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Confidential filing

Consultative paper on the Government's response to the Blennerhassett Committee's recommendations on drinking and driving. ~~Transport and Road Safety~~

TRANSPORT

June 1979

Attached folder "Report - The Road User and the Law"

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~12.11.79~~							
~~14.12.79~~							
~~20.12.79~~							
~~3.7.80~~							
~~8.7.80~~							
~~6/2/89~~							
2/2/89							
28.11.89							

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TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
H(80) 16th Meeting, item 1	08/07/1980
H(80) 50	03/07/1980
H(79) 9th Meeting, item 1	31/07/1979
H(79) 43	26/07/1979

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed J. Gray Date 27/10/2016

PREM Records Team

: 010

Prime Minister 2

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28/11

CGN

THE DEPARTMENT OF TRANSPORT

FROM THE SECRETARY OF STATE

2 MARSHAM STREET LONDON SW1P 3EB
TELEPHONE 01-276 3000

The Rt Hon David Waddington QC MP
Secretary of State for the
Home Department
Home Office
50 Queen Anne's Gate
LONDON
SW1H 9AT

My Ref:

Your Ref:

28 NOV 1989

Dear David,

At the last meeting of H our officials were given the remit of working up a clear policy option for extending police breath testing powers which struck a middle course between your predecessor's preferred option of clarification of existing powers and the police request for unfettered discretion.

I see from your memorandum, which we are to discuss on Wednesday, that you too have come down in favour of clarification. While I entirely agree with you that we must consolidate the law, I think that doing that on its own will not be enough, and may well be the cause of some confusion.

The police have asked for their powers to be extended; I think we must recognise that. The consultation exercise showed wide support for extension, since when there has been increasing public support for the police to be given the power to undertake mass screening. When we discussed this at H there was, however, understandable unease about the term "unfettered discretion" which the police have used; we felt we could not agree to such an open-ended power in respect of which it would be difficult to rebut accusations of abuse.

It seems to me that the doubts about existing powers apply only to their use for large-scale testing, since they are clearly directed towards the individual driver. Yet the enforcement technique of mass screening is what there is greatest pressure for. We favour a limited extension of police powers so as to provide specifically for large-scale testing. This could be achieved by the provision of an additional power to test drivers (the plural is significant) only at authorised, signed sites. The practical constraints about the need for testing to be authorised in advance and to take place at a specified location,

for signing and for record keeping would be set out in Regulations.

I believe that this extension - I would be loath to sweep away the existing well-established practice and interpretation - combined with the limited circumstances to which the new power would apply, would in large measure fulfil the widely held expectation of government support for a tougher line on drink drive enforcement, while providing the safeguards that H were seeking.

I would have preferred that our discussion at H should have been on the basis of an agreed proposal, but in the absence of that I am circulating this to colleagues on H who may find it helpful to consider this "middle way" before we discuss the issue.

Yours ever,

CECIL PARKINSON

Road Safety (White Paper)

3.31 pm

The Secretary of State for Transport (Mr. Paul Channon): With permission, Mr. Speaker, I wish to make a statement about the Government's proposals to reform road traffic law. A White Paper, called "The Road User and the Law", has been laid this afternoon.

The White Paper responds to the recommendations of the North review of road traffic law, published last April. I pay tribute to the review committee for the valuable work which it did.

The Government's determination to improve road safety is clear. We are committed to cut road casualties, especially those killed or seriously injured, by one third by the end of the century. The proposals in the White Paper will play a major part in achieving that target.

This country now has the best road safety record in Europe. But there is still a long way to go. Over 5,000 people died and more than 300,000 were injured as a result of road accidents in 1987. Behind those stark figures lie appalling personal tragedies. Probably every Member of this House has known someone hurt or killed on one of Britain's roads.

The White Paper brings forward a wide range of proposals to tackle the next steps in improving safety on our roads. These proposals aim to improve the structure of road traffic law, to increase its public acceptability, and to make it operate more fairly and simply. We aim to ensure that the penalty matches the offence and that those who drive very badly are properly punished.

The present reckless driving offence does not operate satisfactorily in England and Wales, and must be changed. At the moment drivers are escaping conviction, because the law turns on the driver's state of mind rather than the state of driving. The Government therefore propose to replace the reckless driving offence with a new offence of dangerous driving based more firmly on the observable standard of driving. This offence will have two ingredients: the standard of driving must fall far below that expected of a competent and careful driver, and the driver must carry a danger of physical injury or serious damage to property.

The present offence of causing death by reckless driving will be replaced by a new offence of causing death by dangerous driving. The present lower level offence of careless driving will be retained.

One of the most serious threats to safety on the roads is drink driving. There is much public concern about the inadequacy of the present law for dealing with drunk drivers who kill. The Government will meet this concern.

As the House is aware, my right hon. Friend the Secretary of State for the Home Department announced last week a period of public consultation on possible changes to police powers to require breath tests. In this White Paper we propose to create a new offence of causing death by careless driving while unfit through drink, drugs or certain other forms of medical incapacity. The maximum penalty will be tough for this offence: five years' imprisonment, obligatory disqualification of at least two years, and an unlimited fine.

There has been mounting concern about the mindless behaviour of vandals who drop objects from motorway bridges, endangering lives. We intend to clamp down on this kind of malicious hooliganism by creating a new criminal offence. There will be a maximum penalty of seven years for those who endanger road users by intentionally obstructing a road or interfering with traffic signs and signals where they are, or ought to be, aware that personal injury or damage to property may result.

The surest way to reduce road casualties is to improve standards of driving. We are therefore proposing that certain categories of road traffic offender must pass a new, longer and more stringent driving test before a licence is restored following a period of disqualification. We shall introduce retesting on a phased basis, starting with those convicted of the most serious bad driving offences. Ultimately, the test could be extended to all drivers disqualified as a result of careless driving and other accident offences. The private sector will be encouraged to develop suitable training courses. We shall monitor progress closely and will seek powers, for use as necessary, to require instructors intending to offer retraining to be licensed specifically for that purpose.

We propose to set up an experiment to see whether we can change the attitudes of drink drivers. Powers will be sought to allow the courts in selected areas to order those convicted of drink-driving offences to attend special rehabilitation courses.

The penalty point system has proved very successful. To make it even more effective, we intend to make certain changes. These include a new range of three to six penalty points for speeding offences dealt with by court proceedings, which will enable the courts to deal more effectively with the more serious cases. The maximum penalty for the offences of failure to stop and failure to report an accident will be increased to include six months' imprisonment.

Technology has an important role to play in the detection of certain traffic offences. The Government therefore intend to amend the law so that cameras can be used as sole evidence for speeding and traffic light offences. Safeguards will be provided to ensure that the equipment used is both accurate and reliable. We shall continue to monitor the development of enforcement technology in other areas of road traffic law and will consider allowing its wider use as and when equipment of sufficient accuracy and reliability becomes available.

The White Paper contains a wide variety of proposals to make road traffic law simpler and easier to understand in a variety of ways. Most of the proposals will apply throughout Great Britain. However, my right hon. and learned Friend the Secretary of State for Scotland is considering whether the new dangerous driving offence should extend to Scotland, where the present reckless driving offence has not given rise to the same problems of interpretation as in England and Wales.

The Government's proposals will bring about significant changes in statute and in the operation of road traffic law. Further work to implement the proposals will start as soon as possible. Specific recommendations in the North report have been drawn to the attention of the courts and the police, and consultations are being initiated with representative bodies of these organisations. Consultation will be undertaken with the local authority associations, motoring and other organisations on the detailed implementation of the proposals. Legislation will then be brought forward as soon as parliamentary time can be found.

local health authority control, there should be a vote by the users of that service, namely the patients in the Lewisham and North Southwark district health authority area? Will the Prime Minister give an undertaking that those people will have a vote, and, if not, why not?

The Prime Minister: Schools come under local authorities, as do council houses, so it is very obvious that parents and tenants should have a vote. But hospitals, as the hon. Member knows, do not.

Mr. Hayes: Will my right hon. Friend express her deep concern to the Dutch and Belgian authorities about their failure to prosecute two Irishmen who were found in possession of weapons allegedly used in the murder of two British service men? Does she agree that international terrorism will be beaten only by international co-operation?

The Prime Minister: Yes, I agree wholeheartedly with that proposition, and from most countries we get such co-operation. As my hon. Friend is aware, there are times when we do not succeed in getting people extradited, but for the most part we get increasing co-operation, particularly among the police and the security services, in the fight against terrorism.

Q6. **Mr. Harry Barnes:** To ask the Prime Minister if she will list her official engagements for Tuesday 7 February.

The Prime Minister: I refer the hon. Gentleman to the reply that I gave some moments ago.

Mr. Barnes: Has the Prime Minister seen the league table that was published in *Hansard* on 11 January showing that the Derbyshire county council, which is Labour-controlled, has the best staff-pupil ratio of any shire county? It is top in special education, top in secondary education, and second, by a hair's breadth, in primary education. Will the right hon. Lady congratulate the Derbyshire county council on this achievement?

The Prime Minister: I understand that it also have very, very high spending. But I am very glad if it has excellent education; the hon. Member must be very pleased with Conservative education policy.

Mr. Hayward: Will my right hon. Friend consider the monopoly that currently operates with the BBC and ITV in terms of the prior publication of programmes, particularly since we now have Sky TV's competing channels?

The Prime Minister: Yes, but the whole of broadcasting is, in fact, changing because of the speed of new technology and, of course, because of the alternative channels. I think that we shall soon have the debate on the White Paper, when we shall be able to consider these matters and how to deal with them in legislation.

Q7. **Mr. Buchan:** To ask the Prime Minister if she will list her official engagements for Tuesday 7 February.

The Prime Minister: I refer the hon. Gentleman to the reply that I gave some moments ago.

Mr. Buchan: Has the Prime Minister yet had the chance to reconsider her grossly offensive speech in Scotland on Friday? Has no one told her that she united practically the entire Scottish population with her objectionable views? Does she not realise that the stupidity of her declared veto is as dangerous as the stupid separatism of Scottish Nationalists? Are they in consort with each other?

The Prime Minister: If I may say so, in the place where I gave the speech before 675 people, many of them journalists, it was very well received. I pointed out that under a Conservative Government, Scotland is doing better than ever and that Scotland could not possibly have achieved that response to Conservative policies without being in tune with them, even though many people, like the hon. Gentleman, find it difficult to admit it.

Q8. **Mr. Adley:** To ask the Prime Minister if she will list her official engagements for Tuesday 7 February.

The Prime Minister: I refer my hon. Friend to the reply that I gave some moments ago.

Mr. Adley: Now that the Russians are leaving or have left Afghanistan, the Cubans and South Africans have left Namibia, and the Vietnamese are leaving Kampuchea, will my right hon. Friend join me in hoping that ere long the Israelis will leave the occupied west bank and Gaza?

The Prime Minister: The Soviet withdrawal from Afghanistan is a great tribute to the resistance who never let up in their fight for their country. Also, it is a great tribute to Pakistan which has received so many refugees. We are very pleased that the withdrawal is virtually complete. I join my hon. Friend in hoping that we shall soon see negotiations begin on a settlement to the middle east problem.

[Mr. Channon]

accident reduction, it is in the public interest. There is bound to be controversy, and the House will wish to debate the matter at length.

Mr. Menzies Campbell (Fife, North-East): I too welcome the terms of the White Paper in principle, especially the attempt to fill the unhappy and sometimes distressing lacuna in our law which has meant that deaths in circumstances in which drink was taken were not always possible to deal with in a way that was satisfactory not only to the relations of those killed, but to the views of the public. That provision will be warmly welcomed.

I should like the Secretary of State to deal with one point that is perhaps more directly relevant to Scotland than elsewhere. He says that the Secretary of State for Scotland must consider whether the change in legislation for England and Wales is to apply in Scotland. The substantive road traffic law has always been the same throughout the United Kingdom, and if the Secretary of State were to take the view that that should not be the case, for the first time the law in Scotland on a matter of that nature would be different from the law in England and Wales. That would be a substantial departure in principle and one to which I hope the Secretary of State will give serious consideration.

Mr. Channon: I thank the hon. and learned Gentleman for his preliminary remarks and for what he has said about the new offence of causing death by drunken driving. The law in England and Wales is the same as the law in Scotland, but in Scotland the courts have interpreted the law in a wholly different way and there has not been the same difficulty of interpretation or the same rigorous suggestion that it depends on the state of the driver's mind. As I am advised by my Scottish colleagues, the law is working satisfactorily in Scotland. In those circumstances, they must decide whether they want to change it or to continue with the present satisfactory state of the law in Scotland. I shall convey what the hon. and learned Gentleman has said to my right hon. and learned Friend, but it is difficult to weigh up the two conflicting points.

Mr. Roger Moate (Faversham): I congratulate my right hon. Friend on the further evidence of the Government's determination to cut down the appalling slaughter and injuries on our roads. I assure him that the White Paper will receive widespread support in the House. Does he agree that it will depend largely on driver co-operation and that that could be jeopardised if there is widespread suspicion about the use of photographic devices for speeding offences, especially if, at the same time, drivers are discouraged from challenging the offence in court because of the deterrent effect of extra penalty points? Would my right hon. Friend look at that matter carefully? Does the White Paper include any encouragement for regular eye testing, and if not will my right hon. Friend consider that?

Mr. Channon: Driver co-operation is extremely important. It is because there has been massive co-operation between the driving public and the authorities that in the past few years the driving accident rate has been coming down significantly, which is a different position from that in many other parts of the world. At one point in the past 10 years, deaths peaked at about 6,800 per year; they are now down to 5,100. The trend for the first three quarters of 1988 shows a further decline. There is no doubt that a combination of things, including driver co-operation, has led to that effect.

Of course, I shall consider my hon. Friend's point, but the thrust of the White Paper is that we should not penalise motorists who commit trivial offences from time to time —as I suspect many hon. Members do—but should punish those who seriously offend. I hope that the driving public does not think that this measure is designed to penalise those who make a trivial mistake from time to time.

Mr. David Marshall (Glasgow, Shettleston): The review was set up following the report on road safety by the Select Committee on Transport in 1984-85. I welcome the report and am grateful to the Secretary of State for his letter today offering to meet the Select Committee to discuss it. On behalf of the Committee, may I say that we are all looking forward to that meeting.

As hon. Member after hon. Member has emphasised, the major factor in road safety is drinking and driving. As the introduction of random breath testing would do more than anything else to combat that problem, if the Secretary of State wants to save Government time, will he give Government support to the Bill sponsored by my hon. Friend the Member for East Lothian (Mr. Home Robertson)?

Mr. Channon: That is a matter for my right hon. Friend the Home Secretary, who is consulting on it. I shall put the hon. Gentleman's suggestion to him but it would be odd to accept it when one is out for consultation on that subject. I am much looking forward to meeting the Select Committee—any place, any time.

Mr. Peter Fry (Wellingborough): I join in the general congratulations given to my right hon. Friend for seeing that those who commit serious motoring offences have a corresponding penalty, when he is considering the range of penalty points, will he ensure that a degree of flexibility is allowed to magistrates so that those who are technically guilty of an offence do not suffer the heavy penalties of those who are guilty of dangerous or reckless driving?

Mr. Channon: My hon. Friend makes a fair point. We hope that, for small offences, there will be a greater use by the police of warnings than there has been in the past.

Mr. Alex Salmond (Banff and Buchan): I join the general welcome for the Secretary of State's proposals, especially those relating to retesting as a standard penalty for many traffic offences. Has the right hon. Gentleman considered the possibilty of retesting people soley on the theory of road practice, given that most drivers do not commit offences because they are not in control of the car, but because they ignore "The Highway Code"? Retesting on the theory of "The Highway Code" as opposed to a full driving test could be introduced quickly over a whole range of driving offences, and for all but the least serious.

Mr. Channon: The hon. Gentleman has reminded me —the House may already know—that we are going to produce a new highway code in the not-too-distant future. The present one has been in operation for about seven years, so it is about time that we had a new one.

I am grateful for the hon. Gentleman's welcome for the retesting proposals. We shall introduce a new extensive driving test for certain categories of offender. Although we

This White Paper strengthens, modernises and clarifies road traffic law. I commend it to hon. Members on both sides of the House as a major contribution to the Government's drive to make Britain's roads safer still.

Mr. John Prescott (Kingston upon Hull, East): I welcome the White Paper and its proposals to improve our traffic law and road behaviour. I believe that it will reduce deaths from accidents, and the House and the country will welcome that.

May I offer our grateful thanks to Dr. North and his committee for their most thorough report. Whilst one would like to consider the full implications of the White Paper proposals, I am happy to endorse the broad thrust of them. Indeed, it will make the law more definitive and more uniform. The tougher penalties, with retraining and rehabilitation for drink drivers, are to be welcomed.

The Secretary of State spoke about testing, retesting and retraining. I hope that he is prepared to increase the number of staff available to deal with training and testing because major difficulties are experienced at present. Like the Government, I reject some of Dr. North's recommendations, most notably that the penalty fine for an offence should cover administrative and court costs —in a sense, privatising the costs. I accept the Government's view that the fine should represent a punishment and a deterrent and should reflect the seriousness of the offence.

Will the Secretary comment on the proposals so obviously missing from the terms of reference and which make a major contribution to reducing drink-driving accidents—random breath tests which are carried out openly by some police authorities without the express agreement of Parliament, or the necessary protection that would be imposed? Does his statement and that of the Home Secretary last week mean that their proposals will be included in a new traffic Bill? Will random breath tests be included in that Bill, and when is such a Bill likely to come forward?

In substituting the offence of reckless driving for the two offences of dangerous driving and careless driving, will the advice given by police officers in exercising that judgment be publicly available and discussed by the House and by other interested parties?

The Secretary of State mentioned the use of technology such as videos and cameras as the sole evidence for prosecution. Is he quite convinced that technically they can be relied upon to be absolutely sound? I am sure that that problem will exercise many minds.

Is the Secretary of State aware that, in extending the penalty points for speeding offences from three to six in the case of those who choose to go to court, he appears to be loading the case against citizens who exercise their right to have their cases heard in court instead of being dealt with by policemen on the spot? Is that not a penalty against one's right to pursue one's case through the courts?

The Secretary of State accepted Dr. North's rejection of the suggestion that the courts should not be burdened with compensation issues related to traffic offences. Is he considering any other ways of dealing with that distressing and vexed question that is involved when one pursues a civil action?

Finally, will the conclusions of the experiment to be carried out in Scotland in relating fines to one's ability to pay them—that is clearly against the Government's taxation policy whereby the rich do not pay—be included in the next traffic Bill to come before the House?

Mr. Channon: I am very grateful to the hon. Member for Kingston upon Hull, East (Mr. Prescott) for his generous welcome to the thrust of the proposals. I shall try to deal with all the points that he raised, but if I omit any issues I shall be in touch with him.

In regard to random breath testing, my right hon. Friend the Home Secretary announced only a few days ago that there would be consultation. He has asked for the consultations to be completed by 30 April. Were it to be decided that changes in the law were to take place, there is no reason to assume that they could not be fitted into a new traffic Bill. As to when such a Bill will be brought forward, the hallowed answer to such requests is "As soon as parliamentary time allows." *[Interruption.]* I note that the hon. Member for West Bromwich, East (Mr. Snape) is pressing for the Government to be speedy, and I shall convey that to my ministerial colleagues.

The hon. Member for Kingston upon Hull, East referred to technology. It is absolutely essential that the technology should be reliable and accurate. Equipment will be subject to rigorous testing. I shall have to approve devices and the equipment will be regularly maintained to prescribed standards. Of course I shall not approve a device unless I am satisfied that it is accurate and reliable. Obviously the House will wish to pay very close attention to that. Provided that standards can be met, it is clear that it is no longer a game on Britain's roads and we must have the most efficient way of catching offenders in order to reduce road accidents.

I note the hon. Gentleman's views on the question of the courts and speeding and I shall consider them. He will know that the position will not be changed enormously. At present, speeding incurs a level 3 fine of £400 and a discretionary disqualification of three penalty points. All that is suggested is that the three penalty points fixed penalty should remain, but that there will be a right to go up to six in court proceedings. We shall consider the hon. Gentleman's comments in the period before there is any suggestion of legislation. I shall also consider the other points he has made and be in touch with him.

Mr. Norman Tebbit (Chingford): Is my right hon. Friend aware that his White Paper will gain general acceptance and a good welcome, but that the further extension, through the use of cameras, of the principle that a motorist or a keeper of a motor vehicle can be found guilty of an offence without the same burden of proof that would be required to find him guilty of any other form of offence is becoming a little worrying and that some of us may find it difficult to agree with him on that point?

Mr. Channon: I am grateful for my right hon. Friend's initial remarks. I know of the views expressed in the latter part of his remarks and that has, of course, given me some concern about whether to press ahead with the proposals. However, with 5,100 people still being killed on our roads —although our road safety figures are now the best for deaths since 1954—and 300,000 being injured, my view is that, provided we can have reliable equipment which is subject to rigorous testing and that it is used where improved enforcement can have the maximum effect on

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

My ref:

Your ref:

P A Bearpark Esq
Private Secretary
10 Downing Street
LONDON
SW1A 2AA

Dear Andy, BY 7/2

6 FEB 1989

WHITE PAPER ON REFORM OF ROAD TRAFFIC LAW

The arrangements for the publication of this White Paper, approved by H Committee on 17 January, are now in hand. Publication will be announced tomorrow: the Secretary of State expects to make a statement to the House of Commons after Questions.

I attach a copy of the Confidential Final Revise of the paper, which is entitled "The Road User and the Law". I am likewise sending copies to the Private Secretaries of all Cabinet Ministers.

Yours sincerely,

Katherine

KATHERINE ORRELL
Private Secretary

STATEMENT ON ROAD SAFETY WHITE PAPER

"THE ROAD USER AND THE LAW"

1. With permission, Mr Speaker, I wish to make a statement about the Government's proposals to reform road traffic law. A White Paper, called "The Road User and the Law", has been laid this afternoon.

2. The White Paper responds to the recommendations of the North Review of Road Traffic Law, published last April. I pay tribute to the Review Committee for the valuable work which they did.

3. The Government's determination to improve road safety is clear. We are committed to cut road casualties, especially those killed or seriously injured, by one third by the end of the century. The proposals in the White Paper will play a major part in achieving that target.

4. This country now has the best road safety record in Europe. But there is still a long way to go. Over five thousand people died and more than three hundred thousand were injured as a result of road accidents in 1987. Behind these stark figures lie appalling personal tragedies. Probably every Member of this House has known someone hurt or killed on one of Britain's roads.

5. The White Paper brings forward a wide range of proposals to tackle the next steps in improving safety on our roads. These proposals aim to improve the structure of road traffic law, to increase its public acceptability, and to make it operate more fairly and simply. We aim to ensure that the penalty matches the offence and that those who drive very badly are properly punished.

6. The present reckless driving offence does not operate satisfactorily in England and Wales, and must be changed. At the moment drivers are escaping conviction, because the law turns on the driver's state of mind rather than the state of driving. The Government therefore proposes to replace the reckless driving offence with a new offence of dangerous driving based more firmly on the observable standard of driving. This offence will have two ingredients: the standard of driving must fall far below that expected of a competent and careful driver, and the driving must carry a danger of physical injury or serious damage to property.

7. The present offence of causing death by reckless driving will be replaced by a new offence of causing death by dangerous driving. The present lower level offence of careless driving will be retained.

8. One of the most serious threats to safety on the roads is drink driving. There is much public concern about the inadequacy of the present law for dealing with drunk drivers who kill. The Government will meet this concern. As the House is aware, my Rt Hon Friend, the Secretary of State for the Home Department announced last week a period of public consultation on possible changes to police powers to require breath tests. In this White Paper, we propose to create a new offence of causing death by careless driving while unfit through drink, drugs or certain other forms of medical incapacity. The maximum penalty will be tough for this offence: five years imprisonment, obligatory disqualification of at least two years, and an unlimited fine.

9. There has been mounting concern about the mindless behaviour of vandals who drop objects from motorway bridges, endangering lives. We intend to clamp down on this kind of malicious hooliganism by creating a new criminal offence. There will be a maximum penalty of seven years for those who endanger road users by intentionally obstructing a road or interfering with traffic signs and signals where they are, or ought to be, aware that personal injury or damage to property may result.

10. The surest way to reduce road casualties is to improve standards of driving. We are therefore proposing that certain categories of road traffic offender must pass a new, longer and more stringent driving test before a licence is restored following a period of disqualification. We will introduce retesting on a phased basis, starting with those convicted of the most serious bad driving offences. Ultimately the test could be extended to all drivers disqualified as a result of careless driving and other accident offences. The private sector will be encouraged to develop suitable training courses. We will monitor progress closely and will seek powers, for use as necessary, to require instructors intending to offer retraining to be licensed specifically for that purpose.

11. We propose to set up an experiment to see whether we can change the attitudes of drink drivers. Powers will be sought to allow the courts in selected areas to order those convicted of drink driving offences to attend special rehabilitation courses.

12. The penalty point system has proved very successful. To make it even more effective, we intend to make certain changes. These include a new range of three to six penalty points for speeding offences dealt with by court proceedings. This will enable the courts to deal more effectively with the more serious cases. The maximum penalty for the offences of failure to stop, and failure to report an accident, will be increased to include six months' imprisonment.

13. Technology has an important role to play in the detection of certain traffic offences. The Government therefore intends to amend the law so that cameras can be used as sole evidence for speeding and traffic light offences. Safeguards will be provided to ensure that the equipment used is both accurate and reliable. We shall continue to monitor the development of enforcement technology in other areas of road traffic law and will consider allowing its wider use as and when equipment of sufficient accuracy and reliability becomes available.

14. The White Paper contains a wide variety of proposals to make road traffic law simpler and easier to understand in a variety of areas.

15. Most of the proposals will apply throughout Great Britain. However, my Rt Hon and Learned Friend, the Secretary of State for Scotland, is considering whether the new dangerous driving offence should extend to Scotland where the present reckless driving offence has not given rise to the same problems of interpretation as in England and Wales.

16. The Government's proposals will bring about significant changes in statute and in the operation of road traffic law. Further work to implement the proposals will be taken forward as quickly as possible. Specific recommendations in the North Report have been drawn to the attention of the courts and the police, and consultations are being initiated with representative bodies of these organisations. Consultation will be undertaken with the local authority associations, motoring and other organisations on the detailed implementation of the proposals. Legislation will then be brought forward as soon as Parliamentary time can be found.

17. Mr Speaker, this White Paper strengthens, modernises and clarifies road traffic law. I commend it to Hon. Members on both sides of the House as a major contribution to the Government's drive to make Britain's roads safer still.

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SWIH 9AT

3 February 1989

Dear Katherine,

You copied to me your letter of 1 February to Alison Smith inviting comments on the statement which your Secretary of State proposes to make on Tuesday, 7 February.

The Home Secretary is generally content with the proposed terms of the statement, but he would like one change to be made: in lines 6-7 of paragraph 8, substitute "a period of public consultation on possible changes to police powers to require breath tests" for "his proposals to review the application of breath testing powers". This brings the wording into line with that of the White Paper.

Yours ever,

Peter Storr.

P R C STORR

Ms Katherine Orrell

TRANSPORT : consultation Pape
on Gov't response to cheerleading
during June 79.

RESTRICTED

CC/4

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

My ref:

Your ref:

Prime Minister 2

Alison Smith
Private Secretary to
The Rt Hon John Wakeham MP
Lord President of the Council
Privy Council Office
68 Whitehall
LONDON
SW1A 2AT

1- FEB 1989

Dear Alison

WHITE PAPER ON REFORM OF ROAD TRAFFIC LAW

Attached

As you know, H Committee at their meeting on 17 January approved this White Paper for publication in early February. The plan, agreed in consultation with your office and the Chief Press Secretary, is that it should be published on Wednesday 8 February, and that my Secretary of State would make an oral statement to the House of Commons after Questions that day. The statement would be offered for repetition in the House of Lords by Lord Brabazon. A draft text is attached.

If asked, the Secretary of State would very much like to be able to make a commitment on holding a debate in both Houses on the White Paper proposals. During the debates on the Penalty Points (Alteration) Order last autumn, Ministers came under very strong all-Party pressure that both Houses should have an opportunity to debate the Government response to the North Report as a whole before any further changes were introduced. This will no doubt be pressed again at publication, and my Secretary of State would very much like to be in a position to give a positive answer.

A press conference will be held immediately after the statement, at which Transport Ministers will be joined by the Minister of State, Home Office, (Mr Patten) and the Parliamentary Under Secretary of State for Scotland (Lord James Douglas-Hamilton), whose Departments have jointly sponsored the proposals.

Please may I have any comments on the draft oral statement by Friday 4 February.

RESTRICTED

I am copying this letter and enclosures to Andy Bearpark (No 10), Rhodri Walters (Lord Privy Seal's office), Peter Storr (Home Office), David Crawley (Scottish Office), Murdo Maclean (Chief Whip's office), and Trevor Woolley (Sir Robin Butler's office).

Yours

Katherine

KATHERINE ORRELL
Private Secretary

DRAFT ORAL STATEMENT

1. With permission, Mr Speaker, I wish to make a statement about the Government's proposals to reform road traffic law. A White Paper has been laid this afternoon.

2. The White Paper responds to the recommendations of the North Review of Road Traffic Law, published last April. I pay tribute to the Review Committee for the valuable work which they did.

3. The Government's determination to improve road safety is clear. We are committed to cut road casualties, especially those killed or seriously injured, by one third by the end of the century. The proposals in the White Paper will play a major part in achieving that target.

4. This country now has the best road safety record in Europe. But there is still a long way to go. Over five thousand people died and more than three hundred thousand were injured as a result of road accidents in 1987. Behind these stark figures lie appalling personal tragedies. Probably every Member of this House has known someone hurt or killed on one of Britain's roads.

5. The White Paper brings forward a wide range of proposals to tackle the next steps in improving safety on our roads. These proposals aim to improve the structure of road traffic law, to increase its public acceptability, and to make it operate more

fairly and simply. We aim to ensure that the penalty matches the offence and that those who drive very badly are properly punished.

6. The present reckless driving offence does not operate satisfactorily in England and Wales, and must be changed. At the moment drivers are escaping conviction, because the law turns on the driver's state of mind rather than the state of driving. The Government therefore proposes to replace the reckless driving offence with a new offence of dangerous driving based more firmly on the observable standard of driving. This offence will have two ingredients: the standard of driving must fall far below that expected of a competent and careful driver, and the driving must carry a danger of physical injury or serious damage to property.

7. The present offence of causing death by reckless driving will be replaced by a new offence of causing death by dangerous driving. The present lower level offence of careless driving will be retained.

8. One of the most serious threats to safety on the roads is drink driving. There is much public concern about the inadequacy of the present law for dealing with drunk drivers who kill. The Government will meet this concern. As the House is aware, my Rt Hon Friend, the Secretary of State for the Home Department announced last week his proposals to review the application of breath testing powers. In this White Paper, we propose to create a new offence of causing death by careless driving while unfit through drink, drugs or certain other forms of medical incapacity. The maximum penalty will be tough for this offence: five years imprisonment, obligatory disqualification of at least two years, and an unlimited fine.

9. There has been mounting concern about the mindless behaviour of vandals who drop objects from motorway bridges, endangering lives. We intend to clamp down on this kind of malicious hooliganism by creating a new criminal offence. There will be a maximum penalty of seven years for those who endanger road users by intentionally obstructing a road or interfering with traffic signs and signals where they are, or ought to be, aware that personal injury or damage to property may result.

10. The surest way to reduce road casualties is to improve standards of driving. We are therefore proposing that certain categories of road traffic offender must pass a new, longer and more stringent driving test before a licence is restored following a period of disqualification. We will introduce retesting on a phased basis, starting with those convicted of the most serious bad driving offences. Ultimately the test could be extended to all drivers disqualified as a result of careless driving and other accident offences. The private sector will be encouraged to develop suitable training courses. We will monitor progress closely and will seek powers, for use as necessary, to require instructors intending to offer retraining to be licensed specifically for that purpose.

11. We propose to set up an experiment to see whether we can change the attitudes of drink drivers. Powers will be sought to allow the courts in selected areas to order those convicted of drink driving offences to attend special rehabilitation courses.

12. The penalty point system has proved very successful. To make it even more effective, we intend to make certain changes. These include a new range of three to six penalty points for speeding offences dealt with by court proceedings. This will enable the courts to deal more effectively with the more serious cases. The maximum penalty for the offences of failure to stop, and failure to report an accident, will be increased to include six months' imprisonment.

13. Technology has an important role to play in the detection of certain traffic offences. The Government therefore intends to amend the law so that cameras can be used as sole evidence for speeding and traffic light offences. Safeguards will be provided to ensure that the equipment used is both accurate and reliable. We shall continue to monitor the development of enforcement technology in other areas of road traffic law and will consider allowing its wider use as and when equipment of sufficient accuracy and reliability becomes available.

14. The White Paper contains a wide variety of proposals to make road traffic law simpler and easier to understand in a variety of areas.

15. Most of the proposals will apply throughout Great Britain. However, my Rt Hon and Learned Friend, the Secretary of State for Scotland, is considering whether the new dangerous driving offence

should extend to Scotland where the present reckless driving offence has not given rise to the same problems of interpretation as in England and Wales.

16. The Government's proposals will bring about significant changes in statute and in the operation of road traffic law. Further work to implement the proposals will be taken forward as quickly as possible. Specific recommendations in the North Report have been drawn to the attention of the courts and the police, and consultations are being initiated with representative bodies of these organisations. Consultation will be undertaken with the local authority associations, motoring and other organisations on the detailed implementation of the proposals. Legislation will then be brought forward as soon as Parliamentary time can be found.

17. Mr Speaker, this White Paper strengthens, modernises and clarifies road traffic law. I commend it to Hon. Members on both sides of the House as a major contribution to the Government's drive to make Britain's roads safer still.

Transport HAD

Department of Transport
Room C16/07
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20 December 1979

Dear Sir

CONSULTATION PAPER ON DRINKING AND DRIVING

The Minister has asked me to send you a copy of the attached paper and to invite your comments.

These should be sent to us by 31 March 1980. They should be addressed to Miss S I Faulkner (Room C16/16, Tel 01-212 4220) from whom further copies of the paper can also be obtained.

Yours faithfully

John Robins

J B W ROBINS
Road Safety General Division

CONSULTATIVE DOCUMENT ON DRINKING AND DRIVING

DEPARTMENT OF TRANSPORT

INTRODUCTION

1. Drinking and driving is one of our most serious road safety problems. It is the cause of some 1,200 deaths each year. This is about one in five of all deaths on the road. One in three of all drivers killed have more than the prescribed limit of alcohol in their blood. At night the proportion is two in every three.

2. The Road Safety Act 1967 led to a dramatic reduction in the number of deaths and serious injuries from drunken driving. Over a period of seven years there was an estimated saving of 5,000 lives and 200,000 injuries. But in time the Act lost its original impact. The position today is worse than when it was introduced.

3. In 1974 the then Minister of Transport appointed a Committee under Mr. Frank (now His Honour, Judge) Blennerhassett QC to review the operation of the law. The main recommendations in the Committee's report, which was published in 1976, were that -

a. as at present, there should be an offence defined in terms of a blood alcohol limit of 80 milligrammes of alcohol in 100 millilitres of blood; (paragraph 5.2);

b. 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; (paragraphs 5.16 - 18);

c. a breath sample should normally be used to determine a driver's blood alcohol concentration (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; (paragraph 4.10);

d. proof of an offence should not be unreasonably dependent on compliance with procedural requirements; (paragraph 8.2);

e. 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 (i.e., 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; (paragraphs 6.14 and 7.12);

f. 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; (paragraph 9.8).

4. Since the Committee reported, the Home Office Central Research Establishment has, in co-operation with the police, carried out extensive field and laboratory trials to evaluate devices for possible use for evidential breath testing purposes.

5. The Government are determined to make a new attack on drinking and driving. As the next step they are issuing this consultation paper, with a view to legislation, to a wide range of interested organisations. Its purpose is, first, to invite comments on the Government's proposals on the issues where they have reached provisional conclusions (which differ in some important respects from the Blennerhassett Committee's own recommendations); secondly, to seek an up to date expression of view on certain issues where the Government have yet to reach conclusions, notably that of the proposed unrestricted power to test; and, thirdly, to provide the further information on the trials of the evidential breath testing machines, which needs to be made available before decisions can be taken on their use.

THE OFFENCES

6. At present there are two separate drinking and driving offences: the offence under section 5 of the 1972 Act of driving whilst the ability to drive is impaired by drink or drugs (the impairment offence); and the offence under section 6 of driving with alcohol in the blood above the prescribed level (the excess alcohol offence). There are two parallel "in charge" offences. Section 12 of the Act provides that the limit of alcohol in the blood shall be 80 mg of alcohol in 100 ml of blood or such limit as may be prescribed by the Minister in regulations.

7. The Blennerhassett Committee considered that this duplication made for untidy law and could give the false impression that the excess alcohol offence was a technical one falling short of impairment. They recommended (paragraph 8.11) that there should be a single offence of driving while the ability to drive is impaired by drink or drugs (with a parallel "in charge" offence); and that evidence of the level of alcohol in the body above the prescribed level should create an irrebuttable presumption of impairment.

8. The Government accept the recommendation for a single offence. They propose that irrebuttable presumption of impairment should be provided by evidence of alcohol in the blood above the prescribed level, as at present, or evidence of alcohol in the breath above an equivalent level. This latter form of evidence is described in paragraphs 29 to 35 below. Other evidence of impairment will, however, remain admissible.

9. The Committee also recommended that the present limit of alcohol in the blood should be retained. The Government accept this recommendation. They are aware that there is a body of opinion which favours a reduction in the present limit of alcohol in the blood and that in some countries the limit is lower. But the present limit is that at which

impairment starts to rise sharply and the main emphasis should be on more efficient means of dealing with drivers above the present limit rather than on reducing it to take in more drivers.

METHOD OF PROOF

10. The Blennerhassett Committee found that proof of the offence of drinking and driving had become inextricably bound up with proof that the procedure had been rigidly followed, with the result that many acquittals had been obtained on grounds which had no relevance to the merits of the case. Loopholes and limitations in the law had been discovered and exploited.

11. The difficulties to which the Committee drew attention were illustrated in Spicer v Holt (House of Lords 1976). Although there was no dispute that the defendant had been found to have more than twice the legal limit of alcohol in his blood, he was acquitted because the arrest itself was held to be unlawful. The House of Lords held that the sections of the Act laid down a code of procedure to be followed before a person could be convicted of an offence; and that each step in the procedure must be taken before proceeding to the next step.

12. The Government agree with the Committee that the present law has not operated satisfactorily and have sympathy with their general recommendation that proof of an offence should not be unreasonably dependent on compliance with procedural requirements. Improvement in the operation of the law depends on two things. First, on the single offence (referred to in paragraph 8 above) being so defined as to exclude procedural requirements relating to the collection of evidence from the definition of the offence itself; and, secondly, on what may be provided in the Act, specifically or by implication, as to how far a failure to carry out procedural requirements in collecting evidence

of the offence should render that evidence inadmissible.*

13. The Blennerhassett Committee made three relevant recommendations -

a. while the police should continue to have power to arrest, the arrest should not be a necessary preliminary to conviction for the offence of impairment, nor should arrest on the wrong grounds invalidate proceedings; (paragraph 8.2);

b. the procedure by which offences are established should be set out in a schedule to the new legislation, which could be amended by regulations subject to the negative resolution procedure; (paragraph 8.3);

c. a court should be empowered to disregard a departure from specified procedures or instructions where no injustice would result; (paragraph 8.2).

14. The Government accept (a). If a person in fact goes to a police station and undergoes a test which provides evidence of impairment it should not be necessary in proceedings to prove that he was arrested before doing so. If arrest is not to be required at all, it also follows that an arrest on the wrong grounds should not invalidate proceedings. The power of arrest, to be used when necessary, is of course still required. The existing power covers cases where the screening test indicates that the proportion of alcohol exceeds the limit or where a driver fails without reasonable excuse to provide a breath specimen. There is need, however, to clarify the legal powers of the police when a driver runs away before a constable is able to request

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* The Government believe that fresh legislation in this limited and specialised area should proceed in advance of the outcome of the deliberations of the Royal Commission on Criminal Procedure, which is looking at powers of arrest and related aspects of criminal procedure in a much wider context.

him to provide a breath specimen. In such circumstances it may be desirable to provide that if a constable has reasonable grounds for believing that the driver is intending to evade a request to take a breath test he should have power to detain him in order that he can be asked to take the test.

15. On (b) the Government aim to reduce to a minimum the specification of procedural matters in the legislation. How far this will be possible depends on decisions to be taken after consultation has been completed.

16. As regards (c), the Government agree that justifiable concern has been caused by cases in which people who have been clearly shown to have had more than the legal limit of alcohol in their blood have been acquitted because of a failure to observe procedural matters. It is important to consider how this can best be remedied and also to ensure that the enactment of new legislation, including the introduction of breath testing to provide evidence of the offence (which would inevitably involve new procedures), does not enable drinking drivers to find new loopholes in the law, or re-open those closed only after costly litigation on the interpretation of the present Act. On the other hand it would not be acceptable to put to Parliament a provision so drafted that it might permit a procedure which really is essential to prove the proposed offence to be disregarded, at the discretion of the court, in determining the guilt of the suspect.

17. The Government believe that the changes suggested in paragraphs 8-14 above would themselves provide a major simplification of the definition of the offence and thereby remove a number of the procedural difficulties which the present law has thrown up. They recognise also that it is difficult to take any final view on the recommendation until it is decided whether to make both these and other changes, particularly those relating to the powers of the police to require a roadside test (paragraphs 20-25 below). They

would, however, be glad to receive views both on the desirability of including a provision on the lines of recommendation 13(c) and on the scope of the procedures or instructions to which it should be applied.

THE ROADSIDE OR SCREENING TEST

18. Section 8 of the Act provides that a police constable can require a driver to provide a specimen of breath for a breath test only -

a. after an accident;

b. if the constable has reasonable cause to suspect the driver of having alcohol in his body;

c. if he has reasonable cause to suspect him of having committed a moving traffic offence.

The constable must be in uniform when he takes the specimen of breath. In cases (b) and (c) the requirement must be made "there or nearby"; and in case (c) it must be made as soon as reasonably practicable after the commission of the traffic offence.

19. The Blennerhassett Committee made a number of important recommendations on this issue as follows -

a. the circumstances in which a constable may require a specimen of breath from a driver for screening purposes should not be specified; (paragraph 5.16);

b. there should be a power to test a person who <u>has been</u> driving, or attempting to drive a motor vehicle, provided the requirement is made as soon as reasonably practicable thereafter; (paragraph 5.17);

c. there should be a power to breath test persons who are or have been in charge of motor vehicles; (paragraph 5.18).

20. The first of these recommendations is undoubtedly controversial. The Government have, therefore, examined with particular care the reasons which led the Committee to make it.

21. The first of these was that the present requirements, in particular that which requires the police to show that they have "reasonable cause to suspect" a driver of having alcohol in his body, have led to numerous court cases where an acquittal has often been secured although the result of analysis has shown that the driver was clearly above the limit. Such results cannot have been the intention of the Act; nor can they do other than bring it into disrepute and have a demoralising effect on the police.

22. The Government sympathise with this view, but they think it is for consideration whether recent court cases have perhaps clarified the law in a way which has removed many of the earlier difficulties.

23. The second reason advanced by the Committee for removing the present restrictions was that they had had the effect of convincing too many drivers that barring an accident or a moving traffic offence they were safe from being tested. In order to increase the deterrent effect of the law and enable the police to deploy their resources to maximum effect, they needed to have discretion to relate roadside screening to the times and places where drinking drivers were most likely to be found.

24. The Committee recognised that by allowing the police an unfettered discretion, they would in theory be opening the way for the police to test drivers at random. But they did not believe that the police would use the power in this way nor would they have wished them to do so because it would be wasteful of resources. Nevertheless the possibility that powers could be so used has been the subject of widespread concern because it raises the prospect

of large numbers of innocent motorists being stopped and tested. This might well be regarded by many of them as an unreasonable, unjustified and possibly distressing intrusion into their lives by the police and might well damage the good relationship between the police and motorists on which the effectiveness of road safety law still largely depends.

25. The Government would be opposed to indiscriminate testing. The question remains however whether the present restrictions on the police's power to test can be removed without leading to such a result. Some would argue that once the restrictions were removed random testing would inevitably happen, whatever the Government's or the police's declared intentions were. Others would argue that if the power to test were to continue to be restricted, either by the present conditions or others, there is the risk that defects which have undermined the effectiveness of the present law would be carried into the new law. It is one of the purposes of this consultation paper to seek the widest possible views on the balance to be struck on this question.

26. As regards the other recommendations of the Committee on roadside testing, the Government propose to accept the recommendation that there should be a power to breath test persons in charge of motor vehicles on a similar basis to persons driving them.

27. They are, however, not inclined to accept the recommendation that there should be a power to test a person who has been driving or attempting to drive a motor vehicle. The courts appear to have interpreted the present powers of the police in such a way that there is generally no serious impediment to their ability to test a driver who seeks to avoid the consequences of drinking and driving, by, for instance, making a dash for home. Further evidence on this issue will, nevertheless, be welcomed.

28. Action to improve roadside screening devices is well advanced. The Home Secretary has recently approved one new electronic device and this is now in use in certain areas. Other devices are still being evaluated.

EVIDENTIAL TESTING

29. At present a person arrested on suspicion of impaired driving ability or of having alcohol in his blood above the prescribed level is taken to a police station and is then offered a second breath test on arrival. Then if this is positive, or if it is declined, the police may require a sample of blood or urine, with a statutory warning of the consequences of failing to provide one without reasonable excuse. A person can be treated as failing to provide a sample (for which the penalties are the same as for the main offence) only if he first refuses to give a blood sample, then refuses or fails to give two samples of urine within an hour, and, finally, refuses a second time to give a blood sample. To take blood samples a police surgeon must be called: and a part of the sample of blood or urine or, if it is not practicable to divide the blood sample, a further sample which the suspect may consent to have taken, must be offered to him for independent analysis.

30. The Blennerhassett Committee saw numerous advantages in establishing a driver's BAC for evidential purposes from breath samples rather than from blood or urine. As they put it "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."

31. They, therefore, recommended that -

a. BAC's should normally be determined for forensic purposes by analysis of breath; (paragraph 4.10);

b. there should nevertheless be a right to require a blood sample if the suspect were unable to give a sample of breath or an instrument for analysing it were not available; (paragraph 4.7);

c. a suspect whose breath analysis was over the limit should nevertheless be entitled to offer a specimen of blood; analysis of which would then determine whether he was over the limit and be used in any proceedings instead of the breath reading; (paragraph 4.7);

d. sampling of urine as a test for alcohol should be abandoned; (paragraph 4.10).

32. Following the Committee's report, the Home Office set up at their Central Research Establishment (HOCRE) a team of forensic scientists to evaluate devices for possible use. From the laboratory trials three makes of machine were shown to have the most promise. These were subsequently tested in field trials conducted by the police at twelve different centres between December 1977 and June 1978. The method used was to invite all persons who had given blood or urine samples for analysis under present procedures to provide two breath samples in fairly quick succession as soon as the statutory procedures had been completed. The results were then compared with the results of blood analysis when they became available. In all it was possible to make comparisons in nearly 1,000 cases.

33. A summary of the results of the trials is set out in the Annex to this paper. From these results and further studies of costs the Government draw two main conclusions. First, the machines tested would be satisfactory for evidential purposes. Secondly, at the present level of testing, the cost per test, taking into account initial capital provision and savings in police time, would be about the same as that under the present system; but it would become progressively cheaper if the number of tests were increased from the present level.

34. In the light of these conclusions the Government propose to accept the Committee's recommendation that breath testing should be the normal method used for testing for evidential purposes. Two specimens of breath should be taken after the breath testing machine has been shown in the suspect's presence to be properly calibrated. This would be done by passing through the machine a vapour sample (produced by an aqueous simulator) with an alcohol concentration equivalent to that of a person with a BAC of 80mg of alcohol in 100ml of blood. Guidance would need to be given to the police on calibration, but this would not be included in the statute.

35. Mouth alcohol should not affect the evidential test because it dissipates rapidly and is gone normally in 5-10 minutes, and at the outside 20 minutes. It is, however, for consideration whether, to protect suspects, a minimum period should be required to elapse between when a driver is stopped and when the evidential test is taken.

36. The Government also propose to accept the recommendations that a right to require a specimen of blood should be retained either where the suspect was unable to give a sample of breath or where an instrument for analysing it was unavailable; and that the sampling of urine as a test for alcohol should be abandoned.

37. They intend, however, to modify the Committee's recommendations in two respects. First, where breath is used for evidential purposes, the prescribed limit should be expressed in terms of the actual breath alcohol concentration rather than a calculated blood alcohol concentration. Secondly, rather than being allowed an option to offer a specimen of blood after a breath test has been taken, a person should be offered this option only before the evidential specimen is first sought.

38. The reason for the first proposed modification is that both blood alcohol concentrations and breath alcohol concentrations are quantifiable substitutes for what is itself not directly quantifiable, namely the degree of impairment of a person's ability to drive safely. There may in fact be quite wide variations in the degree of impairment caused by a given quantity of alcohol in different subjects, or in the same subject under different conditions, but the present legislation accepts the need for a somewhat arbitrary limit as an aid to enforcement. There is, as the trials have shown, a high correlation between blood alcohol concentration and breath alcohol concentration. Although in a very small number of cases there would, at the margin, be differences which might result in a person being over the limit by one method and under it by the other, these differences are minor by comparison with the degree of arbitrariness already inherent in the present system. For this reason it seems appropriate to adopt breath alcohol concentration as direct evidence of impairment, rather than to introduce the measurement of breath alcohol as part of a circuitous two-stage system which treats breath alcohol as evidence of blood alcohol and blood alcohol as evidence of impairment, with the first stage being open to challenge if analysis of a blood sample produced a result lower than the blood concentration deduced from the breath sample.

39. The proposed change in the time at which a person could exercise his option to provide a specimen of blood would be a logical corollary of this. If the prescribed limit were expressed only in terms of blood alcohol concentration, anyone providing a breath sample which, when the analysis was converted to blood alcohol concentration, showed him to be over the limit, especially if by only a small amount, might reasonably opt for a blood test in the hope that the finding would be reversed; hence the Committee's recommendation of an option after the breath test. But if there are to be prescribed limits in terms both of breath and blood alcohol concentrations independent of each other, that need disappears, because a breath alcohol concentration over the limit would itself be evidence of the offence and could not be corrected by a subsequent blood test. On this approach an option before either test is administered would be appropriate in order to cater for drivers who may attach value to being able to retain a part of the specimen they provide or who for any other reason may regard the blood test as more acceptable.

40. The Government suggest that the prescribed level of breath alcohol concentration should be 40 microgrammes per 100 millilitres of breath. This corresponds to the present prescribed level of blood alcohol concentration (80mg per 100ml of blood), plus an allowance for deviations in the operation of the device.

HOSPITAL CASES

41. At present, in hospital cases the law requires a doctor's concurrence first to a screening test and then to a substantive blood or urine test. The police cannot proceed to the substantive test until the screening test has taken place or been refused by the person concerned.

42. The Blennerhassett Committee, while not wishing to prejudice the proper care and treatment of patients,

considered that this too often rendered drivers immune from investigation because doctors were unwilling to approve the taking of a breath sample. The Committee, therefore, recommended that the screening test should not be regarded as an essential preliminary and that the procedural rules should permit the police, subject to the doctor's consent, to require from a driver in hospital either an evidential breath or blood sample, as appropriate. The Government propose to accept this recommendation.

DRUGS

43. The Government propose to accept the recommendation of the Blennerhassett Committee that where after a negative screening test the police have cause to suspect impairment by drugs they should have power to request (but not to require) a sample of either urine or blood or both for evidential purposes, in place of the present power which does not enable them to request urine as an alternative or as an addition if a person is prepared to offer blood.

SENTENCES INCLUDING HIGH RISK OFFENDERS

44. The Blennerhassett Committee recommended that -

a. disqualification for a first offence should remain mandatory and the minimum period should in the absence of special reasons (interpreted as at present) remain at one year; (paragraph 6.14);

b. drinking and driving offences should cease to be indictable, subject to maintaining the special procedure in Scotland; (paragraph 6.18);

c. the maximum prison sentence for the main driving offences (or failing to provide a specimen for analysis) should be six months; and for the in charge offence three months; (paragraph 6.18);

d. the maximum fines for the main offences of £400 and for the in charge offence of £200 were adequate at 1975 prices; (paragraph 6.18);

e. a "high risk" offender (defined as someone convicted twice in ten years for a drinking and driving offence or with a BAC above 200mg per 100ml of blood) should receive, in addition to the order of disqualification for a period appropriate to the offence, an order that he should not be entitled to a licence thereafter unless he first satisfied the court that he did not, by reason of his drinking habits, present undue danger to himself and other road users; (paragraph 7.12);

f. as a consequence of (e), a person who committed a second offence within ten years should no longer be disqualified for at least three years; (paragraph 7.13);

g. for a second in charge offence within ten years, or for a first over 200mg per 100ml of blood, there should be mandatory disqualification for at least twelve months; (paragraph 7.13).

45. The Government propose to accept recommendations (a) and (g). Recommendations (b) and (c) have already been implemented in the Criminal Law Act 1977. This Act also covered recommendation (d), raising the maximum fine for the main offences to £1,000 and for the in charge offences to £500.

46. A new procedure for dealing with high risk offenders is clearly the most important and far reaching of this group of the Committee's recommendations. The Government welcome the recommendation in principle. They agree with the Committee's view that frequent and heavy drinkers pose an especially serious threat to road safety; and they believe

that the recommendation, which is designed to ensure that drivers are banned from driving until they have overcome their drinking problem while at the same time offering them an incentive to take steps to overcome it, is the right approach in dealing with this type of offender.

47. Such a procedure does, however, raise a number of practical difficulties. First the proposition that a person no longer presents undue risks as a driver is incapable of objective proof. It must depend on subjective assessment. There is then the difficulty of deciding what kind of subjective evidence would be sufficient to enable a court to take a decision on an application.

48. The Blennerhassett Committee thought that evidence might be provided by some person or body in addition to the applicant himself. This raised the difficulty of deciding what individuals or bodies would have the competence to provide evidence and, where appropriate, to give help or treatment to the applicant beforehand. Even if they were available, there is the further question of whether they would be available in sufficient numbers since the number of offenders who might come within the high risk category could be of the order of 15,000 a year. Finally, there is the additional burden which would be placed on the courts in hearing applications in the expected large numbers.

49. Finding competent and willing people in sufficient numbers to help offenders and to give evidence on their behalf may not be the major difficulty although it should not be minimised. There is a range of possible sources of help. There are specialist centres such as the NHS Alcohol Treatment Units and private clinics; and the voluntary counselling services, such as those provided by local Councils on Alcoholism, have been growing in number and developing simpler and more cost effective forms of advice and treatment. The representative

organisations of family doctors and psychiatrists in hospitals and clinics, and voluntary bodies such as Alcoholics Anonymous, are being consulted about the extent to which they might play a part. In certain cases, other non-medical bodies may be able to help. For instance, where the offender is well-known to the police, as may be the case in some rural areas, they may be able to offer evidence when an application is made.

50. There may also be a case, when public expenditure constraints permit, for the development of services more specifically tailored to the needs of the drinking driver. For example, on conviction 'high risk' drivers might be given a leaflet setting out basic facts about alcohol-related harm, and specifically about the effect of alcohol on driving skills, and giving information about sources of counselling and treatment. A further development, as an alternative to leaving the 'high risk' offender free to follow whatever course he felt necessary to convince the adjudicating authorities of his fitness to again hold a driving licence, could be the selective experimental establishment of a special counselling service for drinking drivers. 'High risk' offenders could be directed to attend soon after conviction for an initial assessment of their needs. This first session would probably contain a strong educational element - telling the offender what he may expect in the way of physical, mental and social problems if he does not bring his drinking under control. This might be all some offenders need to 'bring them to their senses'; but those with a more serious drinking problem would be referred to other appropriate agencies for further help. The impact of any such experimental scheme would need to be researched to evaluate the feasibility of extending the arrangements nationally on a permanent basis.

51. The basic problem, however, lies not so much in finding suitable methods and agencies to help an offender as in how the courts should decide, when the time comes, whether it has been demonstrated that he is no longer an undue risk. This is critically important because of the Committee's proposal that a person who commits a second offence should no longer be disqualified for a minimum period of three years but should instead be disqualified for one year plus the special order. The danger is that if too relaxed an attitude is adopted on the special orders, the result of adopting the Committee's proposals might simply be to weaken the deterrent effect of the law. This cannot have been their intention; nor do the Government consider that it would be acceptable.

52. This risk, however, would be removed if the present three year minimum period of disqualification for second offenders were retained. The high risk orders would then be applied to first offenders with Blood Alcohol Concentrations above 200mg per 100ml of blood or Breath Alcohol Concentrations above 100 microgrammes per 100 millilitres of blood and to all second offenders in addition to the normal one and three year disqualification periods.

53. If there were no danger of the special procedure leading to reduced penalties, it could be administered in the experimental way in which such a novel idea probably needs to be treated. Differences of approach would be more acceptable.

54. The Government are therefore hopeful that a modified version of the Committee's proposal could be introduced. But they do not underestimate the difficulties of doing so; and this aspect of the proposed new legislation is one on which they will particularly welcome comment and suggestions.

EDUCATION AND RESEARCH

55. In addition to legislative changes, the Blennerhassett

Committee also recommended a continuing programme of education and research. As they put it "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."

56. The Government agree that within available resources, a continuing programme of education and research is desirable. Large scale publicity campaigns have already been mounted and a further campaign will have taken place over the Christmas and New Year period.

57. The research requirements stem from the need for a better understanding of how to deal with the drinking driver and what countermeasures are likely to be most effective. The appropriateness of these depends on whether the problem is related to social drinkers, problem drinkers or alcoholics. To advance such research it is essential to relate drinking levels to drinking habits, on which very little information has been obtained in this country. In particular it is desirable in principle to examine associated drinking levels and habits among non-fatally injured drivers involved in accidents in comparison with similar studies of the general driving population on the road, that is through roadside surveys. The Transport and Road Research Laboratory has proposals for both the accident studies and roadside surveys, which would be in

line with the recommendation of the Blennerhassett Committee that periodic surveys of BACs in representative samples of drivers on the roads should be undertaken as a separate activity from police enforcement. The Government recognise however that there is some sensitiveness in this proposal and they would welcome views on its acceptability before reaching a conclusion on whether the surveys should proceed.

SELF ASSESSMENT

58. The Blennerhassett Committee did not commend the practice of self-testing, not only because of the number of factors affecting its practical value and reliability, but more fundamentally because it might encourage drivers to drink to as near the legal limit as possible. The Government share the Committee's view.

HIT AND RUN OFFENCES

59. Over the last decade the number of offences of failing to stop and report an accident has nearly doubled and has grown faster than that of any other road traffic offence except drinking and driving. It seems likely that many of these offences are in fact drink-related.

60. The Government share the concern of the police over this increase and are considering what steps might be taken to counter it. One obvious factor to be taken into account is that the penalties for failing to stop and report an accident are lower than those for drinking and driving.

NORTHERN IRELAND

61. The law on drinking and driving in Northern Ireland is markedly different in a number of respects from that governing the rest of the United Kingdom. It is not thought practicable to harmonise the two systems entirely, but the Secretary of State for Northern Ireland is issuing

a consultation paper, the general effect of which will be to bring the two systems closer together.

CONCLUSIONS

62. The main points made in this paper may be summarised as follows -

a. the present impairment and excess alcohol offences should be merged into a single offence of driving while the ability to drive is impaired by drink or drugs. Evidence of the level of alcohol in the blood above the prescribed level should create an irrebuttable presumption of impairment. Other evidence of impairment would, however, remain admissible; (paragraphs 7-8);

b. the present limit of alcohol in the blood should remain unchanged; (paragraph 9);

c. proof of an offence should not be unreasonably dependent on compliance with procedural requirements. Improvement in the operation of the law depends on -

i. the single offence being so defined as to exclude procedural requirements relating to the collection of evidence from the definition of the offence itself;

ii. what may be provided in the Act, specifically or by implication, as to how far a failure to carry out procedural requirements in collecting evidence of the offence should render that evidence inadmissible; views are invited on a method of dealing with this point; (paragraphs 12 and 17);

d. while the police should continue to have power to arrest, the arrest should not be a necessary preliminary to conviction for the offence of impairment, nor should arrest on the wrong grounds invalidate proceedings; (paragraph 14);

e. the specification of procedural matters in the legislation should be reduced to a minimum; (paragraph 15);

f. indiscriminate testing would be undesirable, but further views are sought on the question of whether the present restrictions on the powers of the police to test drivers at the roadside should be removed; (paragraphs 20-25);

g. there should be a power to breath test persons in charge of motor vehicles; (paragraph 26);

h. no new power should be taken to test a person who has been driving a motor vehicle; (paragraph 27);

j. trials of breath testing machines have shown that these would be satisfactory for evidential purposes. Breath testing should, therefore, be the normal method used for testing for such purposes; (paragraphs 29-35);

k. the right to require a specimen of blood should nevertheless be retained but the sampling of urine as a test for alcohol should be abandoned; (paragraph 36);

l. where breath is used for evidential purposes the offence should be expressed in terms of breath rather than blood alcohol content; (paragraphs 37-38);

m. a person should retain the right to a blood test but he should be required to exercise this option before he has taken an evidential test; (paragraph 39);

n. the prescribed limit of breath alcohol concentration should be 40 microgrammes per 100 millilitres of breath; (paragraph 40);

p. a screening test should not be regarded as an essential preliminary in hospital cases; (paragraphs 41-42);

q. where drugs are suspected, the police should have power to request a specimen of blood or urine or both; (paragraph 43);

r. subject to s. below, no amendment of existing penalties is required; (paragraph 45);

s. a special procedure for high risk offenders should if practicable be introduced in a modified form to that proposed by the Committee; (paragraphs 46-54);

t. a continuing programme of education and research within available resources is desirable. Views are sought on the carrying out of roadside surveys; (paragraph 57);

v. the practice of self assessment is not to be commended; (paragraph 58);

w. further steps are necessary to counter the increasing incidence of hit and run driving; (paragraphs 59-60).

A PRACTICAL ASSESSMENT OF THREE BREATH ALCOHOL TESTING INSTRUMENTS

M D J Isaacs*, M.Sc., C. Chem., F.R.I.C.
V J Emerson* M.Sc., N A Fuller**, B.Sc.,
D J Hunt***

Summary

Following laboratory testing of a number of commercially available substantive breath test instruments submitted for evaluation, three types were selected for field trials. Examples of each type were used at twelve police stations in Great Britain during a seven month period.

Motorists arrested for drink/driving offences under the Road Traffic Act (RTA) 1972 agreed to participate by providing two breath samples after their statutory specimen for laboratory analysis had been taken. The breath instrument results were subsequently compared with the Certificate of Analysis of the corresponding blood sample.

The trial was designed as a practical assessment of the three types of instrument which are currently in use in other parts of the world. Police officers used the instruments during the whole period of the trial in a fully representative selection of police premises with a high degree of efficiency.

Over 1500 motorists agreed to take part in the experiment and nearly 1000 pairs of breath results were used for comparison purposes.

The results obtained on all three types of instrument were generally in good agreement with the subject's blood alcohol results.

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* Home Office Central Research Establishment, Aldermaston, Berks.

** Metropolitan Police Forensic Science Laboratory, 109 Lambeth Road, London SE1.

*** Chief Inspector, Sussex Police.

Introduction

A study to assess the possible use of commercially available breath alcohol measuring instruments as an alternative to blood analysis was set up at the Home Office Central Research Establishment (HOCRE) in 1976. Following a laboratory evaluation of instruments from several manufacturers, three were selected for further testing under operational conditions.

The instruments were the Intoxilyzer 4011A, the Gas Chromatograph Intoximeter Mk.IV and the Breathalyzer 1000. Each instrument incorporated a system designed to sample alveolar (ie deep lung) air automatically, and was simple to use.

Four instruments of each type were obtained for the study. Twelve police stations widely spaced geographically throughout Great Britain were chosen after consultation with Chief Officers of Police.* The selection was made from stations which had a large throughput of motorists suspected of driving under the influence of drink. Police Officers were trained at each centre to use the equipment.

The twelve instruments were circulated amongst the police stations so that an example of each of the three types was used at each location during the course of the study.

The subjects were motorists who had been arrested under the Road Traffic Act 1972 and who had been required to give a sample for laboratory analysis. Having provided this sample, and completed the statutory procedures, the subjects were invited to provide two breath samples as soon as possible after the laboratory specimen had been taken.

Procedures

All three instruments types were designed and manufactured for use in parts of the world where legislation prescribes a blood alcohol concentration even though the generally accepted sample for analysis is breath. The measured breath alcohol concentration is multiplied by 2,100 within the instrument and the result displayed as an equivalent blood alcohol

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*Traffic Committee of the Association of Chief Police Officers of England, Wales and Northern Ireland, and the Association of Chief Police Officers (Scotland)

concentration expressed as a percentage. (0.080% = 80mg per 100ml). The Breathalyzer 1000 and the Intoxilyzer are factory calibrated using this figure and therefore all calibrations performed on the Intoximeters, both at installation and when gas cylinders were replaced, also used this figure.

All of the instruments were checked for serviceability in the laboratory before delivery to police stations. The instrument checking and Intoximeter calibration were carried out using standard alcohol vapours from Smith & Wesson Mk IIA simulators containing an aqueous alcohol solution (0.97 grams of alcohol per litre) maintained at 34°C; this vapour should provide an instrument reading of 0.080% equivalent blood alcohol concentration. The 1800 litres of standard solutions for the simulators were provided by the local Forensic Science Laboratories, and were prepared from a primary standard supplied by HOCRE.

Throughout the study, the instruments were checked for accuracy once per day, and in addition, were checked before each subject was tested. If the instrument did not give a reading for the simulator sample of 0.080% $\pm$ 0.005% equivalent blood alcohol concentration immediately prior to testing a subject, the operators were instructed not to proceed with the test.

The operators were police officers who had attended a one day training course which was given during the installation of the equipment at the various locations.

It was recognised that some subjects would provide urine specimens for laboratory analysis. Comparison of a theoretical blood level deduced from a urine analysis with another theoretical blood level deduced from a breath analysis would involve two conversion factors, neither of which was known precisely for any one individual. Because of this, subjects providing urine specimens were excluded from the comparisons.

If substantive breath legislation were to be introduced it would seem practical that a prosecution should proceed on the actual result produced and printed out by the instrument. Current prosecutions are based on a Certificate of Analysis from a Forensic Science Laboratory which reports the result as "not less than x mg%", where x is the mean result of several blood analyses less a deduction to allow for experimental variation. The deduction is 6mg% for results below 100mg%, and 6% of the value when above 100mg%.

In the field trial situation, subjects had to complete the full normal procedure under the Road Traffic Act 1972, including the provision of a blood sample, before they could be approached to participate in the experiment. Time intervals therefore occurred for various reasons, between the time the blood sample was taken and the time the breath specimens were taken. It was therefore decided that each displayed instrument result should be compared with the Certificate results corrected for the metabolic elimination of alcohol during this time interval.

The correction was based on the assumptions (a) that absorption of alcohol was complete, and (b) that the subject was metabolising alcohol at a rate of 15mg/100ml blood/ hour. Where a time greater than forty minutes had elapsed between blood and breath sampling, implying a deduction greater than 10mg/100ml from the laboratory certificate figure the results were excluded from the comparisons.

Instrument Performance

During the seven months of the study, the twelve instruments required 64 visits for routine maintenance and repairs. There was no significant bias in the visits and the overall instrument availability was better than 95%.

Six of the twelve simulators required repair at one time or another during the seven months' study. Most of these repairs were due to the failure of the contact thermometer temperature controller. The manufacturers stated that this failure rate was most unusual.

Results

1776 motorists arrested under the Road Traffic Act 1972 were invited to take part in the test programme, and, of these, 1516 (85%) agreed to give breath samples. Each motorist was asked to provide two breath samples, and 991 pairs of samples were found to be suitable for comparison with analysis results from blood samples taken shortly before the subjects provided breath.

Table I shows the distribution of the 991 tests performed on each instrument type, and an analysis of the remaining 525 occasions when the results of the breath tests were not usable.

TABLE I

TEST RESULTS DISTRIBUTION

	Intoxilyzer	Intoximeter	Breathalyzer	Total
Initial acceptances	505	578	433	1516
Results used for comparisons	364	395	232	991
Urine specimens	43	53	38	134
Instrument out of order Instrument out of calibration Operator not available	28 19 1	37 45 6	35 34 28	100 98 35
Subject unable to blow/only provided one breath sample	19	28	36	83
Time delay greater than 40 minutes	31	14	30	75

On 8.9% of occasions when pre-subject calibration checks were performed the instrument results were outside the designated range of 0.075-0.085% BAC. This number is higher than the figures in Table I would suggest. The 98 cases rejected for this reason were only those occasions when the subject tests were still performed. Calibration check failures were also obtained on other occasions when the results were rejected for other reasons. Some of the failures of calibration check were directly attributable to the simulators.

Blood/Breath Comparisons

A graphical presentation of results for each instrument type is shown in Figures 1, 2 and 3. The graphs are plots of the breath results from all four instruments of one type for a two month period of the study. The results from all three two month periods were comparable for each of the instrument types. Each breath result has been plotted as a separate point and the line at 45° represents the points where the instrument result is the same as the time corrected certificate result.

Figure 1

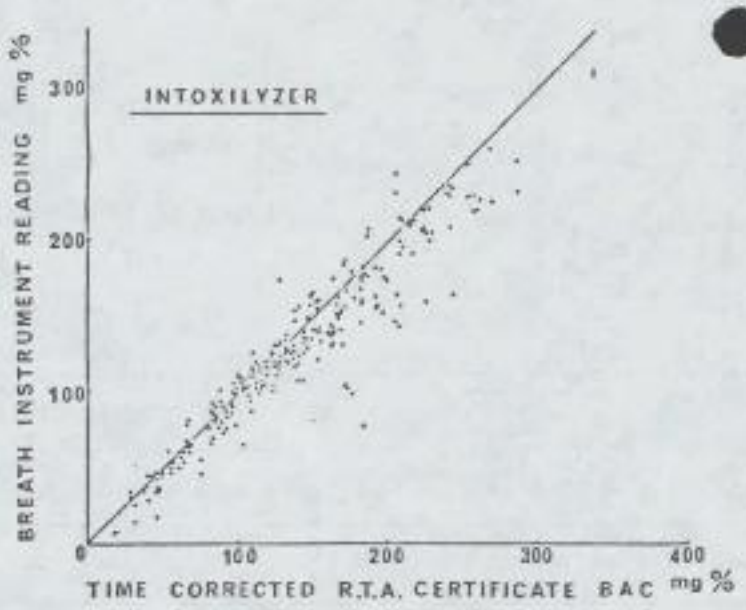


Figure 2

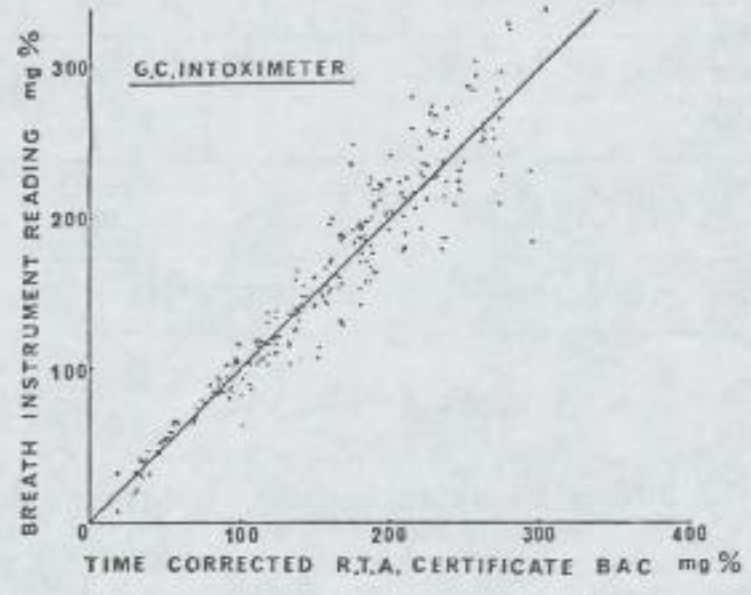
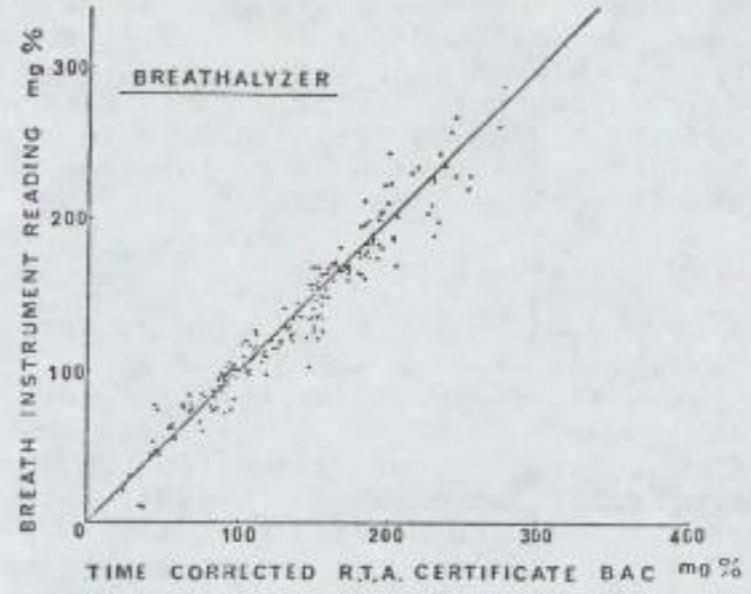


Figure 3



Figures 1,2, & 3. Results from all four instruments of each type for a single two month period. Each instrument result plotted against a time corrected certificate result.

An alternative method of presenting the results can be achieved by expressing the differences between the time corrected certificate blood figure and the instrument reading as a percentage of the corrected certificate figure. These percentages can be expressed as histograms for each instrument type and figures 4, 5 and 6 show all the results plotted in this way. It can be seen that all three types of instrument produce a similar picture.

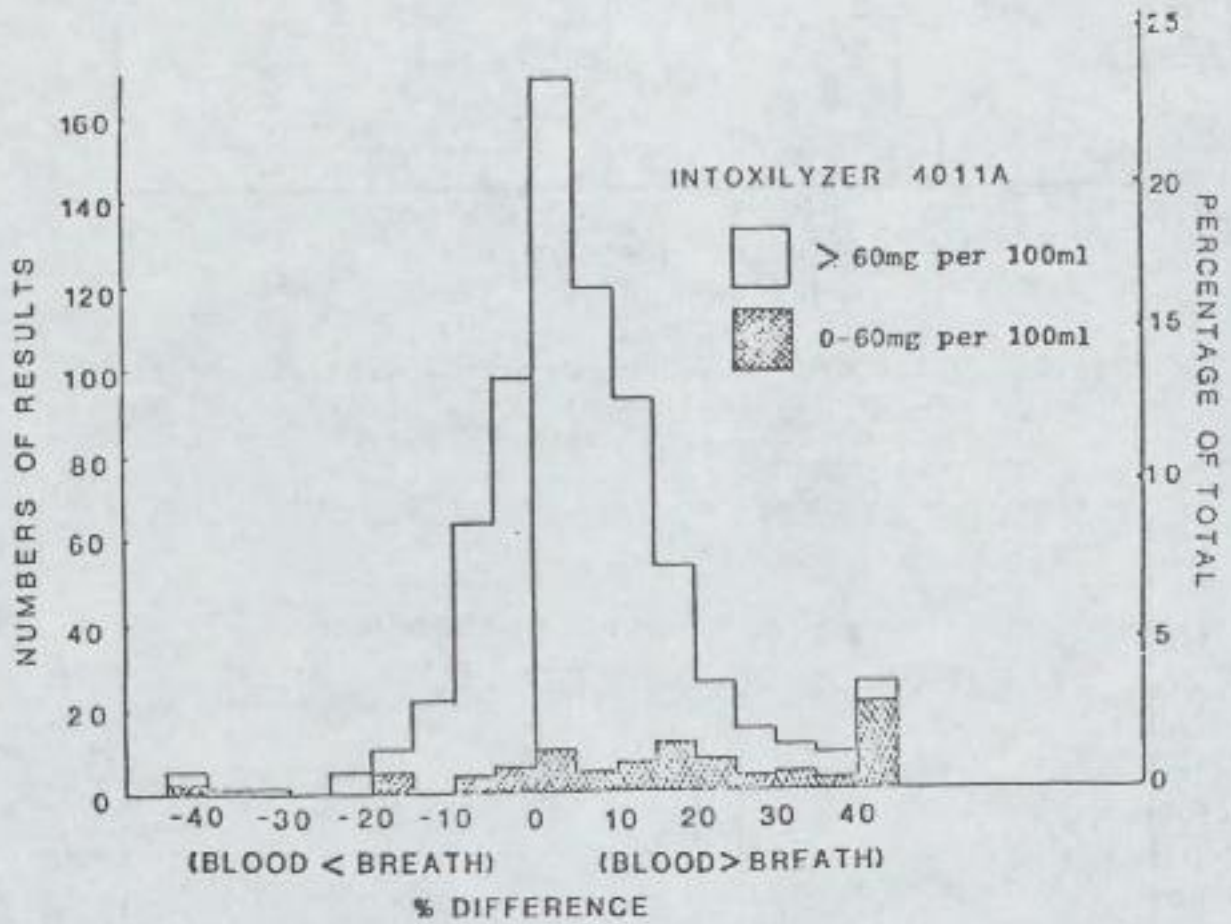


Figure 4 : Difference between corrected certificate figure and breath instrument result, expressed as a percentage. Total results for all the Intoxilyzer instruments.

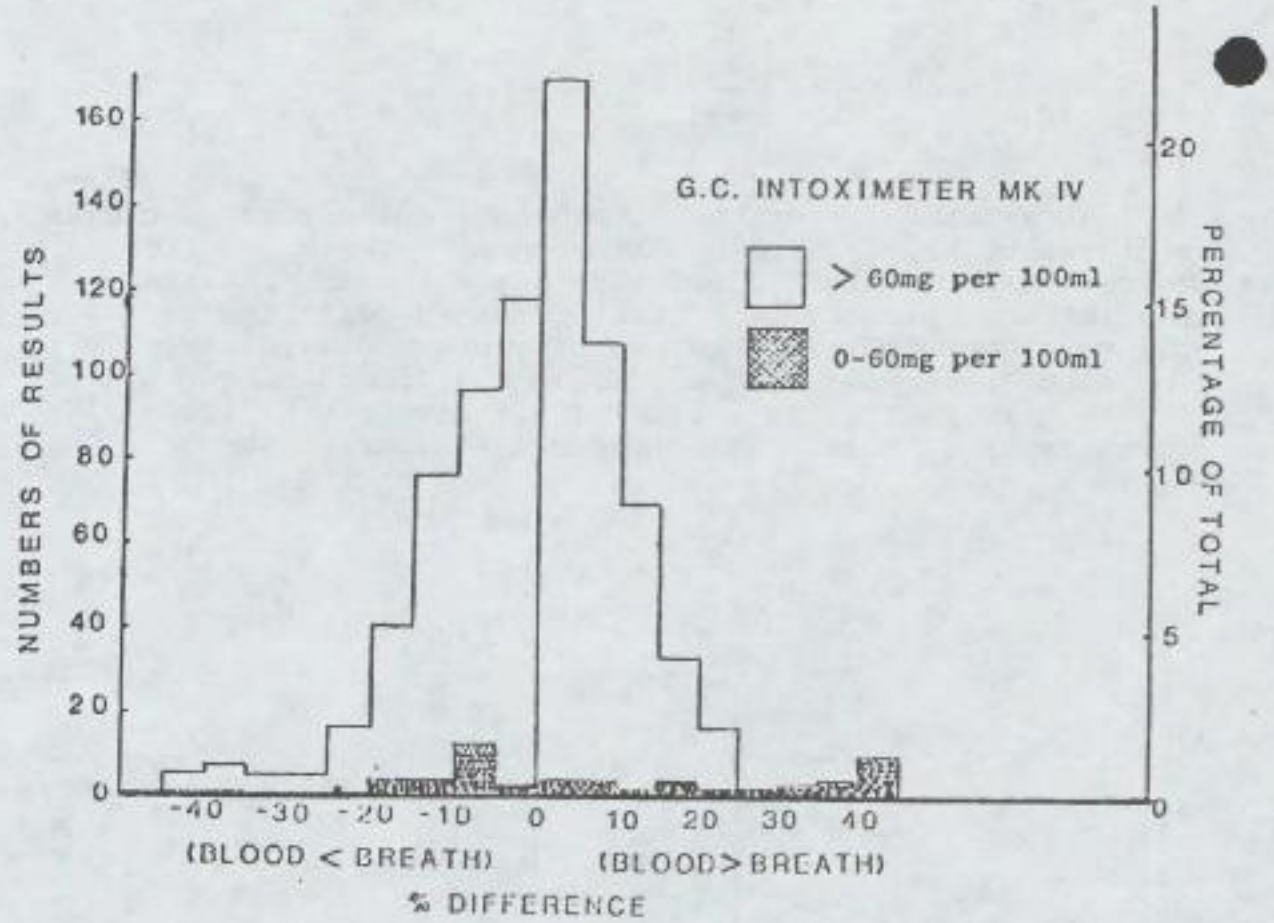


Figure 5 : Difference between corrected certificate figure and breath instrument result, expressed as a percentage. Total results for all the Intoximeter instruments.

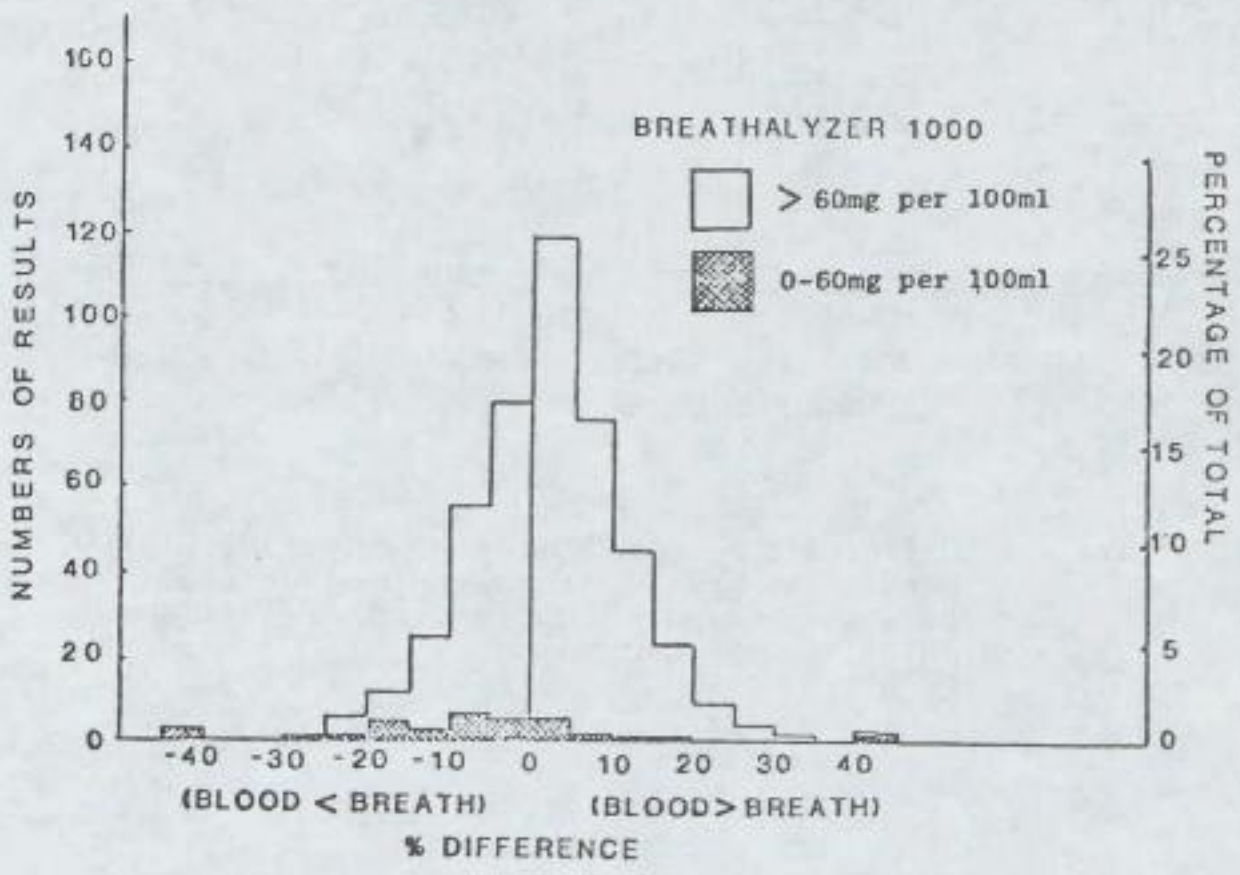


Figure 6 : Difference between cor.ected certificate figure and breath instrument result, expressed as a percentage. Total results for all the Breathalyzer instruments.

Breath Pairs

One of the reasons for requesting two breath samples from each subject was to study the variability of successive samples. An analysis of all the results in the range 50-400 mg per 100 ml showed that in 92.5% of cases, the difference between the pair of breath instrument results was less than 20 mg per 100 ml and in 56.5% of cases it was less than 5 mg per 100 ml.

Discussion

Only 991 pairs of breath results were used for comparison purposes out of 1516 subjects who agreed to take part in the study. Results have been rejected for a variety of reasons. Urine samples and breath samples taken longer than 40 minutes after blood sampling have already been explained as introducing extra uncertainties. These would not occur if substantive breath testing were to be introduced. Other reasons for subjects not providing usable results are detailed in Table I.

Figures 1, 2 and 3 show a scatter of results about the ideal comparison line. If it is desired to compare the instrument figures with actual analytical results for the blood samples, this may be achieved by moving all of the points the appropriate amount to the right in these diagrams.

A similar treatment may be applied to the histograms in figures 4, 5 and 6 which show the total results for each instrument type. The results of such treatment will give a clear indication of the degree to which breath instruments under-read a subject's blood alcohol concentration.

In the histograms figures 4, 5 and 6 at levels below 60 mg per 100 ml, all the instruments produced wide variations from the ideal comparison, as small differences in results at these levels produced proportionately larger percentage differences than the same differences at higher blood levels.

The spread of results shown in figures 1 to 6 will be due to several factors - these include (a) the reproducibility of the breath instrument, (b) the variation between successive breath samples from the same individual, (c) physiological variations between individuals and possibly (d) the degree of intoxication of the individual.

Work within the laboratory using standard vapour samples showed that all three types of instrument had a reproducibility of ± 2.5%, therefore the contributions from this source will be small. The calibration check range chosen for the field trial using simulators to produce standard vapours was 0.075-0.085% BAC equivalent, which was more than the 2.5% instrument variation mentioned above but was considered a more appropriate range for the field situation. Despite this on 8.9% of occasions a satisfactory calibration check was not achieved. This can be attributed, at least in part, to the minimal training which the police officers received and their lack of experience in the use of such instrumentation.

The results for the variability of successive breath samples are described above, and these also differ from the ideal condition of repeated samples of standard vapour. This is because a human being will not necessarily produce successive identical breath samples and the results will also be influenced by factors (c) and (d). Each instrument requires a sample of deep lung air in order to determine accurately a subject's blood alcohol concentration. A subject's lung capacity and his ability to blow will therefore affect the degree to which this is achieved and this in turn will determine the instruments' indicated BAC. The spread of results can largely be attributed to the differences between subjects and the success in obtaining a sample of deep lung air for analysis. Any instrument which analyses a sample of breath obtained earlier in the exhalation will tend to give a reading below the blood alcohol concentration.

Conclusions

The trial results show that each type of instrument produced results which were generally in good agreement with the certified blood result and therefore, subject to the appropriate experimental allowances, reliable instrument maintenance and the use of such instruments by well trained personnel, substantive breath testing could be considered as a viable alternative to blood testing.

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET
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With the Compliments of the
Minister of Transport

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NJS

Transport.

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

CONFIDENTIAL

The Rt Hon Angus Maude MP
Paymaster General
68 Whitehall
LONDON SW1

14 December 1979

Dear Angus,

Thank you for your letter of 10 December about my consultation paper on drinking and driving.

I agree with you that we need to explain as clearly as possible why the Blennerhassett Committee saw a distinction between giving the police an unrestricted power to test and the use of such a power for random testing. I have attempted to do this in the redrafted text attached to my minute of today to the Prime Minister of which I enclose a copy.

I take your second point. My advice is that mouth alcohol dissipates rapidly and is normally gone in 5-10 minutes and 20 minutes at the outside. The likelihood of a person being given a roadside screening test and then two evidential breath tests at a police station within a period of 20 minutes after last taking a drink is very remote, but I suppose that the possibility cannot be totally ruled out. I propose, therefore, to add an additional sentence to say that we will consider the necessity of laying down a minimum period before an evidential breath test can be taken.

I am sending copies of this letter to the Prime Minister, the members of H Committee and Sir Robert Armstrong.

NORMAN FOWLER

PRIME MINISTER

Your Private Secretary wrote to mine on 10 December about the line the consultation paper on drinking and driving should take on the issue of 'random' testing.

We discussed this in some detail at H Committee in July. We were all clear that any move towards indiscriminate testing on this basis would be widely opposed. On the other hand there has been quite a shift of opinion recently in favour of relaxing some of the present restrictions on roadside testing. Both the Automobile Association and the Chief Constables, who were previously firmly against any relaxation, have come out in favour of a change and there appears to have been a similar shift of opinion in the House. Some discussion of the issue is therefore inevitable. We therefore thought it right that the paper should cover the possibility, but in neutral terms.

I agree however that as drafted the paper could give the impression that we were considering letting the police engage in indiscriminate testing, when the organisations who have changed their view have done so, I am sure, only on the basis that if the restrictions were lifted the police would exercise their powers responsibly and not engage in indiscriminate testing. I have therefore looked again at the drafting of paragraphs 20 to 23, taking into account also the useful points Angus Maude made in his letter of 10 December. Enclosed are the paragraphs I suggest should be inserted in their place. As you will see these

come down firmly against indiscriminate random testing but look at the difficulties the Blennerhasset Committee saw in operating the law as it stands.

I hope you feel this is a reasonable way forward.

I am sending copies of this minute to the members of H Committee and to Sir Robert Armstrong.

NORMAN FOWLER

13 December 1979

20. The first of these recommendations is undoubtedly controversial. The Government have, therefore, examined with particular care the reasons which led the Committee to make it.

21. The first of these was that the present requirements, in particular that which requires the police to show that they have "reasonable cause to suspect" a driver of having alcohol in his body, have led to numerous court cases where an acquittal has often been secured although the result of analysis has shown that the driver was clearly above the limit. Such results cannot have been the intention of the Act; nor can they do other than bring it into disrepute and have a demoralising effect on the police.

22. The Government sympathise with this view, but they think it is for consideration whether recent court cases have perhaps clarified the law in a way which has removed many of the earlier difficulties.

23. The second reason advanced by the Committee for removing the present restrictions was they had had the effect of convincing too many drivers that barring an accident or a moving traffic offence they were safe from being tested. In order to increase the deterrent effect of the law and enable the police to deploy their resources to maximum effect, they needed to have discretion to relate roadside screening to the times and places where drinking drivers were most likely to be found.

24. The Committee recognised that by allowing the police an unfettered discretion, they would in theory be opening the way for the police to test drivers at random. But they did not believe that the police would use the power in this way nor would they have wished them to do so because it would be wasteful of resources. Nevertheless the possibility that powers could be so used has been the subject of widespread concern because it raises the prospect of large numbers of innocent motorists being stopped and tested. This might well be regarded by many of them as an unreasonable, unjustified and possibly distressing intrusion into their lives by the police and might well damage the good relationship between the police and motorists on which the effectiveness of road safety law still largely depends.

25. The Government would be opposed to indiscriminate testing. The question remains however whether the present restrictions on the police's power to test can be removed without leading to such a result. Some would argue that once the restrictions were removed random testing would inevitably happen, whatever the Government's or the police's declared intentions were. Others would argue that if the power to test were to continue to be restricted, either by the present conditions or others, there is the risk that defects which have undermined the effectiveness of the present law would be carried into the new law. It is one of the purposes of this consultation paper to seek the widest possible views on the balance to be struck on this question.

Transport

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cc EC DES
LCO CH SEC JHF
LPO CWO
D/EMP CWO, LORDS
DOE CO
SO
WO
NIO
DHSS
CDL

10 DOWNING STREET

From the Private Secretary

14 December 1979

The Prime Minister has seen Mr. Fowler's minute of 13 December with which he enclosed a revision of paragraphs 20-25 of the draft consultation paper about drinking and driving.

As I told you on the telephone earlier today, the Prime Minister is content that the consultation paper should now be issued, incorporating the revision.

I am sending copies of this letter to the Private Secretaries to members of H Committee and to Martin Vile (Cabinet Office).

M.A. PATTISON

Miss Viveca Dutt,
Department of Transport.

CONFIDENTIAL

ABJ

PRIME MINISTER

Has seen: agrees MAP 4/XII

You were unhappy about Norman Fowler's proposals on "random" testing, in his draft consultation paper about drinking and driving.

His paper left the issue open for consultation. He has now revised the relevant paragraphs (Flag A) with the intention of clarifying the issue, although he still proposes to leave the question open until reactions to the consultation paper can be assessed.

As you say, this is likely to be a highly controversial issue. The strength of reaction may well demonstrate that no change in the law will be acceptable. But the revised draft is a better exposition of the precise issue, and the new text of paragraph 21 illustrates the crux of the matter - drivers who are above the legal limit have been able to secure acquittal on procedural grounds.

Agree that the consultation paper may go out with the amended paragraphs, and that reactions should be considered before the Government takes a final view?

MAP

14 December 1979

From: THE PRIVATE SECRETARY

CONFIDENTIAL

PM has dealt.
MAP 14/XII

HOME OFFICE
QUEEN ANNE'S GATE LONDON SW1H 9AT

14 December 1979

Dear Mike

CONSULTATIVE DOCUMENT ON DRINK AND DRIVING

The Home Secretary has seen your letter of 10 December to Viveca Dutt, and the Minister of Transport's minute of today to the Prime Minister.

The Home Secretary agrees that the subject of discretionary testing is very sensitive, and that there are those who believe that its introduction would be an unacceptable increase in police powers, even in the present context of increasing casualties on the roads. He takes the view, however, that the consultative document would give a useful indication of the feelings of the public and of practitioners in the field now that the existing law has been in force for some time, without committing the Government one way or the other; and he therefore goes along with the redraft of paragraphs 20-24 of the consultative document, proposed by the Minister of Transport.

I should perhaps record that we are, of course, concerned to take due account of the police view, which is that the law has lost its meaning for many members of the public and that the courts have reduced its efficacy still further by restrictive interpretation of the power to test. The police regard discretionary testing as a corrective to both of these trends, though, if in the event public opinion is generally very hostile to the idea, they will of course understand if it is decided not to legislate. They would, however, be very disappointed if this important issue is not at least put to the public.

I am sending copies of this letter to the Private Secretaries to the members of H Committee, and to Martin Vile (Cabinet Office).

Yours sincerely
Tony Butler.

A. J. BUTLER

Mike Pattison, Esq.

CONFIDENTIAL

PRIME MINISTER

Your Private Secretary wrote to mine on 10 December about the line the consultation paper on drinking and driving should take on the issue of 'random' testing.

We discussed this in some detail at H Committee in July. We were all clear that any move towards indiscriminate testing on this basis would be widely opposed. On the other hand there has been quite a shift of opinion recently in favour of relaxing some of the present restrictions on roadside testing. Both the Automobile Association and the Chief Constables, who were previously firmly against any relaxation, have come out in favour of a change and there appears to have been a similar shift of opinion in the House. Some discussion of the issue is therefore inevitable. We therefore thought it right that the paper should cover the possibility, but in neutral terms.

I agree however that as drafted the paper could give the impression that we were considering letting the police engage in indiscriminate testing, when the organisations who have changed their view have done so, I am sure, only on the basis that if the restrictions were lifted the police would exercise their powers responsibly and not engage in indiscriminate testing. I have therefore looked again at the drafting of paragraphs 20 to 23, taking into account also the useful points Angus Maude made in his letter of 10 December. Enclosed are the paragraphs I suggest should be inserted in their place. As you will see these

come down firmly against indiscriminate random testing but look at the difficulties the Blennerhasset Committee saw in operating the law as it stands.

I hope you feel this is a reasonable way forward.

I am sending copies of this minute to the members of H Committee and to Sir Robert Armstrong.

NORMAN FOWLER

13 December 1979

20. The first of these recommendations is undoubtedly controversial. The Government have, therefore, examined with particular care the reasons which led the Committee to make it.

21. The first of these was that the present requirements, in particular that which requires the police to show that they have "reasonable cause to suspect" a driver of having alcohol in his body, have led to numerous court cases where an acquittal has often been secured although the result of analysis has shown that the driver was clearly above the limit. Such results cannot have been the intention of the Act; nor can they do other than bring it into disrepute and have a demoralising effect on the police.

22. The Government sympathise with this view, but they think it is for consideration whether recent court cases have perhaps clarified the law in a way which has removed many of the earlier difficulties.

23. The second reason advanced by the Committee for removing the present restrictions was they had had the effect of convincing too many drivers that barring an accident or a moving traffic offence they were safe from being tested. In order to increase the deterrent effect of the law and enable the police to deploy their resources to maximum effect, they needed to have discretion to relate roadside screening to the times and places where drinking drivers were most likely to be found.

24. The Committee recognised that by allowing the police an unfettered discretion, they would in theory be opening the way for the police to test drivers at random. But they did not believe that the police would use the power in this way nor would they have wished them to do so because it would be wasteful of resources. Nevertheless the possibility that powers could be so used has been the subject of widespread concern because it raises the prospect of large numbers of innocent motorists being stopped and tested. This might well be regarded by many of them as an unreasonable, unjustified and possibly distressing intrusion into their lives by the police and might well damage the good relationship between the police and motorists on which the effectiveness of road safety law still largely depends.

25. The Government would be opposed to indiscriminate testing. The question remains however whether the present restrictions on the police's power to test can be removed without leading to such a result. Some would argue that once the restrictions were removed random testing would inevitably happen, whatever the Government's or the police's declared intentions were. Others would argue that if the power to test were to continue to be restricted, either by the present conditions or others, there is the risk that defects which have undermined the effectiveness of the present law would be carried into the new law. It is one of the purposes of this consultation paper to seek the widest possible views on the balance to be struck on this question.

MBPH

MAP

Treasury Chambers, Parliament Street, SW1P 3AG

Rt Hon William Whitelaw CH MC MP
Secretary of State
Home Office
50 Queen Anne's Gate
LONDON SW1H 9AT

12 December 1979

Dear Willie,

DRINKING AND DRIVING: DRAFT CONSULTATION PAPER

I have seen a copy of the Minister of Transport's letter to you of 5 December covering the draft consultation paper outlining the Government's proposals in response to the report of the Blennerhassett Committee on changes in the law on drinking and driving, which H Committee agreed on 31 July should be published.

I have no comments on the draft itself, but there is one point I should like to register at this stage. One proposal is that breath testing should be the normal method of testing for evidential purposes, in place of the present blood or urine samples. To achieve this some 1000 breath-testing machines would have to be purchased, installed and maintained in police stations. The additional capital cost was estimated, at the time of the H Committee discussion, at £2-3 million. No doubt there would be maintenance costs which might be quite high (I see from the assessment attached to the paper that the 12 instruments required 64 visits for maintenance and repairs over a seven-month period and half the machines required repair during that time).

No doubt we can discuss this in more detail when the time comes for you to make provision for the installation of these machines. But, in view of the statement in paragraph 31 of the paper that costs, including initial capital provision, would be about the same as under the present system, I would not expect you to seek additional provision for this development. I would hope you can absorb the relatively modest sums within the overall provision that is made for police expenditure.

I am sending copies of this letter to the Prime Minister, Norman Fowler, other members of H Committee and Sir Robert Armstrong.

Yours

John B. Biffen

JOHN BIFFEN

PRIVY COUNCIL OFFICE
WHITEHALL. LONDON SW1A 2AT

10 December 1979

The Rt Hon Norman Fowler MP
Minister of Transport
2 Marsham Street
London
SW1

Dear Norman,

I have received a copy of your letter to Willie Whitelaw of 5 December, enclosing your draft consultation paper on drinking and driving.

I am quite happy about this paper, with two qualifications. First, the only likely cause of concern among the public and inside the Party seems to me to be the question of 'random testing'. I am bound to say that the distinction between what the public understands by 'random testing' and the recommendation of the Blennerhassett Committee is not as clear as I would wish. Can you make it clearer?

Secondly, I recall that a number of Court cases turned on the question of whether a breath test accurately reflected blood content of alcohol if a drink had been taken within twenty minutes or so of the test. I seem to recall that it was suggested that somebody who had taken only one small drink all evening and was tested immediately after it might show a breath reaction much stronger than a blood test would confirm. This question is nowhere even referred to in the paper, and the suggestion that the breath test should be primary evidence will surely raise this question immediately. Is it possible to include a reference to this problem in that paper?

I am copying this letter to the recipients of yours.

Yours ever,

Angus

ANGUS MAUDE

CONFIDENTIAL

c. DEmp DHSS
LPO OCDL
LCD DES
HO CWO
SO CS- HMT
DEnv CO
WO GWO
NIO

10 DOWNING STREET

From the Private Secretary

B/F 13-12-79

10 December 1979

The Prime Minister has seen a copy of your Minister's letter of 5 December to the Home Secretary with which he enclosed the draft of a consultative paper on ways of strengthening the law on drinking and driving following the Report of the Blennerhassett Committee.

The Prime Minister has noted that Mr. Fowler leaves open for discussion the question whether the police should have an unrestricted power to test drivers at the roadside. She has commented that the introduction of an unrestricted power will cause enormous opposition. Any step that might be seen as the introduction of random testing without a requirement for reasonable grounds to think that a driver has been drinking, will not be acceptable to the majority of people. She therefore takes the view that both the power to test drivers at the roadside and the power to test drivers at random (paragraphs 22-24 of the paper) should remain subject to a need for the officer to have reasonable grounds to think that the driver has been drinking.

The Prime Minister would be grateful to know how Mr. Fowler proposes to take account of this in the final text of the consultative paper.

I am sending copies of this letter to the Private Secretaries to Members of H Committee and to Martin Vile (Cabinet Office).

M. A. PATTISON

Miss Viveca Dutt,
Department of Transport.

CONFIDENTIAL

PRIME MINISTER

Mr. Fowler is ready to issue a consultative paper on the Government's response to the Blennerhassett Committee's recommendations on drinking and driving.

The document will be a long one, but the conclusions are summarised in paragraph 58 (flagged). The most sensitive area is whether the Police should have an unrestricted power to test drivers at the roadside - F of the summary and discussion at paragraphs 20-23 of the Report.

Mr. Fowler leaves this issue open for discussion in the paper.

7 December 1979

CONFIDENTIAL

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

The Rt Hon William Whitelaw MP
Secretary of State for the Home Department
Home Office
50 Queen Anne's Gate
SW1H 9AT

5 December 1979

Dear Willie.

As you know, at their meeting on 31 July, (H(79)9th Meeting) Home and Social Affairs Committee approved my proposal to issue a consultation paper with a view to legislation on ways of strengthening the law on drinking and driving in the light of the report of the Blennerhassett Committee.

My officials have worked closely with yours and Patrick Jenkin's on the preparation of the paper and I am now satisfied that we can proceed to publication on the basis of the attached draft.

I would like publication to take place before Christmas because it would give an additional boost to my Christmas drinking and driving publicity campaign. The date I have in mind is Tuesday, 18 December.

I would, therefore, be most grateful if you would let me know whether you are content with the draft paper. In order to meet my proposed timetable I would very much appreciate it if you would let me have a reply by Tuesday, 11 December.

CONFIDENTIAL

Although the terms of the H Committee conclusions gave me authority to issue the paper without further reference to other colleagues, I am nevertheless sending copies of this letter and the paper for information to the other members of H Committee and Sir Robert Armstrong; and I shall, of course, return to the Committee when the consultation process has been completed. I am also sending a copy of this letter to the Prime Minister.

Yours ever

NORMAN FOWLER

DRAFT 5.12.79

DRINKING AND DRIVING

CONSULTATION PAPER BY THE DEPARTMENT OF TRANSPORT AND THE HOME OFFICE

INTRODUCTION

1. Drinking and driving is one of our most serious road safety problems. It is the cause of some 1,200 deaths each year. This is about one in five of all deaths on the road. One in three of all drivers killed have more than the prescribed limit of alcohol in their blood. At night the proportion is two in every three.

2. The Road Safety Act 1967 led to a dramatic reduction in the number of deaths and serious injuries from drunken driving. Over a period of seven years there was an estimated saving of 5,000 lives and 200,000 injuries. But in time the Act lost its original impact. The position today is worse than when it was introduced.

3. In 1974 the then Minister of Transport appointed a Committee under Mr Frank (now His Honour, Judge) Blennerhassett QC to review the operation of the law. The main recommendations in the Committee's report, which was published in 1976, were that -

a. as at present, there should be an offence defined in terms of a blood alcohol limit of 80 milligrammes of alcohol in 100 millilitres of blood; (paragraph 5.2)

b. 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; (paragraphs 5.16 - 18)

c. a breath sample should normally be used to determine a driver's blood alcohol concentration (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; (paragraph 4.10)

d. proof of an offence should not be unreasonably dependent on compliance with procedural requirements; (paragraph 8.2)

e. 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; (paragraphs 6.14 and 7.12)

f. 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. (paragraph 9.8)

4. Since the Committee reported, the Home Office Central Research Establishment has, in co-operation with the police, carried out extensive field and laboratory trials to evaluate devices for possible use for evidential breath testing purposes.

5. The Government are determined to make a new attack on drinking and driving. As the next step they are issuing this consultation paper, with a view to legislation, to a wide range of interested organisations. Its purpose is, first, to invite comments on the Government's proposals on the issues where they have reached provisional conclusions (which differ in some important respects from the Blennerhassett Committee's own recommendations); secondly, to seek an up to date expression of view on certain issues where the Government have yet to reach conclusions, notably that of the proposed unrestricted power to test; and, thirdly, to provide the further information on the trials of the evidential breath testing machines, which needs to be made available before decisions can be taken on their use.

THE OFFENCES

6. At present there are two separate drinking and driving offences: the offence under section 5 of the 1972 Act of driving whilst the ability to drive is impaired by drink or drugs (the impairment offence); and the offence under section 6 of driving with alcohol in the blood above the prescribed level (the excess alcohol offence). There are two parallel "in charge" offences. Section 12 of the Act provides that the limit of alcohol in the blood shall be 80 mg of alcohol in 100 ml of blood or such limit as may be prescribed by the Minister in regulations.

7. The Blennerhassett Committee considered that this duplication made for untidy law and could give the false impression that the excess alcohol offence was a technical one falling short of impairment. They recommended (paragraph 8.11) that there should be a single offence of driving while the ability to drive is impaired by drink or drugs (with a parallel "in charge" offence); and that evidence of the level of alcohol in the body above the prescribed level should create an irrebuttable presumption of impairment.

8. The Government accept the recommendation for a single offence. They propose that irrebuttable presumption of impairment should be provided by evidence of alcohol in the blood above the prescribed level, as at present, or evidence of alcohol in the breath above an equivalent level. This latter form of evidence is described in paragraphs 27 to 32 below. Other evidence of impairment will, however, remain admissible.

9. The Committee also recommended that the present limit of alcohol in the blood should be retained. The Government accept this recommendation. They are aware that there is a body of opinion which favours a reduction in the present limit of alcohol in the blood and that in some countries the limit is lower. But the present limit is that at which impairment starts to rise sharply and the main emphasis should be on more efficient means of

dealing with drivers above the present limit rather than on reducing it to take in more drivers.

METHOD OF PROOF

10. The Blennerhassett Committee found that proof of the offence of drinking and driving had become inextricably bound up with proof that the procedure had been rigidly followed, with the result that many acquittals had been obtained on grounds which had no relevance to the merits of the case. Loopholes and limitations in the law had been discovered and exploited.

11. The difficulties to which the Committee drew attention were illustrated in Spicer v Holt (House of Lords 1976). Although there was no dispute that the defendant had been found to have more than twice the legal limit of alcohol in his blood, he was acquitted because the arrest itself was held to be unlawful. The House of Lords held that the sections of the Act laid down a code of procedure to be followed before a person could be convicted of an offence; and that each step in the procedure must be taken before proceeding to the next step.

12. The Government agree with the Committee that the present law has not operated satisfactorily and have sympathy with their general recommendation that proof of an offence should not be unreasonably dependent on compliance with procedural requirements. Improvement in the operation of the law depends on two things. First, on the single offence (referred to in paragraph 8 above) being so defined as to exclude procedural requirements relating to the collection of evidence from the definition of the offence itself; and, secondly, on what may be provided in the Act, specifically or by implication, as to how far a failure to carry out procedural requirements in collecting evidence of the offence should render that evidence inadmissible.*

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* The Government believe that fresh legislation in this limited and specialised area should proceed in advance of the outcome of the deliberations of the Royal Commission on Criminal Procedure, which is looking at powers of arrest and related aspects of criminal procedure in a much wider context.

13. The Blennerhassett Committee made three relevant recommendations -

a. While the police should continue to have power to arrest, the arrest should not be a necessary preliminary to conviction for the offence of impairment, nor should arrest on the wrong grounds invalidate proceedings. (paragraph 8.2)

b. The procedure by which offences are established should be set out in a schedule to the new legislation, which could be amended by regulations subject to the negative resolution procedure. (paragraph 8.3)

c. A court should be empowered to disregard a departure from specified procedures or instructions where no injustice would result. (paragraph 8.2)

14. The Government accept (a). If a person in fact goes to a police station and undergoes a test which provides evidence of impairment it should not be necessary in proceedings to prove that he was arrested before doing so. If arrest is not to be required at all, it also follows that an arrest on the wrong grounds should not invalidate proceedings. The power of arrest, to be used when necessary, is of course still required. The existing power covers cases where the screening test indicates that the proportion of alcohol exceeds the limit or where a driver fails without reasonable excuse to provide a breath specimen. There is need, however, to clarify the legal powers of the police when a driver runs away before a constable is able to request him to provide a breath specimen. In such circumstances it may be desirable to provide that if a constable has reasonable grounds for believing that the driver is intending to evade a request to take a breath test he should have power to detain him in order that he can be asked to take the test.

15. On (b) the Government aim to reduce to a minimum the specification of procedural matters in the legislation. How far this will be possible depends on decisions to be taken after consultation has been completed.

16. As regards (c), the Government agree that justifiable concern has been caused by cases in which people who have been clearly shown to have had more than the legal limit of alcohol in their blood have been acquitted because of a failure to observe procedural matters. It is important to consider how this can best be remedied and also to ensure that the enactment of new legislation, including the introduction of breath testing to provide evidence of the offence (which would inevitably involve new procedures), does not enable drinking drivers to find new loopholes in the law, or re-open those closed only after costly litigation on the interpretation of the present Act. On the other hand it would not be acceptable to put to Parliament a provision so drafted that it might permit a procedure which really is essential to prove the proposed offence to be disregarded, at the discretion of the court, in determining the guilt of the suspect.

17. The Government believe that the changes suggested in paragraphs 8-14 above would themselves provide a major simplification of the definition of the offence. They recognise also that it is difficult to take any final view on the recommendation until it is decided whether to make both these and other changes, particularly those relating to the powers of the police to require a roadside test (paragraphs 20-23 below). They would, however, be glad to receive views both on the desirability of including a provision on the lines of recommendation 13(c) and on the scope of the procedures or instructions to which it should be applied.

THE ROADSIDE OR SCREENING TEST

18. Section 8 of the Act provides that a police constable can require a driver to provide a specimen of breath for a breath test only -

a. After an accident.

b. If the constable has reasonable cause to suspect the driver of having alcohol in his body.

c. If he has reasonable cause to suspect him of having committed a moving traffic offence.

The constable must be in uniform when he takes the specimen of breath. In cases (b) and (c) the requirement must be made "there or nearby"; and in case (c) it must be made as soon as reasonably practicable after the commission of the traffic offence.

19. The Blennerhassett Committee made a number of important recommendations on this issue as follows -

a. The circumstances in which a constable may require a specimen of breath from a driver for screening purposes should not be specified. (paragraph 5.16)

b. There should be a 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. (paragraph 5.17)

c. There should be a power to breath test persons who are or have been in charge of motor vehicles. (paragraph 5.18)

d. New and better screening devices should be tested and brought into use if found satisfactory. (paragraph 4.11)

20. The Government recognise that the first of these recommendations is undoubtedly the most controversial in the whole of the Blennerhassett Committee report. They consider, therefore, that it is desirable to have an up to date expression of views on the issue before they reach firm conclusions. Their intention in this paper is to set out the main arguments, as they see them, both for and against the proposal.

21. Before doing so, it is necessary to make two preliminary points to avoid misunderstanding. First, under section 159 of the Road Traffic Act, 1972, the police already have an unconditional power to stop any vehicle. Secondly, the Blennerhassett Committee did not recommend random testing, as

was proposed in the 1965 White Paper and was envisaged under the 1966 Road Safety Bill. They recommended that the police should have an unrestricted power to test. It is true that such a power would in theory enable the police to carry out testing at random; but the Committee themselves did not believe that the police would in practice use it in this way; nor did they consider that they should do so.

22. With these points in mind, the arguments for and against the recommendation can be expressed as follows. In favour, it can be said that -

a. The present requirements, in particular that which requires the police to show that they have "reasonable cause to suspect" a driver of having alcohol in his body, have led to numerous court cases where an acquittal has often been secured although the result of analysis has shown that the driver was clearly above the limit. Such results cannot have been the intention of the Act; nor can they do other than bring it into disrepute and have a demoralising effect on the police.

b. The limitations inherent in the present requirements have convinced too many drivers that, barring an accident or a moving traffic offence, they are safe from being tested. The removal of these limitations would sharply increase the deterrent effect of the legislation because it would bring home to drivers the fact that they were liable to be tested at any time. And clearly the more effective the deterrent, the more lives would be saved and serious injuries prevented.

c. The law already gives an unrestricted power to require a driver to show that he is fit to drive because he has a driving licence. It should, therefore, impose no artificial restriction on powers requiring him to show that he is fit to drive in other respects.

d. While the removal of the restrictions would in theory enable the police to carry out testing at random, it would be a wasteful use of their limited resources were they to attempt to do so. What in practice the removal would achieve would be to enable them to relate enforcement to actual patterns of drinking and driving behaviour.

23. Against giving an unrestricted power to test it can be said that -

a. While at one time the police's powers might have been thought to have been somewhat circumscribed, recent court cases have clarified the law in a way which has removed many of the earlier difficulties. It can now be argued that the police already have all the powers which they reasonably need to have.

b. It would raise the prospect of large numbers of innocent motorists being stopped and tested. This would not only be an unreasonable, unjustified and possibly distressing intrusion on their lives by the police, but would very quickly damage the good relationship between the police and motorists on which the effectiveness of road safety/law still largely depends.

c. The statute requires the offender to provide the evidence (ie the sample) against himself and he cannot rely on his normal "right of silence". The police ought, therefore, at least to have some prima facie reason for suspicion before being able to start a process that may lead to conviction.

24. As regards the other recommendations of the Committee on roadside testing, the Government propose to accept the recommendation that there should be a power to breath test persons in charge of motor vehicles.

25. They are, however, not inclined to accept the recommendation that there should be a power to test a person who has been driving or attempting to drive a motor vehicle. The courts appear to have interpreted the present powers of the police in such a way that there is generally no serious impediment to their ability to test a driver who seeks to avoid the consequences of drinking and driving, by, for instance, making a dash for home. Further evidence on this issue will, nevertheless, be welcomed.

26. Action to improve roadside screening devices is well advanced. The Home Secretary has recently approved one new electronic device and this will shortly be in use in certain areas. Other devices are still being evaluated.

EVIDENTIAL TESTING

27. At present a person arrested on suspicion of impaired driving ability or of having alcohol in his blood above the prescribed level is taken to a police station and is then offered a second breath test on arrival. Then if this is positive, or if it is declined, the police may require a sample of blood or urine, with a statutory warning of the consequences of failing to provide a sample (for which the penalties are the same as for the main offence) only if he first refuses to give a blood sample, then refuses or fails to give two samples of urine within an hour, and, finally, refuses a second time to give a blood sample. To take blood samples a police surgeon must be called: and a part of the sample of blood or urine or, if it is not practicable to divide the blood sample, a further sample which the suspect may consent to have taken, must be offered to him for independent analysis.

28. The Blennerhassett Committee saw numerous advantages in establishing a driver's BAC for evidential purposes from breath samples rather than from blood or urine. As they put it "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."

29. They, therefore, recommended that -

a. BAC's should normally be determined for forensic purposes by analysis of breath. (paragraph 4.10)

b. There should nevertheless be a right to require a blood sample if the suspect were unable to give a sample of breath or an instrument for analysing it were not available. (paragraph 4.7)

c. A suspect whose breath analysis was over the limit should nevertheless be entitled to offer a specimen of blood; analysis of which would then determine whether he was over the limit and be used in any proceedings instead of the breath reading. (paragraph 4.7)

d. Sampling of urine as a test for alcohol should be abandoned.

30. Following the Committee's report, the Home Office set up at their Central Research Establishment (HOCRE) a team of forensic scientists to evaluate devices for possible use. From the laboratory trials three makes of machine were shown to have the most promise. These were subsequently tested in field trials conducted by the police at twelve different centres between December 1977 and June 1978. The method used was to invite all persons who had given blood or urine samples for analysis under present procedures to provide two breath samples in fairly quick succession as soon as the statutory procedures had

been completed. The results were then compared with the results of blood analysis when they became available. In all it was possible to make comparisons in nearly 1,000 cases.

31. A summary of the results of the trials is set out in the Annex to this paper. From these results and further studies of costs the Government draw two main conclusions. First, the machines tested would be satisfactory for evidential purposes. Secondly, at the present level of testing, the cost per test, taking into account initial capital provision and savings in police time, would be about the same as that under the present system; but it would become progressively cheaper if the number of tests were increased from the present level.

32. In the light of these conclusions the Government propose to accept the Committee's recommendation that breath testing should be the normal method used for testing for evidential purposes. Two specimens of breath should be taken after the breath testing machine has been shown in the suspect's presence to be properly calibrated. This would be done by passing through the machine a vapour sample (produced by an aqueous simulator) with an alcohol concentration equivalent to that of a person with a BAC of 80mg/100ml. Guidance would need to be given to the police on calibration, but this would not be included in the statute.

33. The Government also propose to accept the recommendations that a right to require a specimen of blood should be retained either where the suspect was unable to give a sample of breath or where an instrument for analysing it was unavailable; and that the sampling of urine as a test for alcohol should be abandoned.

34. They intend, however, to modify the Committee's recommendations in two respects. First, where breath is used for evidential purposes, the prescribed limit should be expressed in terms of the actual breath alcohol content rather than a calculated blood alcohol content. Secondly, rather than being allowed an option to offer a specimen of blood after a breath test has been taken, a person should be offered this option only before the evidential specimen is first sought.

35. The reason for the first proposed modification is that both blood alcohol concentrations and breath alcohol concentrations are quantifiable substitutes for what is itself not directly quantifiable, namely the degree of impairment of a person's ability to drive safely. There may in fact be quite wide variations in the degree of impairment caused by a given quantity of alcohol in different subjects, or in the same subject under different conditions, but the present legislation accepts the need for a somewhat arbitrary limit as an aid to enforcement. There is, as the trials have shown, a high correlation between blood alcohol concentration and breath alcohol concentration. Although in a very small number of cases there would, at the margin, be differences which might result in a person being over the limit by one method and under it by the other, these differences are minor by comparison with the degree of arbitrariness already inherent in the present system. For this reason it seems appropriate to adopt breath alcohol concentration as direct evidence of impairment, rather than to introduce the measurement of breath alcohol as part of a

circuitous two-stage system which treats breath alcohol as evidence of blood alcohol and blood alcohol as evidence of impairment, with the first stage being open to challenge if analysis of a blood sample produced a result lower than the blood concentration deduced from the breath sample.

36. The proposed change in the time at which a person could exercise his option to provide a specimen of blood would be a logical corollary of this. If the prescribed limit were expressed only in terms of blood alcohol content, anyone providing a breath sample which, when the analysis was converted to blood alcohol content, showed him to be over the limit, especially if by only a small amount, might reasonably opt for a blood test in the hope that the finding would be reversed; hence the Committee's recommendation of an option after the breath test. But if there are to be prescribed limits in terms both of breath and blood alcohol concentrations independent of each other, that need disappears, because a breath alcohol concentration over the limit would itself be evidence of the offence and could not be corrected by a subsequent blood test. On this approach an option before either test is administered would be appropriate in order to cater for drivers who may attach value to being able to retain a part of the specimen they provide or who for any other reason may regard the blood test as more acceptable.

37. The Government suggest that the prescribed level of breath alcohol concentration should be 40 microgrammes per 100 millilitres of breath (40µg/100ml). This corresponds to the present prescribed level of blood alcohol concentration (80mg/100ml) plus an allowance for deviations in the operation of the device.

HOSPITAL CASES

38. At present, in hospital cases the law requires a doctor's concurrence first to a screening test and then to a substantive blood or urine test. The police cannot proceed to the substantive test until the screening test has taken place or been refused by the person concerned.

39. The Blennerhassett Committee, while not wishing to prejudice the proper care and treatment of patients, considered that this too often rendered drivers immune from investigation because doctors were unwilling to approve the taking of a breath sample. The Committee, therefore, recommended that the screening test should not be regarded as an essential preliminary and 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. The Government propose to accept this recommendation.

DRUGS

40. The Government propose to accept the recommendation of the Blennerhassett Committee that where after a negative screening test the police have cause to suspect impairment by drugs they should have power to request (but not to require) a sample of either urine or blood or both for evidential purposes, in place of the present power which does not enable them to request urine as an alternative or as an addition if a person is prepared to offer blood.

SENTENCES INCLUDING HIGH RISK OFFENDERS

41. The Blennerhassett Committee recommended that -

a. Disqualification for a first offence should remain mandatory and the minimum period should in the absence of special reasons (interpreted as at present) remain at one year. (paragraph 6.14)

b. Drinking and driving offences should cease to be indictable, subject to maintaining the special procedure in Scotland. (paragraph 6.18)

c The maximum prison sentence for the main driving offence (or failing to provide a specimen for analysis) should be six months; and for the in charge offence three months. (paragraph 6.18)

d. The maximum fines for the main offences of £400 and for the in charge offence of £200 were adequate at 1975 prices. (paragraph 6.18)

e. A "high risk" offender (defined as someone convicted twice in ten years for a drinking and driving offence or with a BAC above 200mg/100ml) should receive, in addition to the order of disqualification for a period appropriate to the offence, an order that he should not be entitled to a licence thereafter unless he first satisfied the court that he did not, by reason of his drinking habits, present undue danger to himself and other road users. (paragraph 7.12)

f. As a consequence of (e), a person who committed a second offence within ten years should no longer be disqualified for at least three years. (paragraph 7.13)

g. For a second in-charge offence within ten years, or for a first over 200mg/100ml, there should be mandatory disqualification for at least twelve months. (paragraph 7.13)

42. The Government propose to accept recommendations (a) and (g). Recommendations (b) and (c) have already been implemented in the Criminal Law Act 1977. This Act also covered recommendation (d), raising the maximum fine for the main offences to £1,000 and for the in charge offences to £500.

43. A new procedure for dealing with high risk offenders is clearly the most important and far reaching of this group of the Committee's recommendations. The Government welcome the recommendation in principle. They agree with the Committee's view that frequent and heavy drinkers pose an especially serious threat to road safety; and they believe that the recommendation, which is designed to ensure that drivers are banned from driving until they have overcome their drinking problem while at the same time offering

them an incentive to take steps to overcome it, is the right approach in dealing with this type of offender.

44. Such a procedure does, however, raise a number of practical difficulties. First the proposition that a person no longer presents undue risks as a driver is incapable of objective proof. It must depend on subjective assessment. There is then the difficulty of deciding what kind of subjective evidence would be sufficient to enable a court to take a decision on an application.

45. The Blennerhassett Committee thought that evidence might be provided by some person or body in addition to the applicant himself. This raised the difficulty of deciding what individuals or bodies would have the competence to provide evidence and, where appropriate, to give help or treatment to the applicant beforehand. Even if they were available, there is the further question of whether they would be available in sufficient numbers since the number of offenders who might come within the high risk category could be of the order of 15,000 a year. Finally, there is the additional burden which would be placed on the courts in hearing applications in the expected large numbers.

46. Finding competent and willing people in sufficient numbers to help offenders and to give evidence on their behalf may not be the major difficulty although it should not be minimised. There is a range of possible sources of help. There are specialist centres such as the NHS Alcohol Treatment Units and private clinics; and the voluntary counselling services, such as those provided by local Councils on Alcoholism, have been growing in number and developing simpler and more cost effective forms of advice and treatment. The representative organisations of family doctors and psychiatrists in hospitals and clinics, and voluntary bodies such as Alcoholics

Anonymous, are being consulted about the extent to which they might play a part. In certain cases, other non-medical bodies may be able to help. For instance, where the offender is well-known to the police, as may be the case in some rural areas, they may be able to offer evidence when an application is made.

47. The real problem, however, lies not so much in finding people to help an offender and support his application, as in the limitations of what they can say on his behalf and the different standards of judgement they and the adjudicating authority may adopt. This is critically important because of the Committee's proposal that a person who commits a second offence should no longer be disqualified for a minimum period of three years but should instead be disqualified for one year plus the special order. The danger is that if too relaxed an attitude is adopted on the special orders, the result of adopting the Committee's proposals might simply be to weaken the deterrent effect of the law. This cannot have been their intention; nor do the Government consider that it would be acceptable.

48. This risk, however, would be removed if the present three year minimum period of disqualification for second offenders were retained. The high risk orders would then be applied to first offenders with Blood Alcohol Concentrations above 200mg/100ml or Breath Alcohol Concentrations above 100µg/100ml and to all second offenders in addition to the normal one and three year disqualification periods.

49. If there were no danger of the special procedure leading to reduced penalties, it could be administered in the experimental way in which such a novel idea probably needs to be treated. Differences of approach would be more acceptable.

50. The Government are therefore hopeful that a modified version of the Committee's proposal could be introduced. But they do not underestimate

the difficulties of doing so; and this aspect of the proposed new legislation is one on which they will particularly welcome comment and suggestions.

EDUCATION AND RESEARCH

51. In addition to legislative changes, the Blennerhassett Committee also recommended a continuing programme of education and research. As they put it "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."

52. The Government agree that within available resources, a continuing programme of education and research is desirable. Large scale publicity campaigns have already been mounted and a further campaign will take place over the Christmas and New Year period.

53. The research requirements stem from the need for a better understanding of how to deal with the drinking driver and what countermeasures are likely to be most effective. The appropriateness of these depends on whether the problem is related to social drinkers, problem drinkers or alcoholics. To advance such research it is essential to relate drinking levels to drinking

habits, on which very little information has been obtained in this country. In particular it is desirable in principle to examine associated drinking levels and habits among non-fatally injured drivers involved in accidents in comparison with similar studies of the general driving population on the road, that is through roadside surveys. / The Transport and Road Research Laboratory has proposals for both the accident studies and roadside surveys, which would be in line with the recommendations of the Blennerhassett Committee that periodic surveys of BACs in representative samples of drivers on the roads should be undertaken as a separate activity from police enforcement. The Government recognise however that there is some sensitiveness in this proposal and they would welcome views on its acceptability before reaching a conclusion on whether the surveys should proceed.

SELF ASSESSMENT

54. The Blennerhassett Committee did not commend the practice of self-testing, not only because of the number of factors affecting its practical value and reliability, but more fundamentally because it might encourage drivers to drink to as near the legal limit as possible. The Government share the Committee's view.

HIT AND RUN OFFENCES

55. Over the last decade the number of offences of failing to stop and report an accident has nearly doubled and has grown faster than any other road traffic offence except drinking and driving. It seems likely that many of these offences are in fact drink-related.

56. The Government share the concern of the police over this increase and are considering what steps might be taken to counter it. One obvious factor to be taken into account is that the penalties for failing to stop and report an accident are lower than those for drinking and driving.

NORTHERN IRELAND

57. The law on drinking and driving in Northern Ireland is markedly different in a number of respects from that governing the rest of the United Kingdom. It is not thought practicable to harmonise the two systems entirely, but the Secretary of State for Northern Ireland is issuing a consultation paper, the general effect of which will be to bring the two systems closer together.

CONCLUSIONS

58. The main points made in this paper may be summarised as follows -

a. The present impairment and excess alcohol offences should be merged into a single offence of driving while the ability to drive is impaired by drink or drugs. Evidence of the level of alcohol in the blood above the prescribed level should create an irrebuttable presumption of impairment. Other evidence of impairment would, however, remain admissible. (paragraphs 7-8)

b. The present limit of alcohol in the blood should remain unchanged. (paragraph 9)

c. Proof of an offence should not be unreasonably dependent on compliance with procedural requirements. Improvement in the operation of the law depends on -

i. the single offence being so defined as to exclude procedural requirements relating to the collection of evidence from the definition of the offence itself;

ii. what may be provided in the Act, specifically or by implication, as to how far a failure to carry out procedural requirements in collecting evidence of the offence should render that evidence inadmissible; views are invited on a method of dealing with this point. (paragraphs 12 and 17)

d. While the police should continue to have power to arrest, the arrest should not be a necessary preliminary to conviction for the offence of impairment, nor should arrest on the wrong grounds invalidate proceedings. (paragraph 14)

e. The procedure by which offences are established should be set out in a schedule to the new legislation. (paragraph 15)

f. Further views are sought on the question of whether the police should have an unrestricted power to test drivers at the roadside. (paragraphs 22-23)

g. There should be a power to breath test persons in charge of motor vehicles. (paragraph 24)

h. No new power should be taken to test a person who has been driving a motor vehicle. (paragraph 25)

j. Trials of breath testing machines have shown that these would be satisfactory for evidential purposes. Breath testing should, therefore, be the normal method used for testing for such purposes. (paragraphs 27-32)

k. The right to require a specimen of blood should nevertheless be retained but the sampling of urine as a test for alcohol should be abandoned. (paragraph 37)

l. Where breath is used for evidential purposes the offence should be expressed in terms of breath rather than blood alcohol content. (paragraphs 34-35)

m. The prescribed limit of breath alcohol concentration should be 40 microgrammes per 100 millilitres of breath. (paragraph 37)

n. A person should retain the right to a blood test but he should be required to exercise this option before he has taken an evidential test. (paragraph 36)

p. A screening test should not be regarded as an essential preliminary in hospital cases. (paragraphs 38-39)

q. Where drugs are suspected, the police should have power to request a specimen of blood or urine or both. (paragraph 40)

r. Subject to s. below, no amendment of existing penalties is required. (paragraphs 41-42)

s. A special procedure for high risk offenders should if practicable be introduced in a modified form to that proposed by the Committee. (paragraphs 43-50)

t. A continuing programme of education and research within available resources is desirable. Views are sought on the carrying out of roadside surveys. (paragraph 53)

v. The practice of self assessment is not to be commended. (paragraph 54)

w. Further steps are necessary to counter the increasing incidence of hit and run driving. (paragraphs 55-56)

A PRACTICAL ASSESSMENT OF THREE BREATH ALCOHOL TESTING INSTRUMENTS

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Summary

Following laboratory testing of a number of commercially available substantive breath test instruments submitted for evaluation, three types were selected for field trials. Examples of each type were used at twelve police stations in Great Britain during a seven month period.

Motorists arrested for drink/driving offences under the Road Traffic Act (RTA) 1972 agreed to participate by providing two breath samples after their statutory specimen for laboratory analysis had been taken. The breath instrument results were subsequently compared with the Certificate of Analysis of the corresponding blood sample.

The trial was designed as a practical assessment of the three types of instrument which are currently in use in other parts of the world. Police officers used the instruments during the whole period of the trial in a fully representative selection of police premises with a high degree of efficiency.

Over 1500 motorists agreed to take part in the experiment and nearly 1000 pairs of breath results were used for comparison purposes.

The results obtained on all three types of instrument were generally in good agreement with the subjects blood alcohol results.

Introduction

A study to assess the possible use of commercially available breath alcohol measuring instruments as an alternative to blood analysis was set up at the Home Office Central Research Establishment (HOCRE) in 1976. Following a laboratory evaluation of instruments from several manufacturers, three were selected for further testing under operational conditions.

The instruments were the Intoxilyzer 4011A, the Gas Chromatograph Intoximeter Mk.IV and the Breathalyzer 1000. Each instrument incorporated a system designed to sample alveolar (ie. deep lung) air automatically, and was simple to use.

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Four instruments of each type were obtained for the study. Twelve police stations widely spaced geographically throughout Great Britain were chosen after consultation with Chief Officers of Police.* The selection was made from stations which had a large throughput of motorists suspected of driving under the influence of drink. Police Officers were trained at each centre to use the equipment.

The twelve instruments were circulated amongst the police stations so that an example of each of the three types was used at each location during the course of the study.

The subjects were motorists who had been arrested under the Road Traffic Act 1972, and who had been required to give a sample for laboratory analysis. Having provided this sample, and completed the statutory procedures, the subjects were invited to provide two breath samples as soon as possible after the laboratory specimen had been taken.

Procedures

All three instrument types were designed and manufactured for use in parts of the world where legislation prescribes a blood alcohol concentration even though the generally accepted sample for analysis is breath. The measured breath alcohol concentration is multiplied by 2,100 within the instrument and the result displayed as an equivalent blood alcohol concentration expressed as a percentage. (0.080% = 80mg per 100ml). The Breathalyzer 1000 and the Intoxilyzer are factory calibrated using this figure and therefore all calibrations performed on the Intoximeters, both at installation and when gas cylinders were replaced, also used this figure.

All of the instruments were checked for serviceability in the laboratory before delivery to police stations. The instrument checking and Intoximeter calibration were carried out using standard alcohol vapours from Smith & Wesson Mk IIA simulators containing an aqueous alcohol solution (0.97 grams of alcohol per litre) maintained at 34°C; this vapour should provide an instrument reading of 0.080% equivalent blood alcohol concentration. The 1800 litres of standard solutions for the simulators were provided by the local Forensic Science Laboratories, and were prepared from a primary standard supplied by HOCRE.

Throughout the study, the instruments were checked for accuracy once per day, and in addition, were checked before each subject was tested. If the instrument did not give a reading for the simulator sample of 0.08 $\pm$ 0.005% equivalent blood alcohol concentration immediately prior to testing a subject, the operators were instructed not to proceed with the test.

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* Traffic Committee of the Association of Chief Police Officers of England, Wales and Northern Ireland, and the Association of Chief Police Officers (Scotland)

The operators were police officers who had attended a one day training course which was given during the installation of the equipment at the various locations.

It was recognised that some subjects would provide urine specimens for laboratory analysis. Comparison of a theoretical blood level deduced from a urine analysis with another theoretical blood level deduced from a breath analysis would involve two conversion factors, neither of which was known precisely for any one individual. Because of this, subjects providing urine specimens were excluded from the comparisons.

If substantive breath legislation were to be introduced it would seem practical that a prosecution should proceed on the actual result produced and printed out by the instrument. Current prosecutions are based on a Certificate of Analysis from a Forensic Science Laboratory which reports the result as "not less than x mg%", where x is the mean result of several blood analyses less a deduction to allow for experimental variation. The deduction is 6mg% for results below 100mg%, and 6% of the value when above 100mg%.

In the field trial situation, subjects had to complete the full normal procedure under the Road Traffic Act 1972, including the provision of a blood sample, before they could be approached to participate in the experiment. Time intervals therefore occurred for various reasons, between the time the blood sample was taken and the time the breath specimens were taken. It was therefore decided that each displayed instrument result should be compared with the Certificate results corrected for the metabolic elimination of alcohol during this time interval.

The correction was based on the assumptions (a) that absorption of alcohol was complete, and (b) that the subject was metabolising alcohol at a rate of 15mg/100ml blood/hour. Where a time greater than forty minutes had elapsed between blood and breath sampling, implying a deduction greater than 10mg/100ml from the laboratory certificate figure the results were exluded from the comparisons.

Instrument Performance

During the seven months of the study, the twelve instruments required 64 visits for routine maintenance and repairs. There was no significant bias in the visits and the overall instrument availability was better than 95%

Six of the twelve simulators required repair at one time or another during the seven months' study. Most of these repairs were due to the failure of the contact thermometer temperature controller. The manufacturers stated that this failure rate was most unusual.

1776 motorists arrested under the Road Traffic Act 1972 were invited to take part in the test programme, and, of these, 1516 (85%) agreed to give breath samples. Each motorist was asked to provide two breath samples, and 991 pairs of samples were found to be suitable for comparison with analysis results from blood samples taken shortly before the subjects provided breath.

Table I shows the distribution of the 991 tests performed on each instrument type, and an analysis of the remaining 525 occasions when the results of the breath tests were not usable.

TABLE I

TEST RESULTS DISTRIBUTION

	Intoxilyzer	Intoximeter	Breathalyzer	Total
Initial acceptances	505	578	433	1516
Results used for comparisons	364	395	232	991
Urine specimens	43	53	38	134
Instrument out of order Instrument out of calibration Operator not available	28 19 1	37 45 6	35 34 28	100 98 35
Subject unable to blow/only provided one breath sample	19	28	36	83
Time delay greater than 40 minutes	31	14	30	75

On 8.9% of occasions when presubject calibration checks were performed the instrument results were outside the designated range of 0.075-0.085% BAC. This number is higher than the figures in Table 1 would suggest. The 98 cases rejected for this reason were only those occasions when the subject tests were still performed. Calibration check failures were also obtained on other occasions when the results were rejected for other reasons. Some of the failures of calibration check were directly attributable to the simulators.

Blood/Breath Comparisons

A graphical presentation of results for each instrument type is shown in Figures 1,2 and 3. The graphs are plots of the breath results from all four instruments of one type for a two month period of the study. The results from all three two month periods were comparable for each of the instrument types. Each breath result has been plotted as a separate point and the line at 45° represents the points where the instrument result is the same as the time corrected certificate result.

Figure 1

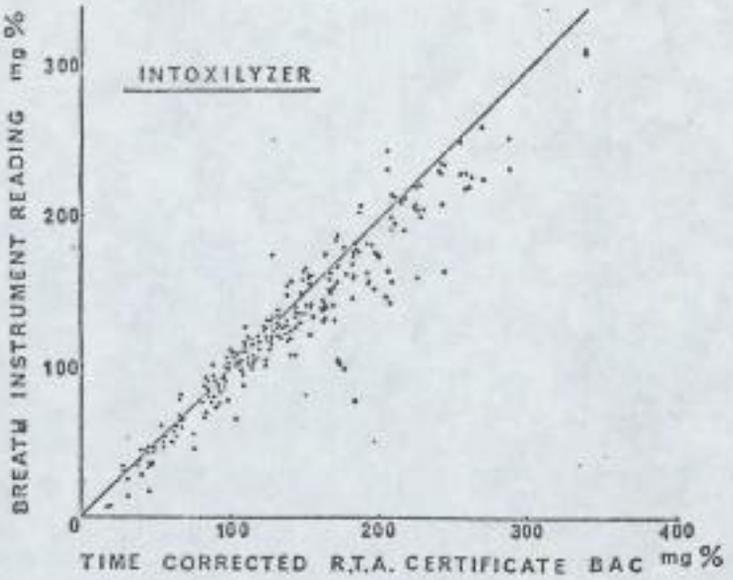


Figure 2

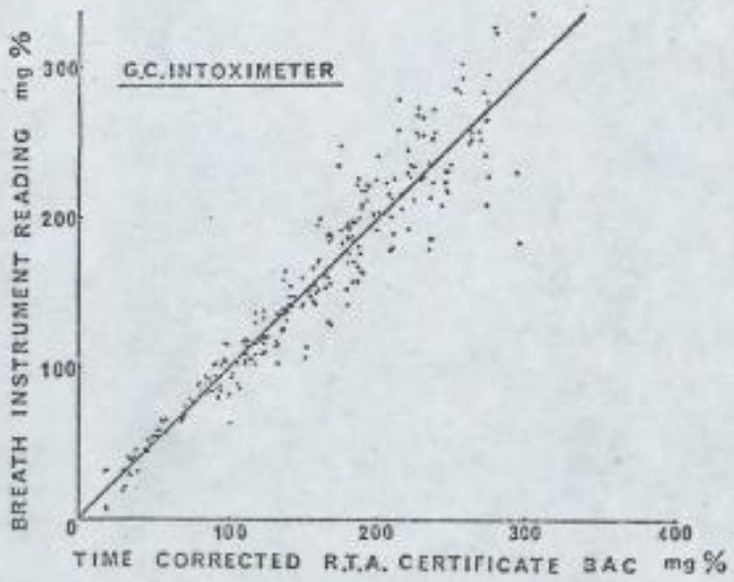
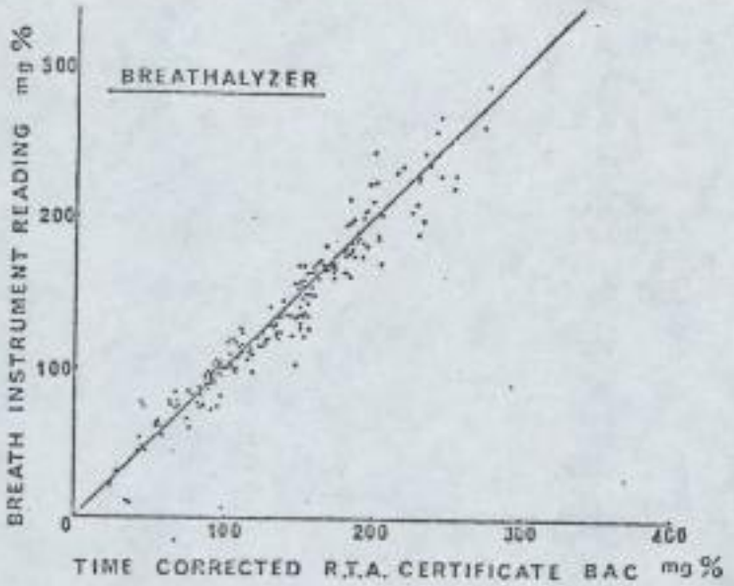


Figure 3



Figures 1,2 & 3. Results from all four instruments of each type for a two month period. Each instrument result plotted against a time corrected certificate result.

An alternative method of presenting the results can be achieved by expressing the differences between the time corrected certificate blood figure and the instrument reading as a percentage of the corrected certificate figure. These percentages can be expressed as histograms for each instrument type and figures 4,5 and 6 show all the results plotted in this way.It can be seen that all three types of instrument produce a similar picture.

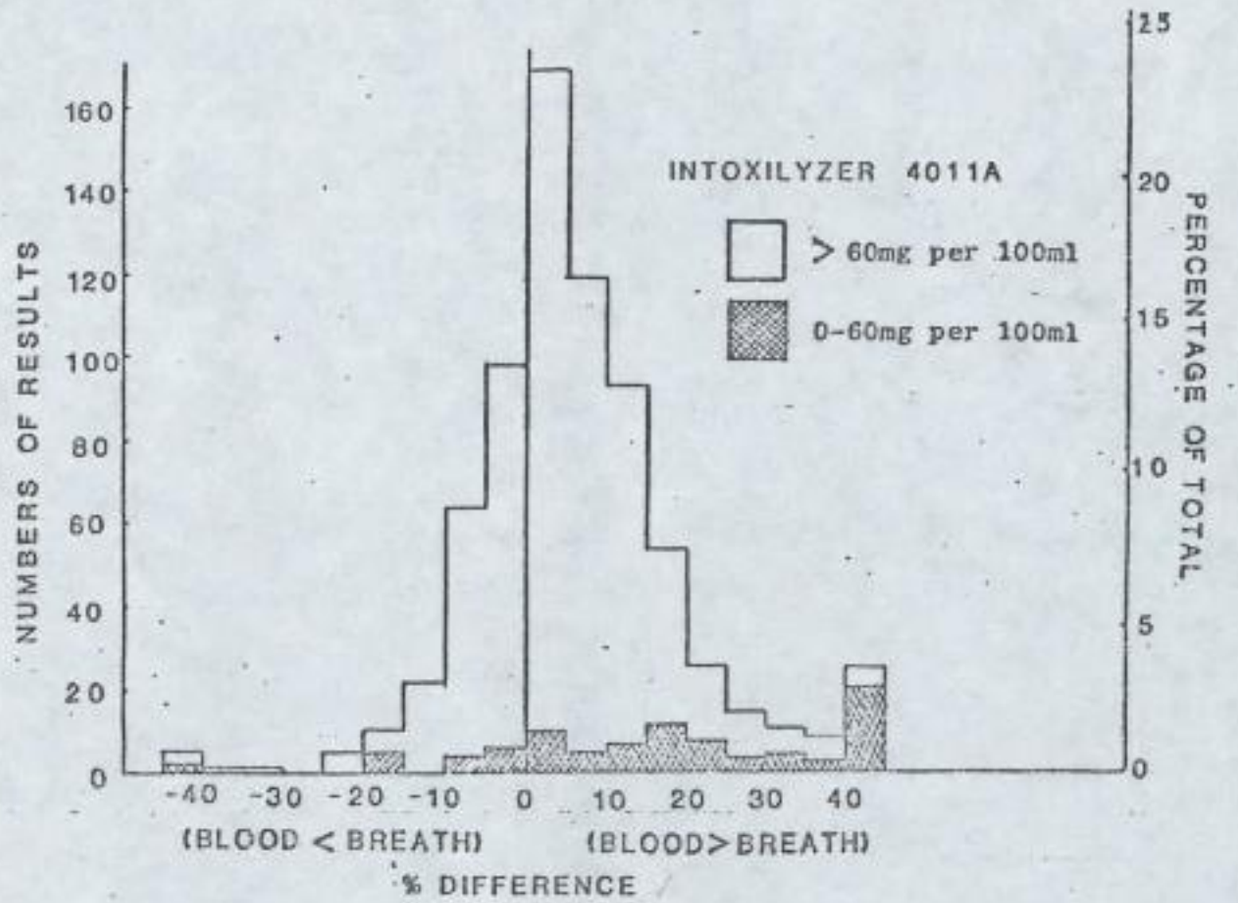


Figure 4 Difference between corrected certificate figure and breath instrument result,expressed as a percentage. Total results for all the Intoxilyzer instruments.

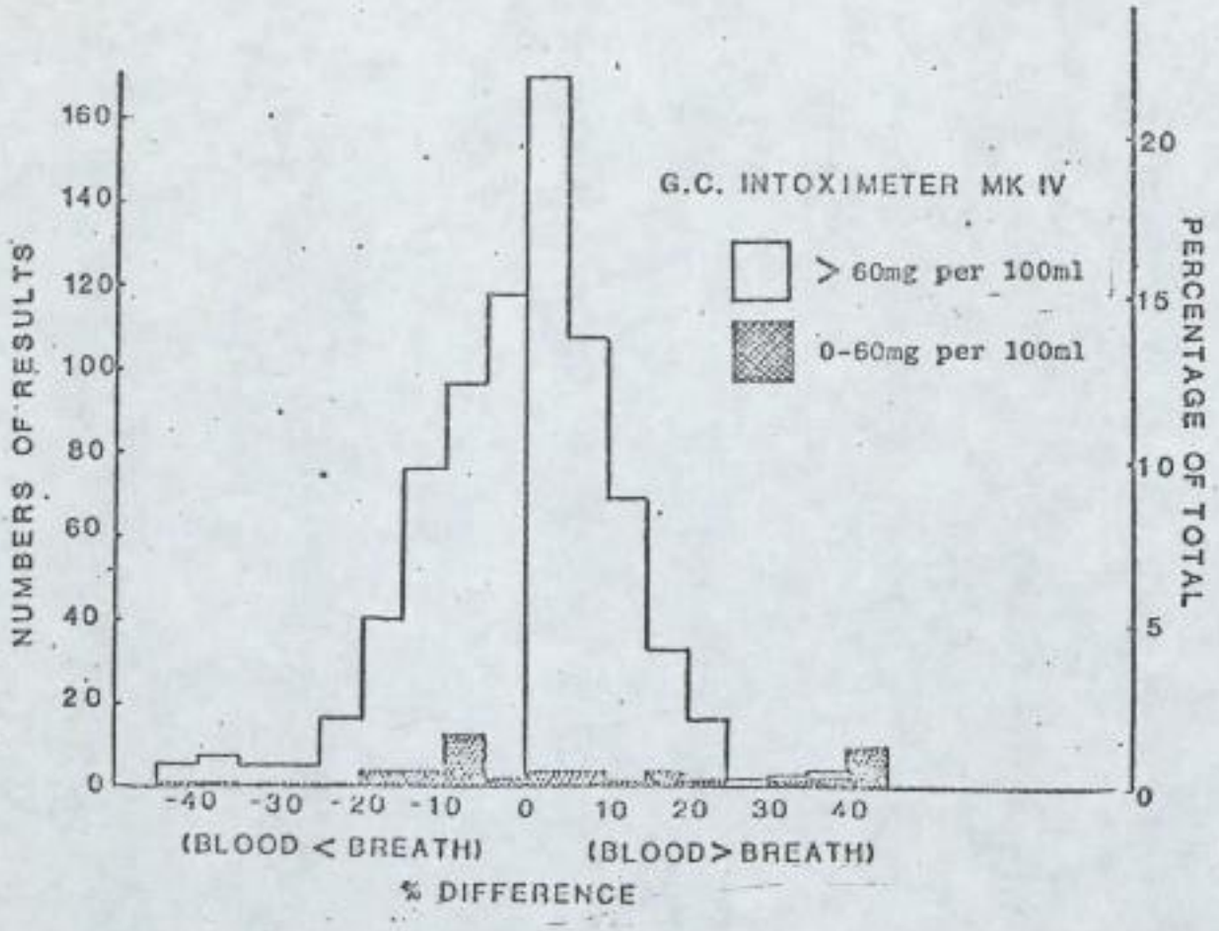


Figure 5 Difference between corrected certificate figure and breath instrument result, expressed as a percentage. Total results for all the Intoximeter instruments.

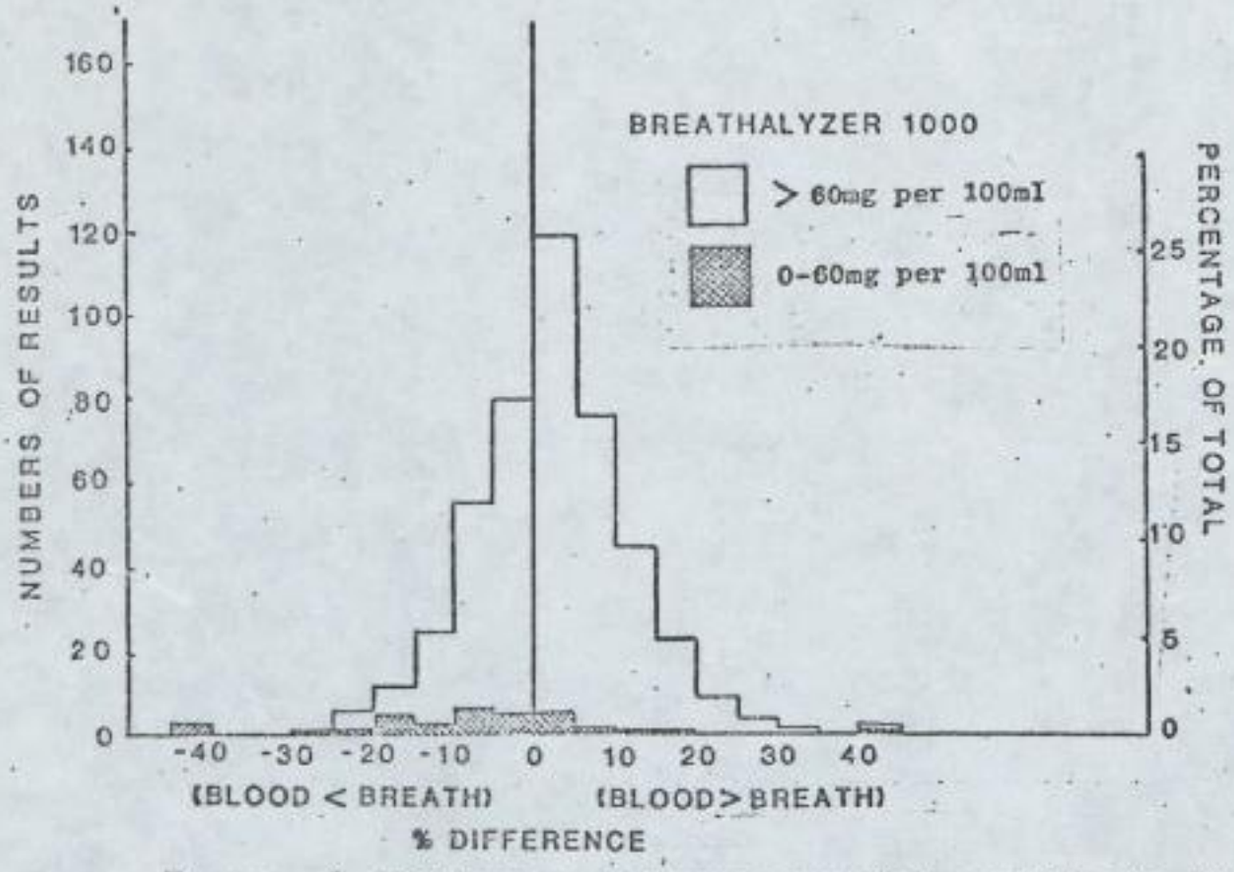


Figure 6 Difference between corrected certificate figure and breath instrument result, expressed as a percentage. Total results for all the Breathalyzer instruments.

Breath Pairs

One of the reasons for requesting two breath samples from each subject was to study the variability of successive samples.An analysis of all the results in the range 50-400 mg per 100 ml showed that in 92.5% of cases,the difference between the pair of breath instrument results was less than 20 mg per 100 ml and in 56.5% of cases it was less than 5 mg per 100 ml.

Discussion

Only 991 pairs of breath results were used for comparison purposes out of 1516 subjects who agreed to take part in the study.Results have been rejected for a variety of reasons. Urine samples and breath samples taken longer than 40 minutes after blood sampling have already been explained as introducing extra uncertainties.These would not occur if substantive breath testing were to be introduced.Other reasons for subjects not providing usable results are detailed in Table 1.

Figures 1 ,2 and 3 show a scatter of results about the ideal comparison line.If it is desired to compare the instrument figures with actual analytical results for the blood samples, this may be achieved by moving all of the points the appropriate amount to the right in these diagrams.

A similar treatment may be applied to the histograms in figures 4 ,5 and 6 which show the total results for each instrument type.The results of such treatment will give a clear indication of the degree to which breath instruments under-read a subjects blood alcohol concentration.

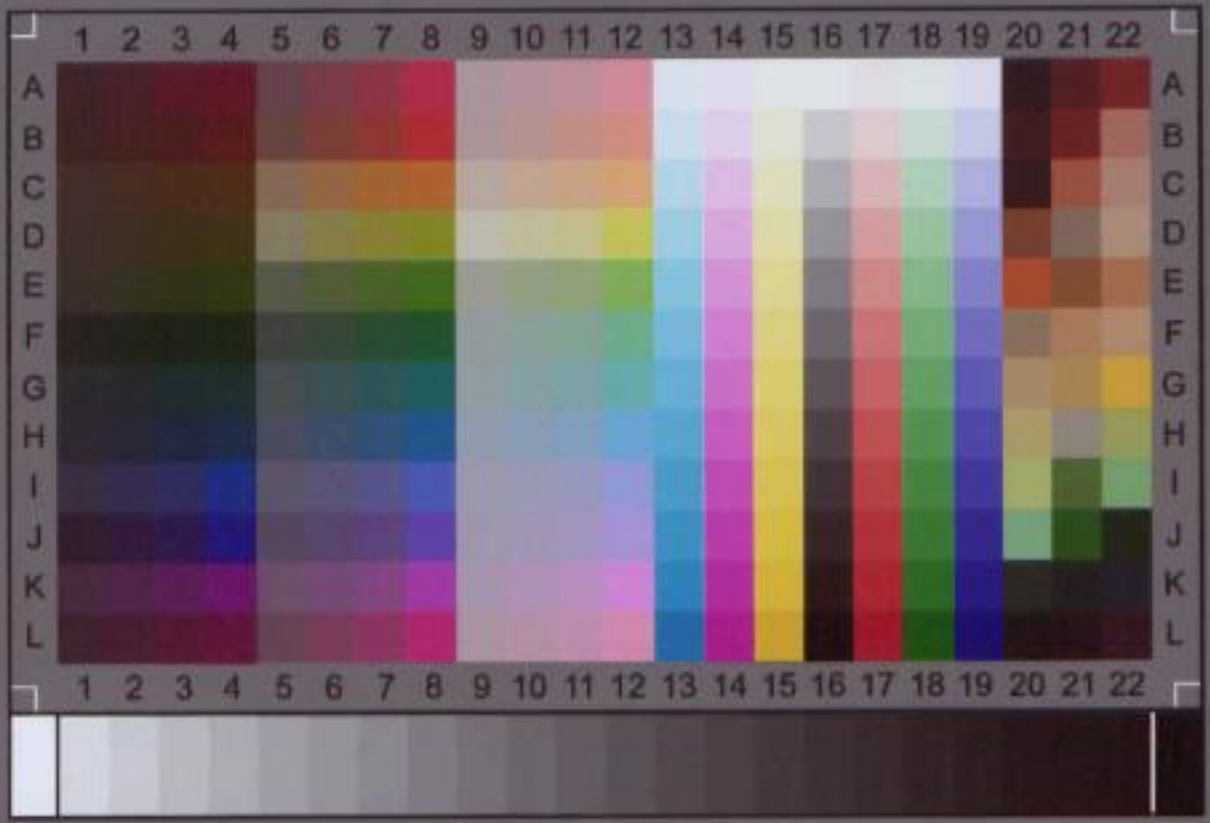
In the histograms figures 4 ,5 and 6 at levels below 60 mg per 100 ml,all the instruments produced wide variations from the ideal comparison,as small differences in results at these levels produced proportionately larger percentage differences than the same differences at higher blood levels.

The spread of results shown in figures 1 to 6 will be due to several factors-these include (a) the reproducibility of the breath instrument,(b) the variation between successive breath samples from the same individual,(c) physiological variations between individuals and possibly (d) the degree of intoxication of the individual.

Work within the laboratory using standard vapour samples showed that all three types of instrument had a reproducibility of ± 2.5%, therefore the contributions from this source will be small. The calibration check range chosen for the field trial using simulators to produce standard vapours was 0.075-0.085% BAC equivalent, this was more than the 2.5% instrument variation mentioned above but was considered a more appropriate range for the field situation. Despite this on 8.9% of occasions a satisfactory calibration check was not achieved. This can be attributed, at least in part, to the minimal training which the police officers received and their lack of experience in the use of such instrumentation. The results for the variability of successive breath samples are shown above and these also differ from the ideal condition of repeated samples of standard vapour. This is because a human being will not necessarily produce successive identical breath samples and the results will also be influenced by factors (c) and (d). Each instrument requires a sample of deep lung air in order to determine accurately a subject's blood alcohol concentration. A subject's lung capacity and his ability to blow will therefore affect the degree to which this is achieved and this in turn will determine the instruments indicated BAC. The spread of results can largely be attributed to the differences between subjects and the success in obtaining a sample of deep lung air for analysis. Any instrument which analyses a sample of breath obtained earlier in the exhalation will tend to give a reading below the blood alcohol concentration.

Conclusions

The trial results show that each type of instrument produced results which were generally in good agreement with the certified blood result and therefore subject to the appropriate experimental allowances, reliable instrument maintenance and the use of such instruments by well trained personnel, substantive breath testing could be considered as a viable alternative to blood testing.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