



Number 28 of 2011

ROAD TRAFFIC (NO. 2) ACT 2011

ARRANGEMENT OF SECTIONS

Section

1. Definitions.
 2. Amendment of section 40 of Principal Act — production of driving licence on demand of member of Garda Síochána.
 3. Amendment of section 107 of Principal Act — duty to give information on demand by member of Garda Síochána.
 4. Amendments to Principal Act — certain driving offences.
 5. Amendment of section 18 of Act of 1968 — regulations in relation to control of driving instructors.
 6. Amendment of section 8 of Act of 2010.
 7. Preliminary breath specimen.
 8. Obligation to provide blood or urine specimen while in hospital.
 9. Amendments to Act of 2010.
 10. Transitional provision — section 65.
 11. Short title, commencement and collective citation.
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ACTS REFERRED TO

Offences against the Person Act 1861	1861, (24 & 25 Vict.) c.100
Probation of Offenders Act 1907	1907 (7 Edw. 7) c.17
Road Traffic Act 1961	1961, No. 24
Road Traffic Act 1968	1968, No. 25
Road Traffic Act 1994	1994, No. 7
Road Traffic Act 2002	2002, No. 12
Road Traffic Act 2004	2004, No. 44
Road Traffic Act 2006	2006, No. 23
Road Traffic Act 2010	2010, No. 25
Road Traffic Acts 1961 to 2011	
Taxi Regulation Act 2003	2003, No. 25



Number 28 of 2011

ROAD TRAFFIC (NO. 2) ACT 2011

AN ACT TO AMEND AND EXTEND THE ROAD TRAFFIC ACTS 1961 TO 2011 AND TO PROVIDE FOR RELATED MATTERS.

[20th October, 2011]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act—

Definitions.

“Act of 1968” means Road Traffic Act 1968;

“Act of 1994” means Road Traffic Act 1994;

“Act of 2002” means Road Traffic Act 2002;

“Act of 2004” means Road Traffic Act 2004;

“Act of 2006” means Road Traffic Act 2006;

“Act of 2010” means Road Traffic Act 2010;

“Principal Act” means Road Traffic Act 1961.

2.—Section 40 (inserted by section 59 of the Act of 2010) of the Principal Act is amended—

Amendment of section 40 of Principal Act — production of driving licence on demand of member of Garda Síochána.

(a) in subsection (4), by substituting for paragraph (a) the following:

“(a) Where a person of whom the production of a driving licence or learner permit is demanded under this section refuses or fails to produce the licence or permit there and then, a member of the Garda Síochána may require the person to produce within 10 days after the date of the requirement the licence or permit in person to a member of the Garda Síochána at a Garda Síochána station to be named by the person at the time of the requirement. If the person refuses or fails so to produce the licence or permit, he or she commits an offence.”,

(b) by substituting for subsection (6) the following:

“(6) Where a person of whom the production of a driving licence or learner permit is demanded or required under this section refuses or fails so to produce the licence or permit or produces the licence or permit but refuses or fails to permit the member of the Garda Síochána to whom it is produced to read the licence or permit, the member may demand of the person his or her name and address and date of birth and, if the person refuses or fails to give to the member his or her name and address and date of birth or gives to the member a name or address or date of birth which is false or misleading, he or she commits an offence.”,

(c) in subsection (7), by substituting for paragraph (b) the following:

“(b) a person who, when his or her name and address and date of birth are lawfully demanded of him or her by a member of the Garda Síochána under this section, refuses or fails to give to the member his or her name and address and date of birth or gives to the member a name or address or date of birth which the member has reasonable grounds for believing to be false or misleading.”,

and

(d) by inserting after subsection (8) the following:

“(9) Section 1(1) of the Probation of Offenders Act 1907 does not apply to an offence under this section.”.

Amendment of section 107 of Principal Act — duty to give information on demand by member of Garda Síochána.

3.—Section 107 (inserted by section 79 of the Act of 2010) of the Principal Act is amended—

(a) by substituting for subsection (1) the following:

“(1) Where a member of the Garda Síochána alleges to a person using a mechanically propelled vehicle that the member suspects that such person has committed a specified offence under this Act, the member may demand of such person his or her name and address and date of birth and may, if such person refuses or fails to give his or her name and address and date of birth or gives a name or address or date of birth which the member has reasonable grounds for believing to be false or misleading, arrest such person without warrant.”,

and

(b) by substituting for subsection (3) the following:

“(3) Where a person, when his or her name and address and date of birth are demanded of him or her under this section, refuses or fails to give his or her name and address and date of birth or gives a name or address or date of birth which is false or misleading, such person commits an offence.”.

4.—(1) The following sections are substituted for sections 51A, 52 (inserted by sections 49 and 50, respectively, of the Act of 1968), 53 (as amended by section 51 of the Act of 1968, section 49(1)(f) of the Act of 1994 and section 13 of the Act of 2004), 54 (as amended by section 6 of the Act of 1968) and 55 (as amended by section 52 of the Act of 1968) of the Principal Act:

Amendments to Principal Act — certain driving offences.

“Driving without reasonable consideration.

51A.—(1) A person shall not drive a vehicle in a public place without reasonable consideration for other persons using the place.

(2) A person who contravenes subsection (1) commits an offence.

Careless driving.

52.—(1) A person shall not drive a vehicle in a public place without due care and attention.

(2) A person who contravenes subsection (1) commits an offence and—

(a) in case the contravention causes death or serious bodily harm to another person, he or she is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding €10,000 or to both, and

(b) in any other case, he or she is liable on summary conviction to a class A fine.

(3) Where a member of the Garda Síochána is of opinion that a person has committed an offence under this section and that the contravention has caused death or serious bodily harm to another person, he or she may arrest the first-mentioned person without warrant.

Dangerous driving.

53.—(1) A person shall not drive a vehicle in a public place in a manner (including speed) which having regard to all the circumstances of the case (including the condition of the vehicle, the nature, condition and use of the place and the amount of traffic which then actually is or might reasonably be expected then to be in it) is or is likely to be dangerous to the public.

(2) A person who contravenes subsection (1) commits an offence and—

(a) in case the contravention causes death or serious bodily harm to another person, he or she is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine not exceeding €20,000 or to both, and

(b) in any other case, he or she is liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months or to both.

(3) In a prosecution for an offence under this section or section 52, it is not a defence to show that the speed at which the accused person was driving was not in excess of a speed limit applying in relation to the vehicle or the road, whichever is the lower, under Part 2 of the Road Traffic Act 2004.

(4) Where, when a person is tried on indictment or summarily for an offence under this section, the jury, or, in the case of a summary trial, the District Court, is of the opinion that he or she had not committed an offence under this section but had committed an offence under section 52, the jury or court may find him or her guilty of an offence under section 52, and he or she may be sentenced accordingly.

(5) Where a member of the Garda Síochána is of opinion that a person has committed an offence under this section, he or she may arrest the person without warrant.

Driving of
dangerously
defective
vehicle.

54.—(1) A person who drives a mechanically propelled vehicle in a public place while there is a defect affecting the vehicle which he or she knows of or could have discovered by the exercise of ordinary care and which is such that the vehicle is, when in motion, a danger to the public, commits an offence.

(2) Where a mechanically propelled vehicle is driven in a public place while there is a defect affecting the vehicle which the owner knows of or could have discovered by the exercise of ordinary care and which is such that the vehicle is, when in motion, a danger to the public, such owner commits an offence.

(3) Where a person is charged with an offence under subsection (2), it is a defence to the charge for him or her to show that the vehicle was being driven on the occasion in question by another person and that such driving was unauthorised.

(4) A person who commits an offence under this section is liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 3 months or to both.

(5) Where a member of the Garda Síochána is of opinion that a person has committed an offence under this section, he or she may arrest the person without warrant.

Parking
vehicle in
dangerous
position.

55.—(1) A person shall not park a vehicle in a public place if, when so parked, the vehicle would be likely to cause danger to other persons using that place.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction—

(a) in the case of—

- (i) a first offence, where any part of the period of the contravention was a period within lighting-up hours (as declared by regulations under section 11) during which the vehicle did not fulfil the requirements imposed by law with respect to lighting and reflectors, or
- (ii) a second or any subsequent offence, to a class B fine or to imprisonment for a term not exceeding one month or to both,

and

(b) in any other case, to a class C fine.

(3) Where a member of the Garda Síochána is of opinion that a person is committing or has committed an offence under this section, he or she may arrest the person without warrant.”.

(2) The following are repealed:

- (a) section 35 of the Offences against the Person Act 1861,
- (b) section 49 to 52 of the Act of 1968,
- (c) section 13 of the Act of 2004,
- (d) the matter at reference numbers 11 to 16 in Part 1 of the Table to section 18 of the Act of 2006, and
- (e) Part 8 of the Act of 2010.

5.—Section 18 of the Act of 1968 is amended by substituting for subsection (7) the following:

Amendment of section 18 of Act of 1968 — regulations in relation to control of driving instructors.

“(7) A person who contravenes or fails to comply with a regulation under this section which is stated to be a penal regulation commits an offence and is liable on summary conviction—

(a) in the case of a contravention of a regulation—

- (i) prohibiting or restricting the giving for reward of instruction by a person other than a licensed driving instructor, or prohibiting the employment of such a person for the purpose of giving instruction for reward, or
- (ii) prohibiting a person other than a licensed driving instructor from holding himself or herself out as a licensed driving instructor, or prohibiting a person employing a driving instructor other than a licensed driving instructor from holding that driving instructor out as a licensed driving instructor,

to a class A fine or to imprisonment for a term not exceeding 3 months or to both, and

(b) in the case of any other failure or contravention, to a class C fine.”.

Amendment of section 8 of Act of 2010.

6.—The Act of 2010 is amended by substituting for section 8 the following:

“Failure or refusal to produce licence.

8.—(1) Where a person is required by a member of the Garda Síochána to provide a specimen under section 9, 10, 12 or 14 and the person fails or refuses, at the demand of the member under section 40 of the Principal Act, to produce and present to the member a driving licence then having effect and licensing the person to drive the vehicle concerned, it shall be presumed, until the contrary is shown, that the person does not hold such a licence.

(2) The presumption referred to in subsection (1) shall cease to apply in relation to a person who within 10 days of the requirement referred to in that subsection produces and presents to the member or another member of the Garda Síochána at a Garda Síochána station nominated by the person at the time of the requirement, a driving licence held by the person at the time of the requirement, then having effect and licensing the holder to drive a vehicle of the category concerned, or evidence that he or she held such a licence.

Alternative verdicts.

8A.—(1) A person charged with an offence under section 4 consisting of a contravention of subsection (2)(b), (3)(b) or (4)(b) of that section may, in lieu of being found guilty of that offence, be found guilty of an offence under section 4 consisting of a contravention of subsection (2)(a), (3)(a) or (4)(a), as may be appropriate, of that section.

(2) A person charged with an offence under section 5 consisting of a contravention of subsection (2)(b), (3)(b) or (4)(b) of that section may, in lieu of being found guilty of that offence, be found guilty of an offence under section 5 consisting of a contravention of subsection (2)(a), (3)(a) or (4)(a), as may be appropriate, of that section.”.

Preliminary breath specimen.

7.—The Act of 2010 is amended by substituting for section 9 the following:

“9.—(1) This section applies to a person in charge of a mechanically propelled vehicle in a public place who, in the opinion of a member of the Garda Síochána—

(a) has consumed intoxicating liquor,

(b) is committing or has committed an offence under the *Road Traffic Acts 1961 to 2011*,

- (c) is or has been, with the vehicle, involved in a collision, or
- (d) is or has been, with the vehicle, involved in an event in which death occurs or injury appears or is claimed to have been caused to a person of such nature as to require medical assistance for the person at the scene of the event or that the person be brought to a hospital for medical assistance.

(2) A member of the Garda Síochána shall, unless he or she is of opinion that the person should be arrested and subject to subsections (6) and (7), require a person to whom paragraph (a) or (d) of subsection (1) applies, and may require a person to whom paragraph (b) or (c) of that subsection applies—

- (a) to provide, by exhaling into an apparatus for indicating the presence of alcohol in the breath, a specimen of his or her breath in the manner indicated by the member,
- (b) to accompany him or her to a place (including a vehicle) at or in the vicinity of the public place concerned and there to provide, by exhaling into such an apparatus, a specimen of his or her breath in the manner indicated by the member, or
- (c) where the member does not have such an apparatus with him or her, to remain at that place in his or her presence or in the presence of another member of the Garda Síochána (for a period that does not exceed one hour) until such an apparatus becomes available to him or her and then to provide, by exhaling into such an apparatus, a specimen of his or her breath in the manner indicated by the member.

(3) A person who refuses or fails to comply immediately with a requirement of a member of the Garda Síochána under this section commits an offence and is liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months or to both.

(4) A member of the Garda Síochána may arrest without warrant a person who in the member's opinion is committing or has committed an offence under this section.

(5) In a prosecution for an offence under section 4, 5 or 6 of this Act it shall be presumed, until the contrary is shown, that an apparatus provided by a member of the Garda Síochána for the purpose of enabling a person to provide a specimen of breath under this section is an apparatus for indicating the presence of alcohol in the breath.

(6) A member of the Garda Síochána shall not make a requirement under subsection (2) of a person to whom paragraph (a) of subsection (1) applies if, in the opinion of the member, such requirement would be prejudicial to the health of the person.

(7) A member of the Garda Síochána shall not make a requirement under subsection (2) of a person to whom paragraph (d) of subsection (1) applies if, in the opinion of the member or on the advice of a doctor or other medical personnel

attending the scene of the event, such requirement would be prejudicial to the health of the person.

(8) Section 1(1) of the Probation of Offenders Act 1907 does not apply to an offence under this section.

(9) Nothing in this section affects any power of arrest conferred by law apart from this section.

(10) It is not a defence in any proceedings, other than proceedings under subsection (3), to show that a member of the Garda Síochána did not make a requirement under this section.”.

Obligation to provide blood or urine specimen while in hospital.

8.—The Act of 2010 is amended by substituting for section 14 the following:

“14.—(1) Where, in a public place, an event occurs in relation to a mechanically propelled vehicle in consequence of which a person is injured, or claims or appears to have been injured, and is admitted to, or attends at, a hospital and a member of the Garda Síochána is of opinion that, at the time of the event, the person was driving or attempting to drive, or in charge of with intent to drive or attempt to drive (but not driving or attempting to drive), the mechanically propelled vehicle, then, subject to subsection (4) and unless the member is of opinion that the person should be arrested, the member shall, in the hospital, require the person either—

- (a) to permit a designated doctor or designated nurse to take from the person a specimen of his or her blood, or
- (b) at the option of the person, to provide for the designated doctor or designated nurse a specimen of his or her urine,

and if the doctor or nurse states in writing—

- (i) that he or she is unwilling, on medical grounds, to take from the person or be provided by the person with the specimen to which the requirement in either of the foregoing paragraphs related, or
- (ii) that the person is unable or unlikely within the period of time referred to in section 4 or 5, as the case may be, to comply with the requirement,

the member may make a requirement of the person under this subsection in relation to the specimen other than that to which the first requirement related.

(2) Subject to section 22, a person who, following a requirement under subsection (1)—

- (a) refuses or fails to comply with the requirement, or
- (b) refuses or fails to comply with a requirement of a designated doctor or designated nurse in relation to the taking under that subsection of a specimen of blood or the provision under that subsection of a specimen of urine,

commits an offence and is liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months or to both.

(3) Notwithstanding subsection (2), it is not an offence for a person to refuse or fail to comply with a requirement under subsection (1) where, following his or her admission to, or attendance at, a hospital, the person comes under the care of a doctor or nurse and the doctor or nurse refuses, on medical grounds, to permit the taking or provision of the specimen concerned.

(4) Before making a requirement of a person under subsection (1) the member of the Garda Síochána concerned shall consult with a doctor treating the person, and if a doctor treating the person advises the member that such a requirement would be prejudicial to the health of the person the member shall not make such requirement.

(5) A member of the Garda Síochána may, for the purposes of making a requirement of a person under subsection (1), enter without warrant any hospital where the person is or where the member, with reasonable cause, suspects the person to be.

(6) A designated doctor or designated nurse may, for the purpose of taking from a person a specimen of his or her blood or being provided by a person with a specimen of his or her urine under subsection (1), enter any hospital where the person is or where the doctor or nurse is informed by a member of the Garda Síochána that the person is.

(7) Section 1(1) of the Probation of Offenders Act 1907 does not apply to an offence under this section.

(8) Nothing in this section affects any power of arrest conferred by law apart from this section.

(9) It is not a defence in any proceedings, other than proceedings under subsection (2), to show that a member of the Garda Síochána did not make a requirement under this section.”.

9.—The Act of 2010 is amended—

Amendments to
Act of 2010.

- (a) in subsection (1) of section 3, by substituting for the definition of “specified person” the following:

“ ‘specified person’ means a person who at the time of an alleged offence under section 4 or 5—

- (a) is the holder of a learner permit permitting the holder to drive a vehicle of the category concerned,
- (b) is the holder of a first driving licence licensing the holder to drive a vehicle of the category concerned within a period of 2 years from the date of its issue,
- (c) is the holder of a driving licence licensing the holder to drive a vehicle in the category C, C1, D, D1, EB, EC, EC1, ED, ED1 or W while

driving, attempting to drive or being in charge of such a vehicle,

- (d) is the holder of a licence to drive a small public service vehicle granted under section 34 of the Taxi Regulation Act 2003 or section 82 of the Principal Act, or a person purporting to be such a holder, while driving, attempting to drive or being in charge of such a vehicle when the vehicle is being used in the course of business, or
 - (e) does not hold a driving licence licensing the holder to drive a vehicle of the category concerned.”,
- (b) in paragraph (a) of section 7, by substituting “section 9(2)” for “section 9(1)”,
 - (c) in subsection (4) of section 10, by substituting “(including the functions under section 9)” for “(including the powers under section 9)”,
 - (d) in section 12(1), by inserting “or hospital” after “at a Garda Síochána station”,
 - (e) in section 24, by inserting after subsection (4) the following:

“(5) A member of the Garda Síochána may, for the purpose of making a requirement of a person under subsection (1), enter without warrant any hospital where the person is or where the member, with reasonable cause, suspects him or her to be.

(6) A designated doctor or designated nurse may, for the purpose of carrying out a medical examination under subsection (1), enter any hospital where the person is or where the doctor or nurse is informed by a member of the Garda Síochána that the person is.

(7) Section 1(1) of the Probation of Offenders Act 1907 does not apply to an offence under this section.”,
 - (f) in section 25, by deleting subsection (6),
 - (g) in section 29—
 - (i) by substituting for subsection (8) the following:

“(8) Where—

 - (a) a person who is eligible under subsection (1) to be served with a fixed penalty notice pays the fixed charge in accordance with this section and the concentration of alcohol purported to be present in his or her body, as stated or certified in accordance with this Part—
 - (i) did not exceed 80 milligrammes of alcohol per 100 millilitres of blood, 107 milligrammes of alcohol per 100

millilitres of urine, or 35 microgrammes of alcohol per 100 millilitres of breath, 3 penalty points shall be endorsed on the entry relating to the person, or

- (ii) exceeded 80 milligrammes but did not exceed 100 milligrammes of alcohol per 100 millilitres of blood, exceeded 107 milligrammes but did not exceed 135 milligrammes of alcohol per 100 millilitres of urine, or exceeded 35 microgrammes but did not exceed 44 microgrammes of alcohol per 100 millilitres of breath, the person shall be disqualified for holding a driving licence for a period of 6 months beginning on the date referred to in subsection (14),

or

- (b) a specified person, who is eligible under subsection (2) to be served with a fixed penalty notice, pays the fixed charge and payment is made in accordance with this section, he or she shall be disqualified for holding a driving licence for a period of 3 months beginning on the date referred to in subsection (14).”,

- (ii) in subsection (11)(b), by substituting “this Part” for “Chapter 2”, and

- (iii) by inserting after subsection (18) the following:

“(18A) A document purporting to be a certificate or receipt of posting or delivery issued by An Post or another postal service is admissible in evidence as proof of the posting or delivery, as the case may be, of a fixed penalty notice.”,

- (h) by substituting for section 31 the following:

“31.—Section 39(2) of the Act of 1994 is amended by inserting ‘making a requirement of the person under section 12(2) of this Act or section 4(4) of the Road Traffic Act 2006, or’ after ‘for the purpose of.’”,

- (i) in section 46, by deleting “(as amended by section 12 of the Act of 2000)”,
- (j) in subsection (2) of section 48, by substituting “subsection (4)(b)” for “subsection (5)(b)”,
- (k) in subsection (7) of section 60, by substituting “Section 41(1)” for “Section 41”,
- (l) in section 61—

- (i) by substituting for subsection (3) the following:

“(3) Where a person of whom the production of a driving licence or learner permit is required under this section refuses or fails so to produce the licence or permit or produces the licence or permit but refuses or fails to permit the member of the Garda Síochána to whom it is produced to read it, the member may demand of the person his or her name and address and date of birth and, if the person refuses or fails to give to the member his or her name and address and date of birth or gives to the member a name or address or date of birth which is false or misleading, he or she commits an offence.”,

and

(ii) in subsection (4), by substituting for paragraph (b) the following:

“(b) a person who, when his or her name and address and date of birth are lawfully demanded of him or her by the member under this section, refuses or fails to give to the member his or her name and address and date of birth or gives to the member a name or address or date of birth which the member has reasonable grounds for believing to be false or misleading.”,

and

(m) in section 85, by deleting paragraph (d).

Transitional
provision — section
65.

10.—The Act of 2010 is amended in section 65 by inserting after subsection (3) the following:

“(4) For the purposes of section 26 of, and the Second Schedule to, the Principal Act (inserted by this section)—

(a) the reference to section 4 of the Road Traffic Act 2010 in—

(i) paragraph 4 of the Second Schedule to, and

(ii) section 26(4)(a)(i) and 26(4)(b) of,

the Principal Act shall be deemed to include a reference to section 49 of the Principal Act,

(b) the reference to section 5 of the Road Traffic Act 2010 in—

(i) paragraph 5 of the Second Schedule to, and

(ii) section 26(4)(b) of,

the Principal Act shall be deemed to include a reference to section 50 of the Principal Act,

(c) the reference to section 5(1) of the Road Traffic Act 2010 in section 26(4)(a)(ii) of the Principal Act shall be deemed to include a reference to section 50(1) of the Principal Act,

(d) the reference to section 12 of the Road Traffic Act 2010 in—

(i) paragraph 6 of the Second Schedule to, and

(ii) section 26(4)(a)(v) of,

the Principal Act shall be deemed to include a reference to section 13 of the Road Traffic Act 1994, and

(e) the reference to section 14 of the Road Traffic Act 2010 in—

(i) paragraph 6 of the Second Schedule to, and

(ii) section 26(4)(a)(v) of,

the Principal Act shall be deemed to include a reference to section 15 of the Road Traffic Act 1994.”.

11.—(1) This Act may be cited as the Road Traffic (No. 2) Act 2011. Short title, commencement and collective citation.

(2) This Act comes into operation on such day or days as, by order or orders made by the Minister for Transport, Tourism and Sport under this section, may be fixed therefor either generally or with reference to any particular purpose or provision and different days may be so fixed for different purposes and different provisions.

(3) The collective citation the “Road Traffic Acts 1961 to 2011” includes this Act.