

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR HOME AFFAIRS

ROAD TRAFFIC LEGISLATION – AMENDMENTS IN RELATION TO HAZARDOUS
DRIVING, DRINK-DRIVING AND DRUG-DRIVING

The States are asked to decide: -

Whether, after consideration of the Policy Letter entitled ‘Road Traffic Legislation – Amendments in Relation to Hazardous Driving, Drink-driving and Drug-driving’ dated 30th October 2023, they are of the opinion to:

- i. introduce a new offence of *Causing death by careless, or inconsiderate, driving* including a provision for the courts to convict a defendant of this offence as an alternative to death by dangerous driving without it having to be specifically charged;
- ii. introduce a new offence of *Causing serious injury by dangerous driving*;
- iii. introduce a new offence of *Causing serious injury by careless, or inconsiderate, driving* including a provision for the courts to convict a defendant of this offence as an alternative to causing serious injury by dangerous driving without it having to be specifically charged;
- iv. remove the requirement that evidential alcohol breath tests from suspected drink drivers are obtained only at a police station, and allow for portable test equipment to be used;
- v. remove the option for suspected drink drivers to provide a specimen of blood or urine when they have already provided evidential breath samples over the legal alcohol limit;
- vi. introduce specified legal limits for certain drugs and create an offence of *Driving whilst over the prescribed limit for specified drugs*;
- vii. introduce a new offence of *Failing to comply with a preliminary impairment test*;
- viii. approve the use of roadside drug screening tests for the detection of drugs affecting drivers and introduce a new offence of *Failing to comply with roadside drug screening tests*;
- ix. amend the offence of dangerous driving so that the wording includes a definition similar to that applicable in England and Wales;
- x. amend the offence of driving without due care and attention so that the wording includes a definition similar to that applicable in England and Wales;
- xi. introduce new provisions and amendments to allow ‘registered health care professionals’ (in addition to medical practitioners) to take blood

- samples, and give advice, provide opinions, and do other related things for the purposes of drug and drink driving offences;
- xii. direct the preparation of such legislation as may be necessary to give effect to the above decisions.

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The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

30th October 2023

Dear Sir

1 Executive Summary

- 1.1 While Guernsey's road traffic safety legislation is robust overall, certain aspects have not kept pace with societal and technological developments. Specifically, there are areas of the law in relation to hazardous driving, drink-driving and drug-driving for which charging options are insufficient or require updating to provide for modern alcohol and drug testing mechanisms.
- 1.2 Updating the existing legislation by creating new offences would provide Guernsey Police and prosecutors with charging options that adequately cover potential driving violations and impose appropriate penalties. It would also enable police officers to more quickly and accurately identify drivers who are under the influence of alcohol and/or drugs, thereby enhancing road safety, creating greater efficiencies for officers and motorists alike and delivering justice more swiftly.
- 1.3 These legislative modernisations would allow Guernsey to keep pace with other jurisdictions with similarly updated laws.
- 1.4 Road safety in Guernsey would be also enhanced through the deterrent factor generated by the creation and publicising of new offences, particularly in relation to drug-driving.

2 Strategic Context

- 2.1 In recent years, cases have occurred in which hazardous driving has resulted in someone's death or serious injury, but the law did not provide relevant offences

and penalties to reflect the gravity of the harm caused. While cases such as these are infrequent, their impact on victims, their loved ones, and witnesses is severe.

- 2.2 Driving while intoxicated through drink and/or drugs remains a problem in Guernsey – from 2017 to 2021, an average of 103 drink and/or drug drive offences per year were recorded.
- 2.3 The drugs landscape in Guernsey has also changed in recent years. Illegal Class A and B liquid vape products are becoming more commonplace. Guernsey Police have seen an increasing number of instances in which it is suspected that motorists have consumed drugs (commonly cannabis or synthetic cannabinoids) that have impacted their driving. Cannabis is the most prevalent illicit drug locally.
- 2.4 The ‘diversion’ of prescription medication is a recognised problem in Guernsey, this extends to the diversion of medicinal cannabis which may increase the likelihood of people driving under its influence.
- 2.5 While societal factors and policy amendments are changing substance use, the technology involved in police detection of alcohol and drugs in a driver’s system has also evolved.
- 2.6 In the case of alcohol testing, decades of police force use across multiple jurisdictions have proven the accuracy of breath testing, while breath testing devices have become smaller and more portable. These new portable devices provide precise enough readings to be considered ‘evidential’ in court.
- 2.7 Additionally, portable drug screening tests that can detect the presence of cannabis and cocaine – similar to a COVID swab test but using saliva – are now available to UK police forces. These screening tests can be used at the roadside, providing officers with reasonable grounds for arrest where drug driving is suspected, although an evidential blood or urine test would still be required to obtain a specific reading following arrest.
- 2.8 Guernsey Police do not currently use evidential portable alcohol breath tests or roadside drug screening tests, nor do they regularly execute preliminary impairment tests (which are similar to sobriety tests) to help assess intoxication, because use of these tests is not yet supported by legislation.

3 Proposed legislative modernisations

Correcting gaps in relation to hazardous driving

- 3.1 Hazardous driving can be categorised as ‘dangerous,’ such as travelling at a particularly inappropriate speed for the road conditions, or ‘careless’ or

‘inconsiderate,’ such as momentary lack of concentration. All forms of hazardous driving can result in accidents that cause serious injury or even death.

- 3.2 Guernsey’s road traffic safety laws do not sufficiently cover the range of hazardous driving offences, nor do they necessarily impose penalties that are commensurate with the gravity of road traffic accident outcomes such as serious injury or death.
- 3.3 Guernsey’s current law includes the following offences: *Causing death by careless driving when under influence of drink or drugs* (The Road Traffic (Drink Driving) (Guernsey) Law, 1989¹ (“the Drink Drive Law”)); *Causing death by dangerous driving* (The Vehicular Traffic (Causing Death by Driving) Law, 1957 (as amended)²); *Driving without due care and attention or without reasonable consideration for other road users* (i.e. careless or inconsiderate driving) (The Road Traffic (Guernsey) Ordinance 2019³) and *dangerous driving* (also under the 2019 Ordinance).
- 3.4 There is no existing legislation that adequately applies to cases in which serious injury or death has occurred as a result of driving that is not under the influence of drink or drugs, and does not meet the test for being classed as ‘dangerous,’ but does qualify as ‘careless’ or ‘inconsiderate.’
- 3.5 While serious and fatal accidents caused by hazardous driving in Guernsey are infrequent, their impact on the people affected by them is enormous. Not only does Guernsey need additional offences to cover these legislative gaps, the penalties for these offences need to be substantial enough to reflect the harm they engender.
- 3.6 Currently, the closest charging option for prosecutors and the courts in cases such as these is ‘driving without due care and attention or without reasonable consideration for other road users,’ which carries a maximum sentence of a fine not exceeding Level 3 (£2,000) as per the Uniform Scale of Fines Ordinance. By contrast, a person causing death by dangerous driving may be subject to 14 years’ imprisonment, a fine, or both.
- 3.7 To remedy the gaps, three new offences are proposed: *Causing death by careless, or inconsiderate, driving*, including a provision for the courts to convict of this lesser driving offence involving a death without it having to be specifically charged, in circumstances where the prosecution fail to prove guilt of death by dangerous driving but do prove that lesser offence; *Causing serious injury by dangerous driving*, and also *Causing serious injury by careless, or inconsiderate,*

¹ [The Road Traffic \(Drink Driving\) \(Guernsey\) Law, 1989](#)

² [The Vehicular Traffic \(Causing Death by Driving\) Law, 1957](#)

³ [The Road Traffic \(Guernsey\) Ordinance 2019](#)

driving, including a provision for the courts to convict of the lesser offence of causing serious injury by careless/inconsiderate driving without it having to be specifically charged, in circumstances where the prosecution fail to prove guilt of causing serious injury by dangerous driving but do prove that lesser offence. All of which would carry penalties commensurate to the gravity of the outcomes.

- 3.8 To provide clarity and avoid unnecessary contesting in court as to what is meant by 'serious', the proposed definition, in line with Jersey legislation, would be:

"an injury that –

- (a) requires hospitalisation for more than 48 hours, commencing within 7 days from the date the injury was received;
- (b) results in a fracture of any bone (except simple fractures of fingers, toes or nose);
- (c) involves lacerations which cause severe haemorrhage, nerve, muscle or tendon damage;
- (d) involves injury to any internal organ; or
- (e) involves second or third degree burns, or any burns affecting more than 5 per cent of the body surface."

- 3.9 These legislative modernisations would allow Guernsey to keep pace with other jurisdictions with similar laws. These include the Road Safety Act 2006⁴ in the UK, the Road Traffic (No.62) (Jersey) Regulation 2015⁵ in Jersey, and the Road Traffic Offences (Motor Vehicles and Bicycles) (Sark) Law, 2013⁶ - 'Causing death by careless or inconsiderate driving' in Sark.

- 3.10 It is proposed that Guernsey also introduce a definition for "dangerous driving" as the island does not currently have a statutory definition in place. This amendment would assist in bringing Guernsey's legislation in line with that of England and Wales. To clarify, this means substituting the offence of dangerous driving in the Road Traffic (Guernsey) Ordinance 2019 with wording very similar to Sark's provisions, which itself is based on the UK Road Traffic Act 1988. The definition proposed is:

"a person is to be regarded as driving dangerously if:

- (a) the way that person drives falls far below what would be expected of a competent and careful driver, and*
- (b) it would be obvious to a competent and careful driver that driving in that way would be dangerous."*

⁴ [Road Safety Act 2006](#)

⁵ [Road Traffic \(No. 62\) \(Jersey\) Regulations 2015](#)

⁶ [Road Traffic Offences \(Motor Vehicles and Bicycles\) \(Sark\) Law 2013](#)

Further provisions in the 1988 Act specify that a) a person can be guilty of dangerous driving if it would be obvious to a competent and careful driver that driving the vehicle in its current *state* would be dangerous (bringing dangerous vehicles within the scope of the offence), b) that "dangerous" for the purpose of these provisions means danger either of injury to any person or of serious damage to property, and c) that in determining what is expected of, or obvious to, a competent and careful driver, regard shall be had not only to the circumstances of which they could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused. These provisions are part of the UK offence of dangerous driving and help clarify its scope. Similar provisions should likewise form part of Guernsey's new offence of dangerous driving.

- 3.11 The legislative amendment would assist in the ability to distinguish between careless/inconsiderate driving and dangerous driving and likewise between the proposed offences involving either death or serious injury by careless/inconsiderate or dangerous driving. Additionally, the benefits of adopting the same definition as that in England and Wales allows for the utilisation of England's extensive case law and guidance (including that from the CPS) to be of benefit to Guernsey's courts and prosecutors when dealing with such offences.

- 3.12 Correspondingly, it is also proposed that Guernsey introduces a definition of driving "without due care and attention" (being the title of the offence referring to careless or inconsiderate driving). The offence of "driving without due care and attention" is set out in *The Road Traffic (Guernsey) Ordinance, 2019*:

"If any person drives a vehicle or animal on a public highway without due care and attention, or without reasonable consideration for other persons using that highway, that person shall be guilty of an offence".

- 3.13 The equivalent offence in England and Wales is:

Careless, and inconsiderate, driving.

If a person drives a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, he is guilty of an offence.

- 3.14 Whilst almost identical to the Guernsey provision the England and Wales offence further defines the meaning of 'due care and attention'⁷ The key provisions are:

⁷ s.3ZA of the RTA 1988.

"(2) A person is to be regarded as driving without due care and attention if (and only if) the way he drives falls below what would be expected of a competent and careful driver.

(3) In determining for the purposes of subsection (2)... above what would be expected of a careful and competent driver... in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.

(4) A person is to be regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by his driving."

It is proposed that similar provisions are enacted in Guernsey to clarify the meaning of driving without due care and attention (i.e. careless/inconsiderate driving). It will be noted that to be guilty of careless/inconsiderate driving the defendant's driving must fall merely below what would be expected of a competent and careful driver, whereas with dangerous driving the standard of driving must fall *far* below.

Amendments to the Drink Drive Law

- 3.15 Several necessary modernisations are proposed under the Drink Drive Law, a law which also covers driving under the influence of drugs.

Assessing whether motorists are unfit to drive:

- 3.16 Some amendments pertain to drink-driving, while others would improve the charging provisions in relation to drug-driving. They all have to do with how police officers assess whether motorists are unfit to drive due to the influence of alcohol and/or drugs.
- 3.17 There are three general categories of tests that help determine whether someone is incapable of driving safely due to intoxication:
- Preliminary impairment tests consist of exercises not dissimilar to the old 'sobriety tests' carried out before the introduction of breath tests. They include examining pupil size and testing the driver's ability to accurately note the passage of time.
 - Indicative tests detect the presence of a substance in someone's system but may not give a specific reading.
 - Evidential tests meet a higher evidential standard by giving an accurate reading of the level of substance in someone's system.

Drink-driving modernisations:

- 3.18 Currently, when a police officer in Guernsey suspects that a driver is intoxicated by alcohol, drugs or both, the first test used is a roadside breath test to detect alcohol. This rules alcohol in or out as a starting point.
- 3.19 When the Drink Drive Law was drafted, breath test machines for alcohol were much larger than they are today – so large in fact that current legislation specifies that an evidential breath test for alcohol may only be obtained at the police station where a stationery, fixed machine is housed. This means that drivers suspected of intoxication have to be brought to the police station for a test that stands up in court.
- 3.20 The Intoxilyser breath test machine at the police station is 22 years old, roughly the size of a large business-sized copier/printer and must be kept within certain environmental parameters. Its maintenance and calibration require engineers to be brought over from the UK twice a year.
- 3.21 In the 1980s when the Drink Drive Law was drafted, some concerns existed about the accuracy of alcohol breath test machines. For this reason, it was written into the law that drivers could have two chances to be assessed via the breath test machine, with the lesser reading being used. Decades of use of these machines have proven that their readings are accurate enough to be considered ‘evidential,’ but this is not yet reflected in existing Guernsey law and, consequently, current practice. At present, motorists who fail two breath tests with a reading between 40 and 50 micrograms of alcohol in 100 millilitres of breath – the legal limit being 35 micrograms – also have the statutory option to have a blood or urine test for analysis. Blood tests have to be carried out by a doctor. (Samples of between 36 and 39 engender ‘no further action’ due to the small influencing factors that can affect the reading.) Currently, this blood or urine test result overrides any previous breath test readings. This statutory process means that police have to call out a doctor, often outside of business hours, to carry out what the law currently defines as evidential testing.
- 3.22 Because there is inevitably a delay whilst waiting for a doctor to attend, the driver’s alcohol levels may diminish, meaning that the level of intoxication experienced while driving might not be truly represented. Most people process alcohol at a rate of about 8 micrograms per hour.
- 3.23 The States incur costs for these doctor call-outs and the subsequent lab results that are needed. It can take several weeks for the lab results to be returned. Thus, the driver is then released pending the results, during which time they are free to drive given that, currently the law (Bail (Bailiwick of Guernsey) Law,

2003⁸) does not allow for conditions such as a restriction on driving to be placed on pre-charge bail.⁹ The charging process is further compromised if those on bail fail to return.

- 3.24 For suspected drink-driving cases in which the driver has been injured and taken to hospital, there are statutory processes in place to ensure that testing is administered by a medical professional other than the one who is providing urgent care, who must also grant consent for the test to be done. This ensures that the evidential process does not interfere with necessary medical care.
- 3.25 Between the 1980s and now, the accuracy of breath testing instruments has been verified time and again, meaning that their appropriateness as evidential tests is now accepted. Furthermore, breath test machines have become smaller and lighter over the years. Modern breath test devices are not much larger than an A4 Lever Arch folder, fully portable and precise. This means that they can provide evidential readings anywhere, including at roadside or in the hospital.
- 3.26 As a result of these advancements, the UK removed the statutory option for motorists to choose a blood or urine test from its legislation in 2015. The National Police Chiefs' Council Liaison for Drink Drive (England and Wales) have confirmed that to date there have been no stated cases challenging this decision.
- 3.27 Similarly, it is proposed that Guernsey remove the requirement for evidential breath tests for drivers to be obtained only at a police station, allow for portable test equipment to be used, and remove the option for drivers to provide a specimen of blood or urine when they have already provided breath samples over the legal alcohol limit.
- 3.28 The existing statutory requirement for the lesser of the two test results to be used would also apply to portable evidential tests. Additionally, the safeguarding protocols in regard to injured drivers currently in place would remain for breath tests taken at the hospital.
- 3.29 The ability to take evidential breath samples at the roadside and elsewhere would save considerable time and help to ensure that justice is served in a timely manner. It would help to remove the delays and risks caused by waiting for lab results.

Drug-driving modernisations:

⁸ [Bail \(Bailiwick of Guernsey\) Law 2003](#)

⁹ The States has resolved to introduce the power to impose pre-charge bail conditions [Resolution 1 Billet d'État XIV](#) (27th September, 2023)

- 3.30 Currently, if an officer encounters a motorist in Guernsey who appears unfit to drive, the officer first administers an alcohol breath test at the roadside. If the breath test does not detect alcohol and the officer has reason to suspect the driver might be under the influence of drugs, the driver would be arrested. A doctor would be called to provide a professional medical opinion as to whether the driver's condition is due to a medical condition or drugs. If the cause is thought to be drugs, the doctor would also be asked to carry out a blood test to provide supporting evidence that drugs were present.
- 3.31 While Guernsey law sets limits for levels of alcohol that are known to impair driving, no such legislation exists for drug-driving. The introduction of an objective statutory limit would resolve this problem by providing clarity and decreasing uncertainty in relation to charging.
- 3.32 The UK enacted legislation such as this in 2015 through amendments to the Road Traffic Act, which introduced a specific offence of *Driving whilst over the prescribed limit for specified drugs* and set limits for different classes of drugs based on extensive research. This legislation has been successfully tried and tested in the courts of England and Wales.
- 3.33 A new offence is proposed for Guernsey that would similarly introduce specified legal limits for certain drugs and create an offence of *Driving whilst over the prescribed limit for specified drugs*. These prescribed limits for various drugs would mirror those of UK legislation.
- 3.34 It would also be useful for police officers to have legal backing to utilise more intoxication assessment tools designed to help determine whether someone has been driving under the influence of drugs.
- 3.35 One of these assessment tools has been used by police forces for decades – the preliminary impairment test, akin to a sobriety test. While this test is non-specific in that it cannot detect the presence of a given substance, it is quick, non-invasive and inexpensive to administer immediately at the roadside (before the levels of a substance in a driver's system change) and provides supporting evidence as to a motorist's fitness to drive.
- 3.36 While some police officers have been trained in preliminary impairment testing, it is not routine practice at present given that there is no legislative backing if someone refuses to undergo the test. Such legislative support has existed in the UK and other jurisdictions for many years. Thus, a new offence of *Failing to comply with a preliminary impairment test* is proposed.
- 3.37 Another testing method that would enhance officers' ability to detect drug-driving immediately is a modern one – using drug screening swabs to detect the presence of specific drugs, namely cannabis and cocaine. Similar to COVID tests

but using saliva, these swab tests show whether cannabis or cocaine are present. They do not give a specific reading of the amount of drug in someone's system, therefore they are indicative rather than evidential tests. Like preliminary impairment tests, swab tests are quick and inexpensive, and can be used at the roadside.

- 3.38 The associated, proposed legislative modernisations would approve the use of roadside drug screening tests for the detection of drugs affecting drivers and introduce a new offence of *Failing to comply with roadside drug screening tests*.
- 3.39 The proposed legislation would still provide for a doctor to be called out where necessary to assess whether someone who is thought to be unfit to drive is impaired due to a medical condition rather than a substance. Because roadside drug screening tests are indicative rather than evidential, a medical professional would still need to carry out blood tests to obtain specific information as to the formulation and level of substance in a driver's system. This would be supported by the safeguarding protocols in respect to injured drivers' testing at the hospital that are currently in place.
- 3.40 The proposed strengthening and modernisation of Guernsey's drug-driving laws would remedy gaps in current legislation and increase the arsenal of assessment tools available to officers to keep road users safe. These improvements would be accompanied by a public information campaign outlining them, with the aim of making drivers more aware of the hazards of drug-driving in particular and acting as a deterrent.

Taking of blood samples:

- 3.41 The Drink Drive Law currently provides for police officers to require a person suspected of committing an offence under section 1 (driving or being in charge when under influence of drink or drugs), 1A (causing death by careless driving when under influence of drink or drugs) or 2 (driving or being in charge with alcohol concentration above prescribed limit) to provide a blood sample by consent, or for police officers to request a medical practitioner to take blood samples from the person without that person's consent, where that person is incapable of consenting for medical reasons.
- 3.42 Currently, only a medical practitioner is allowed to take the blood sample in either case. This means a qualified doctor who is duly registered (in the register kept for Guernsey and Alderney by the Committee *for* Health & Social Care).
- 3.43 It is proposed that the Drink Drive Law be amended to allow registered nurses and any other registered member of a healthcare profession designated by order of the Committee *for* Home Affairs to take blood samples under that Law. This would provide Bailiwick Law Enforcement with greater flexibility in the

healthcare model adopted by the Service and make best use of available resources. In addition, this amendment would align the Drink Drive Law with the Road Traffic Act 1988 in the UK ("the UK Act"), which was amended to allow "registered health care professionals" (and not just medical practitioners) to take samples for the purposes of drug and drink driving offences.

- 3.44 The Amendment to the UK Act also allows such registered health care professionals to give advice, provide opinions, and do other things for the purposes of that Act, which previously could only be done by medical practitioners. In order to fully provide for Bailiwick Law Enforcement to use the services of other healthcare professionals for the purposes of the Drink Drive Law, it is recommended that it is similarly amended to provide for this.

4 Resourcing and financial aspects

- 4.1 The proposed legislative amendments would not require additional staff to administer, the cost of testing would be met with in current revenue budget allocation.

5 Consultation

- 5.1 Responsibility for the improvement of road and traffic safety is shared across the Committee *for* Home Affairs and Committee *for the* Environment & Infrastructure. While the Committee *for* Home Affairs is responsible for crime prevention and law enforcement, the Committee *for the* Environment & Infrastructure manages driver education, traffic policy and highway engineering.

6 Compliance with Rule 4

- 6.1 In accordance with Rule 4(1):
- a) The propositions contribute to the States' objectives and policy plans to 'keep the island safe and secure' by supporting improvements to the criminal justice processes and access to justice.
 - b) In preparing the propositions, consultation has been undertaken with the Committee *for the* Environment & Infrastructure and the Law Officers of the Crown as relevant to their responsibilities in this regard.
 - c) The propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
 - d) The financial implications to the States of carrying the proposal into effect are as described in Section 4 of this Policy Letter.

6.2 In accordance with Rule 4(2):

- a) The propositions relate to the Committee's responsibilities to advise the States and to develop and implement policies on matters relating to its purpose including law enforcement and policing.
- b) The propositions have the unanimous support of the Committee.

Yours faithfully

R G Prow
President

S P J Vermeulen
Vice-President

S E Aldwell
L McKenna
A W Taylor

P A Harwood OBE
Non-States Member