

## **A Consultation Paper Response by the Institute of Alcohol Studies**

We welcome the Consultation Paper and agree with the Government's assessment of the three main problem areas. We also share the Government's views on most of the specific proposals.

We agree with the Consultation Paper that there is no single solution to the drink drive problem and that what is required is a coherent package of measures. The prevalence of drinking and driving is the result of a complex interplay of a number of factors. Most obviously, these factors include drink drive countermeasures such as the legal limit, the level of enforcement, and the nature and severity of the penalties for drink driving offences.

### **Police Breath Testing Powers**

This is the section of the Consultation Paper we find least convincing. The Paper rejects giving unrestricted powers to require breath tests on the grounds that 'it is important for confidence and trust in the police that the public should know that the police do not have powers which would be open to abuse.....'. Presumably, the anxiety concerns the possibility of unrestricted breath testing powers allowing unscrupulous police officers to victimise individual drivers.

It is difficult to see the force of this argument. If police are of a mind to victimise individuals, the potential for such abuse is present in existing legislation: extra powers to require breath tests are irrelevant. It is also explained in the Consultation Paper that police already have the (unrestricted) power to stop any vehicle 'at random', that is, without prior suspicion that an offence has been committed. As, presumably, the potential for abuse lies in the power to stop rather than the power to require a breath test once the driver has been stopped, the actual logic of this argument is the removal of existing powers of the police rather than declining to extend their powers in the specific area of breath tests.

The Consultation Paper invites views on the roadside checkpoint system, checkpoints presumably being seen as a means of avoiding the possibility of unjustified victimisation of individual drivers. However, checkpoints may or may not be a means of avoiding the reality or perception of victimisation depending on how they are operated. On this the Consultation Paper is silent. Checkpoints avoid

the potential for abuse to the extent that police are denied discretion as to which drivers are stopped and tested. The normal pattern in other countries is that police are required to stop and test all drivers or, if the flow of traffic is too great, a genuinely random sample - every third driver or whatever is a sensible proportion, excluding, of course, for emergency service vehicles on duty. This system reduces the likelihood of questions or complaints about why some drivers are 'picked on' while others are not.

Our view is that checkpoints are a useful addition to the armoury and we hope that the Government will introduce the necessary powers. If the checkpoint system is introduced we hope that clear guidelines will be issued to Chief Constables in regard to the operation of checkpoints and the selection of drivers for testing. It should also be made clear - as the Consultation Paper fails to do - that the primary purpose of the checkpoint system is deterrence rather than apprehension.

We hope that increased police powers will not be restricted to the checkpoint system. There is, of course, a clear need to increase the likelihood of apprehension and for this reason we hope that an extension of police powers will not be restricted to the checkpoint system.

In this connection, the problem with existing legislation is that it requires police to suspect that the driver has alcohol in his or her body. The problem that this causes is shown by recent American research which found that even at special police checkpoints, the majority of drivers (62 per cent) who did in fact have blood alcohol levels higher than the legal limit of 80mg% were not subjected to a breath test because the police did not suspect them of drinking<sup>1</sup>.

The result of such failure is that many drinking drivers, even those stopped by the police, learn exactly the wrong lesson - that they can 'get away with it'.

This problem would be even more pronounced should the limit be lowered to 50mg%. In the same American study, almost 90 per cent of drivers who were between 50 and 70mg% were not breath tested by the police because they were not suspected of having been drinking.

For this reason alone we believe that police should be given a general power to breathalyse not dependent on prior suspicion of alcohol consumption. As in relation to checkpoints, we hope that clear guidance would be given to chief constables on the proper use of this power.

### **Measures to prevent driving between the offence and Court proceedings.**

The Government acknowledges that prima facie evidence provided by an evidential breath test is stronger and less likely to be overturned than in other traffic offences. It further acknowledges that delay in bringing the case before the court operates in favour of the defendant.

We have for long advocated the immediate suspension of the licence both in order to emphasise the seriousness of this road offence and to prevent further offending due to the length of time elapsing before cases can come to trial. Some awaiting trial re-offend with more serious consequences - causing injury or fatality to others. If the Government is not prepared to permit immediate suspension then its priority, in the interests of innocent road users, must be to speed up the court process.

There has been some improvement as a result of using the Bail Act. However, constrained by the implications of the R v Kwame judgement and a sense of justice and fair play, magistrates have not used this power as often as they ought.

In Scotland the police and the courts have taken steps to expedite justice. Many offenders appear before the courts within 24 to 36 hours of committing the offence. There is no reason why this should not happen in England and Wales.

However, whilst the majority of cases could be tried and sentenced within such a time, there will be those where adjournments are necessary because of not guilty pleas or the preparation of pre-sentence reports. The latter can easily be dealt with by an interim disqualification but the former will require bail.

The Government rightly recognises that it is here where the problem lies. Despite the fact that the offender is before the court with strong prima facie evidence of guilt, there is reluctance to give a driving ban as a bail condition. The courts may well feel it would be wrong for someone 10mgs to 20 mgs over the limit to be given a bail condition if

they have fair reason to believe that a conviction might be wrong. However, those at least twice over the limit or have previous convictions should have their licence withdrawn as a condition of bail. The Government should be prepared to effect this by primary legislation and treat the bail condition as an interim disqualification. There should be no difficulty in registering the date from which conditional bail is given and to take this into account if a mandatory disqualification is given at a later date.

Although the Government is not attracted to the immediate suspension of the licence, by speeding up the process of law and righting the anomalies surrounding the R v Kwame judgment, justice could be more readily seen to be done both to the offender and more importantly to those who do not break the limit and wish to travel in as safe a road environment as is possible.

The suggestion in paragraph 26 which amounts to 'on the spot' fines or disqualifications at the roadside should be resisted. Offences relating to drink driving are in most circumstances more serious than matters relating to lights or being 10 to 20 miles per hour over the speed limit. In cases where the speed limit has been broken by 30 miles in 70 zones or 20 miles in 30 zones, the offender would not normally be given an 'on the spot' fine. Indeed, Magistrates Association Guidelines suggest disqualification. A person who fails the breath test is committing a serious road traffic offence. The anonymity of "on the spot" penalties would downgrade in the eyes of the public the seriousness of the offence. The Government would certainly be giving a wrong signal at a time when it wishes to give a fresh impetus to the campaign.

## **IGNITION INTERLOCKS FOR REPEAT DRINK-DRIVE OFFENDERS**

We concur with the Government that, due to the length of disqualifications within the UK compared with other jurisdictions, this option appears inappropriate at present and requires monitoring over a longer time-scale.

## **LOWERING THE BLOOD ALCOHOL LIMIT**

We have recently published a document making the case for a lower legal limit and a copy is attached. We welcome the statement that "The Government is therefore minded to make it an offence to drive with a blood alcohol limit of 50mg or over." The Government should not waiver from this view.

1. As far back as 1960 a British Medical Association report concluded:-

" ..... a concentration of 50mg% of alcohol in 100 ml of blood while driving a motor vehicle is the highest that can be accepted as entirely consistent with the safety of other road users."<sup>2</sup>

2. Sir William Paton in his report to the Home Secretary in 1984 recommended lowering the legal limit to 50mg%<sup>3</sup>. This, he believed, would have compensated for the fact that breath testing takes the lower of two readings, and is set to give the driver the fairest interpretation of blood/breath ratios. The overall result of the introduction of evidential breath testing equipment and its interpretation had been in effect to raise the legal limit and thus to prosecute too few drivers. This is why Sir William felt that we should have a compensatory reduction in the legal limit. The argument did not find favour at the Home Office.

3. Considerable epidemiological evidence from various studies, which measure the impact of alcohol in road crashes, have pointed out the risk of a crash in relation to blood alcohol levels. Drivers in the Grand Rapids Study with BAC of 50mg% to 70 mg% had an 18.4% greater chance of being in an accident than drivers with a BAC of 20mg% to 40 mg%.<sup>4</sup>

In an Adelaide study drivers with 50mg% to 70mg% were 73% more likely to have an accident than the lower group<sup>5</sup>. The higher percentage for the Adelaide group reflects the fact that the study dealt with accidents to which an ambulance was called whereas the Grand Rapids Study included all accidents.

4. According to French studies, accident risk is doubled at 50mg% and multiplied by a factor of 10 at 80mg%.<sup>6</sup>

5. Results of changes in legislation are seen in a comparison of two states in Australia where the legal limits are different. The results show that a higher percentage of alcohol-related deaths occurred where the legal limits are higher. This can be seen from a study of New South Wales with a BAC of 50mg% and Western Australia with 80mg%<sup>7</sup>. Both states have a legal limit of 20mg% for novice, provisional and under 18 years of age drivers.

Percentage of drivers and motor-cycle riders killed with BACs over 50mg%

	New South Wales	Western Australia
1981	41	48
1982	40	51
1983	36	55
1984	33	40
1985	33	45
1986	34	48
1987	34	47

The impact of lowering the BAC from 80mg% to 50mg% in Queensland in December 1982 showed a significant reduction in night time accidents<sup>8</sup>.

Using a three-year period before the reduction and a three year period after the reduction, the following fall in night time accidents took place.

15.9% less injuries not resulting in a hospital admission;

11.3% less where at least one person was admitted to hospital;

11.5% less damage to vehicles.

6. There is evidence that lowering the legal limit affects drinkers at all BAC levels. In studies in the USA in states which reduced their limit from 100mgs to 80mgs there was an observed 16% reduction in drivers who were over 80mgs and an 18% reduction in those over 150 mgs<sup>9</sup>. In Australia, where the limit was reduced to 50mg%, there was a reduction of 90% in drivers caught between 50 and 80 mg% and 41% in those over 80mgs<sup>10</sup>.

7. The view given in paragraph 38 that the reduction of the limit led to a weakening of public support in Sweden is contradicted by the oral evidence of Mr Hans Laurell of the Swedish National Road Administration to the House of Lords European Communities Committee. The number of drivers on Swedish roads with a blood alcohol concentration has fallen by 50%. Fatal road accidents have also been reduced by 10%<sup>11</sup>.

8. Since the Government doubts the wisdom of having a 20mg% limit for young drivers, although there is ample evidence to show its safety benefits for young people, it makes sense to establish an overall 50mg% limit for all age groups.

Lowering the limit is the most important step towards giving a fresh impetus to the drink drive campaign and reducing fatalities. Both Australia and USA provide evidence that lowering the legal limit affects drivers at all blood alcohol levels. In the USA lowering the limit appears to have had a greater affect on higher than lower blood alcohol levels. In Sweden it would appear that lowering the limit, albeit to 20mg%, has reduced drink driving right across the board.

Evidence suggests that the proportion of problem drinkers is the same within the range of 50 - 80mg and 80 - 150mg. The implications of all this evidence is that if the Government is seriously wishing to target the so called 'hard core' then lowering the limit is vital.

### **PENALTIES FOR A LOWER DRINK-DRIVE LIMIT**

We have set out our views on penalties in evidence to the House of Lords European Communities Committee as follows:-

(i) In regard to penalties, we believe that one of the reasons for the success of the anti-drink drive campaign in the UK is that the basic penalty for the offence (automatic 12 months disqualification) is a severe one and is certainly a more severe penalty than pertains in most other comparable jurisdictions. There is good evidence that the threat of loss of the driving licence is one of the most effective countermeasures against drinking and driving, although of course it is effective only where drinking drivers believe that they run a real risk of being detected and convicted.

(ii) Equally, however, we recognise that there are other considerations, most obviously that penalties should be acceptable to the public and perceived by them as proportionate to the offence, and the need to avoid placing an undue burden on the courts.

(iii) The situation regarding penalties in other comparable jurisdictions, including other European countries, appears to be extremely varied, although a graduated structure of penalties seems to be universal.

In France, the legal alcohol limit for driving is 50mg per cent, but blood alcohol levels between 50-79mg per cent are regarded as only a misdemeanour, and loss of driving licence is not imposed until 80mg per cent or more. We understand that this is also to be the position in Germany\* when next year the legal limit will probably be reduced to 50mg per cent and that in practice this is also the situation in the Netherlands. However, we understand that in Sweden a three months disqualification is imposed for blood alcohol levels above 30mg per cent, and that next year Spain is likely to impose automatic disqualification, presumably of up to three months, for blood alcohol levels above 50mg per cent when the legal limit is reduced from 80mg per cent.

\* (Germany has now reduced its limit to 50mg/ml)

(iv) Given this diversity it seems very unlikely that it will be possible to achieve in the foreseeable future a harmonised system of penalties across the entire European Union. However, as far as the UK is concerned, a shorter period of disqualification (i.e. less than 12 months) for blood alcohol levels between 50-79mg per cent would certainly be less out of step with existing and planned regimes in other EU countries.

These views were submitted in the context of the European Commissioner's call for a 50mg limit and the introduction of common penalties.

In a British context we believe it is important to maintain mandatory disqualification if the limit is reduced to 50mg%. It is up to the Government to assess whether the public will accept the application of a 12 months disqualification to a new limit of 50mg%. However, we would not quarrel if the Government felt that a shorter disqualification period, as long as it was appropriate to the offence, would be the best means of winning public acceptance for a change in the law. In any case, the disqualification period should be mandatory and not less than six months. The principle of different tiers of disqualification is already applied in courts.

It is in the application of penalties we believe the Government should accept the importance of influencing the European Union due to our success in this area. It makes social and economic sense to have similar penalties. Driving on foreign roads is now commonplace and uniformity of practice needs to be established. It is an anomaly that professional drivers from the continent, convicted of drink driving, should lawfully use roads in the UK whilst their British counterparts,



guilty of the same offence, should be disqualified for a year. In European Union language we should be working toward a level playing field.

### **PENALTIES FOR HIGH RISK OFFENDERS**

It is pleasing that the Government recognises the need to give more publicity to the High Risk Offenders Scheme. In pronouncing sentence on high risk offenders courts should emphasise the fact that offenders may have to satisfy a medical examiner that they do not have a serious alcohol problem before their licence is returned. This aspect should also feature in media campaigns.

The high risk offence category should include all those convicted over 150 mg% and with two convictions in a ten year period above whatever is the legal limit. An annual certification that offenders continue to no longer have a drinking problem should be given by an independent medical adviser. This is not introducing a new principle since those over 70 years of age require regular certification that there is no known health reason to deny them a licence. Costs of medical certification should be the responsibility of the person applying for the licence.

### **DRINK-DRIVE REHABILITATION COURSE**

In 1975 the National Council on Alcoholism, in evidence to the Blennerhassett Committee, proposed the idea of high risk offender schemes and rehabilitation courses both as contributions to road safety and as motivation for problem drinkers to seek help. It is pleasing to note that early assessment of such schemes is favourable. The possibility of all offenders attending at least a three hour information and education course before their licence is returned should be considered. Offenders should pay for the course.

### **SPECIAL RESTRICTIONS ON YOUNG OR NOVICE DRIVERS**

We note the view that the Government takes on a lower limit for young or novice drivers. We accept that introducing a different limit for this group may be difficult to enforce. However, we cannot accept the view that by having a differential limit a wrong message could be given, particularly when it has saved lives in jurisdictions where it has been applied.

Ideally we would like a lower legal limit for this group but, in the light of the lack of identity cards and police support, we understand the Government's position. The Government should, however, keep the matter under review and should carry out more intensive research on the harm done to young people by drinking and driving.

The fact that the Government recognises that young people are more adversely affected by alcohol at lower levels than their elders, but is not of a mind to introduce a specially low limit for this group, makes the case for a 50 mg% limit even more compelling.

### **INFORMATION ON UNITS AND EFFECTS OF ALCOHOL**

We recognise that this is a difficult area. The success of the Drink Drive Campaign arises from the clarity and simplicity of the 'Don't Drink Don't Drive' message. General alcohol education is ineffective because of its ambiguity.

The consultation paper quite rightly points to the differing BACs caused by similar amounts of alcohol in different individuals due to sex, body weight and other factors.

The media's tendency to portray a reduction to 50mg% as drinking less than a pint of beer is false but to provide more accurate information could be counter productive. There would, no doubt, be those who would drink up to the limit. However, it is important for people to know how long it takes to 'eliminate' alcohol from the body, particularly in relation to the 'morning after the night before' factor. On balance, we would prefer the Department of Transport not to issue unit guidance. Although in general education programmes an explanation is provided, but they should be avoided in media handouts because of inevitable misinterpretation. The Government's publicity campaigns only hit home when they stopped implying there was a safe level of drinking and driving and began to use slogans such as 'Drinking and Driving wrecks lives'. The Government would do well to remember the lessons learned from the 'Stay Low' campaign in the mid 80s.

In 1967 Barbara Castle persuaded the BMA to refrain from publishing tables showing how much one could drink before being above the limit. This possibly may have been one of the factors contributing to the huge success of the breathalyser when first introduced. People really thought that they could not drink and drive.

The Department of Transport needs to take great care with any linking of the message regarding drinking and driving with sensible drinking messages. When the former Secretary of State for Health, Stephen Dorrell, increased the 'sensible limit for health' in December 1995, the media and the public confused these with the drink drive message. Sensible limits as a health message are not sensible limits for road safety. Three to four units per day is not a message for the Department of Transport.

### **SELF-TEST BREATHALYSERS**

The reliability of these devices is unknown. However, whatever our attitude toward them, they will go on being introduced and there will be a demand. They should be monitored and carry a warning. At present they should not be encouraged.

### **CONCLUSION**

In 1967 a Labour Government placed on the Statute Book an act which began a social revolution in changing attitudes and behaviour towards drinking and driving. As a result of the 1967 Road Safety Act countless thousands of lives have been saved. Over recent years the improvement has waned and the Government has recognised that a new impetus is required. A new Labour Government has now the opportunity to crown the success story started by Barbara Castle.

If the Government is serious in its desire to further reduce preventable alcohol related road casualties then it has to introduce a packet of measures which must include reducing the limit to 50mg%; mandatory disqualification for drivers over 50mg%; a general police power to breathalyse; no renewal of the driving licence for offenders over 150mg% until they can prove they no longer have a drinking problem. However, we believe that it is essential that this new attack begins with the lowering of the limit. The implementation of all the above measures will result in far more lives saved than the cautious estimates suggested in the Government's Consultation paper. This was the case in 1967.

## REFERENCES:

1. Drinking Drivers missed at Sobriety Checkpoints. Journal on Studies of Alcohol 1997. Vol 58; 513-517.
2. HAVARD DR J : Keynote Address: The Background to Existing Legislation in Drinking and Driving: 10 Year on from Blennerhassett. Institute of Alcohol Studies 1986.
3. Report on the Performance of Lion Intoximeter 300 and the Camic Breath Analyses Evidential Breath Alcohol Measuring Instruments during the period of 16 April 1984 to 15 October 1985. Foreword by Sir William Paton, FRS. HMSO, London 1985.
4. SMALL D I: Effects on traffic safety in Australia of increasing the availability of alcoholic beverages and the lowering of the legal blood alcohol level for drivers. Western Australia Alcohol and Drug Authority : Perth: October 1987.
5. op cit
6. GERONDEAU M: Report of high level expert group for a European Policy for Road Safety. European Commission:: Paris 1990
7. HOWAT P, SLEET D, SMITH J: Alcohol and Driving: Is the 0.05% blood alcohol concentration limit justified. Drug and Alcohol Review (1991): 10; 151-166.
8. op cit
9. HINGSON R, et al. American Journal of Public Health. September 1996.
10. op cit
11. Blood Alcohol Levels for Drivers. House of Lords Select Committee on the European Communities; Stationery Office. London 1998. Oral evidence - Mr Hans Laurell.

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