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Drink/Drug Driving Investigation.



By the end of this lesson, you will be able to:

1. Identify the principles of legislation under Section 4 Road Traffic Act 1988, Section 5 Road Traffic Act 1988 and Section 6 Road Traffic Act 1988.
2. State the Powers of Arrest that are available to officers under Section 6 Road Traffic Act 1988.
3. Explain the Police Station procedure including blood and urine samples should they be required under Section 7 Road Traffic Act 1988.
4. Explain the Hospital Procedure in relation to persons suspected of drink or drug driving.
5. Describe the Powers of Entry that are available to officers under Section 6 Road Traffic Act 1988.

Offences of being 'unfit' to drive through drink or drugs

Section 4 RTA 1988

Offences involving the proportion of alcohol/drugs in the body, as measured in breath, blood or urine

Section 5 RTA 1988



Drink/Drug Driving;

Identified by ACPO and the government as being one of the four most significant dimensions of unlawful, disorderly and dangerous road and vehicle use, drink and drug influenced driving is a significant issue in effective road policing.

Society has made drinking and driving virtually socially unacceptable. Despite this, it is still a common occurrence and a major contributory factor in far too many road traffic collisions as the following statistics illustrate.

- In 2017, 1490 people were killed or seriously injured in drink drive collisions
- Nearly 1 in 6 of all deaths on the road involve drivers who are over the legal limit
- Drinking and driving occurs across a wide range of age groups but is especially prevalent among men aged 17 – 29 in terms of casualties and positive breath tests following a collision

Driving whilst under the influence of drink or drugs, or in combination, is a serious offence and a conviction can result in disqualification, a fine and possible imprisonment.

Dealing with people suspected of having committed a drink drive offence presents unique problems. Not only may police officers have to contend with the potential effects of alcohol upon the behavior of the suspect, but also the realization on the part of the suspect of the potential consequences of their own actions

The law relating to drinking and driving is contained in the **Road Traffic Act 1988** and **The Road Traffic Offenders Act 1988**.

Although this session is a discussion of some of the relevant law and powers of enforcement, there is an increasing emphasis on judicial action to prevent re-offending.

Power to Require Preliminary Tests



Section 6 Road Traffic Act 1988



Drive

Not defined in Road Traffic Act 1988

In charge of the propulsion and steering of the vehicle



The primary consideration as to whether a person is driving is a question of fact, dependant on the degree and extent to which the person has control of the direction and movement of the vehicle.

It is possible for more than one person to be the 'driver' of the vehicle.

- Where one person sits in the driving seat while another reaches across and operates the steering wheel, both can be 'drivers' of the vehicle.
- A learner driver and their instructor may both be the drivers of a vehicle.

Under the legislation relating to accidents, the 'driver' of a vehicle is under an obligation in relation to that vehicle while it remains on a road and that duty can continue even after the person leaves the vehicle for a short time.

The term 'driver' includes a person who takes the vehicle out on the road and remains the driver until they finish their journey even though they may have stopped and switched off the engine some minutes before the accident.

This definition was established in the case of *Jones v Prothero* (1952)

Attempt to Drive

Intention + Actions

Not necessary to prove
person was capable of
achieving it








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An attempt is an intention to do something, coupled with actions directed towards accomplishing the event which are **more than merely preparatory** to the commission of the offence.

It is not necessary to prove the person was capable of achieving it.

As a general rule of thumb “has the person gone as far as they possibly can without actually driving?”

If YES, and the next step they will actually take is to drive, then they have most certainly ‘attempted’.

If NO, then there are more stages to pass through before they actually drive

Example:

- A person sitting at the wheel of a car trying to get a key into the ignition, could be ‘attempting’, even if the keys being used were the wrong ones for the car. (*Kelly v Hogan (1982)*)
- A motorcyclist could be convicted of ‘attempting’ to drive whilst disqualified when he pushed his motor cycle 6 yards towards the entrance of a public road where he was about to ride it (*Shaw v Knill (1974)*).

Whether a person is ‘attempting to drive’ is a question of fact and will usually be determined by the principles applying to ‘attempts’ generally, i.e acts which are ‘more than merely preparatory’ to the act of driving.

An attempt can involve an intention to do something, coupled with actions directed towards accomplishing the event.

The fact that a vehicle is incapable of being driven, say because of a mechanical fault, will not prevent a charge involving an attempt to drive (*R v Farrance 1978*)

In Charge

Not clearly defined under Road Traffic Act

A close connection between the defendant and control of the vehicle is required








A close connection between the defendant and control of the vehicle is required – That connection may be evidenced by the defendants position in relation to the car, his actions, possession of a key which fits the ignition, his intentions as regards control of the vehicle and the position of anyone else in at or near the vehicle.

The principles to be applied when considering whether a person is 'in charge' of a vehicle are set out in *DPP v Watkins* (1989).

Two different situations might arise.

- Where the defendant is the owner of the vehicle or where they have recently driven it.

In these cases it would be for the defendant to show that they were no longer in charge of it and that there was no likelihood of them resuming control at the relevant time (e.g. while drunk)

- Where the defendant is not the owner of the vehicle or has not recently driven the vehicle.

In these cases the prosecution must show that the defendant was in voluntary control of the vehicle or intended to become so in the immediate future.

To determine whether a person can be deemed to be 'in charge' of a vehicle the following would be relevant:

- **Whether the defendant had the keys for the vehicle**
- **Where the defendant was in relation to the vehicle at the time**
- **What evidence there is of the defendant's intention to take control of the vehicle**

****Note that the supervisor of a learner driver can be 'in charge' of the vehicle and can therefore commit an offence if unfit through drink or drugs at the time (*Langman v Valentine* (1952))**

Note that a vehicle that has been clamped may allow a defence to a person being deemed to be 'in charge' – (*Drake v DPP* 1994)

Mechanically Propelled Vehicle



A vehicle that is constructed so that it can be propelled mechanically:

- Steam
- Electric
- Petrol
- Diesel
- Oil
- Gas



A mechanically propelled vehicle is a vehicle that is constructed so that it can be propelled mechanically by steam, electric, petrol, diesel, oil or gas

It DOES NOT include electrically assisted pedal cycles.

If the vehicle is so constructed, it does not cease to be 'mechanically propelled' just because the mechanism is not being used to propel it at the time.

The test as to whether a vehicle is 'mechanically propelled' is one of construction rather than use.

Removing an engine from a vehicle **does not** stop it from being 'mechanically propelled' if you can show that the engine could easily be replaced.

A car with a flat battery is still a 'mechanically propelled vehicle'

This is an objective test relating to the vehicle's design and **NOT** the intention of the owner.

Motor Vehicle



A mechanically propelled vehicle
intended or adapted for use on roads



A motor vehicle is defined as **‘a mechanically propelled vehicle intended or adapted for use on roads’**

A mechanically propelled vehicle is, quite simply, a vehicle that is constructed so that it can be propelled mechanically by petrol, oil, gas, electric or steam.

The test of whether a vehicle is ‘mechanically propelled’ is one of construction rather than use.

Removing an engine from a vehicle does not stop it from being ‘mechanically propelled’ if you can show that the engine can be easily replaced.

A car with a flat battery is still a ‘mechanically propelled vehicle’

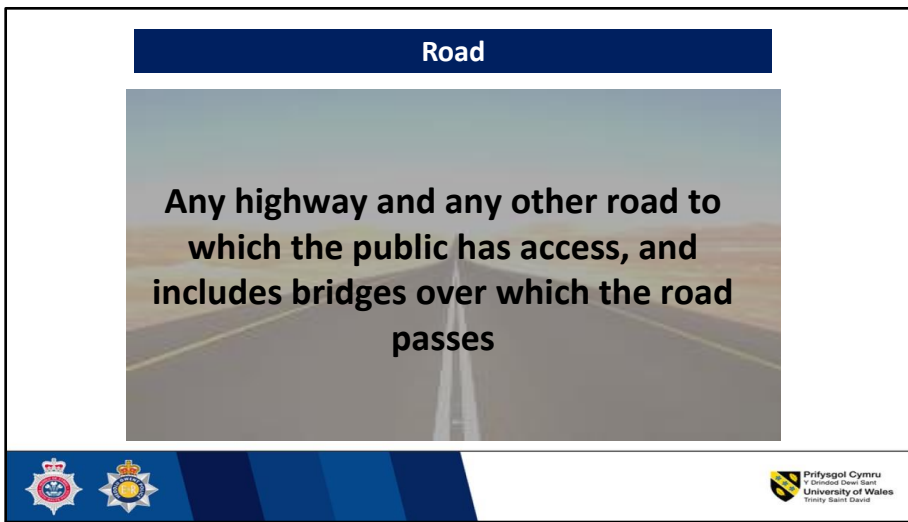
A petrol driven micro-scooter has been held to be a motor vehicle within the definition of the Road Traffic Act as has a motor-assisted pedal cycle (moped) has been held to be a mechanically propelled vehicle even when it is being pedalled.

Intended/adapted

In order to discover if the vehicle is intended or adapted for use on a road, eg Go-kart, the test is objective. Would a reasonable person say that the vehicle could be used on a road?

The owners intention for use of the vehicle is generally not relevant.

Where a vehicle has been rebuilt, it will be assumed the vehicle will continue its intended use on a road.



Sec 192(1) Road Traffic Act provides the definition of a 'road'

This is the same definition as relates to offences under Construction & Use Regulations.

Whether the public has access is a question of fact.

If only a restricted section of the public (such as members of a club) has access to a 'road' then it is not enough to make it a 'road' under the Road Traffic Act.

Any access enjoyed by the public must be with the agreement of the landowner. Members of the public must not have obtained access 'either by overcoming a physical obstruction or in defiance of prohibition, express or implied'.

Therefore, roads are capable of being closed or cordoned off in a way that alters their status.

Car parks and forecourts may in exceptional cases be shown to be roads and it will ultimately be for a court to decide.

Whilst car parks may not often be held to be roads, they may fall into the category of 'public places'.

Generally a road stretches to boundary fences or grass verges adjacent to it, including any pavements.

If a vehicle is partly on a road and partly on some other privately owned land it can be treated as being 'on a road' for the purposes of road traffic legislation.

Public Place



Any place to which
the public have
access whether on
payment or
otherwise



In order to prove that a place is in fact a 'public place' it must be shown that:

- those people who are admitted to the place in question are members of the public and are admitted as such, not as members of some special or particular 'class' of the public or as a result of some special characteristic not shared by the public at large; and
- those people are admitted with the permission, either express or implied, of the owner of the land in question.

Some places which have been held to be a 'public place' include:

- A privately owned caravan site open to campers
- A school playground used outside of school hours as a leisure park by members of the public
- A field used in connection with an agricultural show
- A car park attached to commercial premises intended only for the use of customers but accessible *from* a public place and with no restrictions placed on people entering the car park.

Whether a place is a 'public place' will be a question of fact for the Court.

This means that different magistrates courts can arrive at different decisions when presented with the same facts. Therefore, it is important for police officers to provide enough evidence to show that a particular location amounted to a 'public place'.

'Unfit through Drink or Drugs'

A person who drives or
attempts to drive or
is in charge
of a mechanically propelled vehicle
on a road or other public place,
whilst unfit to drive through
drink or drugs
commits an offence

Section 4(1) Road Traffic Act 1988



Section 4 of the Road Traffic Act 1988 relates to offences of being Unfit through Drink or Drugs.

Section 4 creates separate offences, namely; 'Driving', 'Attempting to Drive' and 'In Charge'

Although many of the so-called 'drink driving' offences carry police powers based on reasonable suspicion, it will not be enough to rely on a suspicion *that the defendant had been driving* in order to prove the relevant offence.

Suspicion may be enough to trigger powers to require preliminary tests or powers of entry, it will not, however, be enough to prove the required element of *driving/attempting to drive/being in charge* for the purposes of prosecuting the relevant offence.

There is no need to administer a preliminary test for breath alcohol levels or for drug consumption before arresting for this offence.

Any arrest for this offence must be necessary for any of the reasons stipulated in Sec 24(5) PACE 1984.

However, in straightforward cases it is most likely that the person's arrest will be necessary to prevent causing physical injury to them or any other person and to allow the prompt and effective investigation of the offence.

There is a **power of entry** in relation to this offence under Sec 17(1)(c) which states that

A Constable may enter and search any premises for the purpose of arresting a person under:-

Section 4 (driving/attempting to drive/in charge) when under the influence of drink or drugs

Points to Prove

Sufficient to prove that the person's ability to drive was impaired because of consumption of drink (alcohol) or drugs

Evidence required is similar to that required to prove drunkenness

Doctor's opinion and your observations will be important



- It is sufficient to prove that the person's ability to drive was for the time being impaired because of consumption of drink (alcoholic liquor) or drugs.
- Evidence of impairment may be given by any witness and does not require expert testimony, however, they cannot give evidence as to the defendant's ability to drive.

The evidence required will be similar to that required to prove drunkenness (can they stand up, walk straight, answer questions, speak without slurring?) and also evidence of the standard of their driving (was their driving erratic?)

In many cases, to assist in providing evidence of impairment, if an officer suspects that a person is under the influence of alcohol or a drug they may require them to undertake a preliminary impairment test (S6 RTA – covered later). This test is known as a Field Impairment Test (FIT) which is designed to give an indication of whether a person is unfit to drive due to drink or drugs. The FIT, which involves observing a person's performance during a set of tasks or observing their physical state, can only be conducted by specially trained officers.

Evidence of a doctor's opinion following an examination of the driver is an important part of the prosecution evidence.

Your observations of the driver will also be important.

It is not necessary to show what quantity of alcohol or drug the defendant had in their system for this offence. Therefore, there is no need for any form of breath test.

'Drugs' will include any intoxicant other than alcohol.

Under Sec 4, 'a person shall be deemed not to have been in charge of a mechanically propelled vehicle if they prove that at the material time the circumstances were such that there was no likelihood of them driving so long as they remain unfit to drive through drink or drugs'

Being over the prescribed limit: Alcohol

A person who **drives**
or
attempts to drive
or
is in charge of a motor vehicle on
a road or other public place
after consuming so much alcohol
that the proportion of it in their
breath, blood or urine exceeds the
prescribed limit commits an offence

Section 5 Road Traffic Act 1988



Section 5 of the Road Traffic Act 1988 deals with offences relating to persons 'being over the prescribed limit'

Sec 5(1)(a) relates to 'Driving' & 'Attempting to Drive'

Sec 5(1)(b) relates to 'Being In Charge Of'

'Consuming' is not restricted to drinking and will encompass other methods of getting alcohol into the bloodstream (DPP v Johnson 1995)

Sec 5 provides a statutory defence if the person is able to prove that:
At the time he is alleged to have committed the offence the circumstances were such that there was no likelihood of his driving whilst the proportion of alcohol in his breath, blood or urine remained likely to exceed the prescribed limit.

Prescribed Limit: Alcohol

BREATH LIMIT 35	BLOOD LIMIT 80	URINE LIMIT 107
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Alcohol

Breath – 35 microgrammes of alcohol in 100 millilitres of breath

Blood – 80 milligrammes of alcohol in 100 millilitres of blood

Urine – 107 milligrammes of alcohol in 100 millilitres of urine

Breath specimens at the road side give a preliminary reading and are not evidential to the case. Breath samples for evidence are analysed by approved devices at designated police stations and operated by specially trained staff.

However, this process can be legally administered at places other than a police station by officers on patrol. This will depend on force policy.

Within SWP all evidentially tests are conducted at a police station

Blood samples are taken by a doctor whilst urine samples can be taken by police officers.

Both samples are later analysed at a laboratory.

The 'prescribed limits' can be varied by regulation, the current prescribed limit, listed above, are contained in Section 11(2) Road Traffic Act 1988

Section 5 Road Traffic Act 1988: Defence

It is a defence for a person charged with an offence to prove that at the time he is alleged to have committed the offence the circumstances were such that there was no likelihood of him driving the vehicle whilst the proportion of alcohol in his breath, blood or urine remained likely to exceed the prescribed limit.



It is a defence for a person charged with an offence under subsection (1)(b) above to prove that at the time he is alleged to have committed the offence the circumstances were such that there was no likelihood of his driving the vehicle whilst the proportion of alcohol in his breath, blood or urine remained likely to exceed the prescribed limit . 5(3) The court may, in determining whether there was such a likelihood as is mentioned in subsection (2) above, disregard any injury to him and any damage to the vehicle .

Notes

(i) **Defence** - in the case of *Sheldrake v DPP* [2004] UKHL 43 the Court stated that in the light of the Human Rights Act 1998 this defence must be given the following meaning:

It is a defence for a person charged with this offence to demonstrate from the evidence an arguable case that at the time he was alleged to have committed the offence, the circumstances were such that there was no likelihood of his driving the vehicle while the proportion of alcohol in his breath blood or urine remained likely to exceed the prescribed limit.

It is not sufficient for the accused to show that, at the time of his arrest, he was so hopelessly drunk as to be incapable of driving a motor vehicle; he must show, for example, that he had handed the keys of the vehicle to someone else or that, realising that he was adversely affected by drink, he had taken a room for the night.

Being over the prescribed limit: Drugs

Where a person **drives**
or
attempts to drive
or
is in charge of a **motor vehicle** on
a **road** or other **public place**
and there is in that person's body a specified controlled drug,
they are guilty of an offence if
the proportion of the drug in their blood or urine exceeds the
specified limit for that drug

Section 5A Road Traffic Act 1988



Section 5A of the Road Traffic Act 1988 relates to the concentration of specified controlled drug above the specified limit'

Sec 5(A) applies when a person 'Drives' or 'Attempts to Drive' a motor vehicle on a road or other public place, or

Is 'In Charge Of' a motor vehicle on a road or other public place
and there is in their body a **specified controlled drug**. The person is guilty of an offence if the proportion of the drug in their blood or urine exceeds the specified limit for that drug.

Sec 5A (3) provides defences for the offence set out under Sec 5(A)

It is a defence for a person charged with an offence under this section to show that:
The specified controlled drug had been prescribed or supplied to the person for medical or dental purposes

The person 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, and

The person's possession of the drug immediately before taking it was not unlawful under Sec 5(1) of the Misuse of Drugs Act 1971 (restriction of possession of controlled drugs) because of an exemption in regulations made under Sec 7 of that Act.

The defence has to be raised by the driver, but there is no reverse burden of proof. It is not for the driver to prove his claim (though it would clearly need to be credible), it is for the police to disprove.

Interview and investigation will be necessary and being able to rely on proving Sec 4 impairment, where it exists, will be particularly useful when these claims are made.

Prescribed Limit: Drugs



Cocaine

BLOOD
LIMIT
10



Delta-9
Tetrahydrocannabinol
(THC)
'Cannabis'

BLOOD
LIMIT
2



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Drugs

Regulation 2 of the Drug Driving (Specified limits)(England and Wales)

Regulations 2014 specifies the controlled drugs and the limit for blood for the purpose of this offence.

****No specified limits have been set for the proportion of drugs in urine and as such the Sec 5A offence is only available where the drugs present exceed the prescribed limit in blood****

****Note that Cannabis is not one of the specified drugs. 'Cannabis' is the generic term for the plant and the products produced from it and cannot be measured.**

The active ingredient that makes a person likely to be unfit to drive that can be measured is Delta 9 – Tetrahydrocannabinol (THC) and this has been specified in the regulations.

The limit for specified controlled drugs depends on the type.

The limits are measured in **micrograms per litre of blood**.

As the drug screeners in current use can only detect cannabis and cocaine, only these are shown:

Cocaine – 10 micrograms per litre

Delta 9 Tetrahydrocannabinol (Cannabis) – 2 micrograms per litre

Other drugs specified in the Regulations include:

Amphetamine – 250

Diazepam – 550

Ketamine – 20

Methylamphetamine – 10

Morphine - 80

Section 5A Road Traffic Act 1988: Defences

It is a defence for a person charged with an offence under this section to show that –

- a) The specified controlled drug had been prescribed or supplied to him for medical or dental purposes,
- b) He took the drug in accordance with any directions given by the person whom the drug was prescribed or supplied, and with any accompanying instructions given by the manufacturer or distributor of the drug, and
- c) His possession of the drug immediately before taking it was not unlawful under Section 5(1) of the Misuse of Drugs Act 1971 (restriction of possession of controlled drugs) because of an exemption in regulations made under Section 7 of that Act (authorisation of activities otherwise unlawful under foregoing provisions).



It is a defence for a person charged with an offence under subsection (1)(b) above to prove that at the time he is alleged to have committed the offence the circumstances were such that there was no likelihood of his driving the vehicle whilst the proportion of alcohol in his breath, blood or urine remained likely to exceed the prescribed limit . 5(3) The court may, in determining whether there was such a likelihood as is mentioned in subsection (2) above, disregard any injury to him and any damage to the vehicle .

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(i) **Defence** - in the case of *Sheldrake v DPP [2004] UKHL 43* the Court stated that in the light of the Human Rights Act 1998 this defence must be given the following meaning:

It is a defence for a person charged with this offence to demonstrate from the evidence an arguable case that at the time he was alleged to have committed the offence, the circumstances were such that there was no likelihood of his driving the vehicle while the proportion of alcohol in his breath blood or urine remained likely to exceed the prescribed limit.

It is not sufficient for the accused to show that, at the time of his arrest, he was so hopelessly drunk as to be incapable of driving a motor vehicle; he must show, for example, that he had handed the keys of the vehicle to someone else or that, realising that he was adversely affected by drink, he had taken a room for the night.

Power to Required Preliminary Tests



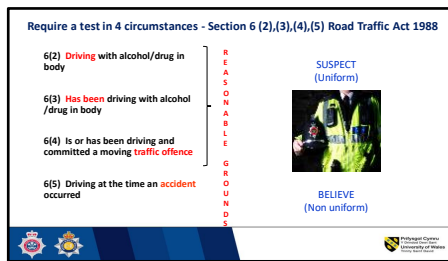
Section 6 Road Traffic Act 1988



Police Officers are given powers under **Sec 6 of the Road Traffic Act 1988**, to require people whom they suspect of committing drink/drug driving offences (Unfit to drive or Excess Alcohol) to take preliminary tests to establish whether or not any offences have been committed.

The constable who administers the test need not have been the requesting officer. This takes into account that some of the tests need to be undertaken by trained officers.

There are four circumstances in which a constable may require a person to co-operate with any one or more of the preliminary tests and these will be looked at in turn.



Section 6(2) Road Traffic Act 1988

This sub-section applies if a constable **reasonably suspects** that the person **is driving**, is attempting to drive or is in charge of a motor vehicle on a road or other public place, and has alcohol or a drug in his body or is under the influence of a drug

This deals with the **Present** – someone who is reasonably suspected to be driving, attempting to drive or being in charge of a motor vehicle on a road or other public place, and having alcohol or a drug in their body or being under the influence of a drug.

Section 6(3) Road Traffic Act 1988

This sub-section applies if a constable **reasonably suspects** that the person **has been driving**, attempting to drive or in charge of a motor vehicle on a road or other public place, while having alcohol or a drug in his body or while unfit to drive because of a drug, and still has alcohol or a drug in his body or is still under the influence of a drug

This deals with the **Past** – someone reasonably suspected of having been driving, attempting to drive or in charge of a motor vehicle on a road or other public place, while having alcohol or a drug in their body or while unfit to drive because of a drug, and who still has alcohol or a drug in their body or is still under the influence of a drug.

Section 6(4) Road Traffic Act 1988

This sub-section applies if a constable **reasonably suspects** that the person **is or has been** driving, attempting to drive or in charge of a motor vehicle on a road or other public place and has committed a traffic offence while the vehicle was in motion
This is a combination of **Past** and **Present** – someone who it is reasonably suspected is or has been driving, attempting to drive or in charge of a motor vehicle on a road or other public place, and who is reasonably suspected to have committed a moving traffic offence while the vehicle is in motion.

‘Traffic offence’ means an offence under any provision of the Road Traffic Act 1988.

An officer must be in uniform to carry out preliminary tests under sub-sections (2) to (4)

Section 6(5) Road Traffic Act 1988

This sub-section applies if: An **accident** occurs owing to the presence of a motor vehicle on a road or other public place, and
a constable **reasonably believes** that the person was driving, attempting to drive or in charge of the vehicle at the time of the accident
an officer **DOES NOT** have to be uniform to carry out a test under this subsection
Reasonable **belief** requires more than ‘reasonable suspicion’

There is no need for the police officer making the requirement to believe or

even suspect that the person has been drinking, or that they have committed any offence.

The reasonable belief of his/her involvement as a person driving, attempting to drive or being in charge of a vehicle at the time of the accident is enough.

****There is no need for the officer to be in uniform for a requirement under this section****

Police Officers can only test a person for alcohol or drugs if:

Suspect driver may be under the influence of alcohol/drugs

Accident occurs where the vehicle has been involved in a Road Traffic Collision (RTC)

Moving traffic offence has been committed



Police Officers can **only** test a person for alcohol or drugs if (**SAM**)

1) Have reason to **Suspect** driver might be under influence of alcohol – following scenarios are examples of this:

- inappropriate style of driving – stalling at red light & when spoken to the driver's speech is slurred
- vehicle is stopped under S163 RTA & driver's breath smells of intoxicating liquor
- information is available about drink/drug use – witness passes info regarding a vehicle being driven by person who has consumed alcohol.

2) Vehicle has been involved in an **Accident**

3) A **Moving traffic offence** has been committed – e.g. driver crosses a red light

Random testing is not permitted.

Preliminary Tests

Roadside breath test

Approved by Secretary of State

Indicates if proportion of alcohol in breath exceeds the prescribed limit



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The **first** 'preliminary test' we will look at is what is commonly referred to as the 'roadside breath test'.

This type of test requires a person to provide a specimen of breath by means of a device approved by the Secretary of State.

This device gives an indication whether the proportion of alcohol in a person's breath or blood is likely to exceed the prescribed limit.

In other words 'over the limit'

There are several different types of breath testing devices. Each is simple to use and you should familiarise yourself with the ones used by South Wales Police.

The **Road Traffic Act 1988** gives further powers to obtain specimens of breath, blood or urine at the police station which can be analysed to discover whether the person is actually over the limit and thereby committing an offence.

Preliminary Tests

Tests in respect of sub-sections 6(2) - 6(4) can be administered at the roadside

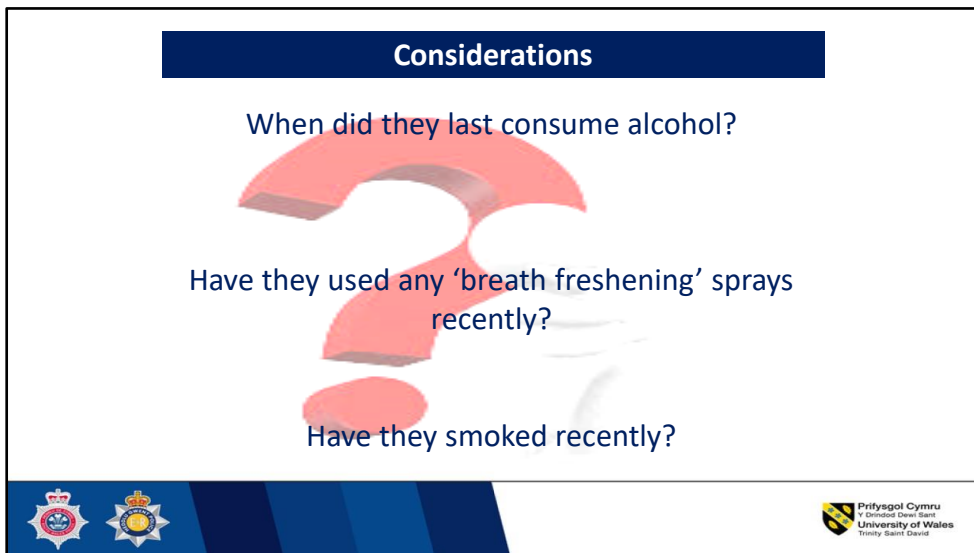
Tests in respect of sub-section 6(5) can be administered at a police station if officer feels necessary



A preliminary breath test undertaken in respect of sub-sections **6(2)** to **6(4)** may be administered only at or near the place where the requirement to co-operate with the test was imposed.

However, in respect of sub-section (5) only, it can be administered at a specified police station, if the constable who imposes the requirement thinks it would be expedient to do so.

In practice, in the majority of cases, the test will be administered at the roadside



Manufacturers recommend that **20 minutes** should have elapsed since alcohol was last consumed before obtaining a specimen.

Note: Some breath freshener sprays contain alcohol.

Recently consumed alcohol will give a false reading because of alcohol still in the person's mouth.

A person who has rinsed their mouth with alcohol will give a positive reading, even if they have not swallowed any, although 20 minutes later any breath test should record negative.

If you ask someone when they last had a drink, and they reply

'*10 minutes ago*' you should wait 10 minutes before administering the test

If the person refuses to wait, you can go ahead and administer the test.

It is best practice to point out to the driver the consequences of refusing to wait 20 minutes.

Recent smoking will also adversely affect the test.

If a driver is smoking, you should ask him/her to stop and explain that to continue to smoke will affect the test.

If the driver stops smoking, you should allow a short period for the driver's lungs to clear of smoke (**a minimum of two or three normal inhalations of breath**) and then proceed with the test.

If the driver refuses to stop smoking, they will have failed to provide a specimen and committed an offence of 'failing to provide' under **Section 7(6) Road Traffic Act 1988** which we will look at later

Alcohol Consumed after the Event

If the driver drinks alcohol while still driving
 (**Remember to wait **20 mins** from time of last drink**)

If person has stopped driving then try and prevent them from drinking

If person alleges they have had a drink since the incident gather evidence to assist with 'back calculation'







You may encounter situations where a driver consumes alcohol immediately before a breath test or after returning home following an accident.

You may need to be guided by a supervisor but the following points are worth bearing in mind:

- If the driver drinks alcohol while still considered to be driving this can be included as part of the relevant alcohol for the breath test procedure.
Remember to wait 20 minutes from the time of the last drink.
- If the person has stopped driving, you should try to prevent them from drinking
In the case of an accident when the person claims they have had a drink since the accident, you should continue with the breath test procedure. However, you should gather as much evidence as possible to allow a judgement to be made of approximately how much alcohol was consumed after the accident.

Courts can take into account an analysis of any specimen, together with an expert opinion of how much alcohol would have been in the body at the time of the accident
You need to consider careful questioning, observation and seizing bottles, flasks or glasses from which a drink is alleged to have been taken.

Preliminary Impairment Tests



Unfit to drive through drink or drugs

Series of physical and psychomotor tests administered by specially trained officers

Test may be carried out at the scene or at a police station






The second type of test available to officers is called an impairment test, which should give an indication whether a person is unfit to drive due to drink or drugs. Unlike preliminary breath tests, the chief officer of the force will nominate trained officers to conduct impairment tests.

A preliminary impairment test consists of a series of physical/psychomotor tasks set by the officer.

These tasks will include for example, walking a straight line or the ‘finger to nose’ test.

By observing the person’s ability to perform these tasks, and making such other observations of the person’s physical state such as the size of the subject’s pupils, the officer can obtain an indication whether the person is unfit to drive and if they are, whether their unfitness is likely to be due to drink or drugs.

For further information see the Home Office ‘THINK’ campaign at :

<http://www.dft.gov.uk/think/drugdrive/>

The Secretary of State publishes (and may from time to time revise) a Code of Practice about the kinds of tasks that may be specified, the types of observations that officers should make, the manner in which the tests should be administered and the inferences that may be drawn from any observations made.

A preliminary impairment test may be administered at or near the place where the requirement to co-operate with the test was imposed, or if the constable who imposes the requirement thinks it expedient, at a specified police station.

At all times the Codes of Practice under this section should be adhered to.

Preliminary Drug Tests

Sweat or saliva samples

Test may be administered at
the scene or at a police
station



The **third** and final test available for officers to consider is called a drug test, which will test for the presence of drugs in a person's body. Samples of the person's sweat or saliva will be obtained, using a device approved by the Secretary of State. A preliminary drug test may be administered at or near the place where the requirement to co-operate with the test was imposed, or if the officer who imposes the requirement thinks it expedient, at a specified police station.

In respect of the impairment test the codes of practice must be adhered to.

Section 6(6) Road Traffic Act 1988



A person commits an offence if, without **reasonable excuse**, they fail to co-operate with a preliminary test in pursuance of a requirement imposed under this Section



A person commits an offence if, without reasonable excuse, they fail to co-operate with a preliminary test in pursuance of a requirement imposed under this Section.

A constable may **arrest** a person without warrant if,

the person fails to co-operate with a preliminary test in pursuance of a requirement imposed under Sec 6 **and** the constable reasonably suspects that the person has alcohol or a drug in his body or is under the influence of a drug

Section 6D(2) Road Traffic Act 1988

A person may not be arrested under Section 6D while at hospital as a patient.

The diagram illustrates the concept of a 'Reasonable Excuse' in the context of a physical or mental inability to undertake a test. It features a central blue box with the text 'Physical or mental inability to undertake the test'. To the left, a blue box labeled 'Reasonable Excuse' points to this central box. To the right, a large blue box labeled 'What's reasonable?' also points to the central box. Below the central box, a blue box labeled 'Unable to understand the requirement to take the test' points to it. The entire diagram is set against a background of blue and white diagonal stripes.

'Reasonable Excuse'

Physical or mental inability
to undertake the test

What's
reasonable?

Unable to understand the
requirement to take the
test

A constable may **arrest** a person without warrant if,

Section 6D(2) Road Traffic Act 1988

29

Section 6 Road Traffic Act 1988

Requirement can be made if lawfully
on private premises

Officer **MUST** be in uniform

If asked to leave then no longer
lawfully on premises and no power to
require will exist

Any subsequent requirement would be
unlawful



Under Section 6 Road Traffic Act 1988, provided the reasonable grounds exist, a constable can make a requirement of a person to take a provisional breath test whilst lawfully on private premises or private land.

In order to administer the test the Constable **MUST** be in uniform.

The person should be arrested or reported (if alcohol is not suspected) if they refuse or fail to provide a sample.

However, if the officer is asked to leave the private premises or land before any requirement is made, they are no longer lawfully on the premises or land, and therefore there is no power to make the requirement under Section 6. Any subsequent requirement would be unlawful.

If unsure, advice should be sought from supervisors.

Powers of Arrest



Powers of Arrest

A constable may arrest a person without warrant if, as a result of a preliminary breath test, the constable **reasonably suspects** that the proportion of alcohol in the person's breath or blood **exceeds the prescribed limit**

Section 6D(1) Road Traffic Act 1988

Prifysgol Cymru
Deddfedig Dewi Sant
University of Wales
Trinity Saint David

Your powers of arrest are provided by **Sect 6D Road Traffic Act 1988** itself and not within Sec 24 PACE 1984.

In this case a person will have co-operated with the preliminary breath test procedure and provided a positive reading, indicating that their alcohol levels may be above the prescribed limit.

Having obtained a positive reading and arrested the person, further breath specimens for analysis can then be requested under powers contained in Section 7 Road Traffic Act 1988.

The procedures for obtaining will be covered shortly.

As you will see, you can lawfully require the person to provide specimens for analysis at or near a place where a relevant breath test has been administered to the person concerned or would have been so administered but for his failure to co-operate with it, rather than take the person to a police station. However, force policy dictates that individuals should be taken to a police station in order to provide evidential samples.

Powers of Arrest

A constable may arrest a person without warrant if,
the person **fails to co-operate** with a preliminary test in
pursuance of a requirement imposed under Sec 6
and
the constable **reasonably suspects** that the person has
alcohol or a drug in his body or is under the influence of a
drug

Section 6D(2) Road Traffic Act 1988



In this case, a person will have failed to co-operate with the requirement to take a preliminary test and at the time, the constable reasonably suspects that the person has alcohol or drugs in their body

If the constable did not reasonably suspect that there was alcohol or drugs in their body, then the person would still commit the offence of failing to take a preliminary test and could be reported for summons.

The offence of failing to co-operate in these circumstances can only be dealt with by a Magistrates Court and carries a penalty of a fine, four penalty points and a discretionary disqualification.

Police Station Procedure

Section 7 RTA 1988 provides that in the course of an investigation into an offence under **Sections 3A, 4 or 5** at a **police station**, a driver can be required to provide:

- **2 specimens of breath** for analysis by means of an approved breath test machine **OR**
- a specimen of **Blood or Urine** for a laboratory test



Prifysgol Cymru
University of Wales
Cardiff, Swansea, Bangor

Section 7 of the Road Traffic Act 1988 creates an offence for drink drivers who fail to provide a specimen and the following conditions and procedures for taking samples for laboratory analysis. 7(1)

In the course of an investigation into whether a person has committed an offence under the following sections [section 3A](#), [section 4](#), [section 5](#) of this Act a [constable](#) may, subject to the following provisions of this section and section 9 of this Act, require him -

- (a) to provide two [specimens of breath](#) for analysis by means of a device of a type approved by the Secretary of State, or
- (b) to provide a [specimen of blood](#) or urine for a laboratory test.

A constable may make a requirement under this section to provide specimens of breath only if -

- (a) the requirement is made at a police station or a hospital,
- (b) the requirement is imposed in circumstances where [section 6\(5\)](#) of this Act applies, or
- (c) the constable is in uniform

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 whether the proportion of alcohol in his breath or blood is likely to exceed the prescribed limit.

Specimens of **BREATH, BLOOD or URINE** may be requested at a police station, **EVEN WHERE NO SCREENING TEST** has been required

This means a **SCREENING BREATH TEST** carried out, for example, at the **ROADSIDE**

Police Station Procedure

- BLOOD or URINE can **only** be required where:
- The constable making the requirement has reasonable cause to believe that for medical reasons a specimen of breath could/should not be provided
- An approved device is not available at the police station or is not practical to use such a device
- An approved device has been used but the constable has reasonable cause to believe that the readings produced are unreliable



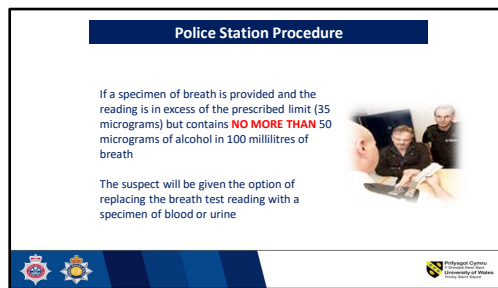
Police Station Procedure

BLOOD or URINE can **only** be required where:

A preliminary drug test has been administered and the constable has reasonable cause to believe that the person has a drug in his/her body

The suspected offence is one under Sec 3A, 4 or 5A and a medical practitioner has advised that the condition of person required to provide a specimen might be due to some drug





It is for the **Constable** to decide whether the specimen will be **BLOOD** or **URINE**, **UNLESS**, in a **doctor's opinion**, there are medical grounds for not providing blood, such as anaemia - **However, the following stated cases should be borne in mind –**

Joseph v DPP (2003)

J, a Rastafarian, provided two specimens of breath for analysis having been arrested on suspicion of driving a motor vehicle after consuming alcohol in excess of the statutory limit. The lower reading was 40 microgrammes in 100ml of breath, it was indicated that he would have to follow the statutory option of requiring an alternative sample. J indicated, before the formal process began that he would not be able to give blood due to his religion and the officer then stated that if that was the case then there would be no option left but to charge him.

The formal process then began and due to the previous conversation J restated that he could not give blood because of his religion, and as this could not be seen as a medical reason he was charged, using the lower of the two breath tests as the reason.

No mention was made of the alternative of a sample of urine. J was found guilty at Magistrates Court and the decision was supported by the Crown Court. J appealed by way of case stated:-

HELD (allowing the appeal) the court gave the following reasons in these exceptional circumstances:-

In a case brought under [section 8\(2\)](#) of the Road Traffic Act 1988 there is no reason for a driver to be invited to state whether he wishes to give blood or urine. The choice is the constable's, it is a statutory discretion and if tested should be done on the basis of the Wednesbury Principles.

However the present case is unusual in that before the officer made his choice he was aware that J would not be able to give blood, regardless of whether or not Rastafarianism is a religion and these reasons should have been taken into consideration when requesting the alternative. In those circumstances the officer, not having any reason not to choose urine, should have chosen urine instead of blood.

Blood will **ALWAYS** be taken by a **DOCTOR** – the **POLICE SURGEON**

The suspect **MUST CONSENT** to the blood being taken, otherwise it is an **ASSAULT**

Urine **MAY** be taken by a **POLICE OFFICER**

The suspect will be required to provide **2 SAMPLES** within **ONE HOUR**. **The first sample will be discarded, and the second one used**

If this option is NOT taken then the suspect will be charged with the appropriate offence.

If the option is taken the suspect will be bailed pending the results of the analysis of the blood/urine sample provided.

Police Detention

A person required under Section 7/7A to provide a specimen of breath, blood or urine, may afterwards be detained at a police station if a constable has reasonable grounds for believing that:

were that person to then drive, or attempt to drive a mechanically propelled vehicle on a road, he would commit an offence under Section 4, 5 or 5A of this Act .





Police Scotland
Police Northern Ireland
Police Wales

A person required under section 7 or 7A to provide a specimen of breath, blood or urine, may afterwards be detained at a police station if a constable has reasonable grounds for believing that, were that person to drive, or attempt to drive a mechanically propelled vehicle on a road, he would commit an offence under section 4, 5 or 5A of this Act .

The above does not apply to the person if he ought reasonably to appear to the constable that there is no likelihood of his driving or attempting to drive a mechanically propelled vehicle whilst -

- (a) his ability to drive properly is impaired,.
- (b) the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit, or.
- (c) the proportion of a specified controlled drug in his blood or urine exceeds the specified limit for that drug.

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 his proper care and treatment.

A constable **must** consult a medical practitioner on any question arising as to whether a person's ability to drive properly is or might be impaired through drugs and must act on the medical advice provided.



Section 9 Road Traffic Act 1988



The provision of samples for analysis under hospital procedure is covered by Section 9 Road Traffic Act 1988.

Hospital Procedure

Welfare of patient takes
precedence

Consent required from doctor
in charge of patient



The welfare of the patient in a hospital takes precedence over any request for preliminary tests or specimens that may be required in the course of investigations concerning Section 4 or 5 offences.

It is for this reason, that the medical practitioner immediately in charge of a patient must be made aware of your intention to request a preliminary test or the provision of specimens under Section 7 Road Traffic Act 1988 so that he/she can decide whether the taking of the test, the request for specimens, or the associated warnings regarding non-co-operation or refusal to provide specimens may harm the patient.

If consent is given, you can require a preliminary test followed by the provision of specimens.

It is the usual practice to request a preliminary breath test prior to obtaining specimens for a laboratory test, as the former could be negative, thus making it unnecessary for blood or urine samples to be taken.

Hospital Procedure



If doctor consents – continue with procedure

If doctor does not consent to preliminary breath test, they may still allow a request for blood or urine sample



If you suspect alcohol, it is the usual practice to request a preliminary breath test prior to obtaining specimens for a laboratory test, as the former could be negative, thus making it unnecessary for blood or urine samples to be taken.

If the doctor considers it prejudicial to the care and treatment of the patient, refuses consent for you to administer a preliminary breath test, he or she may still allow a request for blood or urine for analysis.

This request must be accompanied by a warning that failure to co-operate with a preliminary test or to provide samples may render the driver liable to prosecution.

Hospital Procedure

It is the decision of the doctor in charge of the patient to allow samples to be taken

The police surgeon will obtain blood samples if required, **NOT** the hospital doctor



If the doctor in charge of the patient consents to blood samples being taken, the on-call police surgeon should be contacted to attend and take the samples.

If this is not possible, then the assistance of another hospital doctor not associated with the care of the patient should be sought to obtain the samples.

Under no circumstances should the doctor in charge of the patient obtain the evidential samples.

Blood samples from unconscious drivers



Following an accident, a constable can request that a blood specimen should be taken without the consent of the casualty who is a patient in hospital, if the officer believes that the patient cannot give valid consent because of his/her medical condition.

Following an accident, a constable can request
that a blood specimen be taken without the
consent of the casualty who is a patient in
hospital, if the officer believes that the patient
cannot give a valid consent because of his/her
medical condition



Following an accident, a constable can request that a blood specimen should be taken without the consent of the casualty who is a patient in hospital, if the officer believes that the patient cannot give valid consent because of his/her medical condition.

Important Considerations

Consent **must** be obtained from the medical practitioner in charge of the casualty

Sample **must** be obtained by a Police Surgeon unless impractical to do so

If sample is obtained by another medical practitioner it **MUST NOT** be the person in charge of and responsible for the care of the casualty



The officer will need to ascertain from the medical practitioner in charge of the casualty whether the person is fit to provide a specimen of blood.

No specimen can be taken if the person with direct medical care objects that by doing so, it would be prejudicial to the patient's proper care and treatment.

If there is no objection, the officer will summon a Police Surgeon who will be asked to take a sample of blood.

A doctor other than a Police Surgeon will only be asked if it is impracticable to obtain the services of a Police Surgeon.

Where a doctor other than a Police Surgeon is used, the reasons must be recorded.

On **no account** can the doctor be a medical practitioner who for the time being has any responsibility for the clinical care of the person concerned.

Procedure



Sample stored until patient recovers

Doctor's consent obtained to speak to patient

Patient asked if they consent to analysis of sample

Warning of consequences if they fail to do so



Once the specimen has been supplied to the constable, it is stored until the patient recovers.

At this point, the officer in the case must ascertain from the hospital doctor responsible for the patient, whether the patient is fit to be asked to give permission for analysis of the specimen.

This may require repeated enquiries with the doctor, all of which must be recorded.

Provided that the person with clinical responsibility does not object, the patient is then asked if he or she consents to its analysis and warned that it is an offence to fail to give consent

Person should be warned of the consequences of prosecution if they fail to do so.

There is **NO** power to arrest a
'patient' in hospital

'Patient' at a hospital is not defined
and could include an 'outpatient'



Patient means any person who is at the hospital for the purpose of treatment (an in-patient or out-patient), but a person ceases to be a patient as soon as the treatment contemplated for that visit is over, and whether a person is 'at a hospital as a patient' is a question of fact. It has been suggested that it is not possible (or desirable) to attempt to define conclusively the circumstances in which a person will be held to be a patient.

Powers of Entry



Powers of Entry – *following accident involving personal injury to any person*

A constable may enter any premises, using reasonable force if necessary, in order to:

Require a person **reasonably believed** to have been driving, attempting to drive or in charge of a motor vehicle at the time of the accident, to provide a preliminary test **OR**

Arrest a person who has provided a positive breath test/drug test **OR**

Arrest a person who has failed to co-operate with a requirement to take one or more of the preliminary tests and who the constable **reasonably suspects** has alcohol or a drug in their body or is under the influence of a drug

Section 6E Road Traffic Act 1988



It is important to note that there must have actually been an accident and it is not sufficient to form suspicion that an accident has occurred.

The constable must also reasonably believe that the person was driving, attempting to drive or in charge of the vehicle at the time of the accident.

For offences concerning **Section 4 RTA 1988 (unfit through drink or drugs)**, a power of entry is provided by **Section 17 of PACE 1984** for constables if they have reasonable grounds for believing that the person whom he is seeking is on the premises', for the purpose of arresting them for the offence of driving, attempting to drive or in charge while unfit through drink or drugs, contrary to Section 4 Road Traffic Act 1988

A power is also provided by Section 6E (above)

There are circumstances when, following an accident involving personal injury to any person, a power of entry into any place is available

Entry can only be made for the purposes of:

- Requiring a preliminary test (**collisions only**)
- Arresting a person if, as a result of a preliminary test, the officer reasonably suspects that the proportion of alcohol in the person's breath or blood exceeds the prescribed limit
- Arresting the person for failing to co-operate with a preliminary test where the officer reasonably suspects that the person has alcohol or drugs in their body or is under the influence of a drug.

Important Considerations

Entry into premises **must** be lawful

There **must** have been a road traffic accident involving injury to any person

AND

The officer **must** reasonably suspect the accident involved **injury** to any person

AND



Entry into premises against the wishes of the owner or occupier is a serious step to take.

You need to be sure of your powers and then exercise them lawfully.

If you act outside the powers provided in law, you will be a trespasser and any evidence you obtain may be inadmissible.

There **MUST** have been a road traffic accident

The constable **MUST** have reasonable cause to suspect the accident involved injury to any person.

Important Considerations

The officer reasonably **believes** the person they are seeking was driving, attempting to drive or in charge of the vehicle at the time of the accident

*There **must** be reasonable cause to believe the suspect is in the place where entry is to be made*



There **MUST** be reasonable cause to believe the person was driving, attempting to drive or in charge of the vehicle at the time of the accident

There **MUST** be reasonable cause to believe the suspect is in the place where entry is to be made

**** Note that If the accident is damage only then there is NO power of entry under Sec 6D Road Traffic Act 1988****



There **MUST** be reasonable cause to believe the person was driving, attempting to drive or in charge of the vehicle at the time of the accident

There **MUST** be reasonable cause to believe the suspect is in the place where entry is to be made

**** Note that If the accident is damage only then there is NO power of entry under Sec 6D Road Traffic Act 1988****