public assent. To reduce it to 50 mg/100 ml—which is the level in some countries—would be of doubtful benefit while police resources remain severely limited; there are real disadvantages in enlarging the category of potential offenders when it is certain that many over the present limit avoid detection. The existing power to vary the limit by regulations approved by both Houses of Parliament is however one which it might be appropriate to use at some future time, and *we recommend* that it should be retained.

### **Which drivers should be tested?**

5.3 Having defined the main drinking and driving offence in terms of the prescribed limit, it was necessary to empower the police to stop and test drivers. It was clearly wrong to restrict this power to drivers who showed signs of impairment. This subjective criterion would have been no advance on the previous law. It was well established by 1967 that drivers' reactions are often dangerously impaired at a stage when they are still able to control the signs of drunkenness.

5.4 The Government originally proposed simply that a constable should have power to require a breath test of a person driving or attempting to drive a motor vehicle, or who had been involved in an accident. This proposal encountered much opposition, primarily on the basis that unlimited power to test drivers, without the need to suspect an offence, would be a new and unacceptable invasion of privacy. It was suggested that the police would engage in 'random testing' and 'harry an innocent majority'.

5.5 The fears were largely misplaced, and the term 'random testing' was particularly confusing. Any law which went beyond a power to test the obviously incapable driver must give the police some discretion, and that discretion could be used in a random way (in practice, it is unlikely to be so used, because the police need to concentrate their attention on those who are most likely to be over the limit). Thus when the Government put forward a compromise which limited the circumstances in which the police could test drivers, other than those involved in accidents, this did *not* in fact entirely rule out 'random



testing'; and the Minister introducing the 1967 Bill expressly stated it retained a random element.

5.6 The categories set forth in the Act were intended to cover the circumstances in which the police were likely to wish to test drivers. These included all accidents and moving traffic offences, and also the situation where a constable had reasonable cause to suspect a driver of having alcohol in his body.

5.7 In the operation of the new law it became apparent that the attempt to limit discretion had inherent weaknesses. The law had to be specific; but this inevitably led to instances where an experienced officer felt that a test was warranted, but the circumstances were not held to fit within the limited categories to which he must work. In particular, it is for the court a question of fact whether the police officer had reasonable cause to suspect the driver of having alcohol in his body; and the subsequent analysis showing that he was over the limit—by however big a margin—has no bearing on this question. There have been cases where the officer has not been able to convince the court that the instance of bad driving or of unusual behaviour (such as driving very slowly with exaggerated concentration) which he observed was a reasonable ground for requiring a breath test, since such behaviour was often seen in persons who had not been drinking. In these cases the defence has secured an acquittal despite the clear result of the analysis.

5.8 Thus, while the Act gave the police discretion which was very wide in relation to those involved in accidents or committing traffic offences, the consequence was to limit their power in an unreasonable way in other circumstances. This had three detrimental effects. It led, for reasons discussed in Chapter 3, to drivers being acquitted despite the results of blood analysis, on the grounds that the initial breath test was not validly required: this is among the loopholes which have discredited the law. It set constraints on enforcement policy which were not related to actual patterns of drinking and driving behaviour. And it fostered the delusion that it is 'safe' to drink and drive, even when one's reactions are sluggish, so long as one believes one can avoid an accident or a moving traffic offence.

5.9 Opinion surveys provide evidence that drivers' views about police power to test their breath have changed since 1967:

	Random testing	
	for	against
1968*	25%	68%
1970†	42%	55%
1974*	48%	38%
1975*	48%	37%

\*for the AA

†published in Daily Express

Moreover, the 1970 survey found that among all adults 51% were in favour of 'random testing'. While, as we have observed, this is a confusing term, it seems fair to conclude that a growing proportion of drivers would accept a wider liability to be tested in the interests of road safety.



### **Should testing power be limited?**

5.10 We have considered whether the anomalies created by the present law could be dealt with in some way other than a return to the unrestricted power proposed in the 1966 Bill. We have come to the conclusion that an attempt to crystallize in legal language the form of a practice which must rest on trained judgement was bound to fail. Any attempt to define with legal precision the circumstances in which tests are appropriate would lead to the kind of difficulty of interpretation which now plagues the courts.

5.11 We do not believe that an unqualified discretion to require a breath test would be an unacceptable invasion of personal freedom. Motor vehicles cause so many casualties that those who drive them should be, and in fact are, subject to restraints and restrictions. A driver needs to be both licensed and insured, and police have a right to require production of the relevant documents. There is a right to stop vehicles in order to inspect their mechanical condition. Driving certain vehicles for an excessive tour of duty has been recognised as a cause of accidents and bus and lorry drivers have to keep record of their hours of work. Such drivers may be stopped and asked to produce their records. In such instances there does not have to be a prior suspicion that an offence has been committed. We believe that there is a need for police officers to have wide discretion to test drivers for alcohol, and that the great majority of motorists, far from finding this unacceptable, would be comforted to know that active steps were being taken to detect drinking drivers. Being required to take a test which proves negative—something which often happens under present law—is a minor inconvenience and should certainly not be regarded as a stigma. The police work within a disciplinary framework, and we have no reason to suppose that a constable is at all likely to abuse his discretion.

5.12 The present legal limitations encourage people to take a chance on the assumption that they are unlikely to be tested if they avoid an accident or committing a moving traffic offence. Although the police are in general unlikely to test a driver whom they have no cause to suspect, it would have a salutary effect on his conduct if he were aware that the power of the police to stop him was no longer limited by law. The ultimate choice is between giving a police officer a power to seek a breath test when he deems it appropriate, and seeking to limit that power by statute—with all the difficulties, limitations and inconsistencies inherent in that course.

### **When should breath tests take place?**

5.13 The law needs to provide a sufficiently flexible framework for the police to deploy their resources to maximum effect; above all, it must make an impression on those drivers who are most likely to drink excessively, by raising the apparent chances of detection. This means more tests, but, above all, tests at times and places where drinking drivers are most likely to be found on the road.

5.14 There are local patterns which will be familiar to the police, and to which they will adapt their practice, but the main feature which must occur in almost every area is the concentration of accidents in which drink is a factor in the hours between 10 pm and 4 am. Alcohol is a major factor in a third of these, but only in (on average) 4% during the rest of the day. There is probably room for a higher level of testing during these hours, particularly after accidents, and also



when the police observe traffic offences or other abnormal driving behaviour. At present positive breath tests are reported for only 14% of drivers involved in accidents during these hours—or less than half the proportion that other evidence might lead one to expect. It is for consideration whether there should, as a matter of policy, be a presumption in favour of breath-testing drivers who come to the notice of the police in one of these ways at those times of day.

5.15 In general, routine testing is unlikely to commend itself to the police. It would be an inefficient use of resources, since the rate of positive tests would be low compared with that from selective testing; and while there could be a temporary improvement in that area, this would be at the cost of delays for drivers who have not been drinking. However, experience may show that the proportion of drinking drivers is especially high at certain times on certain roads. Where this leads to accidents, there may be public support for intensive campaigns of testing.

### **Power to test drivers**

5.16 Having considered all aspects of the power to test drivers, we concluded that discretion should be unfettered. We believe this to be essential both to the simplification of the law and avoidance of loopholes, and for its better enforcement. It is central and fundamental to the reforms we propose, and accordingly *we recommend* that the circumstances in which a constable may require a specimen of breath from a driver for screening purposes should not be specified.

5.17 It is a feature of the present law that a constable may test a person who has been driving or attempting to drive (but is no longer doing so) only if he has been involved in an accident. Thus prosecutions have failed, even if there had been a moving traffic offence or suspicion of alcohol, because by the time the breath test was required, the suspect had stopped driving. Although it presents difficulties of drafting (which we discuss in Chapter 8), *we recommend* that there should be power to test a person who *has been* driving or attempting to drive a motor vehicle, provided the requirement is made as soon as reasonably practicable thereafter.

5.18 Nor is it satisfactory that the police, faced with a person who may be impaired *in charge* of a motor vehicle, should be unable to require a breath test, and are therefore obliged to arrest him on suspicion of impairment (section 5(5) of the 1972 Act) if they wish to ensure that he does not subsequently commit the offence of driving with excess alcohol. It is right that the accused has a complete defence if he can show that there was no likelihood of his again driving while unfit through drink or drugs: this feature of the law should suffice to encourage people not to drive away if they realise that they may be over the limit. *We recommend* however that there should be power to breath-test persons who are or have been in charge of motor vehicles.



## 6. Sentencing the offender

### **Objectives of sentencing**

6.1 Penalties for drinking and driving have changed little in real terms over fifty years. They include heavy maximum fines, prison sentences, and above all obligatory disqualification. By themselves these sentences did little to deter the drinking driver; but in 1967 the combination of a greater risk of detection, a high probability of conviction, and the near-certainty of losing one's licence had a dramatic effect.

6.2 We are mainly concerned with those sentences which are normal or obligatory, and thus, in conjunction with a real fear of detection, influence behaviour and cut road casualties. Our secondary concern is that the wider range of sentences which can be imposed at courts' discretion should match the range of gravity in offences, and the circumstances of offenders. The offender should also be made to see that it is not worth his while to be convicted again.

6.3 This is the largest group of serious road traffic offences which come before the courts. The normal and obligatory sentences must be of kinds which can be administered with available resources, and without incurring disproportionate costs of operation. In this chapter we review criticisms of the fairness and effectiveness of these sentences. We conclude that, except in relation to offences which are discussed in chapter 7, they are the most appropriate that are available, and that there is an adequate range of discretionary measures available to the courts to deal with exceptional cases.

### **Present sentencing practice**

6.4 The usual sentence for the main offences (those committed in connection with driving or attempting to drive) includes a fine and disqualification. In the absence of special reasons, which must relate to the particular offence and not to the offender's personal circumstances, the court must order disqualification for at least a year. If the conviction is for a second offence within ten years of a previous conviction for one of these offences, it has to disqualify for at least three years.

6.5 Disqualification is imposed on 98% of those convicted of the main offences. The Court of Appeal has recently given a lead to the English and Welsh courts in imposing longer periods when offenders have very high BACs. The maximum fine is £400 on summary conviction—on indictment it is unlimited. The court imposing a fine takes into account among other considerations the offender's means, so far as it knows them. In England and Wales, many magistrates take, as their starting points, figures published by the Magistrates' Association—which suggests £80 for the main offences.



6.6 Offenders may also be imprisoned—for up to four months on summary conviction, up to two years on indictment. This is a sentence of last resort, used for the most part where a driver committed several serious offences on the same occasion. Potential offenders generally are thus unlikely to expect, or to be deterred by, this particular sentence. Alternative non-custodial sentences, such as probation and community service, are very rarely used for these offences.

6.7 For the corresponding offences while in charge of a motor vehicle, the maximum fine is £200 on summary conviction—unlimited on indictment; and disqualification is discretionary, but more than half of those who are convicted are disqualified. Failing to provide a specimen for the breath test is a summary offence only, with a maximum fine of £50, and there is no power to disqualify.

### **Is disqualification the right sentence?**

6.8 No sentencing framework will satisfy all points of view, because there are so many objectives to be reconciled. Sentences on drinking drivers have above all to reconcile the needs for consistency, fairness, and deterrence. For most offenders, disqualification is the main penalty. In a society which depends so much on personal transport, the loss of the privilege of driving is a real deprivation. As a deterrent sentence, surveys have shown that it has overwhelming public support.

6.9 Disqualification has been criticised as unfair because it is uneven in its effects. At the extremes this is bound to be true. On the one hand, a very wealthy person can afford a chauffeur and meet other incidental costs such as the rise in his insurance premium, and a person who makes little use of a car may suffer only minor inconvenience. On the other hand, for a professional driver, and for a small businessman who cannot call on a member of his family to drive him and has not taken out insurance to meet the cost of a chauffeur, disqualification may be ruinous. It can impose heavy incidental financial burdens on the offender even if he does not lose his job. He may well find that the cost of providing alternative transport to enable him to follow his occupation and to meet other commitments is extremely heavy. Even where this is not so, when the defendant's period of disqualification is ended he will almost invariably find that the cost of insuring his vehicle has been increased very substantially indeed. Thus in the great majority of cases the actual loss suffered by a defendant who has been fined and disqualified is very much heavier than the mere amount of the fine that he has to pay the court. In evidence to us, there were a number of pleas for the courts to have greater discretion, both to refrain from disqualification, and to make orders for less than a year. Others however argue that the standard sentence is often not severe enough, and ought to be supplemented with other measures such as orders to take another driving test, or community service. In general, the evidence indicates that disqualification is a real and effective punishment—and the courts have discretion to impose heavier sentences or to deal in special ways with exceptional cases.

6.10 Since the main object in dealing with such a serious offence must be to make drivers less likely to commit it, the most serious doubt about sentences is prompted by the discovery that there is a disturbingly large minority—at least one in ten of those convicted each year—who are likely to repeat the offence during the next ten years. Does the rate of recidivism indicate that the standard



sentence is wrong, or rather that some offenders require special treatment? We believe that there are other explanations for recidivism. In part, it may stem from a judgement on the part of reckless and irresponsible drivers (who are an element among drinking drivers as in other groups of offenders) that the risk of detection is low, and that if disqualified they can just go on driving. But there is a large group, which must overlap with this, of drivers who have drinking problems which override other influences on their behaviour. Since repeat offenders appear to be a distinct element in the situation we believe they require special treatment (we discuss this further in chapter 7), and that this should be distinct from the basic penalties.

6.11 For the great majority, an order of disqualification has an indispensable deterrent role. Neither imprisonment nor the available alternative sentences are so suitable. Short prison sentences are no longer considered appropriate for the general run of motoring offences; and the numbers convicted for drinking and driving are far larger than the prisons could receive. (Even in Sweden, where drunken drivers are routinely sent to open prisons for one or two months, there are currently moves to substitute other sentences). Nor, in view of the many prior calls on the probation service, are the non-custodial alternatives a practical answer, though they may be suitable in a few cases. Moreover, none of these is so appropriate as disqualification, which punishes the abuser of a privilege with withdrawal of that privilege, and takes him off the road for a time.

#### **Should one year's disqualification be mandatory?**

6.12 Disqualification has to be mandatory, if it is to serve as a deterrent. If the courts had wider discretion than at present, so that they could for instance have regard to offenders' personal circumstances, this effect could be seriously weakened. As we have seen (6.9 above), the incidental consequences to a person whose livelihood depends on driving can certainly go far beyond anything that may be directly ordered by the courts; but no offender can claim that he was unaware of the risks he incurred, and professional drivers ought to maintain the highest possible standards of conduct. Their high mileage exposes other road users to greater risk, if they fall below these standards, than similar conduct by other drivers. Drivers of heavy goods vehicles and public service vehicles have a particularly heavy responsibility. There cannot be an easier law for those whose livelihood is at stake than for others.

6.13 Since disqualification for one year is already a severe penalty for most offenders, we do not consider that the mandatory period should be longer. A longer minimum period would probably not be acceptable to public opinion, and more drivers would be tempted to drive while disqualified. We welcome, however, the courts' increasing use of their discretion to disqualify for longer in bad cases. Since a number of factors may enter into this judgement, it would be undesirable to enact a graduated scale of obligatory disqualifications related to BACs alone; but we would like to draw attention to the steep rise in accident risk associated with rising BACs (see appendix 2); this information might assist courts to decide what discretionary periods to impose.

6.14 Should the minimum disqualification be reduced to three or six months? It seems to us that unless it were reduced to at most three months, those who depend on driving for their livelihood would be no less likely to lose their jobs than with a year's driving ban. On the other hand, a reduction to three months would gravely weaken the value of this sentence as a deterrent, and no feasible



intensification of enforcement would offset this loss. Reduction in the mandatory period to six months would have the same disadvantage, though in lesser measure, and would do little to mitigate the hardships which attend the loss of one's licence. *We therefore recommend* that the obligatory minimum period of disqualification on first conviction should remain one year, in the absence of special reasons (interpreted as at present) for a shorter period or for not disqualifying.

### **Driving test orders**

6.15 It was suggested to us that courts should make more use of their powers to require offenders (especially the young) to take a further driving test before their licences are restored. Like other little-used powers, this is certainly appropriate on occasions. The offence may have included incompetent driving—though this could have been entirely the result of excessive drinking. A driving test does not however give guide to a person's social habits, and unless he is heavily dependent on alcohol—which is rarely the case—he would probably be sober when presenting himself for it. In general, this order is not relevant to drinking and driving cases to the same extent as to, say, careless driving; but it may be appropriate for offenders such as the young whose driving experience is very short, and those whose faculties may be deteriorating.

### **Trial by jury**

6.16 In England and Wales the main drinking and driving offences can be dealt with either summarily or on indictment at the option of either party. Over 90% of cases which go to the Crown Court do so at the instance of the defence. We can see no justification for a right to trial by jury in relation to an offence ordinarily proved by the objective analysis of a specimen. If the law is simplified as we recommend, the justification will be even less. The Committee on the Distribution of Criminal Business under the chairmanship of Lord Justice James (with which we consulted) has reached a similar conclusion\*. We also support the proposal by that committee that the maximum prison sentence on summary conviction for the main offence should be increased to six months in order that adequate penalties remain available when these offences cease to be indictable.

6.17 In Scotland the accused has no right of election for these offences, and as the prosecutor in Scotland has the right to include a summary offence in an indictment containing a more serious offence (under schedule 4, part IV, paragraph 3 of the Road Traffic Act 1972) the change would coincide with existing practice there, which is that drinking and driving cases are seldom taken on indictment in the absence of other more serious charges.

6.18 *We therefore recommend* that the drinking and driving offences should cease to be indictable, subject to maintaining the special procedure in Scotland. *We also recommend* that there should be a maximum prison sentence of six months for driving or attempting to drive while unfit or over the limit, and that those who fail to provide a specimen for analysis should be liable for identical penalties;† for the corresponding in-charge offences, the maximum prison sentence should be three months. We consider that the maximum fines of £400 for committing the main offences when driving or attempting to drive, and £200 on conviction for in-charge offences, are adequate at 1975 prices.

\*Cmnd 6323.

†This would restore a parallelism which was lost as the result of Parliament accepting last-minute Opposition amendments to the fifth schedule of the Road Traffic Act 1974.



## 7. High-risk offenders

### **Alcoholism\* and road safety**

7.1 The most intractable element in the situation with which our enquiry has been concerned is that presented by offenders whose drinking is out of control. The British Medical Association, the Medical Commission on Accident Prevention, and the Automobile Association were among the witnesses who stressed the danger of allowing these offenders to have their licences restored again at the end of their period of disqualification, without regard to their drinking problems.

7.2 It has been estimated that, in England and Wales alone, between 300,000 and 400,000 people are affected, in some degree, by alcoholism. Many of these people drive, and present a more serious threat to road safety than other potential offenders, since they cannot control their frequent and heavy drinking. Some may be under the influence of alcohol not only in the evening after social drinking, when traffic is light, but at other times, when children and other vulnerable road-users are about, and when an accident is more likely to involve other vehicles. Moreover, the greater a driver's dependence on alcohol, the less likely he is to be influenced by legal sanctions.

7.3 We came to the conclusion that this aspect of drinking and driving required special provisions, but it was not easy to decide what these provisions should be and to whom they should apply. It might be supposed that the answer was for the court, before passing sentence on any drinking and driving offender, to obtain a medical report so as to determine whether he had a drinking problem; and if he had, to order that his licence must not be restored until there was sufficient improvement in his condition. But, except where a person shows symptoms of chronic alcohol poisoning, a doctor cannot establish without his co-operation whether he has a drinking problem and how bad it is. He is unlikely to co-operate if this might lead to prolonged or permanent suspension of the right to drive. An attempted solution on these lines might actually be detrimental to road safety, by making people who have drinking problems reluctant to seek the help and treatment which they may need.

7.4 Recognizing this difficulty, the BMA, the MCAP, and the AA suggested instead that special measures should be taken in relation to groups identified by objective criteria—those who are convicted more than once or at very high BACs. Although such criteria cannot identify all who may have drinking problems, we agree that this is the best available approach to finding what we refer to as 'high-risk cases'—those who are particularly likely to offend again. We have, however, considerably modified and elaborated these bodies' proposals for dealing with such cases.

\*In this chapter we use the term *alcoholism* in its broad sense, to include all stages of involvement with alcohol from significant drinking problems to chronic alcoholism. In speaking of individual drivers, we refer to those with drinking problems, since the word *alcoholic* tends to be understood in a narrower sense than is here relevant.



### **Identification of high-risk offenders**

7.5 There would be general agreement that, by definition, a person who is convicted twice within ten years for drinking and driving qualifies for the 'high-risk' category. Moreover, it can hardly be doubted that alcoholism plays a major part in the repetition of these offences (in this connection we decided that in-charge offences must be regarded as equally relevant as an indicator of high risk). Repeat offenders are people who are deterred neither by disqualification on the first occasion nor by the prospect of a longer disqualification if they are convicted again. Their numbers are at present relatively small, but are likely to rise to at least 10% of cases (7000 a year or more) within a few years.

7.6 In addition, a great many drivers are convicted every year at BACs higher than most people could reach without nausea and other unpleasant symptoms, and without feeling unable to drive a car. While there is no sharp dividing line, 150 mg/100 ml (or nearly twice the legal limit) was suggested to us by the BMA and others as a level at which there was a reasonable presumption that a driver was a regular heavy drinker. For many at these and higher BACs the habit of drinking probably overrides other influences on their behaviour, and thus makes them a particular danger on the road. It is worth noting that BACs over 150 mg/100 ml are found in two thirds of second offenders, but only half of first offenders—so that a high-risk criterion based on a specified high BAC would identify many who are likely to be convicted again if nothing further is done to influence their conduct.

7.7 The actual choice of level has to depend on practical considerations. It would put great strain on a novel procedure, such as we shall propose, if it applied to more than half of those who are convicted. We therefore propose that, initially at least, 'high-risk' cases should be those over 200 mg/100 ml; together with second offenders these would amount to about 15 000 cases a year. To avoid providing a loophole, it is necessary to include also those who fail, without good reason, to provide specimens for analysis.

### **The special procedure**

7.8 We mentioned in para 7.3 above the difficulties which face any attempt to reach, at the initial hearing of a drinking and driving case, a definite view about any drinking problem which may affect the offender's fitness to hold a licence. These apply equally to the smaller number of high-risk cases. Many of these difficulties can however be circumvented by deferring consideration of this question; and that can be achieved by requiring the court to make, in addition to the order disqualifying him for whatever period is appropriate to the particular offence, a special order of indefinite duration. He would not be entitled to a licence until the court removed this. It would thus be for him to take the necessary steps to make available the evidence the court might require concerning his conduct and medical condition, at a hearing to decide whether his licence should be restored at the end of the ordinary disqualification; and if he required help or treatment, this procedure would actually provide an incentive to seek it.

7.9 In making the special order, the court would be required to explain its effect. The offender must be told that his licence will not be restored until the court is satisfied that he does not, by reason of his drinking habits, present undue danger to himself and other road users. While it might be possible for a



first offender to bring evidence that he was convicted for an isolated lapse, the court would ordinarily require to be satisfied that he had taken steps to deal with any drinking problem he might have. It would normally expect to receive testimony about his character and his conduct since the order was made and a medical opinion based on more than one consultation since the offence. In addition to (or instead of) this opinion, it might hear evidence from a person competent to work with problem drinkers. Many offenders would fail to grasp that they should without delay approach those whose evidence they would later require and, unless reminded, would let matters drift until the end of the disqualification. It would therefore be helpful if, on receiving notification of the special order, the licensing authority was required to send the offender a standard letter repeating the explanation of its effect. (We discuss the special procedure more fully in appendix 7).

7.10 It will occasionally be apparent to the court trying an offender who is not within either of the proposed high-risk categories that he may be dependent upon alcohol or some other drug. We would like to see use made in these cases, and in cases of other traffic offences, of the provision (Section 92 of the 1972 Road Traffic Act) that the court shall notify the licensing authority, since addiction to alcohol or a drug is clearly a disease or physical disability which would be likely to cause the driving by them of motor vehicles to be a source of danger to the public. Under the provisions of the 1974 Act, those who may have conditions affecting their fitness to drive are referred for medical examination, which would give the driver concerned an opportunity to seek treatment—and the licensing authority has power to withdraw the licence or make it subject to regular review in the light of the medical report. The licensing authority now also has power to withdraw the licence of a driver who refuses to have a medical examination in these circumstances.

### **Help and treatment**

7.11 General social and medical measures against alcoholism are outside our terms of reference; but witnesses have drawn to our attention that in case-histories of alcoholism a conviction for drinking and driving is often an early sign. Repeat offenders, and those among potential repeat offenders who are identified by the special procedure, have to be regarded as people whose lives are affected by alcohol and who may be already, or be in process of becoming, dependent on it. Having proposed a measure which would go some way towards identifying them, we cannot ignore the argument, on road safety as well as more general grounds, for assisting those who need help in finding it. We suggest that the Department of the Environment should explore with the Health Departments the possibility of sending, in conjunction with the letter we propose in paragraph 7.9, advice on the kind of people and agencies to whom the subject of the order may turn, if he has a drinking problem.

### **Conclusions**

7.12 *We recommend that:*

- a. A 'high-risk' offender should receive, in addition to the order of disqualification for a period appropriate to the offence, an order that he shall not be entitled to a licence thereafter unless he first satisfies the court that he does not, by reason of his drinking habits, present undue danger to himself and other road users.



- b. High risk offenders would be
  - i. those convicted of driving, attempting to drive, or being in charge with a BAC exceeding a prescribed figure or who failed to provide a specimen for analysis in these circumstances; and
  - ii. those convicted twice within ten years for any drinking and driving offence (other than failing to take the screening breath test).
- c. The prescribed figure should be 200 mg/100 ml—this should be alterable by regulations.
- d. The court making the special order should be required to explain its effect to the offender.
- e. Consideration should be given to requiring the licensing authority to repeat this explanation, together with such further information as might be of assistance.
- f. The new procedure should be monitored, so that it may be improved and extended in the light of experience.
- g. More use should be made of the provision for the courts to notify the licensing authority in other cases where a driver who is before it appears to be dependent on alcohol or drugs (Road Traffic Act 1972 section 92).

7.13 In consequence of these proposals, *we recommend* that:

- h. A person who commits a second offence of driving or attempting to drive while unfit etc within ten years should no longer be disqualified for at least three years.
- i. For a second in-charge offence within ten years, and for a first over 200 mg/100 ml, there should be a mandatory disqualification for at least twelve months.
- j. Endorsements for in-charge offences should remain on licences for eleven (instead of four) years.



## 8. The framework of a new law

### **The form of new legislation**

8.1 Since the changes in the law which we propose affect almost every subsection of the present text, we consider that Parliament should be asked to enact completely new provisions, in place of sections 5-13 of the Road Traffic Act 1972 (reproduced in Appendix 5). As we have explained, the basic features of the existing law are sound, but it is only right, as part of a new attack on drinking and driving, to have the law in a straightforward and readily understandable form.

8.2 A common strand in the evidence we received was that the link between the specified procedure and proof of an offence ought to be broken. In particular, it should not be necessary that the suspect who is required to furnish a specimen for analysis should have been arrested. Moreover, a deviation from prescribed procedure or from the instructions for using a device does not necessarily lead to an unfair result. *We therefore recommend* that the police should have power to arrest, but the arrest should not be a necessary part of the procedure; and that the court should be empowered to disregard a departure from specified procedures or instructions, where no injustice would result.

8.3 As new technical methods become available, minor changes in the procedure might be appropriate, and it should not be necessary to await main legislation to introduce these. *We recommend* that the procedures by which these offences are established should be set forth in a schedule to the new act which could be amended by regulations.

### **Drinking after ceasing to drive**

8.4 We have recommended in chapter 5 that there should be power to test persons who *have been* driving or attempting to drive, provided the requirement is made as soon as reasonably practicable thereafter.

8.5 One type of circumstance presents peculiar difficulty: where a driver who is over the legal limit when a sample is taken for analysis can show that he took further alcohol after driving and before the police required the initial breath test. (If he takes it in a brief interval between being stopped by the police and having the Alcotest presented to him, the court is likely to hold that he was still 'driving' when the request was made and that the BAC of the subsequent sample is therefore relevant). Since there is no reliable method of back-calculation to establish what a driver's BAC would have been if he had not taken an extra drink, the courts have held that the result of an analysis cannot be used to prove an excess alcohol offence. The authors of the 1967 Act did not overlook this possibility, but they knew that it would not often arise and decided that it was not worth dealing with. We are unable to take this view for three reasons:



1. Since we are proposing power to screen persons who *have been* driving, the need arises to safeguard those who drink after completing a journey, without the intention of frustrating police enquiries.
2. On the other hand, it is undesirable that a driver should be able to frustrate the police by deliberately taking a small quantity of alcohol. Examples are those who drink from a hip-flask after an accident or who manage to reach home and take a drink with a patrol car in hot pursuit.
3. Although such cases are rare, they attract publicity and tend to discredit the law: it would be particularly unfortunate if a new law were shown to have this loophole.

8.6 *We therefore recommend* that there should be a defence of subsequently consumed alcohol, but that it should be strictly limited. The defendant should be required to prove to the court

- a. that he had in fact consumed alcohol after he had ceased driving and before being tested; and
- b. that he did not consume the additional alcohol with the object of giving himself a defence to the charge; and
- c. that without the additional alcohol he would not have exceeded the limit.

In a few cases, this defence will involve the courts in back-calculations; but this is not unprecedented (it has been necessary both in adjudicating pleas against disqualification on the ground that the defendant's companions laced his drinks, and where the prosecution brings a subsequent-consumption case under section 5 in order to obtain a conviction.) Cases will be rare, and a conviction would be unlikely if a relatively small excess over 80 mg/100 ml was conceivably attributable to subsequent drinking.

### **Hospital cases**

8.7 The 1967 Act adapts the normal procedure to hospital cases by providing that the constable must at each stage obtain the consent of the doctor in immediate charge of the case. We have discussed with the British Medical Association how these provisions, which were introduced in consultation with them, work in practice, and what changes would result from a switch to breath analysis as the normal method of proof. Some features of the existing provisions are essential. First, although it would be possible for a hospital to share with the police samples taken for diagnostic purposes, this would be inconsistent with the relationship between doctor and patient. Second, the driver who happens to be a patient can, like any other suspect, refuse a specimen which may prove his guilt, though in the absence of good reasons for failing to provide it he should face the same consequences. Third, the taking of a sample should be subject to the consent of the doctor, since many who are injured in accidents are too ill to be disturbed or unable to consent to it because they are unconscious, sedated or severely shocked.

8.8 Instead of the present separate procedure, which is complicated and inflexible, we would like to see merely such supplementary provisions as are necessary to adapt the normal sequence to those special circumstances. When a driver is already detained in hospital, there is no point in treating a screening test as an essential preliminary to the substantive blood or breath sample—though it may suit both parties to use it before the police surgeon is called; and *we recommend* that the procedural rules should permit the police, subject



to the doctor's consent, to require from a driver in hospital either a breath or a blood sample, as appropriate, for analysis.

### **Two main offences—or one?**

8.9 As it now exists in consolidated form, the drinking and driving law contains the two strata of an impairment offence and an excess alcohol offence—for each there is a distinct procedure. Not only does this duplication make for untidy law; it can give the false impression that the excess alcohol offence may be a technical one, falling short of impairment. In practice prosecutions are likely to be brought on the excess alcohol charge wherever the evidence is available, and however gross impairment may be, because it sets an objective standard. The impairment offence has had to be retained for use where

- a. the evidence for the excess alcohol offence is unobtainable or deficient (the commonest reason for preferring this charge) or
- b. there is impairment below the level of 80 mg/100 ml or
- c. the impairment is by drugs or a combination of drugs with alcohol at a concentration below 80 mg/100ml.

8.10 We have concluded that, so far as practicable, the two sets of provisions should be merged. The prescribed limit for the excess alcohol offence was set at a level at which, on scientific evidence, virtually all drivers are significantly impaired, and we are satisfied that it is right to deem a person unfit to drive when his BAC exceeds that limit.

8.11 *We therefore recommend* that two main offences should be merged into a single offence of driving or attempting to drive when unfit through drink or drugs, defined as in section 5 of the 1972 Act, and that the two in-charge offences should be similarly merged. Without prejudice to the possibility of proving these offences when there is no evidence of BAC or when the BAC is below the prescribed limit, a person should be deemed unfit to drive if his BAC (as found on analysis of a specimen subsequently taken) is above the prescribed limit, and evidence to this effect should create an irrebuttable presumption of his impairment.

8.12 For cases of impairment by drugs, and by drugs with alcohol, there must however, as at present, be a distinct power of arrest (without a breath test) and power to request (but not require) samples of urine and/or blood for analysis. As at present, the police need to be able to switch from one procedure to the other when, for example, the driver is manifestly impaired but the screening test or the substantive breath test shows him to be within the alcohol limit.

### **The new legal framework**

8.13 Since recommendations for changes in the law appear in several chapters of this report, and there are a number of minor points which we do not mention in the main text, we present an outline of the total provisions we envisage in appendix 6.



## 9. Education and research

### **A continuing campaign**

9.1 Most of this report has been addressed to measures which should be taken as soon as practicable, in order to arrest and reverse the decline which followed the original success of the Road Safety Act. In turning to education and research we adopt a longer perspective. Changes in the law and improvements in technical resources can be introduced from time to time, and may have immediate effects; but the role of alcohol and drugs in society, scientific knowledge of their effects, and public attitudes to their abuse are in constant evolution; and new generations come of age. This makes it essential to monitor the situation continuously, to extend and deepen scientific understanding of it, and to treat the education of the public—and especially of new drivers—as a continuing priority which must never be abandoned.

### **Monitoring and research**

9.2 The use of both alcohol and drugs has recently grown faster than the resources for combating their abuse. Further research is needed so that the most effective counter-measures can be deployed. The most basic information needed for this purpose—what proportion of drivers on the road have been drinking, and the distribution of BACs among them—is not available for Britain. Thus the statistics on numbers of accidents at various times, on breath tests and convictions and on alcohol in the bodies of road users who die in accidents, and the surveys which indicate how often alcohol is a factor in accidents, cannot be related to the situation as a whole, or compared with that in other countries. We do not know how much drivers drink, or how many are dependent on alcohol, and there are even bigger gaps in knowledge about their use of drugs.

9.3 Periodic surveys will be needed in order to gauge the results of education and enforcement over the years, and to identify the effects of other factors such as changes in the relative cost of motoring, alcohol, and other goods—which may be considerable. It is because trends have not been adequately monitored in this way that it was not easy for us to determine the extent of the deterioration that has occurred since 1967 or to establish the reasons for it.

9.4 This country should play its part in the international effort to understand and control the abuse of alcohol and drugs as a threat to young drivers. *We recommend* that research on drink and drugs in relation to driving should have a high priority in the programme of the Transport and Road Research Laboratory (TRRL) and that the evolving situation should be permanently monitored. TRRL should continue to collect data from coroners, and there should be periodic surveys of BACs in representative samples of drivers on the roads, as a separate activity from police enforcement.



## **Educating the public**

9.5 The purpose of measures to educate people about alcohol and driving is both to create a climate of informed opinion against a form of conduct which is irresponsible and dangerous, and to act directly on the attitudes and behaviour of drivers themselves. For publicity in the mass media, the basic message can only be 'don't drink and drive'. Though in its literal sense this is a counsel of perfection, we believe it is generally understood, and it has the advantage of being immune to misinterpretation in an unsafe sense. There will of course be a number of subsidiary themes. Publicity can vividly convey the terrible consequences of alcohol on the roads, and the remorse of the driver who carries this responsibility.

9.6 Other media should be used to convey a basic understanding of the effects of alcohol on driving ability. We were interested to learn of a demonstration mounted in Sweden as part of a current campaign, in which drivers were shown to be unable to react fast enough to unforeseen hazards, such as a figure appearing on the road in front of their cars, at BACs as low as 40 mg/100 ml. A similar demonstration could be mounted in this country, and film of it made available for television features and road safety education. While, for reasons which we state in paragraph 4.15 and more fully in appendix 3, it is not feasible to give safe general guidance on consumption before driving, the responsible citizen can be helped to appreciate the factors which determine his fitness to drive. *We recommend* that the Government should consider issuing a leaflet giving authoritative information about the factors which affect a drinker's BAC, and the relationship between BACs and accident risk.

9.7 A lesson which must be drawn from the decaying impact of the 1967 measures is that there is no permanent cure for this social menace. Drivers generally must be reminded periodically; young people who missed earlier campaigns are coming of age all the time. They are so much at risk, as inexperienced drivers and inexperienced drinkers leading mobile social lives, that special care is needed to ensure that continuing propaganda in various media gets through to them. The schools also have a key responsibility. They should consider carefully how they can best prepare their pupils for what has now become a major hazard of early adult life. We suggest this is an important element in social and road safety education. The ultimate aim, which can never be fully realized, is not a temporary remission in casualties due to drinking, but the progressive development of responsible habits among all drivers, from the time when they first qualify for licences.

9.8 *We recommend* that publicity should be used not only to draw attention to new measures to strengthen the law, but also on a continuing basis, and that it should include educational measures, particularly directed at the young, as well as campaigns in mass media. In determining what share of resources drinking and driving publicity should have, it should be recognized that it is one of the main factors in road accidents, and that relatively cheap measures, provided they are brought to bear on each new generation of drivers, can bring enormous savings in life and injury.

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The first part of the paper is devoted to a general discussion of the problem of the existence of solutions of the system of equations (1) for arbitrary values of the parameters  $\alpha$  and  $\beta$ . It is shown that the system has solutions for all values of the parameters if and only if the condition  $\alpha + \beta > 0$  is satisfied. In the case when  $\alpha + \beta < 0$ , the system has solutions only for certain values of the parameters.

In the second part of the paper, the problem of the stability of the solutions of the system (1) is considered. It is shown that the solutions of the system are stable with respect to the initial conditions if and only if the condition  $\alpha + \beta > 0$  is satisfied. In the case when  $\alpha + \beta < 0$ , the solutions of the system are unstable with respect to the initial conditions.

The third part of the paper is devoted to a study of the asymptotic behavior of the solutions of the system (1) as  $t \rightarrow \infty$ . It is shown that the solutions of the system approach zero as  $t \rightarrow \infty$  if and only if the condition  $\alpha + \beta > 0$  is satisfied. In the case when  $\alpha + \beta < 0$ , the solutions of the system do not approach zero as  $t \rightarrow \infty$ .

The fourth part of the paper is devoted to a study of the problem of the existence of solutions of the system (1) for arbitrary values of the parameters  $\alpha$  and  $\beta$ . It is shown that the system has solutions for all values of the parameters if and only if the condition  $\alpha + \beta > 0$  is satisfied. In the case when  $\alpha + \beta < 0$ , the system has solutions only for certain values of the parameters.

# Appendix 1

## MEMBERSHIP, MEETINGS, VISITS, AND EVIDENCE RECEIVED

### A. Members of the Committee

Frank Blennerhassett, QC (chairman)  
W P Blair, JP, Executive Councillor, Electrical Electronic Telecommunication  
and Plumbing Union  
S Bowen, CBE, former Crown Agent for Scotland  
E G Davies, MSc, former Controller, Home Office Forensic Science  
Services  
Dr Griffith Edwards, MA, DM, MRCP, MRCPsych, Honorary Director,  
Addiction Research Unit, Institute of Psychiatry, London  
Sir Martin Edwards, DL, solicitor, member of the Council of the Law  
Society  
Patrick Halnan, MA, clerk to the justices, solicitor  
Graham Hill, OBE (died 29 November 1975)  
J K McLellan, CBE, QPM, MA, BSc, FRIC, Senior Assistant Chief  
Constable, Strathclyde Police  
Dr P A B Raffle, MD, FRCP, Chief Medical Officer, London Transport  
Executive  
Barbara E Sabey, BSc, FInstP, FIHE, Head of Accident Investigation  
Division, Safety Department, Transport and Road Research Laboratory  
G W Terry, CBE, QPM, Chief Constable of Sussex

#### Assessors:

A B Saunders, Department of the Environment  
Dr A Sippert, MB, CHB, MRCPsych, MSCM, DPH, Department of  
Health and Social Security  
G H Baker, DSC, Home Office  
J A Chilcot, Home Office  
W W Scott (till August 1975)  
N E Sharp (from September 1975) —Scottish Office  
G Gates, Welsh Office

#### Secretary:

D Baldry, Department of the Environment

#### Secretariat:

D M Barclay (till September 1975)  
C J Dunabin (from September 1975)  
Mrs J E Dawes

#### Legal Sub-committee:

Frank Blennerhassett, S Bowen, Sir Martin Edwards and Patrick  
Halnan, assisted by:  
R G Bellis, Legal Directorate, Department of the Environment  
T H Williams, Legal Adviser's Branch, Home Office



## **B. Meetings and Visits**

The Committee held fifteen meetings. The Legal Sub-committee met three times.

The Chairman, Mr Halnan, and the Secretary gave evidence at a meeting of the Committee on the Distribution of Criminal Business in April 1975 (see para 6.16 of this report).

The Chairman and several members attended a demonstration of breath-testing equipment at Brighton in April 1975 arranged by the Sussex Police, the Transport and Road Research Laboratory, and Dr T P Jones (University of Wales Institute of Science and Technology).

The Chairman visited Belfast in May 1975 for discussion on Northern Ireland law and practice.

The Chairman, Mr Halnan, Mr Terry, and the Secretary visited Stockholm in October 1975 for discussions on Swedish experience. The visit was organized by the Swedish Road Safety Office, and discussions also took place with representatives of the Royal Caroline Institute, the Police Board, the Ministry of Justice, and the Swedish Automobile Association.

## **C. Oral Evidence**

The Committee is grateful to the following who came to give evidence in person:

The Lord Hacking, BA, barrister at law

Dr T P Jones, BSc, PhD, ARIC

Dr R B Voas, Office of Alcohol Countermeasures, National Highway Traffic Safety Administration, Washington

### *Automobile Association*

A C Durie, CBE (Director General)

O F Lambert (Managing Director)

D W E Dutton (Manager, Environmental Affairs)

### *Association of Chief Police Officers of England, Wales and Northern Ireland*

R B Matthews, CBE, QPM, Chief Constable of Warwickshire

R N Buxton, OBE, BEM, QPM, Chief Constable of Hertfordshire

### *British Medical Association*

Professor Sir Edward Wayne, MD, PhD, FRCP

Dr J A G Clarke, MB, ChB, MRCP, Hon Secretary, Association of Police Surgeons

Dr J D J Havard, MA, MD, LI B, barrister at law

Dr B M Wright, MA, MB, BChir, MRCS, LRCP

*Royal Automobile Club*

L F Dyer (Chairman, Public Policy Committee)

J B Izod (Solicitor)

A J A Lee (Public Policy Executive)

*Royal Scottish Automobile Club*

W Linn, CEng, FICE, FStructE, FInstArb, MConE.

The following submitted written evidence:

(a) *Organizations*

Association of Chief Police Officers of England, Wales, and Northern Ireland\*

Association of Chief Police Officers (Scotland)

Association of Police Surgeons\*

Automobile Association\*

Berkshire Federation of Women's Institutes, Environment & Agriculture Sub-committee

British Academy of Forensic Science

British Medical Association\*

Camberwell Council on Alcoholism

Company of Veteran Motorists

Division of Social Responsibility of the Methodist Church

Electric Transport Development Society

Institute of Advanced Motorists

Justices' Clerks' Society

Law Society

Law Society of Scotland

London Magistrates' Clerks Association

Magistrates' Association

Medical Commission on Accident Prevention

Mid-Essex Law Society

National Association of Licensed Victuallers

National Council of Alcoholism

National Temperance Federation

Pedestrians Association for Road Safety

Police Superintendents' Association of England and Wales

Prosecuting Solicitors' Society of England and Wales

Royal Automobile Club\*

Royal Institute of Chemistry and Institute of Public Analysts

Royal Scottish Automobile Club\*

Royal Society for the Prevention of Accidents

Scottish Law Agents' Society

Scottish Police Federation

Senate of the Inns of Court and the Bar

Trades Union Congress

United Kingdom Alliance

United Road Transport Union

\*Also represented in oral evidence.



(b) *Individuals:*

J Addyman

H Bailey

J D K Burton, MB, FFARCS, Hon Secretary, Coroners' Society of  
England and Wales

D F Cameron, solicitor

The Clerk of Justiciary, High Court of Justiciary, Edinburgh

E Crowther, Chief Clerk, West London Magistrates' Court

A Dutton, senior prosecutor, Essex County Council

Gareth Edwards, BA, BCL, barrister at law

W P W Elwell, BA, LI B, solicitor

D B B Fenwick, MA, barrister at law

J C Gibbs, solicitor

D H Greene, solicitor

W H Grosset, solicitor

A J Healey, solicitor

J D Hobson, solicitor

A M Howell

R B Keene, MA, LI B

W J Kelly

W M Lee, LI B, solicitor

J J Leeming, BSc, ACGI, FICE, FIStructE, FIMunE, FInstHE

H Ludlam, OBE, solicitor

C Lynch, LI B, solicitor

Marsh, Pearson and Skelton, solicitors

R G Mays, Metropolitan Police Solicitor's Department

B S Minchin, solicitor

C H Moiser, Clerk to the Justices, Plymouth

S Overend, BA, barrister at law

R J Padget

L W Parmenter, clerk to the justices, Newbury

B H Pinsett

M Pratt, solicitor to Cambridgeshire Constabulary

I Raleigh

H A Samuels, BA, JP, barrister at law, Reader in Law, University of  
Southampton

Dr B O Scott, MA, MRCS, LRCP, D Phys Med Eng

M D Shaffner, prosecuting solicitor for West Yorkshire County Council

J M Simons, prosecuting solicitor for Thames Valley Police Authority

M Townsend

Commander B T Turner, CVO, DSO, OBE, JP

Dr P P Turner, OBE, MB, BS, DPH, FRCP, DIHEng

J Woodcock, TD, solicitor

Dr B M Wright, MA, MB, BChir, MRCS, LRCP\*

\*Also represented in oral evidence.

# Appendix 2

## STATISTICS ON DRINKING AND ACCIDENTS

1 This appendix displays in graphical or tabular form the more striking features of the situation on which we report, and thus supplements the data quoted in the main text, especially chapters 2 and 3.

2 The total economic cost of road accidents is conservatively estimated to be £900 million a year at current prices. This figure includes loss of output resulting from fatal or serious injuries, costs of hospital treatment, and damage to property. If accidents involving drinking drivers were of average severity, they would account for around a tenth of this annual cost (see para 2.6 of main text); in fact, these accidents are more than average severity—accounting for over a third of deaths among drivers. While data about the alcohol levels of drivers in non-fatal accidents are inadequate, calculations on a variety of assumptions indicate that accidents in which alcohol is a major factor represent economic losses exceeding £100 million (para 1.1 of the main text).

## REGIONAL CHARACTERISTICS

The discrepancy in Scottish ranking for alcohol consumption and for other variables shown below suggests different social patterns (Scotland also has a greater incidence of alcoholism than other parts of Britain).

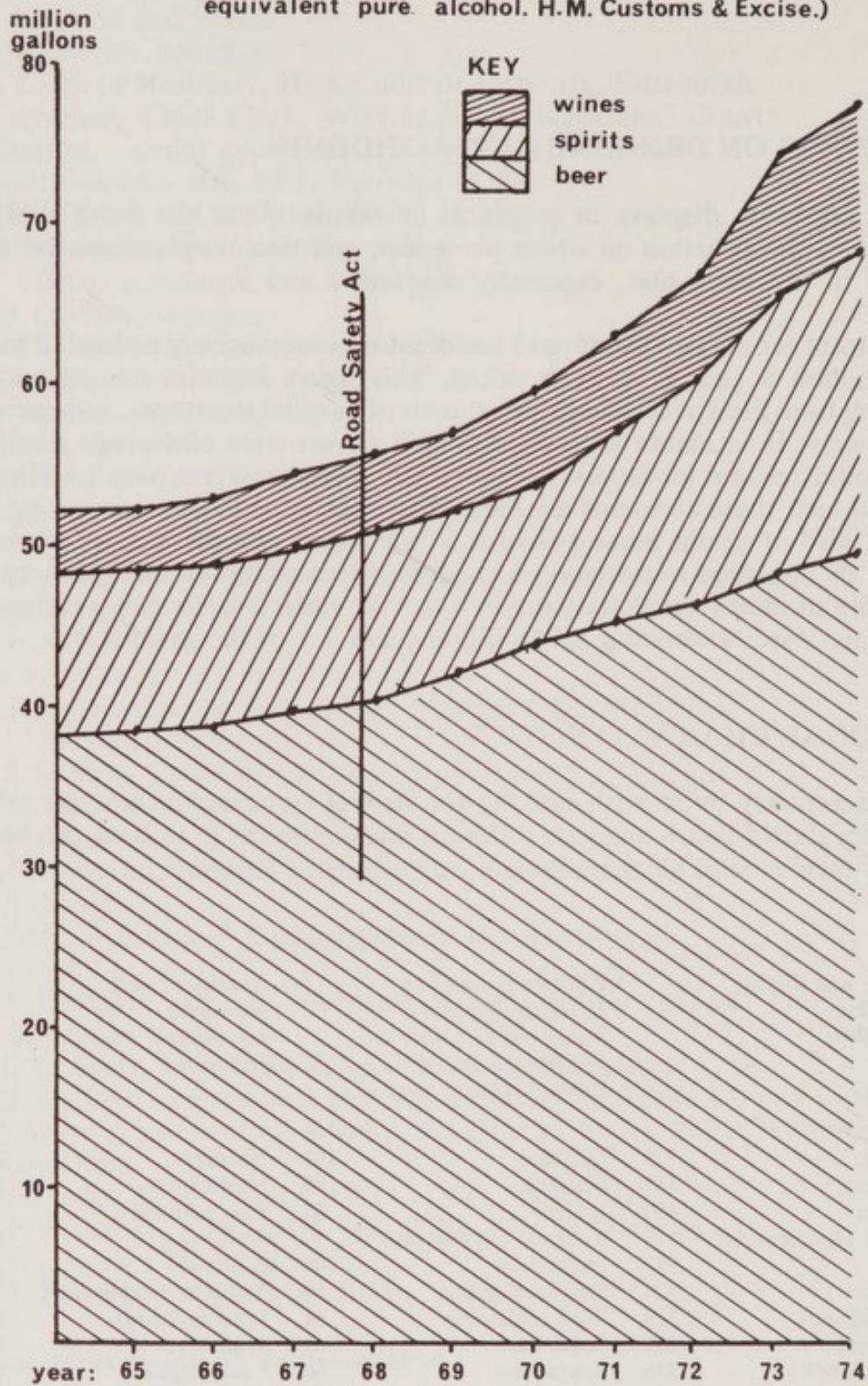
<i>Drinking and driving prosecutions per 100 000 vehicles licensed</i>		<i>Vehicles involved in accidents by positive breath test or failure to provide breath, per 100 000 vehicles licensed</i>		<i>Average weekly per capita expenditure on alcohol</i>	<i>£</i>
Scotland	721	Scotland	103	Northern	1.74
North west	487	Northern	84	North west	1.71
Northern	450	Wales	83	East midlands	1.64
Yorks & Humberside	413	Yorks & Humberside	79	South east	1.58
Wales	397	North west	75	Scotland	1.57
South east	326	East midlands	69	Yorks & Humberside	1.55
West midlands	279	West midlands	64	West midlands	1.55
South west	257	South east	62	Wales	1.48
East midlands	235	South west	60	East Anglia	1.39
East Anglia	193	East Anglia	54	South west	1.17

(Returns of casualty accidents and road traffic offences; Family expenditure survey—1972.)

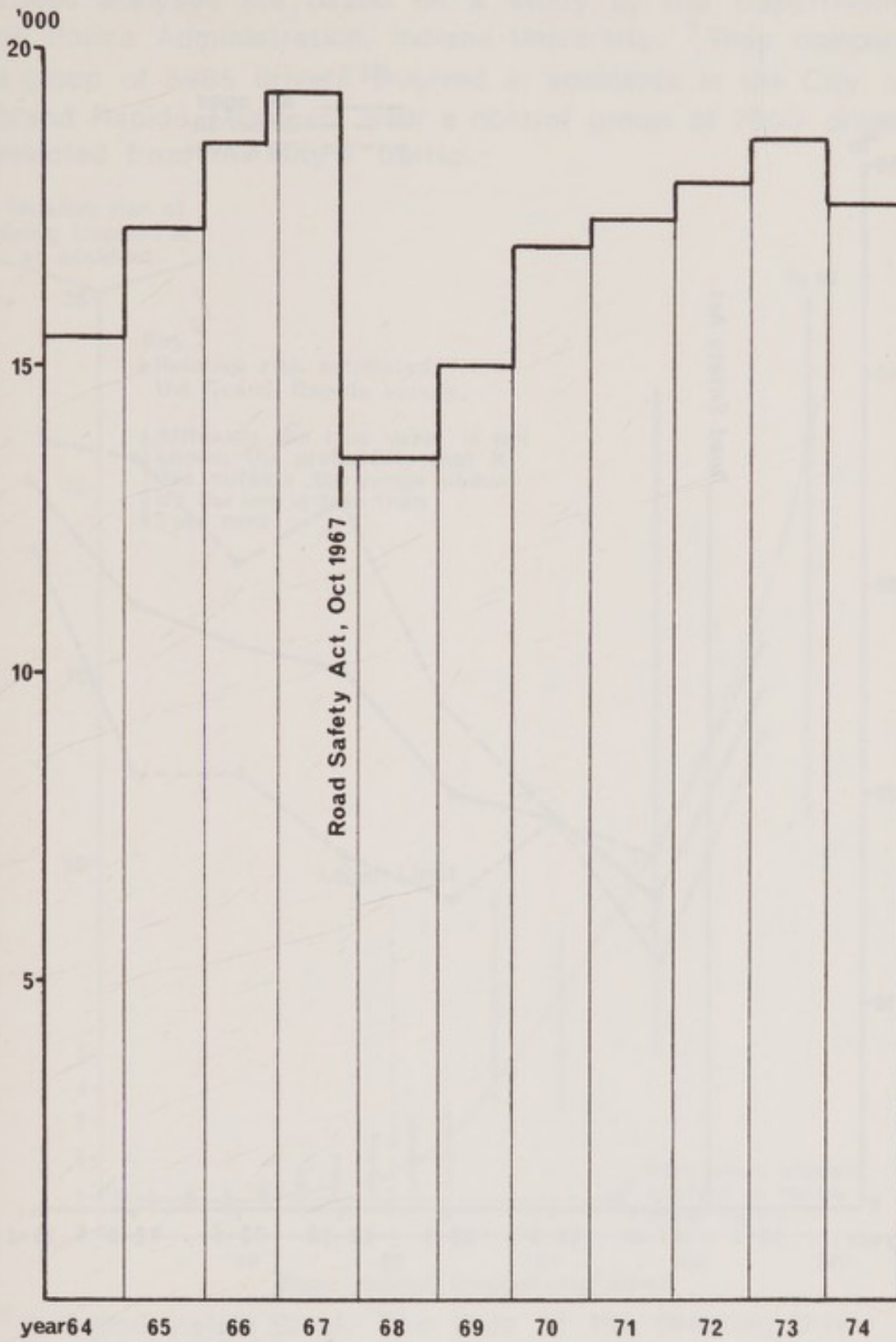
Further differences between Scotland and the rest of Great Britain are in the higher percentages of reported roadside breath tests which are positive or refused (80 as compared with 64% in 1974) and the higher proportion of analysis results over 150 mg/100 ml (55% as compared with 41.5%).



ALCOHOL CONSUMPTION (UK)  
(Beer, wines and spirits converted to  
equivalent pure alcohol. H.M. Customs & Excise.)

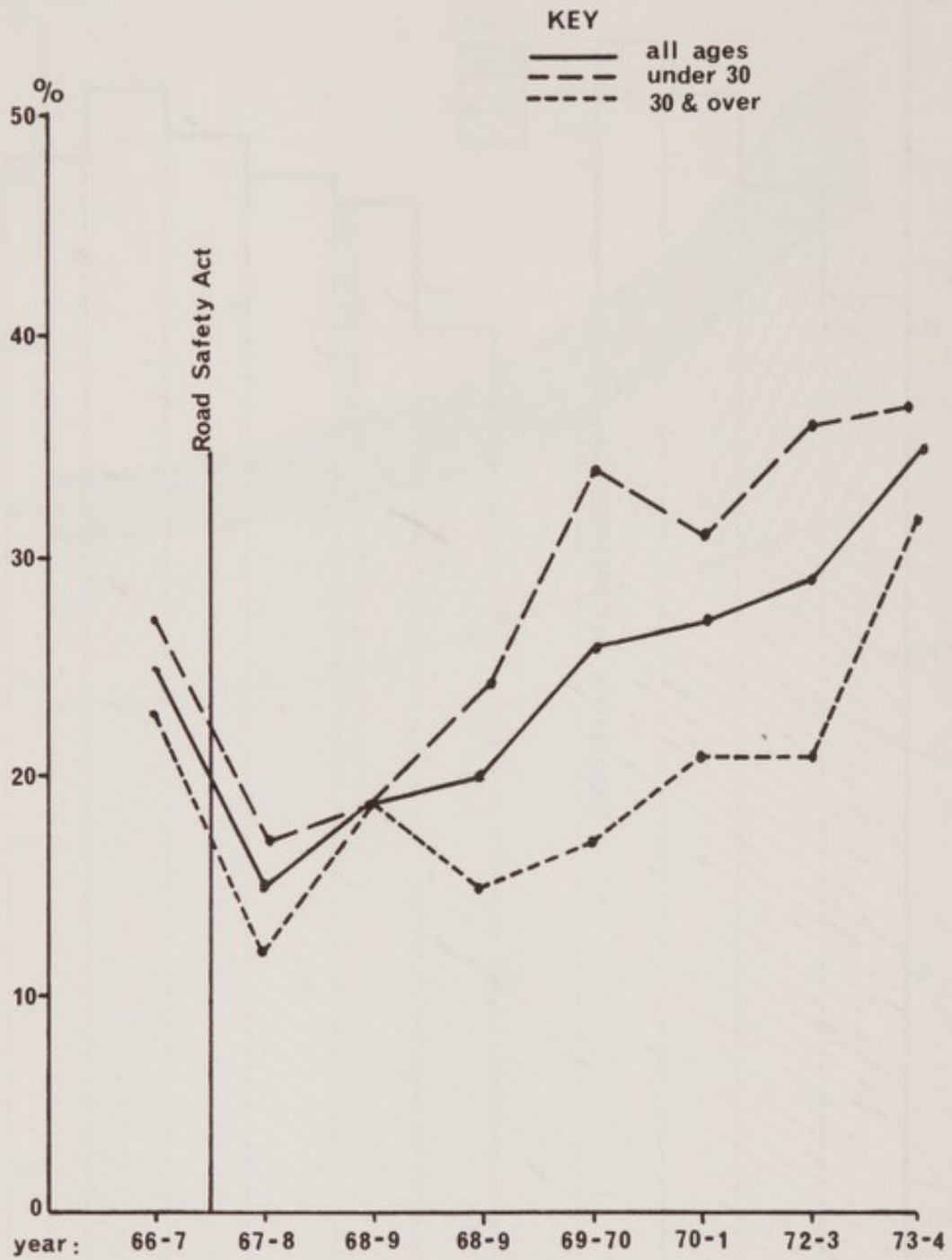


CAR INVOLVEMENTS IN FATAL AND SERIOUS  
ACCIDENTS 10pm - 4am (Great Britain).(D.O.E).





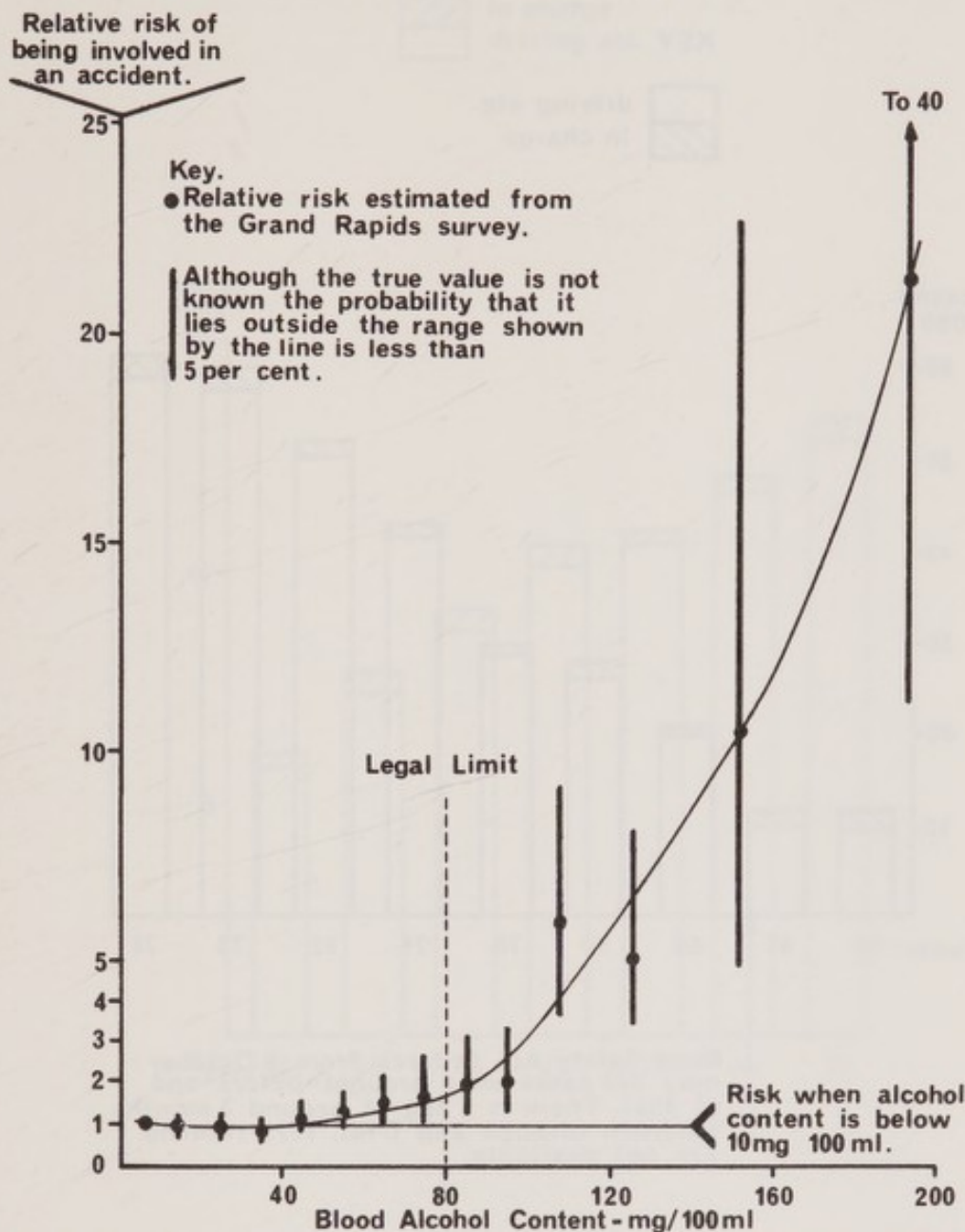
DRIVERS KILLED IN ACCIDENTS OVER  
LEGAL LIMIT (England & Wales). (TRRL).



# VARIATION OF ACCIDENT RISK WITH BLOOD ALCOHOL CONTENT

Appendix 2  
Figure 4

These analyses are based on a study by the Department of Police Administration, Indiana University. \* They compared a group of 5985 drivers involved in accidents in the City of Grand Rapids, Michigan, with a control group of 7590 drivers selected from the City's traffic.

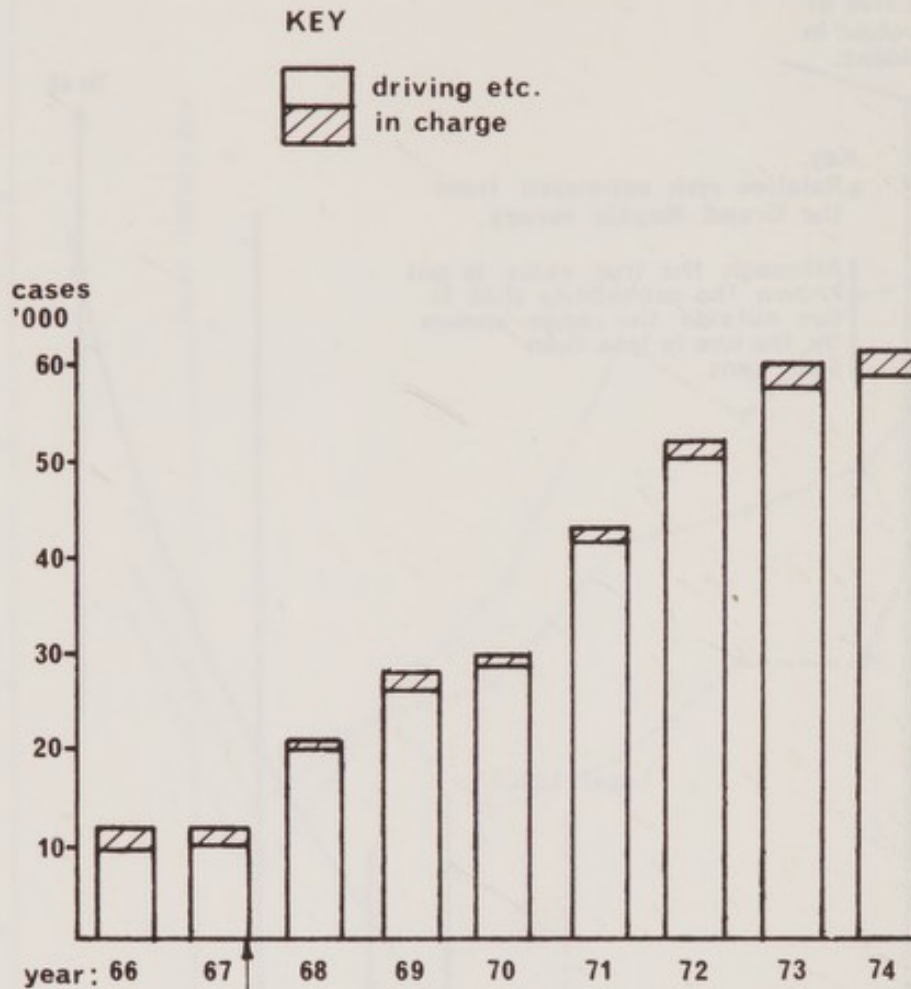


\*R. F. Borkenstein Et. al. "The Role of the Drinking Driver in Traffic Accidents".



**DRINKING & DRIVING PROSECUTIONS**  
(England & Wales). (Home Office).

(Not including failure to provide screening breath test specimen).





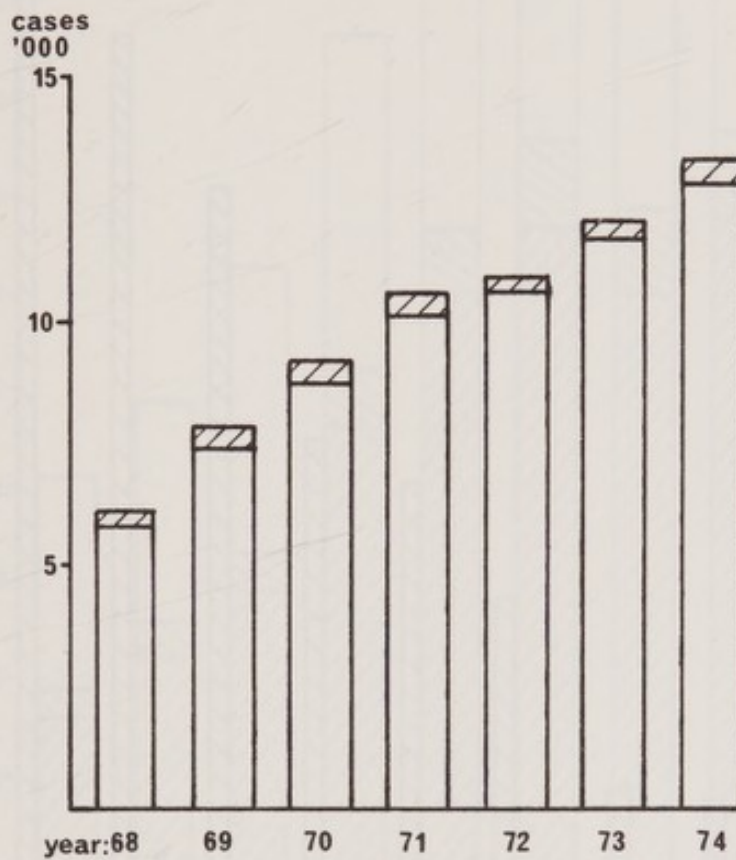
Road Safety Act in force from 9 October :  
only 940 cases were brought before end  
of 1967. There is a lag of around 3 months  
between offence and trial. 1975 returns  
are not available.

**DRINKING & DRIVING PROSECUTIONS**  
(Scotland). (Scottish Office)

(Not including failure to provide screening breath test specimens).

**KEY**

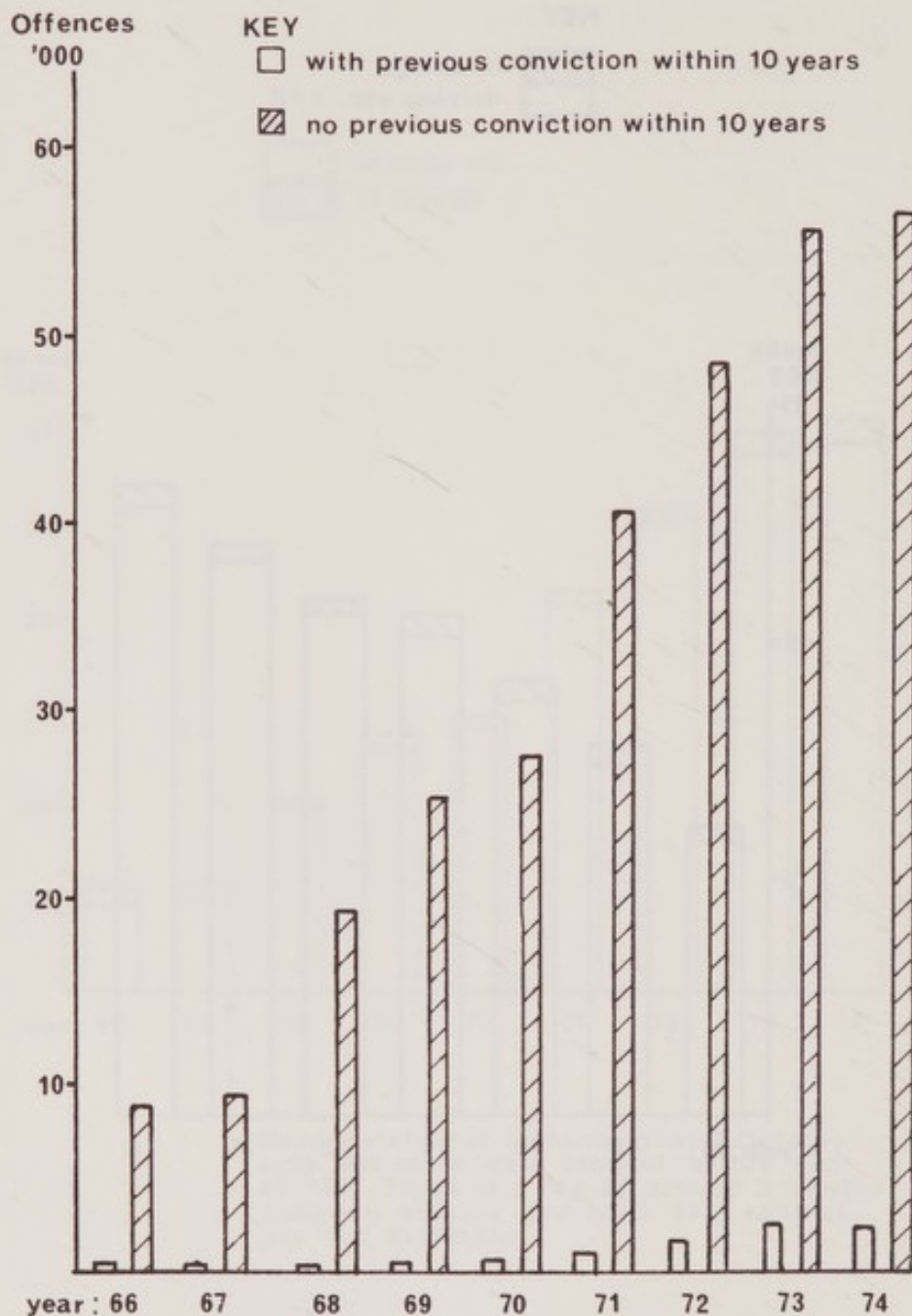
 in charge  
 driving etc.





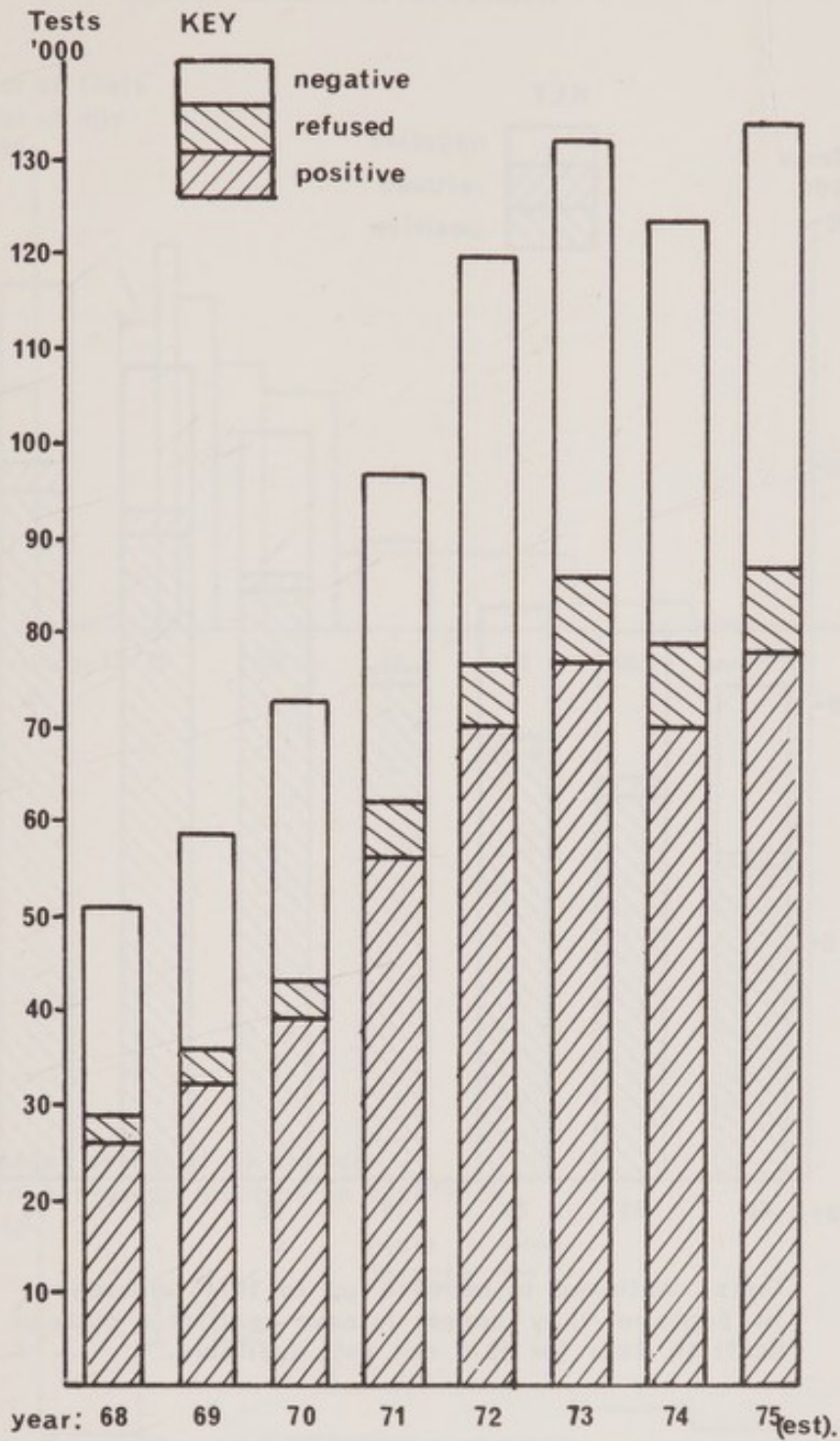
FIRST & SUBSEQUENT OFFENCES  
(England & Wales).(Home Office).

(Not including failure to provide screening  
breath test specimen).



Because first convictions have risen rapidly, estimates of  
recidivism based on a single year are too low.

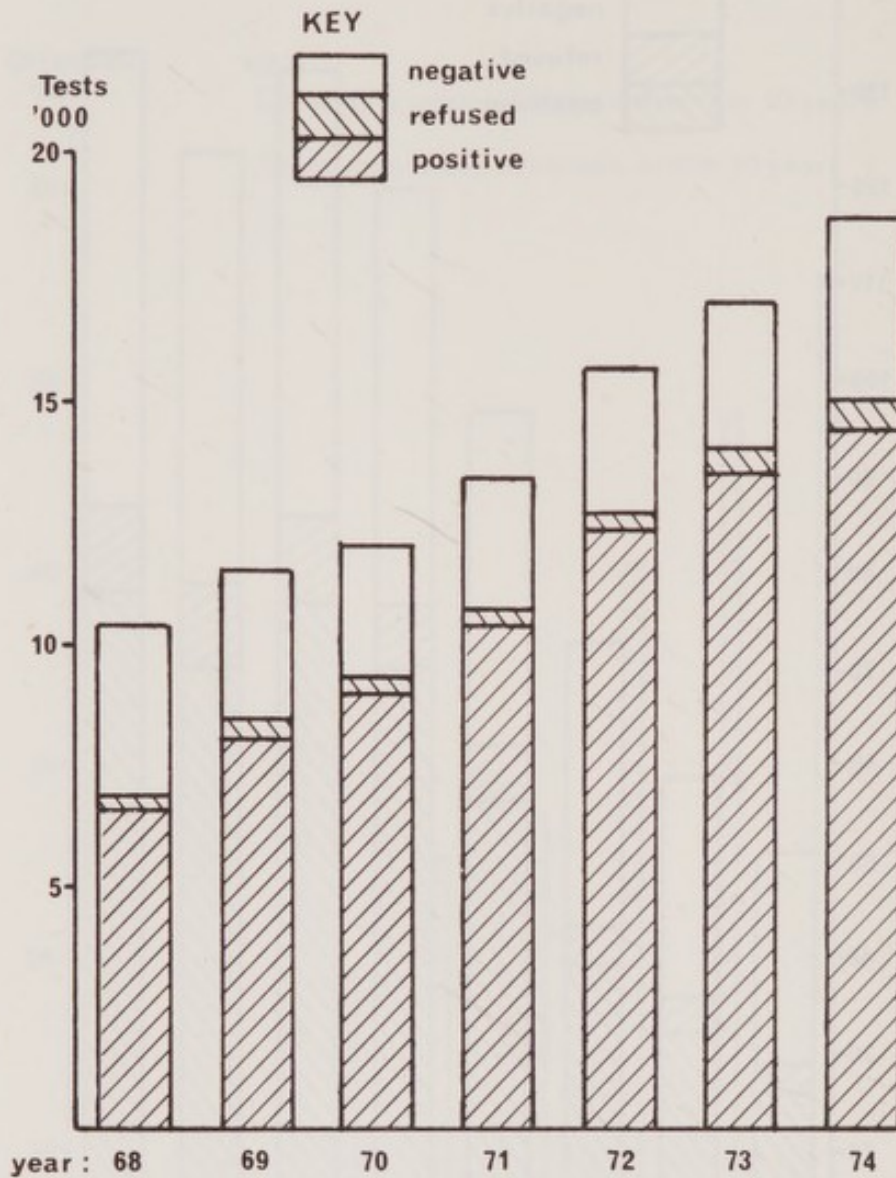
BREATH TESTS (England & Wales).  
(Home Office).



Breath tests reached a plateau in 1973. The fall in 1974 was probably related to the reduction in traffic that year. Negative tests are under-recorded.

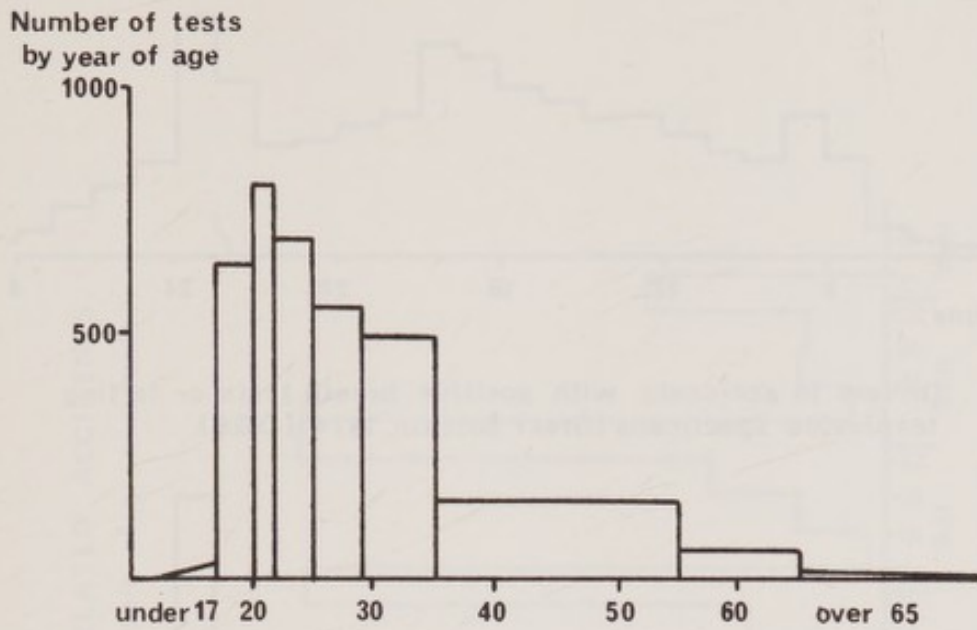


BREATH TESTS (Scotland).  
(Scottish Office).

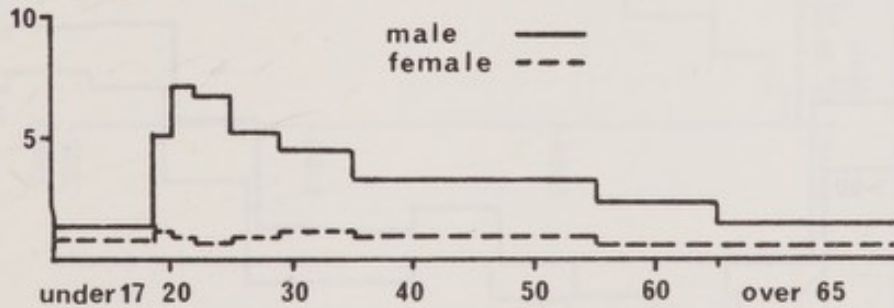


Tests continued to increase up to 1974, whereas in England they appear to have reached a plateau. Scottish data for 1975 not yet available.

AGES OF DRIVERS WHO HAVE POSITIVE BREATH  
TESTS OR FAIL TO PROVIDE SPECIMENS.  
(Great Britain 1974).(D.O.E.)

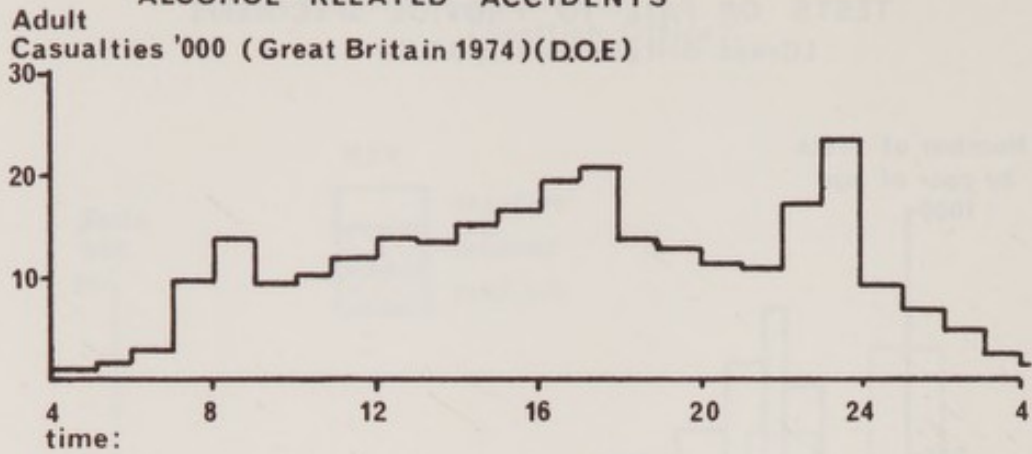


Cases as % of all drivers  
in age-group involved in accidents

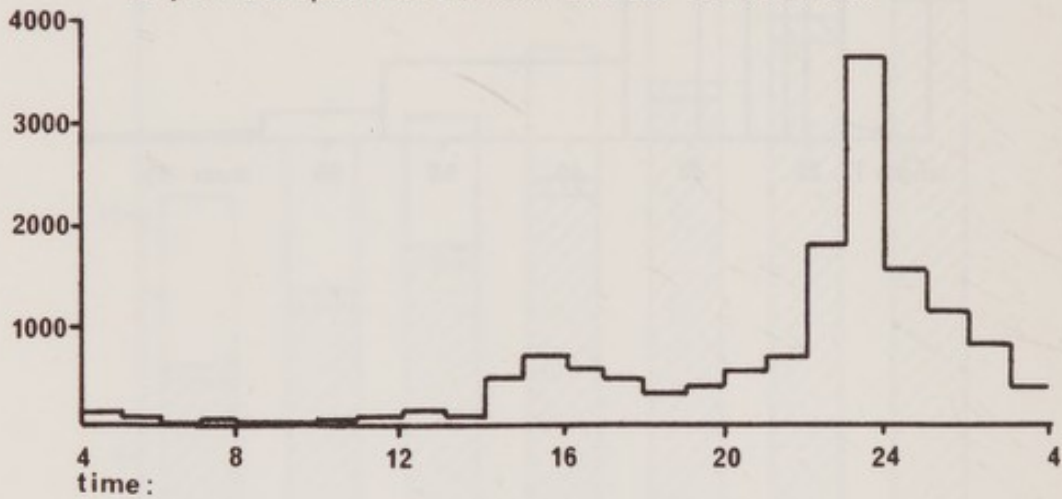




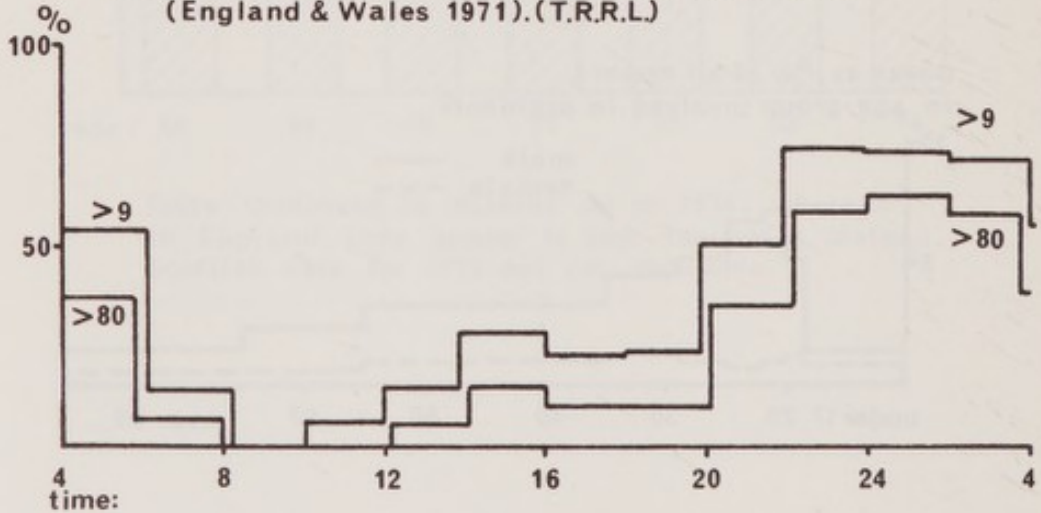
DAILY CYCLE OF CASUALTIES AND  
ALCOHOL-RELATED ACCIDENTS



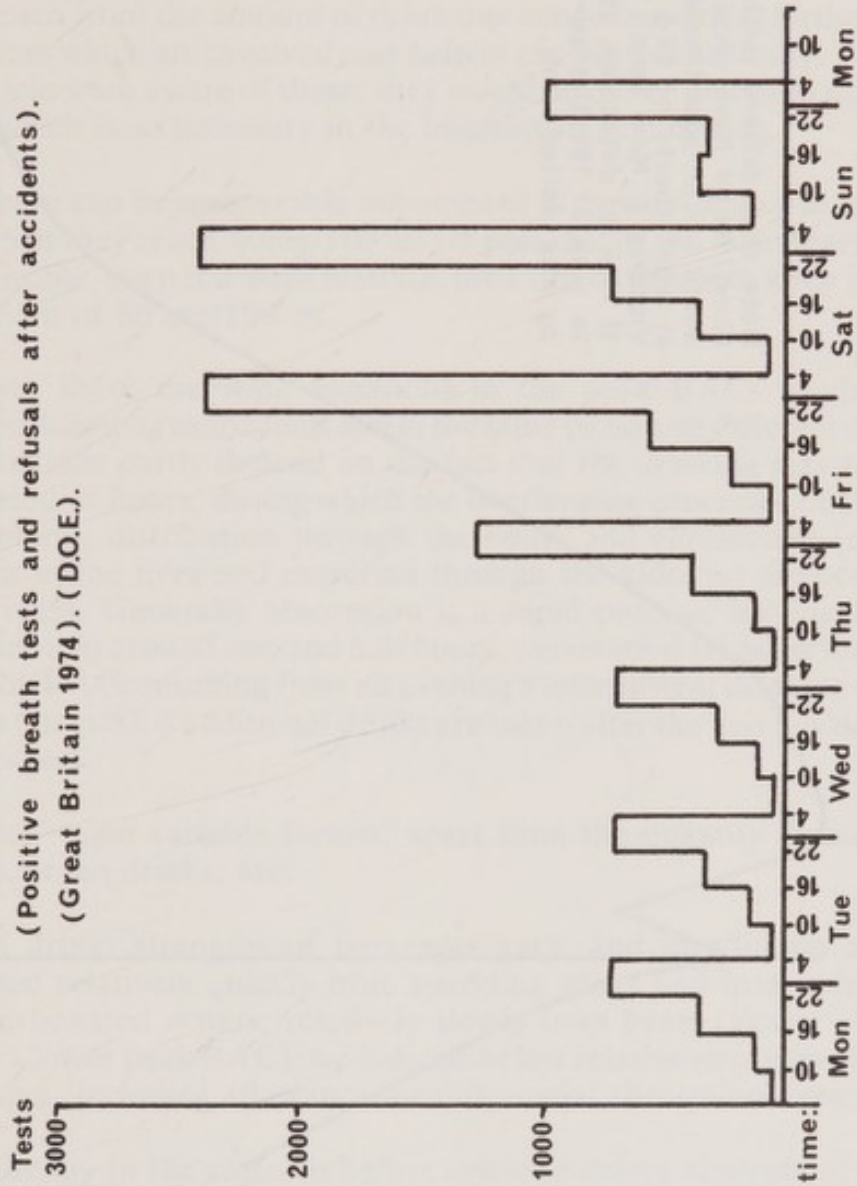
Drivers in accidents with positive breath tests or failing  
to provide specimens (Great Britain 1974)(D.O.E).



Drivers killed in accidents over 9 & 80mg/100 ml  
(England & Wales 1971).(T.R.R.L)

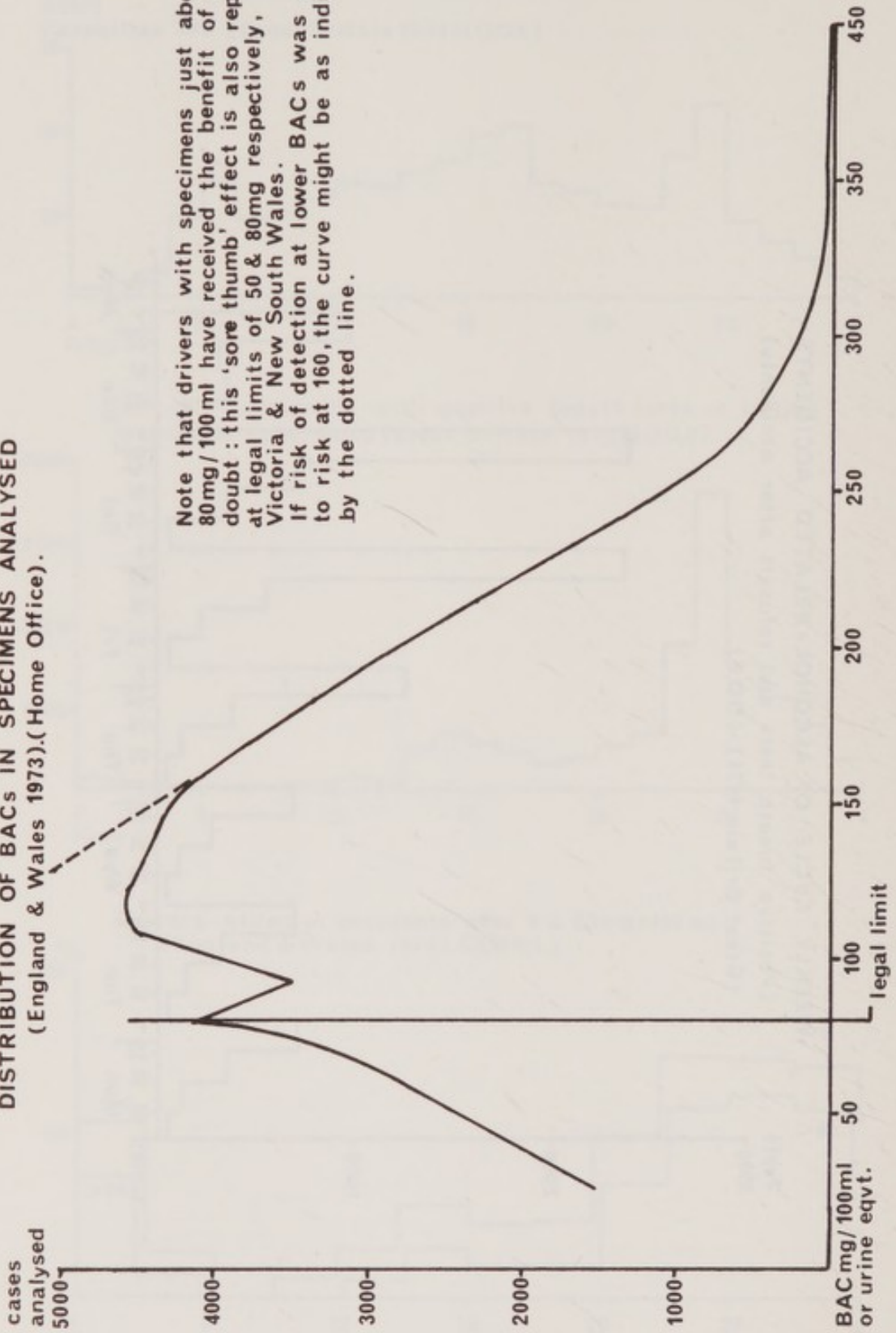


**WEEKLY CYCLE OF ALCOHOL-RELATED ACCIDENTS**  
(Positive breath tests and refusals after accidents).  
(Great Britain 1974). (D.O.E).





DISTRIBUTION OF BACs IN SPECIMENS ANALYSED  
(England & Wales 1973).(Home Office).



Note that drivers with specimens just above 80mg/100ml have received the benefit of the doubt : this 'sore thumb' effect is also reported, at legal limits of 50 & 80mg respectively, in Victoria & New South Wales. If risk of detection at lower BACs was equal to risk at 160, the curve might be as indicated by the dotted line.

# Appendix 3

## THE SCIENTIFIC BACKGROUND

### **How alcohol consumption is related to BAC**

1 In paras 4.14-17 of the main text we stated that one cannot predict what BAC one will reach from the amount of drink one consumes. Some further account of the factors which are involved may help to explain this difficulty. We believe that if people were aware of these, they would be better placed to exercise the restraint which is so necessary in the interests of safe driving.

2 Since there can be measurable impairment of drivers' ability to respond to hazards when they reach 40mg/100 ml (cf para 2.2 of the main text), it would be irresponsible, even if it were feasible, for a driver to aim to keep just within the legal limit of 80 mg/100 ml.

3 Moreover there are wide variations in the peak BACs resulting from drinking both among individuals and in the same person on different occasions. These variations partly depend on the fact that the drinking may take place over a period of hours, during which the overlapping processes of absorption into the blood, distribution through the body, and elimination (mainly by conversion in the liver and excretion through the kidneys) are occurring at different rates. Generally absorption is a rapid process, leading to a peak concentration in around one and half hours; elimination takes far longer. The curve of the BACs resulting from an evening's intermittent drinking may have more than one peak if additional drinks are taken after the first few drinks have been absorbed.

4 The other main variable factors, apart from the quantity drunk and the interval between drinks, are:

- a. type of drink: strengths of beverages vary, and in addition alcohol is absorbed relatively quickly from sparkling wines and from spirits mixed with carbonated waters, relatively slowly from beers (slower absorption means a lower peak BAC); we indicate below relative strengths of common beverages, including allowance for differential absorption rates;
- b. food already in the stomach before drinking delays absorption;
- c. body weight: the peak concentration resulting from distribution of alcohol through the body would be about twice as high in a person of half the weight (and this varies in normal adults over a range of more than three to one);
- d. individual metabolism: both absorption and elimination rates vary widely among individuals and at different times—for instance, elimination is faster during vigorous physical activity than when sitting at a bar or driving a vehicle.



5 The relative effect of different beverages is usually conveyed in terms of a unit drink, roughly equivalent to

- a single measure of distilled spirits (5/6 fl oz or 24 ml)
- half a pint (284 ml) of ordinary beer
- a quarter pint (142 ml) of strong ale
- a small glass of table wine (4 fl oz or 114 ml)
- a small glass of fortified wine (2 fl oz or 55 ml)

6 Various attempts were made up to 1965 to compile tables which incorporated the factors we have enumerated, but it was increasingly recognized that they gave unrealistic results and were of no use as a guide to conduct.

### **Accuracy of analyses**

7 Procedures for determining drivers' BACs depend on a securing suitable specimens and interpreting the results of analyses in such a way that the risk of injustice is, for all practical purposes, eliminated. In laboratory analysis of blood and urine specimens the procedure ensures that the odds against a final reported figure just over the legal limit being too high are several millions to one. Consistent accuracy is ensured by comparison with standard reference samples and by repeated and independent analyses. A series of results (which must fall within three standard deviations (6%)) is averaged, and then 6% (or 6 mg below 100 mg/100 ml) is deducted from the result, which is therefore reported as 'not less than—mg/100 ml.'

8 The device adopted for analysing breath at police stations must reliably measure concentrations over a range including the critical points at 80 mg and 200 mg/100 ml. We consider that it must be capable of achieving accuracy within  $\pm 10\%$  at the 95% confidence level (several devices are claimed to give performance of this order). Provided that the appropriate allowance for experimental error is deducted from the reading which is obtained, the risk of an incorrect result leading to injustice will be very low; but the only practical way of resolving any doubt conclusively in marginal cases would be to take a blood specimen for laboratory analysis. This option is only likely to be exercised by those who are just over the critical figures; it would soon be recognized that the net result of various factors could well be a higher BAC from the blood analysis, and that at most levels there is nothing to be gained.

### **Comparative costs of blood and breath analysis**

9 In 1975, 70 000 blood analyses were conducted at a total cost of £840 000—of which £700 000 was the cost of taking specimens at police stations and £140 000 that of laboratory analyses. The cost per case was thus £12.

10 The target cost per breath test on this basis, and assuming that no more than 10% of suspects would opt to give blood specimens after positive breath analyses, would be about £10.50. In principle this target is attainable, since devices with associated equipment, which would have several years' life, are quoted at prices well below £1000, and each is likely to be used hundreds of times. In practice the crucial factors are the total number of tests each year (a network of devices throughout the country could cope with any probable rise in

cases, at negligible extra expense) and the number of instruments which would have to be deployed in order to have one within a convenient distance from all points where offences may occur, and to allow for spares.

11 Since the cost of such equipment in relation to that of skilled manpower (such as doctors and analysts) will tend to fall, the economics of breath analysis will further improve in the future. While we consider that the arguments set out in paras 4.1-6 of the main text furnish the main case for making breath analysis the standard method, the prospect of being able to introduce the change without additional public expenditure (subject to detailed operational costing of the preferred device) is also relevant.



# Appendix 4

## INTERNATIONAL COMPARISONS

### **Drinking and accidents**

1 Alcohol is recognized as a major factor in road accidents not only in Britain but in every country where it is available for consumption. A recent international survey (Alcohol and Highway Safety, Canadian Ministry of Transport, 1974) included information from 28 countries; research is conducted in many of these, and there have been many conferences at which workers in this field compared their findings.

2 These international exchanges have revealed that, despite differences in national traditions and other local factors, the importance of drinking as a factor in accidents is generally on the increase, young drivers are heavily involved, alcoholism is increasingly recognized to be an element in the situation, and countermeasures have had only limited success. For example, members who visited Sweden, which has had strict measures against drinking drivers for 35 years and has developed a very responsible public attitude to drinking before driving, were told that alcohol was a factor in 20% of fatal accidents and that 35% of drivers killed on the roads were under the influence of drink. They were experimenting with increased roadside screening, and considering reforms which would place less emphasis on imprisonment and more on disqualification and treatment for drinking problems—a recipe not dissimilar to that which this committee proposes for Britain.

3 While the gravity of the situation in each country depends on the extent of heavy drinking among drivers, studies generally show that evenings, especially at weekends, are the worst times, that even at these times up to 80% of drivers on the roads have had little if any drink, but that those affected by it and especially those over legal limits (who in most surveys even in drinking hours do not exceed 10% of the total), have been involved in a disproportionate share of accidents and traffic offences.

### **Types of law**

4 Some jurisdictions restrict access to alcohol, by limiting opening hours, restricting issue of licences, and forbidding drivers to carry opened containers of liquor. These laws often affect national drinking habits, but there appears to be no evidence that they prevent those drivers who wish to drink from doing so. At best, they may produce a more marked polarization than exists in most parts of Britain between the responsible majority of drivers and a minority who drink heavily.

5 Our concern is with laws specifically directed at the driver impaired by alcohol. While many jurisdictions still have subjectively defined offences similar to those which were enacted here between 1872 and 1962, there is now a



consensus, which was reflected in a recommendation passed in 1967 by the European Conference of Ministers of Transport, that the main offence should be based on a prescribed limit not exceeding 80 mg/100 ml. The earliest country to enact such a law was Norway (1937), followed by Sweden (1941), both prescribing 50 mg/100 ml. Others with this limit include Victoria (Australia), Iceland, Japan and the Netherlands; while there are 80 mg limits in New South Wales, Austria, Belgium, Canada, Denmark, France, the German Federal Republic, Northern Ireland, Switzerland, and two American States. Most American States have limits of 100 mg/100ml, as has New Zealand, while ten States together with the Republic of Ireland and South Africa have limits in the range 120-150 mg/100 ml.

### Enforcement

6 A prescribed limit has little deterrent value unless the police are given the legal power and technical means to screen suspects. An increasing number of countries have adopted the Draeger Alcotest used in Britain, or similar devices; in the USA more advanced devices are coming into use following the issue of a Federal performance standard. Results depend not only on the scope of police powers but on their enforcement practice, which is not easy to establish. A recent Swedish law permitted testing on suspicion, after accidents and moving traffic offences, and at road blocks. In France, the permitted circumstances are similar to the British provisions, but far more tests are conducted apparently as a matter of routine after minor traffic violations. Comparison with experience here seems to show advantages in a more selective approach:

1974	tests	positives	% positive
France	1 093 000*	60 000	5.5
Britain	143 000	83 000	58.0

\*600 000 after minor traffic offences.

7 Most jurisdictions rely on blood analysis—it is of course a vital part of effective laws that constitutional safeguards against compulsory self-incrimination should be circumvented, if necessary by making it (as in some American States) a condition of holding a driving licence to be willing to give a specimen. The State of Victoria and some American States now require breath at the police station, using the Breathalyzer or more recently developed devices. An alternative approach—as in Northern Ireland—is to deploy these in vans; but unless the police also use screening devices this form of enforcement is rather inflexible and limited in coverage. Generally the suspect who is dissatisfied with the breath analysis can choose to give a further specimen, this time of blood or urine. In Northern Ireland in 1974 90% of those with positive breath tests accepted the results, and all the remaining 10% were confirmed by blood or urine analyses.

### Sentences

8 Several countries—including Belgium, France, Germany, Sweden, and Northern Ireland—operate two-tier offences, with heavier penalties for driving at BACs over 120 or 150 mg/100 ml. A few have enacted sliding scales of disqualification related to BACs. Many have heavier penalties, including longer disqualifications, for second and subsequent offences.



9 In some jurisdictions, notably Sweden, disqualification is at present a separate administrative procedure (although the advantages of placing it at the disposal of the criminal court are now recognized). The police may have power to withdraw the licence temporarily when they have evidence of an offence, and this suspension is confirmed by an administrative court or the licensing authority (depending on the local system) if the driver is found guilty in the criminal court. Swedish administrative practice is to withhold a licence if there is any drinking offence (not just one involving a vehicle) in the past two years, and that is the effective length of a disqualification.

10 As there is no consistent interpretation of terms such as 'drinking problem', one cannot reliably compare findings about the extent of alcoholism and related conditions among drivers who drink; but recidivism and evidence about drivers' other offences give some indications. For example, in Sweden about 20% of those who are convicted of drinking and driving are recidivists; in Melbourne the corresponding figure is 25%; and other Australian studies have found that up to 35% have previous criminal convictions (these samples will have been at very high BACs).

11 In consequence of such findings, some American States, Canadian provinces, and Sweden are conducting or contemplating programmes of education and rehabilitation for offenders—but it will be several years before any of these can be assessed, and it may take even longer to find the most effective approach.

12 As in Britain, young men are generally the largest group of offenders—in Sweden, for instance, 90% are male, a third of these are under 25 and half are under 30.

# Appendix 5

## THE PRESENT DRINKING AND DRIVING LAW

(These provisions apply in Great Britain; separate legislation is in force in Northern Ireland).

### **Licensing Act 1872**

**(similar provision in Licensing (Scotland) Act 1903)**

12. . . . Every person who . . . is drunk while in charge on any highway or other public place of any carriage, horse, cattle, or steam engine . . . may be apprehended, and shall be liable to a penalty not exceeding £10, or in the discretion of the court to imprisonment with or without hard labour for any term not exceeding one month . . .

(Statutory references to carriages include motor vehicles – Road Traffic Act 1972 section 195).

### **Licensing Act 1974**

(Section 9 disqualifies premises in motorway service areas from receiving justices' licences.)

### **Road Traffic Act 1972**

5.—(1) A person who, when driving or attempting to drive a motor vehicle on a road or other public place, is unfit to drive through drink or drugs shall be guilty of an offence.

Driving, or being in charge, when under influence of drink or drugs

(2) Without prejudice to subsection (1) above, a person who, when in charge of a motor vehicle which is on a road or other public place, is unfit to drive through drink or drugs shall be guilty of an offence.

(3) For the purposes of subsection (2) above a person shall be deemed not to have been in charge of a motor vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving it so long as he remained unfit to drive through drink or drugs.

(4) For the purposes of this section a person shall be taken to be unfit to drive if his ability to drive properly is for the time being impaired.



(5) A constable may arrest without warrant a person committing an offence under this section.

Driving, or being in charge, with blood-alcohol concentration above the prescribed limit.

6.—(1) If a person drives or attempts to drive a motor vehicle on a road or other public place, having consumed alcohol in such a quantity that the proportion thereof in his blood, as ascertained from a laboratory test for which he subsequently provides a specimen under section 9 of this Act, exceeds the prescribed limit at the time he provides the specimen, he shall be guilty of an offence.

(2) Without prejudice to subsection (1) above, if a person is in charge of a motor vehicle on a road or other public place having consumed alcohol as aforesaid, he shall be guilty of an offence.

(3) A person shall not be convicted under this section of being in charge of a motor vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving it so long as there was any probability of his having alcohol in his blood in a proportion exceeding the prescribed limit.

(4) In determining for the purposes of subsection (3) above the likelihood of a person's driving a motor vehicle when he is injured or the vehicle is damaged, the jury, in the case of proceedings on indictment, may be directed to disregard, and the court in any other case may disregard, the fact that he had been injured or that the vehicle had been damaged.

Evidence on charge of unfitness to drive.

7.—(1) In any proceedings for an offence under section 5 of this Act, the court shall, subject to section 10(5) thereof, have regard to any evidence which may be given of the proportion or quantity of alcohol or of any drug which was contained in the blood or present in the body of the accused, as ascertained by analysis of a specimen of blood taken from him with his consent by a medical practitioner, or of urine provided by him, at any material time; and if it is proved that the accused, when so requested by a constable at any such time, refused to consent to the taking of or to provide a specimen for analysis, his refusal may, unless reasonable cause therefor is shown, be treated as supporting any evidence given on behalf of the prosecution, or as rebutting any evidence given on behalf of the defence, with respect to his condition at that time.

(2) A person shall not be treated for the purposes of subsection (1) above as refusing to provide a specimen unless—

(a) he is first requested to provide a specimen of blood, but refuses to do so;

(b) he is then requested to provide two specimens of urine within one hour of the request, but fails to provide them within the hour or refuses at any time within the hour to provide them; and



- (c) he is again requested to provide a specimen of blood, but refuses to do so.

(3) The first specimen of urine provided in pursuance of a request under subsection (2)(b) above shall be disregarded for the purposes of subsection (1) above.

**8.—(1)** A constable in uniform may require any person driving or attempting to drive a motor vehicle on a road or other public place to provide a specimen of breath for a breath test there or nearby, if the constable has reasonable cause— Breath tests.

(a) to suspect him of having alcohol in his body, or

(b) to suspect him of having committed a traffic offence while the vehicle was in motion;

but no requirement may be made by virtue of paragraph (b) above unless it is made as soon as reasonably practicable after the commission of the traffic offence.

(2) If an accident occurs owing to the presence of a motor vehicle on a road or other public place, a constable in uniform may require any person who he has reasonable cause to believe was driving or attempting to drive the vehicle at the time of the accident to provide a specimen of breath for a breath test—

(a) except while that person is at a hospital as a patient, either at or near the place where the requirement is made or, if the constable thinks fit, at a police station specified by the constable;

(b) in the said excepted case, at the hospital;

but a person shall not be required to provide such a specimen while at a hospital as a patient if the medical practitioner in immediate charge of his case is not first notified of the proposal to make the requirement or objects to the provision of a specimen on the ground that its provision or the requirement to provide it would be prejudicial to the proper care or treatment of the patient.

(3) A person who, without reasonable excuse, fails to provide a specimen of breath for a breath test under subsection (1) or (2) above shall be guilty of an offence.

(4) If it appears to a constable in consequence of a breath test carried out by him on any person under subsection (1) or (2) above that the device by means of which the test is carried out indicates that the proportion of alcohol in that person's blood exceeds the prescribed limit, the constable may arrest that person without warrant except while that person is at a hospital as a patient.



(5) If a person required by a constable under subsection (1) or (2) above to provide a specimen of breath for a breath test fails to do so and the constable has reasonable cause to suspect him of having alcohol in his body, the constable may arrest him without warrant except while he is at a hospital as a patient.

(6) Subsections (4) and (5) above shall not be construed as prejudicing the provisions of section 5(5) of this Act.

(7) A person arrested under this section, or under the said section 5(5), shall, while at a police station, be given an opportunity to provide a specimen of breath for a breath test there.

(8) In this section "traffic offence" means an offence under any provision of this Act except Part V thereof or under any provision of Part III of the Road Traffic Act 1960 or the Road Traffic Regulation Act 1967.

Laboratory tests. **9.**—(1) A person who has been arrested under section 5(5) or 8 of this Act may, while at a police station, be required by a constable to provide a specimen for a laboratory test (which may be a specimen of blood or of urine), if he has previously been given an opportunity to provide a specimen of breath for a breath test at the station under subsection (7) of the said section 8, and either—

(a) it appears to a constable in consequence of the breath test that the device by means of which the test is carried out indicates that the proportion of alcohol in his blood exceeds the prescribed limit, or

(b) when given the opportunity to provide that specimen he fails to do so.

(2) A person while at a hospital as a patient may be required by a constable to provide at the hospital a specimen for a laboratory test—

(a) if it appears to a constable in consequence of a breath test carried out on that person under section 8(2) of this Act that the device by means of which the test is carried out indicates that the proportion of alcohol in his blood exceeds the prescribed limit, or

(b) if that person has been required, whether at the hospital or elsewhere, to provide a specimen of breath for a breath test, but fails to do so and a constable has reasonable cause to suspect him of having alcohol in his body;

but a person shall not be required to provide a specimen for a laboratory test under this subsection if the medical practitioner in immediate charge of his case is not first notified of the proposal to make the requirement or objects to the provision of a specimen on the ground that its provision, the

requirement to provide it or a warning under subsection (7) below would be prejudicial to the proper care or treatment of the patient.

(3) A person who, without reasonable excuse, fails to provide a specimen for a laboratory test in pursuance of a requirement imposed under this section shall be guilty of an offence.

(4) Nothing in the foregoing provisions of this section shall affect the provisions of section 7(1) of this Act.

(5) A person shall not be treated for the purposes of subsection (3) above as failing to provide a specimen unless—

- (a) he is first requested to provide a specimen of blood, but refuses to do so;
- (b) he is then requested to provide two specimens of urine within one hour of the request, but fails to provide them within the hour or refuses at any time within the hour to provide them; and
- (c) he is again requested to provide a specimen of blood, but refuses to do so.

(6) The first specimen of urine provided in pursuance of a request under subsection (5)(b) above shall be disregarded for the purposes of section 6 of this Act.

(7) A constable shall on requiring any person under this section to provide a specimen for a laboratory test warn him that failure to provide a specimen of blood or urine may make him liable to imprisonment, a fine and disqualification, and, if the constable fails to do so, the court before which that person is charged with an offence under section 6 of this Act or this section may direct an acquittal or dismiss the charge, as the case may require.

In this subsection “disqualification” means disqualification for holding or obtaining a licence to drive a motor vehicle granted under Part III of this Act.

**10.—(1)** For the purposes of any proceedings for an offence under section 5 or 6 of this Act, a certificate purporting to be signed by an authorised analyst, and certifying—

- (a) the proportion of alcohol or any drug found in a specimen identified by the certificate, and
- (b) for the purposes only of proceedings for an offence under the said section 5, in the case of a specimen of urine, the proportion of alcohol or of that drug in the blood which corresponds to the proportion found in the specimen,

Ancillary provisions as to evidence in proceedings for an offence under s. 5 or 6.



shall, subject to subsection (3) below, be evidence of the matters so certified and of the qualification of the analyst.

(2) For the purposes of any proceedings for an offence under the said section 5 or 6, a certificate purporting to be signed by a medical practitioner that he took a specimen of blood from a person with his consent shall, subject to subsection (3) below, be evidence of the matters so certified and of the qualification of the medical practitioner.

(3) Subsections (1) and (2) above shall not apply to a certificate tendered on behalf of the prosecution unless a copy has been served on the accused not less than seven days before the hearing or trial, nor if the accused, not less than three days before the hearing or trial, or within such further time as the court may in special circumstances allow, has served notice on the prosecutor requiring the attendance at the hearing or trial of the person by whom the certificate was signed.

A copy of a certificate required by this subsection to be served on the accused or of a notice required by this subsection to be served on the prosecutor may either be personally served on the accused or the prosecutor (as the case may be) or sent to him by registered post or the recorded delivery service.

(4) In any proceedings in Scotland for an offence under the said section 5 or 6, a certificate complying with subsection (1) or (2) above and, where the person by whom such a certificate was signed is called as a witness, the evidence of that person, shall be sufficient evidence of the facts stated in the certificate.

(5) Where, in proceedings for an offence under the said section 5 or 6 the accused, at the time a specimen of blood or urine was taken from or provided by him, asked to be supplied with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen shall not be admissible on behalf of the prosecution unless—

- (a) the specimen is either one of two taken or provided on the same occasion or is part of a single specimen which was divided into two parts at the time it was taken or provided, and
- (b) the other specimen or part was supplied to the accused.

(6) A constable requesting any person to consent to the taking of or to provide a specimen of blood or urine for analysis shall offer to supply to him, in a suitable container, part of the specimen or, in the case of a specimen of blood which it is not practicable to divide, another specimen which he may consent to have taken.

(7) In this section "authorised analyst" means any person possessing the qualifications prescribed by regulations made under section 89 of the Food and Drugs Act 1955, or section 27 of the Food and Drugs (Scotland) Act 1956, as qualifying persons for appointment as public analysts under those Acts, and any other person authorised by the Secretary of State to make analyses for the purposes of this section.



**11.** Any person required to provide a specimen for a laboratory test under section 9(1) of this Act may thereafter be detained at the police station until he provides a specimen of breath for a breath test and it appears to a constable that the device by means of which the test is carried out indicates that the proportion of alcohol in that person's blood does not exceed the prescribed limit.

Detention of persons while affected by alcohol.

**12.—(1)** In sections 6 to 11 of this Act, except so far as the context otherwise requires—

Interpretation of ss. 6 to 11.

“breath test” means a test for the purpose of obtaining an indication of the proportion of alcohol in a person's blood carried out by means of a device of a type approved for the purpose of such a test by the Secretary of State, on a specimen of breath provided by that person;

“fail”, in relation to providing a specimen, includes refuse and “failure” shall be construed accordingly;

“hospital” means an institution which provides medical or surgical treatment for in-patients or out-patients;

“laboratory test” means the analysis of a specimen provided for the purpose;

“the prescribed limit” means 80 milligrammes of alcohol in 100 millilitres of blood or such other proportion as may be prescribed by regulations made by the Secretary of State.

(2) A person shall be treated for the purposes of sections 6 and 9 of this Act as providing a specimen of blood if, but only if, he consents to the specimen being taken by a medical practitioner and it is so taken and shall be treated for those purposes as providing it at the time it is so taken.

(3) References in sections 8, 9 and 11 of this Act to providing a specimen of breath for a breath test are references to providing a specimen thereof in sufficient quantity to enable that test to be carried out.

(4) For the purposes of the said section 6 and this section 107 milligrammes of alcohol in 100 millilitres of urine shall be treated as equivalent to 80 milligrammes of alcohol in 100 millilitres of blood, and the power conferred by subsection (1) above to prescribe some other proportion of alcohol in the blood shall include power to prescribe a proportion of alcohol in urine which is to be treated as equivalent to the prescribed proportion of alcohol in the blood.

**13.** A person liable to be charged with an offence under section 5, 6 or 9 of this Act shall not be liable to be charged—

Person liable to be charged with offence under s. 5, 6 or 9 not liable to be charged with certain other offences.

(a) under section 12 of the Licensing Act 1872, with the offence of being drunk while in charge, on a highway or other public place, of a carriage, or

(b) under section 70 of the Licensing (Scotland) Act 1903, with the offence of being drunk while in charge, in a street or other place, of a carriage.



Cycling when under influence of drink or drugs.

**19.**—(1) A person who, when riding a cycle, not being a motor vehicle, on a road or other public place, is unfit to ride through drink or drugs shall be guilty of an offence.

(2) A person liable to be charged with an offence under this section shall not be liable to be charged—

(a) under section 12 of the Licensing Act 1872, with the offence of being drunk while in charge, on a highway or other public place, of a carriage, or

(b) under section 70 of the Licensing (Scotland) Act 1903, with the offence of being drunk while in charge, in a street or other place, of a carriage.

(3) A constable may arrest without warrant a person committing an offence under this section.

(4) In this section “unfit to ride through drink or drugs” means, as regards a person riding a cycle, under the influence of drink or a drug to such an extent as to be incapable of having proper control of it.

(5) In this section “road” includes a bridleway.

.....

Notification of disease or disability.

**92.** If, in any proceedings for an offence committed in respect of a motor vehicle, it appears to the court that the accused may be suffering from any disease or physical disability which would be likely to cause the driving by him of a motor vehicle to be a source of danger to the public, the court shall notify the Secretary of State.

A notice sent by a court to the Secretary of State in pursuance of this section shall be sent in such manner and to such address and contain such particulars as the Secretary of State may determine.

*Disqualification and endorsement of licences*

Disqualification on conviction of certain offences.

**93.**—(1) Where a person is convicted of an offence—

(a) under a provision of this Act specified in column 1 of Part I of Schedule 4 to this Act in relation to which there appears in column 5 of that Part the word “obligatory” or the word “obligatory” qualified by conditions or circumstances relating to the offence; and

(b) where the said word “obligatory” is so qualified, the conditions or circumstances are satisfied or obtain in the case of the offence of which he is convicted;

or where a person is convicted of the offence specified in Part II of that Schedule (any such offence being in this Part of this Act referred to as an "offence involving obligatory disqualification") the court shall order him to be disqualified for such period not less than twelve months as the court thinks fit unless the court for special reasons thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified.

.....

(4) Where a person convicted of an offence under any of the following provisions of this Act, namely section 5(1), 6(1) or 9(3) (where the latter is an offence involving obligatory disqualification), has within the ten years immediately preceding the commission of the offence been convicted of any such offence, subsection (1) above shall apply in relation to him with the substitution of three years for twelve months.

.....

(6) The foregoing provisions of this section shall apply in relation to a conviction of an offence committed by aiding, abetting, counselling or procuring, or inciting to the commission of an offence involving obligatory disqualification as if the offence were an offence involving discretionary disqualification.

.....

**101.—[as amended by Road Traffic Act 1974 Schedule 3 para 10(3)]**

Endorsement of licences.

(7) Where an order has been made in respect of a person under this section or any previous enactment requiring any licence held by him to be endorsed with any particulars, he shall be entitled, on applying for the grant of a licence in pursuance of section 88(1)(a) of this Act and satisfying the other requirements of that subsection, to have issued to him a new licence free from the particulars, if the application is made not less than four years after the date of the conviction in consequence of which the order was made or, if it was a conviction of an offence under any of the following provisions of this Act, namely section 5(1), 6(1) or 9(3) (where the latter was an offence involving obligatory disqualification), not less than eleven years after that conviction.



**Schedule 4 (as amended by ROAD TRAFFIC ACT 1974 schedule 5)**

1 Provision creating offence	2 General nature of offence	3 Mode of prosecution	4 Punishment	5 Disqualification	6 Endorsement
5(1)	Driving or attempting to drive when unfit to drive through drink or drugs.	(a) Summarily. (b) On indictment.	£400 or 4 months' imprisonment.	Obligatory.	Obligatory.
5(2)	Being in charge of a motor vehicle when unfit to drive through drink or drugs.	(a) Summarily. (b) On indictment.	£200 12 months or a fine or both.	Discretionary.	Obligatory.
6(1)	Driving or attempting to drive with blood-alcohol concentration above the prescribed limit.	(a) Summarily. (b) On indictment.	£400 or 4 months' imprisonment. 2 years or a fine or both.	Obligatory.	Obligatory.
6(2)	Being in charge of a motor vehicle with blood-alcohol concentration above the prescribed limit.	(a) Summarily. (b) On indictment.	£200 12 months or a fine or both.	Discretionary.	Obligatory.
8(3)	Failing to provide a specimen of breath for a breath test.	Summarily.	£50.	—	—
9(3)	Failing to provide a specimen of blood or urine for a laboratory test.	(a) Summarily.  (b) On indictment.	(i) Where it is shown that at the relevant time (as defined in Part V of this Schedule) the offender was driving or attempting to drive a motor vehicle on a road or other public place, £400. (ii) Where in any other case it is shown that at that time the offender was in charge of a motor vehicle on a road or other public place, £200. (iii) 2 years or a fine or both in the case of a conviction where it is shown as mentioned in paragraph (i) above. (iv) 12 months or a fine or both in the case of a conviction where it is shown as mentioned in paragraph (ii) above.	(a) Obligatory if it is shown as mentioned in paragraph (i) of column 4. (b) Discretionary if it is not so shown.	Obligatory.
19	Cycling when unfit through drink or drugs.	Summarily.	£50.	—	—

# Appendix 6

## OUTLINE OF PROPOSED LAW

### **The Main Offences**

1. It would be an offence to drive or attempt to drive a motor vehicle on a road or other public place when unfit through drink or drugs (including drink and drugs).
2. Being in charge of a motor vehicle as above would also be an offence.
3. A person should be taken to be unfit if his ability to drive properly is for the time being impaired.
4. There would be an irrebuttable presumption that a driver was unfit at the time of driving, attempting to drive, or being in charge, if on analysis of breath or blood (subsequently provided) his BAC (at the time the specimen was provided) was found to exceed the prescribed limit.

For the defence when drinking has occurred after ceasing to drive see para 8 below.

5. The prescribed limit would be 80 mg/100 ml of blood (which could be altered by regulations approved by resolution of both Houses of Parliament).

### **Statutory Defences**

#### *No Likelihood of Driving:*

6. For the purpose of paragraph 2 above, a person would not be treated as in charge if he showed that he was not likely to drive so long as he remained unfit.<sup>1</sup> The proviso<sup>2</sup> that in excess alcohol cases this dispensation need not operate if he had been injured or his vehicle damaged in an accident would be retained, and should apply equally in cases brought on clinical evidence of impairment.

#### *Drinking After Driving:*

7. The Committee recommends (para 10 below) that there should be a power to require a screening test from a person who has ceased to drive or be in charge, provided that the requirement is made as soon as reasonably practicable.

There will be some who consume alcohol during this period in such quantity that their BAC exceeds the prescribed limit at the time of the test, although it may not have done so at the time of the offence.

8. Conviction in some of these cases would be unjust. Therefore it should be a defence for the driver to prove that:

<sup>1</sup> This would repeat the present provisions of ss5(3) and 6(3) of the 1972 Act

<sup>2</sup> s6(4)



- i. He in fact consumed alcohol after ceasing to drive, attempt to drive, or be in charge and before being tested;
- ii. the object of the consumption was not an attempt to bring himself within the terms of this proviso; and
- iii. his BAC would not have exceeded the prescribed limit but for the alcohol consumed after ceasing to drive, attempt to drive, or be in charge.

### **Method of Proof**

9. The procedural provisions for obtaining evidence of BAC or the presence of drugs should be specified in a Schedule, which could be altered by regulations subject to negative resolution procedure. The formulation of the offence proposed in para 4 above should generally mean that failure to comply with the procedural requirements for obtaining evidence would not invalidate proceedings based on the specimen so obtained; but it should also be expressly provided that a failure to comply with a procedural provision would not invalidate proceedings unless the court so directs.

### **Screening Test**

10. There would be power for a constable in uniform to require a specimen of breath for screening test from a person

- i. who is driving or attempting to drive, or is in charge of a motor vehicle on a road or other public place; or
- ii. whom he has reasonable cause to suspect of having been driving etc. provided that the request is made as soon as reasonably practicable.

11. As at present, failure to provide a specimen of breath for a screening test without reasonable excuse would be an offence.

### **Arrest**

12. A constable (whether uniformed or not) would have power to arrest without warrant, except a person detained at a hospital as a patient,

- i. a person who appears to him to be over the limit on the screening test;
- ii. one who fails to provide a specimen for the test;
- iii. one whom he suspects of committing <sup>4</sup> the offence of driving etc while unfit through drink or drugs.

An arrest should not however be an essential preliminary to requiring a specimen for analysis; and an arrest on the wrong grounds should not invalidate proceedings.

### **Evidential Tests**

13. *Over Prescribed Limit?*  
(Screening test positive; or failure to provide)

*Unfit through Drink or Drugs?*  
(Screening test (if any) negative, but constable suspects impairment)

<sup>4</sup> cf s5(5) of the 1972 Act.

The constable may require a specimen of breath to be provided for analysis at a place he may designate<sup>5</sup> or, if the doctor in charge of the case consents<sup>6</sup>, at the hospital where the person is at the time. (At a hospital if the doctor consented, or in any other case where circumstances so dictated, the constable would alternatively have power to require a specimen of blood).

No specimen may be taken without the consent of the suspect, but failure to provide it without reasonable excuse would be an offence. The suspect must be warned of this, and that the consequences may be more serious than those of conviction for the main offence.

The constable must inform the driver of the result of the analysis and, if it shows a BAC above the limit, must inform him that it may be used as evidence of an offence.

The constable must then offer him a blood test (subject at a hospital to the consent of the doctor) – if he then gives blood, the result of analysing this specimen supersedes the result of the breath test. The constable would be required to offer him a part of the specimen in a suitable container, which he could have analysed independently.

The constable would have power to detain a person whose breath analysis result was over the prescribed limit until a further test indicated that his BAC had fallen below that level.

14. The following charts illustrate how the procedures outlined would generally work in normal and in hospital cases, including the cross-overs from excess alcohol to unfitness cases.

<sup>5</sup> Normally this would be the nearest police station, but this general formulation is suggested in order to allow for the possible future introduction of breath analysis equipment suitable for use at the roadside, or for installation in mobile vans.

<sup>6</sup> ie It would be necessary for him to consent to a specimen being taken, but his permission would not also be needed for the requirement or the warning.

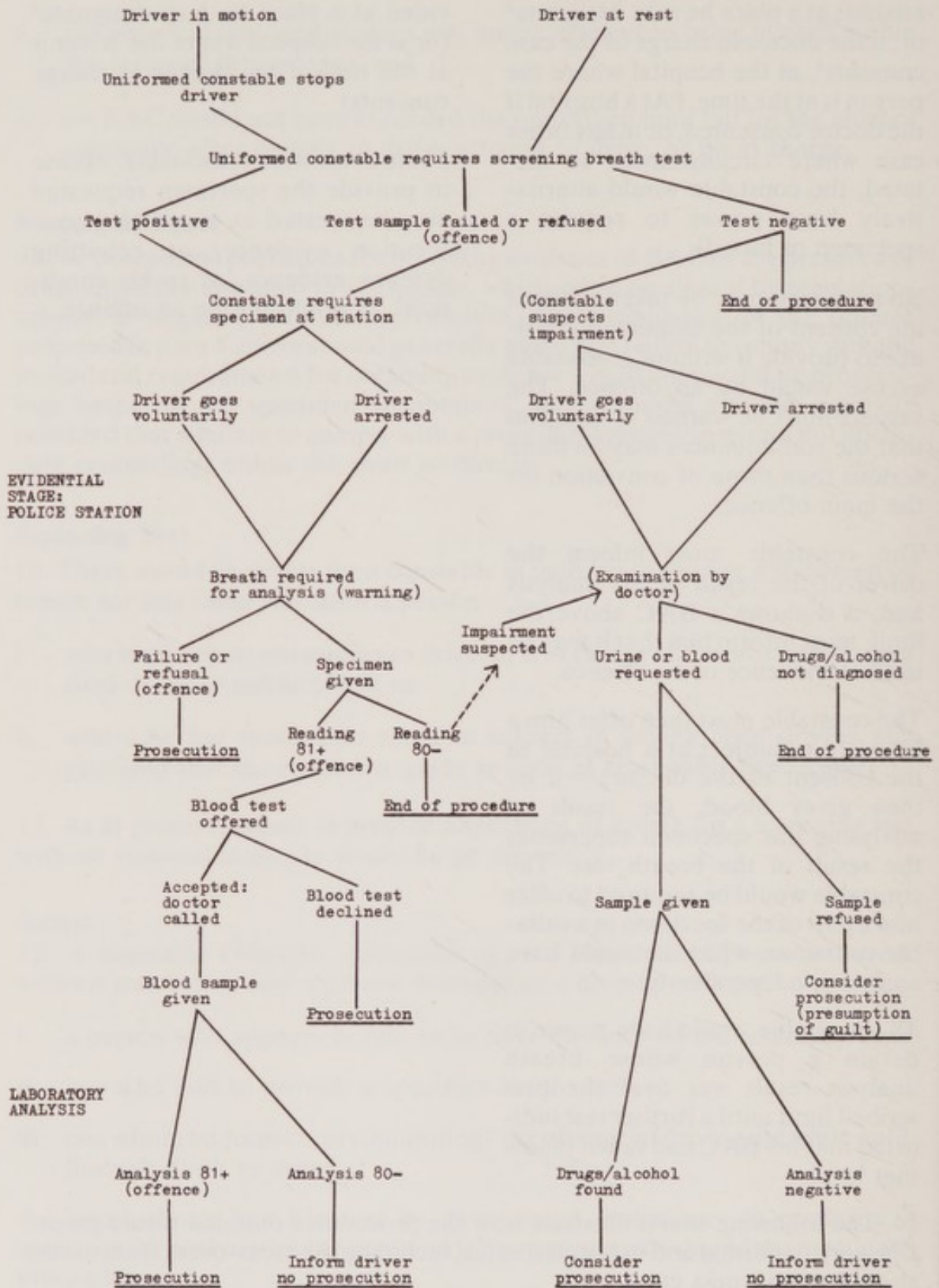
<sup>7</sup> This would repeat the provision of s7(1). The suggested procedure for impairment cases implies abandoning the sequence of blood/urine/blood requests in s7(2).

The constable may request a specimen of urine and/or blood to be provided at a place he may designate<sup>5</sup> (or at the hospital where the driver is at the time if the doctor in charge consents)

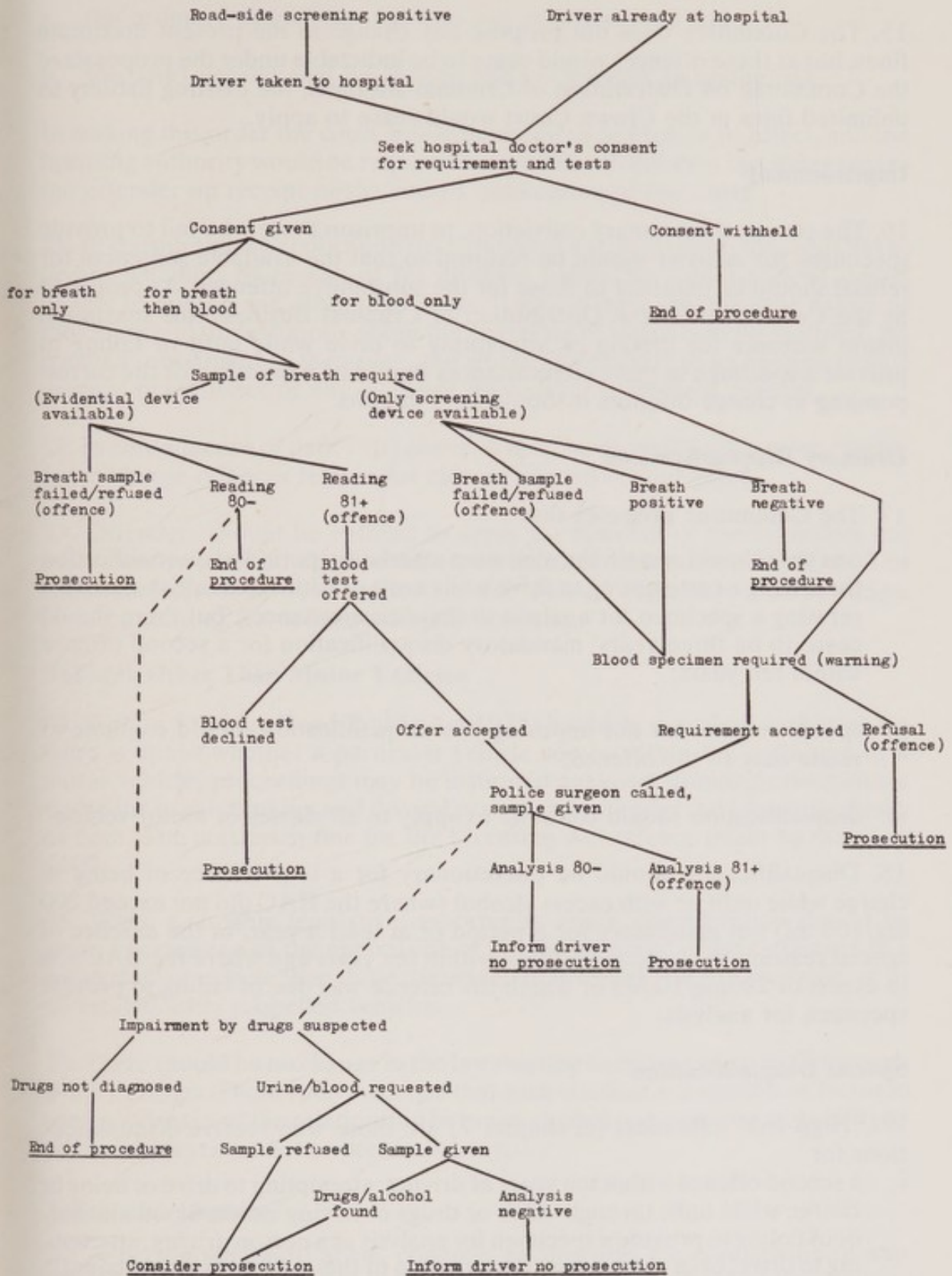
Failure without reasonable excuse to provide the specimen requested may be treated as supporting prosecution evidence, or rebutting defence evidence, as to his condition<sup>7</sup>. It would not be an offence.



SCREENING STAGE



HOSPITAL CASES





## DISPOSALS

### Fines

15. The Committee does not propose any change in the present maximum fines, but as these offences would cease to be indictable under the proposals of the Committee on Distribution of Criminal Business, the existing liability to unlimited fines in the Crown Court would cease to apply.

### Imprisonment

16. The power, on summary conviction, to imprison those who fail to provide specimens for analysis should be restored so that the available sentences for refusal should be identical to those for the substantive offences. As proposed by the Committee on the Distribution of Criminal Business, the maximum prison sentence for driving or attempting to drive while unfit or failing to provide a specimen in these circumstances should be 6 months; for the corresponding in-charge offences it should be 3 months.

### Ordinary Disqualifications

17. The Committee proposes that

- i. one year should remain the minimum mandatory period of disqualification for driving or attempting to drive while unfit or with excess alcohol and for refusing a specimen for analysis in these circumstances; but there should cease to be three years' mandatory disqualification for a second offence within ten years;
- ii. special reasons for not imposing this disqualification should continue to relate only to the offence;
- iii. disqualification should continue to apply to all classes of motor vehicle.

18. Disqualification should be discretionary for a first offence of being in charge while unfit or with excess alcohol (where the BAC did not exceed 200 mg/100 ml) but mandatory for a period of at least a year, in the absence of special reasons, for a second offence within ten years and where the BAC was in excess of 200mg/100ml or where the offence was one of failing to provide specimen for analysis.

### Special Disqualifications

19. "High-risk" offenders (cf chapter 7) are those who receive disqualifications for

- i. a second offence within ten years of driving, attempting to drive or being in charge while unfit through drink or drugs or having excess blood alcohol, or of failing to provide a specimen for analysis as a person driving, attempting to drive, or in charge (any permutation of these offences would count);  
or
- ii. a first offence of driving attempting to drive or being in charge with a BAC in excess of a prescribed level—200 mg/100 ml or such other figure as may be prescribed in regulations approved by both Houses of Parliament, or of failing to provide a specimen for analysis.



20. In these cases the court would be required to make in addition an order disqualifying the offender until

- a. the ordinary disqualification runs out or is removed and
- b. the court decides that his driving will not present an undue risk.

In making this order the court would be required to explain its effect, and the licensing authority would be required to give this information in a letter sent to the offender on receipt of the court's notification of the order.

21. In considering an application for removal of a special order, the court has to decide whether, by reason of his drinking habits, he would present undue danger to himself and other road-users. It should have regard to the nature of the offence(s), to testimony about the character of the person disqualified, his conduct subsequent to the order, and where appropriate to an opinion from a medical practitioner or any evidence from other competent persons.

22. In consequence of para 19(i) above, it must be provided that endorsements for in charge offences remain for eleven, instead of four years.

23. Offenders should be entitled to apply for removal of special orders not more than three months before the expiry of the ordinary disqualification. The minimum interval between applications for removal of special orders should be three months, as for ordinary disqualifications.

### **Vehicles Other Than Motor Vehicles**

24. Section 13 of the Road Traffic Act 1972 should be repealed, so that where there is doubt whether a particular vehicle comes within the definition of a motor vehicle, proceedings may be instituted against a drinking driver either under the usual drinking and driving provisions, or under the Licensing Acts<sup>9</sup>, or both. The maximum fine for the Licensing Act offence might be raised to £100.

25. When a suitable legislative opportunity arises, consideration should be given to extension of the application of provisions about driving offences to a wider class of vehicle than those "intended or adapted" for use on roads, eg to all mechanically propelled vehicles.

26. There should be no change in the law relating to cycling when unfit through drink or drugs. There is no evidence that such conduct is a significant factor in road accidents and the relationship between alcohol consumption and ability to control a bicycle is not at present known.

### **Aiders and abettors**

27. A person who aids, abets, counsels, or procures the commission of any offence may be found guilty of that offence. Thus a person who plies a driver with drink or encourages him to drive while intoxicated can in principle be prosecuted and is liable to similar penalties. In a recent case where the driver pleaded that his drink had been laced (which may be a valid reason for

<sup>9</sup>s12 of the Licensing Act 1872, and s70 of the Licensing (Scotland) Act 1903, create the offence of being drunk while in charge of a carriage.



refraining from disqualification), another person was successfully prosecuted for procuring the offence. We do not think this type of prosecution will often be possible, since in most circumstances the people who were present when the driver was incited to drink excessively will not be prepared to give evidence; and in any case it would be undesirable to use the law in a way which detracted from the prime responsibility of the driver for his conduct.

### **Disqualification insurance schemes**

28. We propose no action in respect of insurance schemes which pay the cost of personal transport in the event of disqualification for drinking and driving or other traffic offences. While recognising that the offer of such insurance could create the impression that disqualification can be faced with equanimity, we believe it would be against the insurers' own interests to encourage irresponsible behaviour, and provided they exercise great care in advertising and in advice to policy-holders there is no reason to suppose that these schemes will be detrimental to road safety. As Ministers have pointed out in reply to parliamentary questions:

- a. The order of disqualification prevents the offender from driving, but cannot forbid him to use personal transport driven by someone else; and this cannot entirely compensate for the inconvenience of losing one's licence.
- b. These schemes reduce the inequality in the effects of disqualification between those who are fortunate enough to have another driver in the family or can afford to hire a chauffeur, and other offenders who may depend on personal transport.
- c. A person who has alternative means of transport is less tempted to drive while disqualified.
- d. For obvious commercial reasons, drivers with bad records cannot obtain this kind of cover.

29. Moreover, we believe that any attempt to ban such schemes would merely create anomalies, since it would be impossible to prevent private arrangements which had the same practical effect.



# Appendix 7

## OPERATION OF THE HIGH-RISK OFFENDERS' PROCEDURE

1 The high-risk offenders' procedure proposed in chapter 7 is an extension of the existing provisions for courts to order and to remove disqualifications (Road Traffic Act 1972 sections 93-95.) We propose that it should be automatic for all cases defined in para 7.12 of the main text: these are so defined that the vast majority of those who receive the special disqualification will be people with drinking problems. Nevertheless, the determination of applications for removal of the order will present the courts with a novel task in relation to a wide spectrum of individual cases.

2 The special order is not proposed as an added penalty – indeed, if it fully achieved its object, most of those who received it would have the chance, if they took promptly the steps that the court would be required to outline to them, of securing its removal by the end of the period of ordinary disqualification. This is important because it provides those who have drinking problems with a strong incentive to change their drinking habits, and to obtain whatever help they need to this end; while it ensures that in the case where the subject of the order genuinely has no such problem he is disqualified for no longer than the particular offence warranted. (These cases will include those where the excess alcohol offence, though serious, occurred in abnormal and unrepresentative circumstances, and those where a specimen was refused for reasons other than to avoid giving evidence of what might have proved to be a high BAC.)

3 Thus in a high proportion of cases, the court will expect to receive an application supported by witnesses to character and to conduct since the order, by a medical opinion, and (if indeed he has sought help from competent sources for a drinking problem) by testimony from the person who has been treating or counselling him. The prosecuting authority would be the respondent, that is, the court would expect it to state whether any circumstances within its knowledge were relevant. This authority – in England and Wales the police, in Scotland the Lord Advocate or procurator fiscal – could undertake or commission active enquiries into the offender's past and recent conduct, but would not be positively expected to do so. It would however check the records for any other offences or incidents which involved excessive drinking, and be prepared to rebut any claims on behalf of the applicant which it had reason to believe to be false (asking, if necessary, for an adjournment while further enquiries are made.)

4 The question on which the court would be required by statute to reach a decision is whether, if he again held a licence, the applicant would present an undue risk to himself and other road users. It would defeat the objects of the procedure for the court to expect conclusive proof that he had overcome his drinking problem – no competent witness is likely to make such a positive



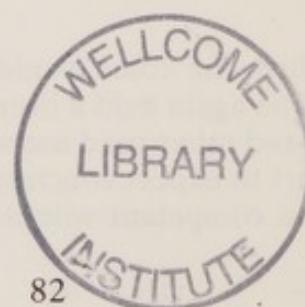
statement. It would however expect – unless, exceptionally, the applicant provides convincing evidence that he has no drinking problem – that he will produce witnesses and reports to the effect that he has sought help and as a result effected a change in his drinking habits. It would not be sufficient for him to establish that he avoids driving when he drinks heavily: drinking problems tend to get worse, similar circumstances to those of his offence could well recur, and he is capable of bad judgement after drinking. To be safe as a driver, he needs to moderate his consumption.

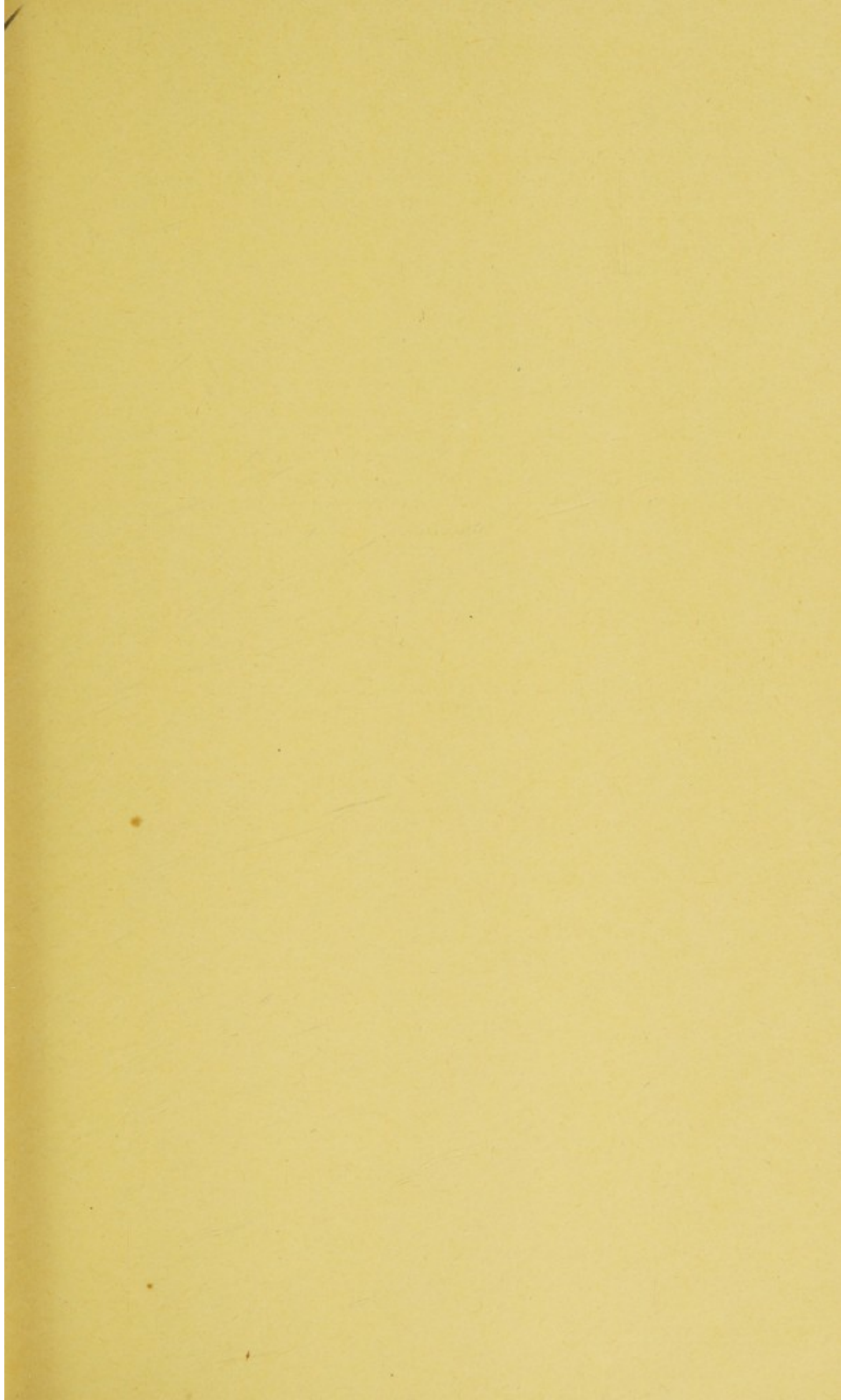
5 Medical evidence will be of two kinds:

- (1) The court would normally expect to be presented with an opinion from the subject's regular medical attendant, based on more than one consultation over a period since the offence. A few people with drinking problems might hesitate for personal or family reasons to approach their regular medical attendants; if so, the court should be prepared to accept evidence of the second kind on its own.
- (2) The court would take into consideration, where the applicant had received specialized help or treatment for his drinking problem, the reports of the expert concerned. Since there are at present few doctors who specialize in treating alcoholics, and other people have relevant experience of counselling and treatment, their advice too should be regarded as acceptable. In either case, a report based on a single interview would be of little value.

6 Evidence from witnesses to character and conduct will be equally relevant, and a court may wish to hear both from a witness of standing – such as the applicant's employer – and from a close friend who knows him well in a social capacity.

7 To avoid burdening the courts with ill-prepared applications, we propose that the earliest time for receiving them should be three months before the end of the ordinary disqualification – this allows time for an adjournment to hear further evidence, if that should be needed. A person whose application was not granted would have the right to renew it after three months, and to appeal.







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