

# **The Road Traffic (Drink Driving) (Guernsey) Law, 1989**

## **(Amendment) Ordinance, 2025**

### ARRANGEMENT OF SECTIONS

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# **The Road Traffic (Drink Driving) (Guernsey) Law, 1989 (Amendment) Ordinance, 2025**

**THE STATES**, in pursuance of their Resolution of the 21<sup>st</sup> February, 2024<sup>a</sup>, and in exercise of the powers conferred upon them by section 10A of the Road Traffic (Drink Driving) (Guernsey) Law, 1989<sup>b</sup> and all powers enabling them in that behalf, hereby order:-

## **Amendment of Law of 1989.**

1. The Road Traffic (Drink Driving) (Guernsey) Law, 1989 ("**the Law**") is amended as set out in sections 2 to 15.

## **Amendment of title of the Law.**

2. In the title of the Law, immediately after "Drink", insert "or Drug".

## **Amendment of section 1A of the Law.**

3. (1) Section 1A of the Law is amended as follows.

(2) In section 1A(1) of the Law -

(a) at the end of paragraph (b), delete "or",

(b) immediately after paragraph (b), insert the following paragraph -

"(ba) he has in his body a specified controlled drug  
and the proportion of it in his blood or urine at

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<sup>a</sup> Article VII of Billet d'État No. II of 2024.

<sup>b</sup> Ordres en Conseil Vol. XXXI, p. 512; this enactment has been amended.

that time exceeds the specified limit for that drug",

- (c) at the end of paragraph (c), insert "or", and
- (d) immediately after paragraph (c), insert the following paragraph -

"(d) an officer of police requires him to give his permission for a laboratory test of a specimen of blood taken from him under section 3A, but without reasonable excuse he fails to do so,".

- (3) Immediately after section 1A(1) of the Law, insert the following subsections -

"(1A) For the purposes of subsection (1), a person is to be regarded as driving without due care and attention if (and only if) the way the person drives falls below what would be expected of a competent and careful driver.

(1B) In determining what would be expected of a competent and careful driver in any case where a person is charged with an offence under subsection (1), regard is to be had not only to the circumstances of which the person could be expected to be aware but also to any circumstances shown to have been within the knowledge of the person.

(1C) For the purposes of subsection (1), a person ("**B**") is to be regarded as driving without reasonable consideration for other persons only if those persons are inconvenienced by B's driving.".

**Amendment of section 2 of the Law.**

4. In section 2 of the Law –
- (a) in subsection (1), for "section", substitute "Law", and
  - (b) in subsection (3), immediately after "prove", insert "on the balance of probabilities".

**Substitution of sections 2A and 2B of the Law with new sections 2C to 2I.**

5. For sections 2A and 2B of the Law, substitute the following sections -

**"Driving, or being in charge, whilst over the limit for specified drugs.**

- 2C. (1) This section applies where a person ("C") -
- (a) drives or attempts to drive a motor vehicle on a road, or
  - (b) is in charge of a motor vehicle on a road,

and there is in C's body a specified controlled drug.

(2) C is guilty of an offence if the proportion of the drug in C's blood or urine exceeds the specified limit for that drug.

(3) Subject to subsection (4), it is a defence for C if charged with an offence under subsection (2) to prove, on the balance of probabilities, that -

- (a) the specified controlled drug had been prescribed or supplied to C for medical or dental purposes,

- (b) C took the drug in accordance with any directions given by the person by whom the drug was prescribed or supplied, and with any accompanying instructions (so far as consistent with any such directions) given by the manufacturer or distributor of the drug,
- (c) either -
  - (i) no advice was given by the person by whom the drug was prescribed or supplied about the amount of time that should elapse between taking the drug and driving a motor vehicle, or
  - (ii) such advice was given and C's actions complied with the advice, and
- (d) either -
  - (i) no accompanying instructions were given by the manufacturer or distributor of the drug about the amount of time that should elapse between taking the drug and driving a motor vehicle, or
  - (ii) such instructions were given and C's actions complied with those instructions (so far as those instructions were consistent with any

advice given of the kind mentioned in paragraph (c)(ii).

(4) The defence in subsection (3) is not available if the prosecution proves beyond reasonable doubt that C's possession of the drug immediately before taking it was unlawful under section 4(1) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 (restriction of possession of controlled drugs).

(5) It is a defence for C if charged with an offence under subsection (2) by virtue of subsection (1)(b) to prove, on the balance of probabilities, that at the time C is alleged to have committed the offence the circumstances were such that there was no likelihood of C driving the vehicle whilst the proportion of the specified controlled drug in C's blood or urine remained likely to exceed the specified limit for that drug; but in determining whether there was such a likelihood, the court may disregard any injury to C and any damage to the vehicle.

(6) In this Law, "**specified**" in relation to a controlled drug, or a limit for a controlled drug, means specified by regulations made by the Committee for Home Affairs.

(7) A limit specified for the purposes of subsection (2) may be zero.

**Power to administer preliminary tests.**

2D. (1) If any of subsections (2) to (5) applies, an officer may require a person to co-operate with any one or more preliminary tests administered to the person by that officer or another officer.

(2) This subsection applies if an officer reasonably suspects that the person -

- (a) is driving, is attempting to drive or is in charge of a motor vehicle on a road, and
- (b) has alcohol or a drug in his body or is under the influence of a drug.

(3) This subsection applies if an officer reasonably suspects that the person -

- (a) has been driving or attempting to drive, or was in charge of, a motor vehicle on a road while having alcohol or a drug in the person's body or while unfit to drive because of a drug, and
- (b) still has alcohol or a drug in the person's body or is still under the influence of a drug.

(4) This subsection applies if an officer reasonably suspects that the person -

- (a) is or has been driving or attempting to drive, or was in charge of, a motor vehicle on a road, and
- (b) has committed a traffic offence while the vehicle was in motion.

(5) This subsection applies if -

- (a) an accident occurred owing to the presence of a motor vehicle on a road, and

(b) an officer reasonably believes that the person was driving or attempting to drive, or was in charge of, the vehicle at the time of the accident.

(6) A person commits an offence if without reasonable excuse the person fails to co-operate with a preliminary test in pursuance of a requirement imposed under this section.

(7) For the purposes of subsection (6), a person fails to co-operate with a preliminary test unless his co-operation -

(a) is sufficient to enable the test to be carried out, and

(b) is provided in such a way as to enable the objective of the test to be satisfactorily achieved.

(8) An officer may administer a preliminary test by virtue of subsections (2) to (4) only if the officer is in uniform.

(9) In this section and sections 2E to 2I -

(a) "**officer**" means an officer of police,

(b) "**traffic offence**" means an offence under any of the enactments listed in the Schedule to this Law, and

(c) a reference to a preliminary test is a reference to any test described in sections 2E to 2G.

**Preliminary breath test.**

2E. (1) A preliminary breath test is a procedure whereby the person to whom the test is administered provides a specimen of breath to be used for the purpose of obtaining, by means of a device of a type approved by Order of the Committee for Home Affairs, an indication of whether the proportion of alcohol in the person's breath or blood is likely to exceed the prescribed limit.

(2) A preliminary breath test administered in reliance on section 2D(2) to (4) may be administered only at or near the place where the requirement to co-operate with the test is imposed.

(3) A preliminary breath test administered in reliance on section 2D(5) may be administered -

- (a) at or near the place where the requirement to co-operate with the test is imposed, or
- (b) if the officer who imposes the requirement thinks it expedient, at a police station.

**Preliminary impairment test.**

2F. (1) A preliminary impairment test is a procedure whereby the officer administering the test -

- (a) observes the person to whom the test is administered in the person's performance of tasks specified by the officer, and
- (b) makes such other observations of the person's physical state as the officer thinks expedient.

(2) The Committee for Home Affairs must issue (and may from time to time revise) a code of practice about -

- (a) the kind of task that may be specified for the purpose of a preliminary impairment test,
- (b) the kind of observation of physical state that may be made in the course of a preliminary impairment test,
- (c) the manner in which a preliminary impairment test should be administered, and
- (d) the inferences that may be drawn from observations made in the course of a preliminary impairment test.

(3) In issuing or revising the code of practice, the Committee must aim to ensure that a preliminary impairment test is designed to indicate -

- (a) whether a person is unfit to drive, and
- (b) if so, whether or not the person's unfitness is likely to be due to drink or drugs.

(4) A preliminary impairment test may be administered -

- (a) at or near the place where the requirement to co-operate with the test is imposed, or
- (b) if the officer who imposes the requirement thinks it expedient, at a police station.

(5) An officer administering a preliminary impairment test must have regard to the code of practice under this section.

(6) An officer may administer a preliminary impairment test only if the officer is approved for that purpose by the Chief Officer of the Island Police Force.

(7) A code of practice under this section may include provision about -

- (a) the giving of approval under subsection (6), and
- (b) in particular, the kind of training that an officer should have undergone, or the kind of qualification that an officer should possess, before being approved under that subsection.

(8) A code of practice issued under this Law -

- (a) is to be brought into force by Order of the Committee for Home Affairs after being issued, and
- (b) must be laid at a meeting of the States of Deliberation as soon as possible after being issued; and if, at that or the next meeting, the States resolve to annul the code that code ceases to have effect but without prejudice to anything done under it or to the issuing of a new code.

(9) In subsection (8), a reference to a code of practice includes a reference to any revision of the code.

**Preliminary drug test.**

2G. (1) A preliminary drug test is a procedure by which a specimen of sweat or saliva is -

- (a) obtained, and
- (b) used for the purpose of obtaining, by means of a device of a type approved by Order of the Committee for Home Affairs, an indication of whether the person to whom the test is administered has a drug in the person's body and if so -
  - (i) whether it is a specified controlled drug,
  - (ii) if it is, whether the proportion of it in the person's blood or urine is likely to exceed the specified limit for that drug.

(2) A preliminary drug test may be administered -

- (a) at or near the place where the requirement to co-operate with the test is imposed, or
- (b) if the officer who imposes the requirement thinks it expedient, at a police station.

(3) Up to three preliminary drug tests may be administered.

**Arrest in connection with preliminary tests.**

2H. (1) An officer may arrest a person without warrant if, as a result of a preliminary breath test or preliminary drug test, the officer reasonably suspects that -

- (a) the proportion of alcohol in the person's breath or blood exceeds the prescribed limit, or
- (b) the person has a specified controlled drug in his body and the proportion of it in the person's blood or urine exceeds the specified limit for that drug.

(2) The fact that specimens of breath have been provided under section 3 by the person concerned ("D") does not prevent subsection (1) from having effect if the officer who imposed on D the requirement to provide the specimens has reasonable cause to believe that the device used to analyse the specimens has not produced a reliable indication of the proportion of alcohol in D's breath.

(3) An officer may arrest a person without warrant if -

- (a) the person fails to co-operate with a preliminary test in pursuance of a requirement imposed under section 2D, and
- (b) the officer reasonably suspects that the person has alcohol or a drug in that person's body or is under the influence of a drug.

(4) A person arrested under this section may, instead of being taken to a police station, be detained at or near the place where the

preliminary test was, or would have been, administered, with a view to imposing on the person there a requirement under section 3.

(5) Instead of, or before, arresting a person under this section, an officer may detain the person at or near the place where the preliminary test was, or would have been, administered, with a view to imposing on the person there a requirement under section 3.

(6) A person must not be arrested under this section while the person is at a hospital as a patient.

**Power of entry in connection with preliminary tests.**

2I. (1) An officer may enter (using reasonable force if necessary) for the purpose of -

- (a) imposing a requirement by virtue of section 2D(5) following an accident in a case where the officer reasonably suspects that the accident involved injury of any person, or
- (b) arresting a person under section 2H following an accident in a case where the officer reasonably suspects that the accident involved injury of another person.

(2) Subsection (1) is without prejudice to any rule of law or enactment giving an officer any other right or power to enter any place."

**Amendment of section 3 of the Law.**

6. (1) Section 3 of the Law is amended as follows.

(2) In section 3(1) of the Law, for "or section 2", substitute ", section 2 or section 2C".

(3) In section 3(2)(b) of the Law, for "or section 2(2)", substitute ", section 2(2) or section 2C(2)".

(4) For section 3(3) of the Law, substitute the following subsections -

"(3) An officer of police may require a person to provide specimens of breath under this section only if -

- (a) the requirement is made at a police station or a hospital,
- (b) the requirement is imposed in circumstances where section 2D(5) applies, or
- (c) the officer is in uniform.

(3A) Where an officer of police has imposed a requirement on the person concerned to co-operate with a relevant breath test at any place, the officer is entitled to remain at or near that place in order to impose on the person there a requirement under this section.

(3B) For the purposes of subsection (3A) "**a relevant breath test**" is a procedure involving the provision by the person concerned of a specimen of breath to be used for the purpose of obtaining an indication of whether the proportion of alcohol in his breath or blood is likely to exceed the prescribed limit.

(3C) If a requirement under subsection (1)(a) has been made at a place other than at a police station, such a requirement may subsequently be made at a police station if (but only if) -

(a) a device or a reliable device of the type mentioned in subsection (1)(a) was not available at that place or it was for any other reason not practicable to use such a device there, or

(b) the officer of police who made the previous requirement has reasonable cause to believe that the device used there has not produced a reliable indication of the proportion of alcohol in the breath of the person concerned."

(5) In section 3(4) of the Law -

(a) in paragraph (b), before "at the time", insert "specimens of breath have not been provided elsewhere and",

(b) in paragraph (bb) -

(i) for "at the Police Station", substitute "(at a police station or elsewhere)", and

(ii) at the end of this paragraph, delete "or",

(c) immediately after paragraph (bb), insert the following paragraphs -

"(bc) as a result of the administration of a preliminary drug test, the officer of police

making the requirement has reasonable cause to believe that the person required to provide a specimen of blood or urine has a drug in that person's body,

(bd) the person concerned has failed to co-operate with a preliminary drug test and the officer of police requiring the specimen of blood or urine reasonably suspects that that person has a drug in that person's body, or", and

(d) in paragraph (c) -

(i) immediately after "section 1", insert ", section 1A or section 2C", and

(ii) immediately after "practitioner", insert "or designated healthcare professional".

(6) In section 3(5) of the Law -

(a) immediately after "specimen of urine" the first time the expression occurs, insert ", and in the case of a specimen of blood, the question of who is to be asked to take the specimen,", and

(b) for the words beginning with "if a medical practitioner" to the end, substitute the following -

"the specimen shall be a specimen of urine if -

- (a) the medical practitioner who is asked to take the specimen is of the opinion that, for medical reasons, a specimen of blood cannot or should not be taken, or
- (b) the designated healthcare professional who is asked to take the specimen is of that opinion and there is no contrary opinion from a medical practitioner."

(7) Immediately after section 3(7) of the Law, insert the following subsection -

"(7A) An officer of police may arrest a person without warrant if -

- (a) the person fails to provide a specimen of breath when required to do so in pursuance of this section, and
- (b) the officer reasonably suspects that the person has alcohol or a drug in that person's body."

(8) In section 3(8) of the Law, delete "Subject to subsection (8A),".

(9) Repeal section 3(8A) of the Law.

**Amendment of section 3A of the Law.**

7. (1) Section 3A of the Law is amended as follows.

(2) In section 3A(1) of the Law, immediately after "practitioner", insert "or designated healthcare professional".

(3) In section 3A(2) of the Law -

(a) in paragraph (a), immediately after "practitioner", insert "or designated healthcare professional", and

(b) in paragraph (b) -

(i) immediately after "practitioner" the first time the word occurs insert "or designated healthcare professional",

(ii) immediately after "police medical" in both places where the expression occurs, insert "or healthcare",

(iii) at the end of subparagraph (i), insert "or", and

(iv) in subparagraph (ii), delete "medical".

(4) In section 3A(3) of the Law, immediately after "practitioner", insert "or designated healthcare professional".

(5) For section 3A(7) of the Law, substitute the following subsection -

"(7) In this section, "**police medical or healthcare practitioner**" means a medical practitioner or designated healthcare professional who is engaged under any agreement to provide medical or health care services for purposes connected with the activities of the salaried police force of the Island of Guernsey."

**Amendment of section 4 of the Law.**

8. In section 4(1) of the Law -
- (a) for the part beginning "provide a specimen of breath" and ending with "laboratory test", substitute "co-operate with a preliminary test or provide a specimen under section 3", and
  - (b) in paragraph (a) -
    - (i) immediately after "shall be", insert "for co-operation with a test administered, or", and
    - (ii) immediately after "specimen", insert a comma.

**Amendment of section 5 of the Law.**

9. (1) Section 5 of the Law is amended as follows.
- (2) In the heading of section 5 of the Law, for "**or section 2**", substitute "**1A, 2 or 2C**".
- (3) In section 5(1) of the Law -
- (a) immediately after "proceedings", insert "against an accused person ("**D**")", and
  - (b) for "or section 2", substitute ", section 2 or section 2C".
- (4) For section 5(2) of the Law, substitute the following subsections -
- "(2) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by or taken from D shall, in all

cases (including cases where the specimen was not provided or taken in connection with the alleged offence), be taken into account and -

- (a) it is to be assumed, subject to subsection (2A), that the proportion of alcohol in D's breath, blood or urine at the time of the alleged offence was not less than in the specimen,
- (b) it is to be assumed, subject to subsection (2B), that the proportion of a drug in D's blood or urine at the time of the alleged offence was not less than in the specimen.

(2A) The assumption in subsection (2)(a) shall not be made if D proves on the balance of probabilities -

- (a) that D consumed alcohol before D provided the specimen or had it taken from D, and -
  - (i) in relation to an offence under section 1A, after the time of the alleged offence, and
  - (ii) otherwise, after D had ceased to drive, attempt to drive or be in charge of a vehicle on a road, and
- (b) that had D not done so the proportion of alcohol in D's breath, blood or urine would not have exceeded the prescribed limit and, if it is alleged that D was unfit to drive through drink, would

not have been such as to impair D's ability to drive properly.

(2B) The assumption in subsection (2)(b) is not to be made if D proves on the balance of probabilities -

(a) that D took the drug before D provided the specimen or had the specimen taken from D and -

(i) in relation to an offence under section 1A, after the time of the alleged offence, and

(ii) otherwise, after D had ceased to drive, attempt to drive or be in charge of a vehicle on a road, and

(b) that had D not done so the proportion of the drug in D's blood or urine -

(i) in the case of a specified controlled drug, would not have exceeded the specified limit for that drug, and

(ii) if it is alleged that D was unfit to drive through drugs, would not have been such as to impair D's ability to drive properly.".

(5) In section 5(4) of the Law -

- (a) immediately after "a medical practitioner" in each of the three places the expression occurs, insert "or designated healthcare professional", and
- (b) for "that medical practitioner", substitute "the medical practitioner or designated healthcare professional who took that specimen".

**Amendment of section 8 of the Law.**

10. Section 8 of the Law is amended as follows -

- (a) in subsection (1), for "or section 2", substitute ", section 2 or section 2C",
- (b) in subsection (2A), for "section 2A(4)", substitute "section 2D(6)", and
- (c) in subsection (3), immediately after "section 2", insert ", section 2C".

**Substitution of section 9 of the Law.**

11. For section 9 of the Law, substitute the following section -

**"Detention of persons affected by alcohol or a drug.**

9. A person required under section 3 or section 3A to provide a specimen of breath, blood or urine may thereafter be detained at a police station (or, if the specimen was required to be provided otherwise than at a police station, that person may thereafter be arrested and taken to and detained at a police station) if an officer of police has reasonable grounds for believing that, were that person then driving or attempting to drive a motor vehicle on

a road, he would commit an offence under section 1 , section 2 or section 2C of this Law; but -

- (a) a person shall not be detained in pursuance of this section if it appears to an officer of police that there is no likelihood of that person driving or attempting to drive a motor vehicle whilst that person's ability to drive properly is impaired or whilst the proportion of alcohol in that person's breath, blood or urine exceeds the prescribed limit, or the proportion of a specified controlled drug in that person's blood or urine exceeds the specified limit for that drug,
- (b) a person who is at a hospital as a patient shall not be arrested and taken from there to a police station in pursuance of this section if it would be prejudicial to that person's proper care and treatment as a patient, and
- (c) an officer of police shall consult a medical practitioner on any question arising under this section of whether a person's ability to drive properly is or might be impaired through drugs and shall act on the medical practitioner's advice."

**Amendment of section 10 of the Law.**

- 12. (1) Section 10 of the Law is amended as follows.
- (2) In section 10(1) of the Law -

- (a) insert the following definitions in the appropriate alphabetical order -

""**controlled drug**" has the meaning given by section 1 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974,"

""**designated healthcare professional**" means -

- (a) any person registered as a nurse in the register kept by the Committee for Health & Social Care under section 3 of the Registered Health Professionals Ordinance, 2006, or
- (b) any other registered health professional, within the meaning given by section 1(3) of that Ordinance, of a kind or class designated by Order of the Committee for Home Affairs,"

""**disqualified**" means disqualified from holding or obtaining a driving licence,"

""**officer**": see section 2D(9),"

""**preliminary breath test**": see section 2E,"

""**preliminary drug test**": see section 2G,"

""**preliminary impairment test**": see section 2F,"

""**preliminary test**": see section 2D(9),"

""**prescribed limit**": see section 2,"

""specified", in relation to a controlled drug, or a limit for a controlled drug: see section 2C(6)," and

""traffic offence": see section 2D(9)," and

(b) for the definitions of "**driving licence**" and "**motor vehicle**" respectively, substitute the following definitions -

""**driving licence**" means a full licence, or provisional licence, within the meaning given by section 24(1) of the Driving Licences (Guernsey) Ordinance, 1995," and

""**motor vehicle**" means a mechanically propelled vehicle intended or adapted for use on roads,".

(3) In section 10(3) of the Law, immediately after "practitioner", insert "or designated healthcare professional".

#### **Insertion of new section 10B in the Law.**

13. Immediately after section 10A of the Law, insert the following section –

#### **"General provisions as to regulations.**

10B. Any regulations made under this Law must be laid before a meeting of the States as soon as possible and will, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations."

#### **Amendment of section 12 of the Law.**

14. In section 12 of the Law, immediately after "Drink", insert "or Drug".

#### **Amendment of Schedule to the Law.**

15. (1)\_ The Schedule to the Law is amended as follows.

(2) In the reference to the enacting provision in the heading of that Schedule, for "2A(7)", substitute "2D(9)".

(3) Delete the following -

(a) "Ordonnance relative au Trafic Véhiculaire en cette Île, 1929, (as amended)",

(b) "Ordonnance ayant rapport au Trafic Véhiculaire en cette Île, 1938", and

(c) "Vehicular Traffic (Causing Death by Driving) Law, 1957".

(4) For "Road Traffic (Construction and Use of Motor Vehicles) Ordinance, 1970, (as amended)", substitute "Any subordinate legislation made under the Road Traffic (Construction and Use of Motor Vehicles) Ordinance, 1970 and having effect under section 16 of the Road Traffic (Construction and Use of Motor Vehicles) Ordinance, 2002".

(5) After "Driving Licences (Guernsey) Ordinance, 1995", insert the following -

"Road Traffic (Construction and Use of Motor Vehicles) Ordinance, 2002

Road Traffic (Guernsey) Ordinance, 2019

Road Traffic (Causing Death or Serious Injury by Driving) (Guernsey) Law, 2025".

**Citation.**

16. This Ordinance may be cited as the Road Traffic (Drink Driving) (Guernsey) Law, 1989 (Amendment) Ordinance, 2025.

**Commencement.**

17. This Ordinance shall come into force on a date specified by Order of the Committee for Home Affairs; and different dates may be appointed for different provisions and for different purposes.