

POLICY**DRINK AND DRUG DRIVING**

Owning Department:	Joint Protective Services		
Department SPOC:	Sergeant – Roads Policing		
CPU Lead:	Policy & Assurance Officer		
Risk Rating:	Low	Legal Sign Off: Date:	Yes 30/07/2019

Approved by

JNCC:	25/11/2015		
Published Date:	10/07/2019	Review Date:	10/07/2023

Index

1. Introduction.....	3
2. Prescribed/Specified limits – Section 5 and 5a.....	3
3. Random Breath/Saliva Tests.....	4
4. Preliminary Impairment Tests (FIT Tests)	4
5. Substantive Breath, Blood and Urine Samples.....	4
6. Phobia of Needles	5
7. Foreign Drivers.....	6
8. Hospital Procedures	6
9. Collisions.....	7
10. Custody Officer.....	7
11. Juvenile Offenders	7
12. Passengers in Vehicles	7
13. Vehicle of Person Arrested.....	7
14. Equipment and Training	8
15. Post Incident Consumption.....	8
16. Moving Traffic Offence	8
Appendix A: Overview in Procedure	9
Appendix B: Screening Breath Test	10
Appendix C: Drink Drive Investigation Process.....	11

Legal Basis

Legislation specific to the subject of this policy document

<i>Act (title and year)</i>
Police Reform Act 2002
Road Traffic Act 1988
Road Traffic Offenders Act 1988
Road Traffic Regulation Act 1984
Drug Driving (Specified Limits)(England and Wales) Regs 2014
Criminal Procedure and Investigations Act 1996
Police and Criminal Evidence Act 1984
Criminal Justice Act 1988
Offences Against the Person Act 1861
Misuse of Drugs Act 1971
Intoxicating Substances (Supply) Act 1985
Criminal Justice and Public Order Act 1994
Police (Conduct) Regulations 2004
Rail and Transport Safety Act 2003
Serious Organised Crime and Police Act 2005

Other legislation which you must check this document against (required by law)

<i>Act (title and year)</i>
Human Rights Act 1998 (in particular A.14 – Prohibition of discrimination)
Equality Act 2010
Crime and Disorder Act 1998
Health and Safety at Work etc. Act 1974 and associated Regulations

Security Marking:	OFFICIAL	Version:	1.0
--------------------------	----------	-----------------	-----

General Data Protection Regulation (GDPR) and Data Protection Act 2018
Freedom Of Information Act 2000
The Civil Contingencies Act 2004

1. Introduction

1.1 The Road Traffic Act 1988 defines offences in relation to drink and drug driving which include:

Section 3a - Causing death by careless driving whilst under the influence of drink or drugs;

Section 4 - Driving whilst being unfit through drink or drugs;

Section 5 - Driving whilst over the prescribed limit (alcohol);

Section 5a - Driving whilst over the specified limit (drugs).

1.2 Sections 6 to 10 of the Road Traffic Act 1988 deal specifically with powers and procedures in relation to these offences, which include:

Section 6 - Preliminary road side testing and powers of arrest/entry;

Section 7 - Station procedure (breath/blood/urine specimens);

Section 7a - Obtaining blood/urine specimens from persons medically incapable of consenting;

Section 8 - Higher substantive breath specimen to be disregarded;

Section 9 - Hospital procedure (blood/urine specimens);

Section 10 - Detention of drink/drug drivers (PIC).

1.3 The following national forms guide officers through the statutory procedures required to obtain specimens under this legislation:

MG DD/A Station procedure;

MG DD/B Station procedure for provision of blood or urine samples;

MG DD/C Hospital procedure;

MG DD/D Alcohol technical defence;

MG DD/E Drug specimen information;

MG DD/F Preliminary impairment test (FIT testing).

1.4 It is important that the forms are followed, with no deviations, as they cover all necessary evidential requirements. If for any reason it becomes necessary to deviate from the procedures then a full and accurate record must be made at the rear of the form. The latest versions of the MG DD series of forms are available on the Digital Shared Suite.

2. Prescribed/Specified limits – Section 5 and 5a

2.1 The prescribed limits for alcohol in Section 5 of the Road Traffic Act 1988 are:-

35 micrograms of alcohol in 100 millilitres of breath

80 milligrams of alcohol in 100 millilitres of blood

107 milligrams of alcohol in 100 millilitres of urine

2.2 Regulation 2 of the Drug Driving (Specified Limits)(England and Wales) Regulations 2014 defines the specified limits for the 17 drug groups covered by Section 5a of the Road Traffic Act 1988. A full list of these is available via a link from PNLD.

2.3 When a person is arrested for a positive roadside breath test or a roadside drug screening test they should be taken to the nearest Police Investigation Centre (PIC) where the substantive procedure should be initiated.

3. Random Breath/Saliva Tests

3.1 There is no power in law to carry out random breath or saliva tests. However, there is a power under Section 163 of the Road Traffic Act 1988, for a Police Constable in uniform to stop any vehicle on a road. If drugs or alcohol are subsequently suspected, then normal powers under the Road Traffic Act 1988, should be used.

4. Preliminary Impairment Tests (FIT Tests)

4.1 A person driving whilst under the influence of drugs may provide a negative breath test. If there is suspicion that they are under the influence of drugs, a screening test, if available, should be considered. Preliminary drug testing can take the form of a roadside or station based saliva test.

4.2 In any case, where signs or symptoms of impairment are observed, either in the manner of driving or demeanour of the driver, this should be noted and consideration given to conducting a Field Impairment Test (FIT). This can only be conducted by police officers who have attended accredited training, details can be obtained via the CCR.

4.3 Field Impairment Testing is a method of determining whether or not there is a possibility that a driver has drink or drugs in their system which, at the time, renders them unfit to drive. Procedures to be followed are contained within Form MG DD/F.

4.4 Drivers who legitimately take prescription medication, in accordance with their doctor/dentist's instructions, cannot be guilty of exceeding the specified limits within Section 5a of the Road Traffic Act 1988. However, they may be guilty of an offence contrary to Section 4 if at the time of driving that medication renders them unfit to drive due to the effects of that drug.

5. Substantive Breath, Blood and Urine Samples

5.1 Where a driver provides two substantive specimens of breath, and the lower result is between 36 - 39 ug/ml, they will not be prosecuted but given appropriate advice.

5.2 Section 7(3)(a) of the Road Traffic Act 1988 enables a police officer to request a blood or urine specimen if they reasonably believe for medical

reasons a specimen of breath cannot be provided or should not be required.

- 5.3 Section 7(4) of the Road Traffic Act 1988 states that it is the officer who decides if the specimen shall be of blood or urine, it is not a matter of preference for the suspect. However, when the officer exercises that discretion, they must consider any reasons given by the suspect as to why the sample should be one rather than the other, e.g. religious objection to giving blood.
- 5.4 Where a person is required to provide a sample of blood or urine, unless there are medical or operational reasons not to, officers will require the person to provide blood.
- 5.5 Only blood can be tested for Section 5a offences therefore urine samples will not be taken in relation to this offence. Consider impairment evidence and Section 4 alternatives if blood cannot be obtained as urine is an acceptable specimen in relation to this offence.
- 5.6 Samples for analysis will be dealt with in accordance with the Joint Laboratory Forensic Submissions policy.

6. Phobia of Needles

- 6.1 The taking of blood by needle is unlikely to be a pleasant experience for anyone. However, when a phobia of needles is put forward as a reason for not supplying a specimen of blood, consideration must be given to whether it is believed to be genuine or an attempt to prevent police obtaining the blood specimen for analysis.
- 6.2 Advice must be sought from a HCP, who after examination should be able to assist with an opinion based on their clinical observations. A person with a genuine phobia of needles will likely exhibit physiological signs (examples of which could include excessive sweating, flushed complexion, elevated pulse or raised blood pressure) and appear distressed when required to give a blood sample.
- 6.3 People with tattoo may still have a genuine needle phobia as the sensation experienced is very different. Instead, officers should seek to ask objective questions of the person claiming a phobia in order to form a proper opinion. Examples of which could include whether the person is up to date with inoculations, travel vaccinations received, dental work which required an anaesthetic.
- 6.4 Where the officer and/or HCP is of the opinion that there is a genuine reason for not supplying blood, a specimen of urine should be requested instead (urine cannot be tested in Section 5a cases).

7. Foreign Drivers

- 7.1 In all cases where there are doubts as to the person's understanding of the requirements being made, the officer will take reasonable steps to request an interpreter to ensure the person fully understands the procedures. See respective force's Translation and Interpreting policy.

8. Hospital Procedures

- 8.1 Where a driver is taken to hospital following a road traffic collision the medical professional in charge of the patient's immediate care must be consulted prior to any screening or substantive testing. The medical professional can object if in their opinion it would be prejudicial to the proper care and treatment of their patient, in which case the request must not be made of the driver. If this occurs, the MG DD/C must be endorsed. Consideration should be given to waiting and trying again at a later stage.
- 8.2 FIT testing will not take place when the suspect is a patient at a hospital. Officers may attempt to obtain an opinion from the doctor in charge of the suspect's care as to their level of impairment.
- 8.3 Where a person from whom a sample is required has been taken to hospital as a patient, procedures detailed within Form MG DD/C will be followed.
- 8.4 In cases where a police officer is required to wait for considerable time and they are satisfied there is no evidence that the relevant person has consumed any alcohol or drugs, the officer need not wait and should endorse the CR1 and MG DD/C accordingly. A report must also be submitted detailing why the procedure was not conducted.
- 8.5 Where the incident is serious in nature and required the deployment of a Road Scene Manager or Lead Investigator from the Roads and Armed Policing Team (RAPT), their advice should be sought before making any final decisions.
- 8.6 Where a person is released from hospital following treatment, they may be dealt with in the usual way or continue procedures already commenced.
- 8.7 The Road Traffic Act 1988 defines a Health Care Professional as a doctor, registered nurse (not a phlebotomist) or paramedic. Any suitably authorised person can be utilised to obtain a blood specimens at hospital with the exception of the medical professional in immediate charge of the patient. The law does not require officers to wait for our HCP provider to attend if another professional is available and prepared to assist in the procedure.
- 8.8 The doctor in charge of a patient who is medically incapable of providing consent must never, under any circumstances, take the specimens of blood. Police officers must not get the specimens analysed until the

patient has given consent. Specimens from these patients must be clearly marked to avoid them being analysed prior to consent being obtained. Procedures are detailed in Form MG DD/C.

9. Collisions

9.1 All driver involved in collision involving injury will be subjected to preliminary testing. If the nature of any injury requires the driver to be taken to hospital consideration should be given to officers attending the hospital in order to obtain specimens for analysis (see Hospital Procedures).

9.2 All drivers, including police officer drivers, involved in a pursuit or other road traffic incident where a death or serious injury has occurred will be subject to preliminary testing.

10. Custody Officer

10.1 The decision to charge and release a person arrested for a drink or drugs driving offence rests with the Custody Officer.

10.2 Section 10 of Road Traffic Act 1988 provides procedures for the continued detention of persons affected by alcohol or drugs, where an officer has reasonable grounds for believing that were they to drive, or attempt to drive, they would not be committing an offence under Sections 4,5 or 5a of the Road Traffic Act 1988.

10.3 However, there is no power to detain a person where it appears that there is no likelihood of their driving, whilst their ability to drive is 'impaired' or whilst they are 'over the limit', through alcohol or drugs.

11. Juvenile Offenders

11.1 Where it is necessary to breath test a juvenile in order to obtain a sample for analysis, police officers have a duty to arrange for the attendance of an appropriate adult, but do not have to wait for that person to arrive before commencing the testing procedure.

12. Passengers in Vehicles

12.1 Officers must ensure that passengers in any vehicle, where a driver has been arrested, are able to make the necessary transport arrangements to get to their destination. It is wholly unacceptable, for instance, to arrest a driver and leave elderly, disabled or vulnerable passengers in isolated locations. Assistance must be given in such cases, as appropriate.

13. Vehicle of Person Arrested

13.1 A vehicle being driven by a person arrested for drink/drug driving offences will not be brought to a police station as a matter of course, but will be secured. The subject can nominate a friend, relative or garage to recover

Security Marking:	OFFICIAL	Version:	1.0
-------------------	----------	----------	-----

the vehicle on their behalf and thus assume responsibility for the safety of their own property.

14. Equipment and Training

14.1 All equipment used in connection with drink and drug driving enforcement must be approved and used in accordance with both College of Policing guidelines and the manufacturer's instructions.

14.2 All marked police vehicles and some officers are issued with a device to be used for screening breath tests. These devices must be downloaded and accuracy checked each calendar month. Calibration must be performed on failure of an accuracy check. Only trained officers are authorised to carry out this procedure.

14.3 Should a screening device not be available for use, a request should be made for one to be sent as soon as possible. Roadside drug screening devices are held within the Roads and Armed Policing Team (RAPT) and some nominated units, details can be obtained via the CCR.

14.4 Substantive breath test devices are located at PICs throughout Norfolk and Suffolk. They are only to be used for the purpose of evidential breath testing of a subject. Only specifically trained and authorised personnel are permitted to use the equipment.

15. Post Incident Consumption

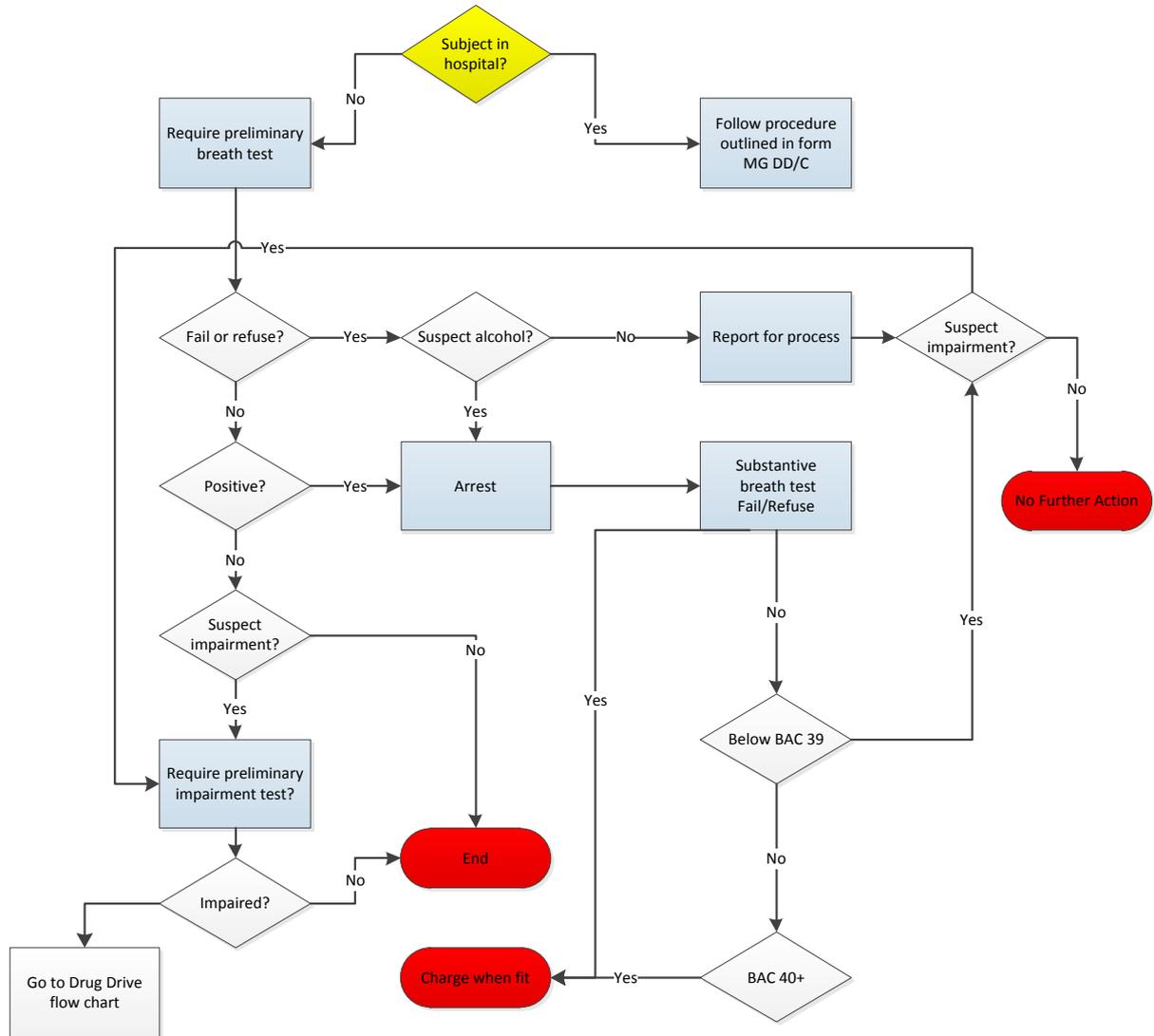
15.1 It is imperative that a person suspected of an offence of drunkenness in connection with a motor vehicle should be given no opportunity of taking alcohol between the time of being stopped and the time of providing a specimen, and any indication that a "hip flask defence" may be used must be fully investigated. Where a person in custody or hospital claims post alcohol consumption then form MGDD/D will be completed in all cases, and only under caution.

15.2 Likewise, a person under arrest following a positive roadside drug test must be monitored continually to negate any later suggestion that drugs were ingested post incident.

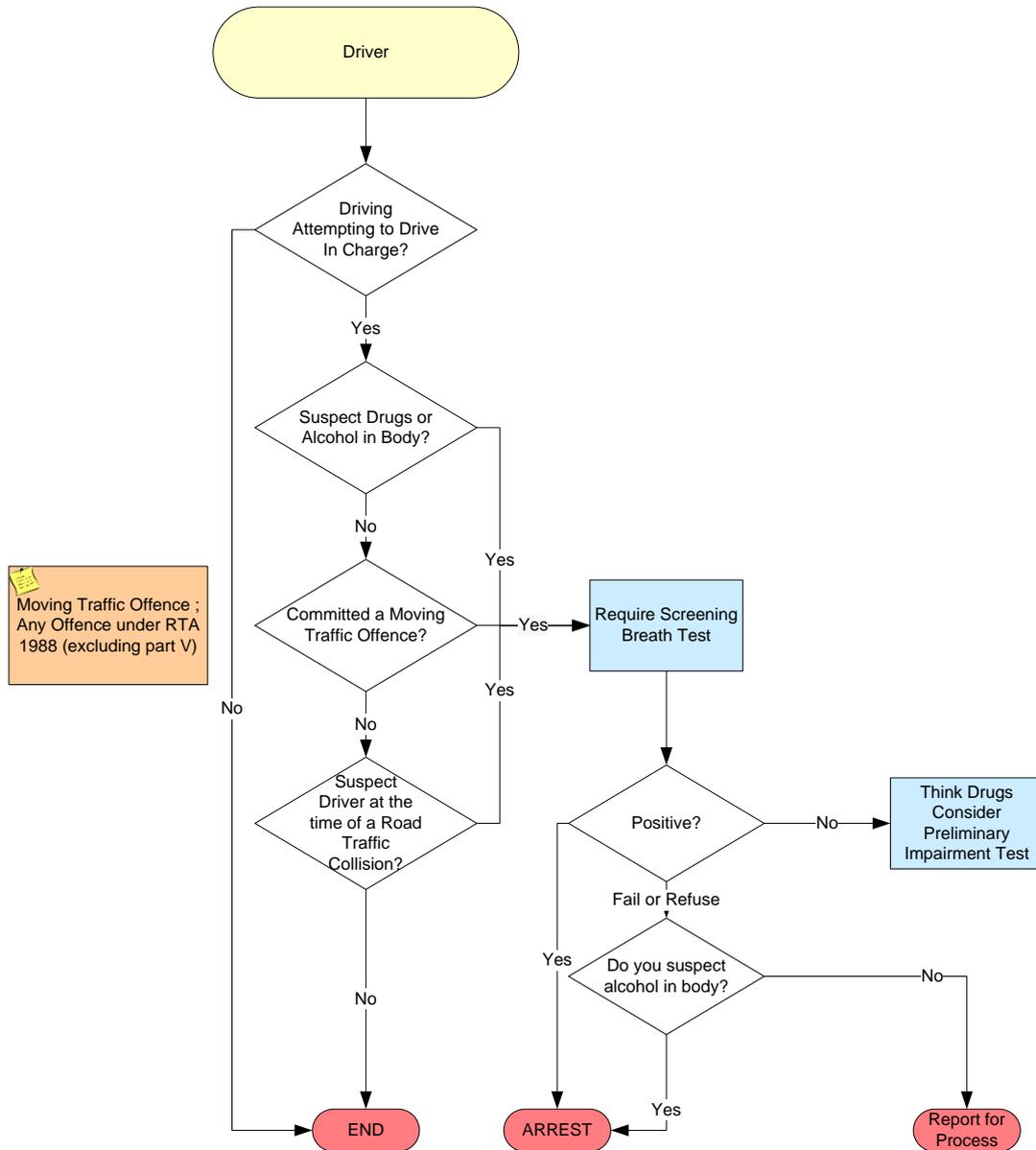
16. Moving Traffic Offence

16.1 This is defined by Section 6(8) of the Road Traffic Act 1988, full details are available via links from the PNLD. Examples would include excess speed, ignoring traffic signs, using a vehicle in a dangerous condition, careless or inconsiderate driving etc.

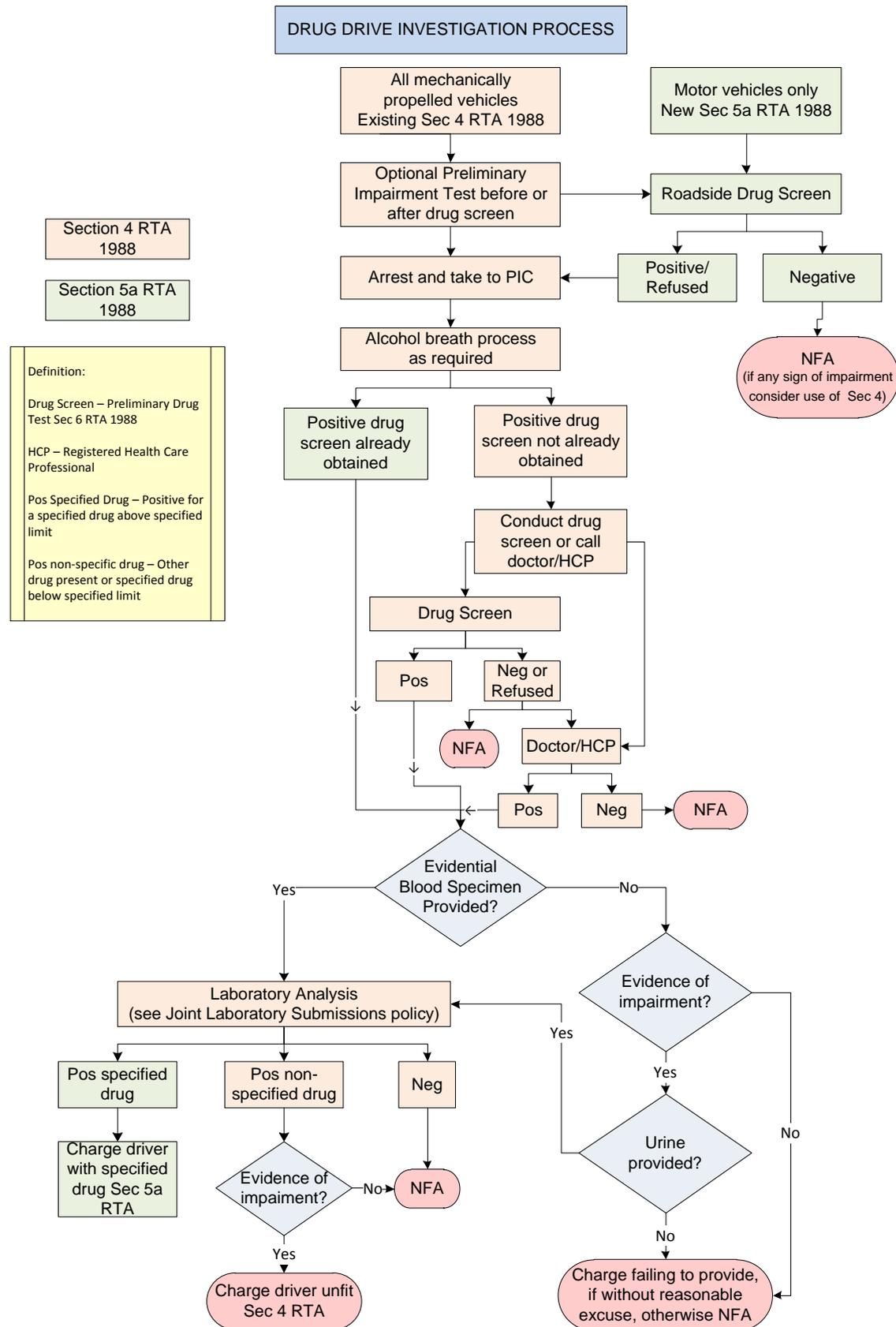
Appendix A: Overview in Procedure



Appendix B: Screening Breath Test



Appendix C: Drink Drive Investigation Process



Section 4 RTA 1988

Section 5a RTA 1988

Definition:
 Drug Screen – Preliminary Drug Test Sec 6 RTA 1988
 HCP – Registered Health Care Professional
 Pos Specified Drug – Positive for a specified drug above specified limit
 Pos non-specific drug – Other drug present or specified drug below specified limit