

THE ROAD TRAFFIC (AMENDMENT) BILL

(No. V of 2019)

Explanatory Memorandum

The main object of this Bill is to provide that any person who, whilst being under the influence of a drug or an intoxicating substance –

- (a) rides a cycle on a road or any other public place;
- (b) drives, or attempts to drive, a motor vehicle on a road or any other public place;
- (c) drives, or attempts to drive, a vehicle which is involved in a road accident;
- (d) is in charge of a motor vehicle on a road or any other public place; or
- (e) occupies the front seat of a motor vehicle as a competent driver supervising a learner driver who is driving the motor vehicle on a road or any other public place,

shall commit an offence.

2. The Bill further provides, in cases where a person is suspected to be driving or to be in charge of a motor vehicle or to be riding a cycle under the influence of a drug or an intoxicating substance, for the procedures and methods of detecting whether that person is under the influence of a drug or an intoxicating substance.

3. Opportunity is being taken to clarify all the sections in the Road Traffic Act which pertain to the procedures and methods of detecting whether a person driving or being in charge of a motor vehicle, or riding a cycle, is under the influence of alcohol.

12 April 2019

N. BODHA, G.C.S.K.
*Minister of Public Infrastructure
and Land Transport, Minister of
Foreign Affairs, Regional
Integration and International Trade*

THE ROAD TRAFFIC (AMENDMENT) BILL

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ARRANGEMENT OF CLAUSES

Clause

- | | |
|---|---|
| 1. Short title | 11. New section 123JA inserted in principal Act |
| 2. Interpretation | 12. Section 123K of principal Act amended |
| 3. Section 2 of principal Act amended | 13. Section 123L of principal Act amended |
| 4. Section 68A of principal Act amended | 14. Section 123LA of principal Act amended |
| 5. Section 123D of principal Act amended | 15. Section 123M of principal Act amended |
| 6. Section 123E of principal Act repealed and replaced | 16. Section 123AB of principal Act repealed |
| 7. Section 123F of principal Act repealed and replaced | 17. Section 133 of principal Act amended |
| 8. Section 123G of principal Act repealed and replaced | 18. Section 134 of principal Act amended |
| 9. Section 123H of principal Act repealed and replaced | 19. Second Schedule to principal Act amended |
| 10. Section 123J of principal Act repealed and replaced | 20. Twelfth Schedule and Thirteenth Schedule added in principal Act |
| | 21. Consequential amendment |
| | 22. Commencement |
- SCHEDULE
-

A BILL

To amend the Road Traffic Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Road Traffic (Amendment) Act 2019.

2. Interpretation

In this Act –

“principal Act” means the Road Traffic Act.

3. Section 2 of principal Act amended

The principal Act is amended, in section 2 –

(a) in the definition of “breath test”, by deleting the words “or blood” and replacing them by the words “, blood or urine”;

(b) by deleting the definition of “drug” and replacing it by the following definition –

“drug” means a drug specified in the Twelfth Schedule;

(c) by deleting the definition of “intoxicating drink”;

(d) by inserting, in the appropriate alphabetical order, the following new definitions –

“field impairment test” means a test conducted by a police officer on a person in order to assess, by observation, the person’s physical state;

“intoxicating substance” –

(a) means a dangerous drug specified in the First Schedule to the Dangerous Drugs Act, other than a drug specified in Part I of the Twelfth Schedule; and

(b) includes such other intoxicating substance as may be prescribed;

“preliminary drug test” means a test conducted on a person for the purpose of obtaining, by means of a device of a type approved by the Minister, an indication whether the person is under the influence of a drug;

“specified limit”, in relation to a drug specified in the first column of Part II of the Twelfth Schedule, means the corresponding threshold limit specified in the second column of Part II of that Schedule;

4. Section 68A of principal Act amended

Section 68A of the principal Act is amended, in paragraph (f), by deleting the words “or drugs” and replacing them by the words “, a drug or an intoxicating substance”.

5. Section 123D of principal Act amended

Section 123D of the principal Act is amended –

- (a) in the heading, by deleting the words “**intoxicating drinks or drugs**” and replacing them by the words “**alcohol, drug or intoxicating substance**”;
- (b) by repealing subsection (1) and replacing it by the following subsection –

(1) Where a person causes the death of another person by driving a motor vehicle on a road or any other public place without due care and attention, or without reasonable consideration for other persons using the road or place, and –

- (a) at the time of driving, he is under the influence of alcohol and the proportion of the alcohol in his breath, blood or urine exceeds the prescribed limit;
- (b) at the time of driving, he is under the influence of a drug specified in Part I of the Twelfth Schedule;
- (c) at the time of driving, he is under the influence of a drug specified in Part II of the Twelfth Schedule and the proportion of the drug in his blood exceeds the specified limit; or

- (d) at the time of driving, he is under the influence of an intoxicating substance,

he shall commit an offence and shall, on conviction, be liable to a fine of not less than 25,000 rupees nor more than 50,000 rupees and to imprisonment for a term not exceeding 5 years.

6. Section 123E of principal Act repealed and replaced

Section 123E of the principal Act is repealed and replaced by the following section –

123E. Driving or cycling when under the influence of alcohol, drug or intoxicating substance

- (1) No person shall –
 - (a) ride a cycle on a road or any other public place;
 - (b) drive, or attempt to drive, a motor vehicle on a road or any other public place;
 - (c) drive, or attempt to drive, a vehicle which is involved in a road accident;
 - (d) be in charge of a motor vehicle on a road or any other public place; or
 - (e) occupy the front seat of a motor vehicle as a competent driver supervising a learner driver who is driving the motor vehicle on a road or any other public place,

where he is under the influence of alcohol and the proportion of the alcohol in his breath, blood or urine exceeds the prescribed limit, or he is under the influence of a drug specified in Part I of the Twelfth Schedule, or he is under the influence of a drug specified in Part II of the Twelfth Schedule and the proportion of the drug in his blood exceeds the specified limit, or he is under the influence of an intoxicating substance.

(2) (a) A person who commits an offence under subsection (1)(a) shall, on conviction, be liable to a fine of not less than 5,000 rupees nor more than 25,000 rupees.

(b) The offender under paragraph (a) shall, in the case of a second or subsequent conviction, be liable to a fine of not less than 25,000 rupees nor more than 50,000 rupees and to imprisonment for a term not exceeding 12 months.

(3) (a) A person who commits an offence under subsection (1)(b), (c), (d) or (e) shall, on conviction, be liable to a fine of not less than 20,000 rupees nor more than 50,000 rupees and to imprisonment for a term not exceeding 5 years.

(b) The offender under paragraph (a) shall, in the case of a second or subsequent conviction, be liable to a fine of not less than 50,000 rupees nor more than 75,000 rupees together with imprisonment for a term of not less than 12 months nor more than 8 years.

(4) For the purpose of subsection (1)(d), the person shall not be deemed to have been in charge of the motor vehicle where he shows that, at the material time, the circumstances were such that there was no likelihood of him driving the motor vehicle so long as he remained so unfit to drive.

(5) Sections 152 and 153 and Part X of the Criminal Procedure Act, the Community Service Order Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section.

7. Section 123F of principal Act repealed and replaced

Section 123F of the principal Act is repealed and replaced by the following section –

123F. Reasonable suspicion of person being under influence of alcohol

(1) Subject to section 123K, where a police officer in uniform has reasonable ground to suspect that a person is under the influence of alcohol pursuant to an offence under section 123D or 123E –

(a) (i) he shall require that person to provide a specimen of breath for a breath test, either at or near the place where the requirement is made or at the nearest police station where the test may be carried out; and

(ii) where the breath test carried out pursuant to subparagraph (i) indicates that the proportion of alcohol in the person's breath, blood or urine is likely to exceed the prescribed limit, he shall require that person to –

(A) provide 2 specimens of breath for analysis by means of a device of a type approved by the Minister; or

(B) provide, at a hospital, a specimen of blood or 2 specimens of urine, or both, for a laboratory test;

(b) he shall require that person to provide 2 specimens of breath for analysis by means of a device of a type approved by the Minister; or

(c) he shall require that person to provide, at a hospital, a specimen of blood or 2 specimens of urine, or both, for a laboratory test.

(2) Where the provision of a specimen of blood or 2 specimens of urine is required pursuant to subsection (1)(a)(ii)(B) or (1)(c), the question as to whether it is to be a specimen of blood or 2 specimens of urine shall be decided by the police officer making the requirement, but where a medical practitioner is of the opinion that, for medical reasons, a specimen of blood cannot or should not be taken, 2 specimens of urine shall be taken.

(3) (a) Where a person is required to provide 2 specimens of breath for analysis or a specimen of blood for a laboratory test under this section, he shall provide the 2 specimens of breath or the specimen of blood within 12 hours of the offence committed under section 123D or 123E.

(b) Where a person is required to provide 2 specimens of urine for a laboratory test under this section, he shall provide the 2 specimens of urine within 12 hours of the offence committed under section 123D or 123E, subject to the second specimen of urine being provided not later than one hour after the provision of the first specimen of urine.

(4) (a) Subject to paragraph (b), where 2 specimens of breath are provided for analysis by any person under this section, the specimen with the lower proportion of alcohol in the breath shall be used and the other shall be disregarded.

(b) Where the specimen of breath with the lower proportion of alcohol contains no more than 11 micrograms of alcohol in 100 millilitres of breath, the person who provided it may claim that it should be replaced by a specimen of blood or 2 specimens of urine and, where he provides such a specimen, neither specimen of breath shall be used.

(5) (a) A police officer shall, on requiring any person to provide a specimen of breath for a breath test, a specimen of breath for analysis or a specimen of blood or urine for a laboratory test under this section, warn him that a failure, without reasonable excuse, to provide the specimen may render him liable to prosecution and may be used against him as evidence.

(b) In a prosecution under section 123D or 123E, a failure, without reasonable excuse, by a person to provide a specimen of breath for a breath test, a specimen of breath for analysis or a specimen of blood or urine for a laboratory test where required to do so under this section shall be held against him as prima facie evidence that at the material time the proportion of alcohol in his breath, blood or urine exceeded the prescribed limit.

(c) Paragraph (b) shall not apply where the person has not been warned by a police officer in accordance with paragraph (a).

8. Section 123G of principal Act repealed and replaced

Section 123G of the principal Act is repealed and replaced by the following section –

123G. Reasonable suspicion of person being under influence of drug

(1) (a) Subject to section 123K, where a police officer has reasonable ground to suspect that a person is under the influence of a drug pursuant to an offence under section 123D or 123E, he shall require that person to undergo a field impairment test, either at or near the place where the requirement is made or at the nearest police station where the test may be carried out.

(b) The police officer shall, while conducting the field impairment test, fill in the field impairment questionnaire set out in the Thirteenth Schedule.

(2) Where a field impairment test is carried out pursuant to subsection (1) and the police officer has reasonable ground to suspect that the person's physical state is impaired, he shall require the person to provide a specimen of saliva for a preliminary drug test either at or near the place where the requirement is made or at the nearest police station where the test may be carried out, or to provide a specimen of urine for a preliminary drug test at a hospital.

(3) (a) Where a preliminary drug test indicates that a person is under the influence of a drug, a police officer shall require that person to provide, at a hospital, a specimen of blood for a laboratory test.

(b) Notwithstanding paragraph (a), where a medical practitioner is of the opinion that, for medical reasons, a specimen of blood cannot or should not be taken, the police officer shall require that person to provide a specimen of urine for a laboratory test.

(4) (a) A police officer shall, on requiring any person to undergo a field impairment test, or to provide a specimen of saliva or urine for a preliminary drug test, or to provide a specimen of blood or urine for a laboratory test, under this section, warn him that a failure, without reasonable excuse, to provide the specimen may render him liable to prosecution and may be used against him as evidence.

(b) In a prosecution under section 123D or 123E, a failure, without reasonable excuse, by a person to undergo a field impairment test, or to provide a specimen of saliva or urine for a preliminary drug test, or to provide a specimen of blood or urine for a laboratory test, where required to do so under this section shall be held against him as prima facie evidence that at the material time he was under the influence of a drug.

(c) Paragraph (b) shall not apply where the person has not been warned by a police officer in accordance with paragraph (a).

9. Section 123H of principal Act repealed and replaced

Section 123H of the principal Act is repealed and replaced by the following section –

123H. Reasonable suspicion of person being under influence of intoxicating substance

(1) (a) Where, pursuant to section 123G(1), a preliminary drug test does not indicate that the person is under the influence of a drug but the police officer has reasonable ground to suspect that the person's physical state is impaired, he shall require that person to provide, at a hospital, a specimen of blood for a laboratory test.

(b) Notwithstanding paragraph (a), where a medical practitioner is of the opinion that, for medical reasons, a specimen of blood cannot or should not be taken, the police officer shall require that person to provide a specimen of urine for a laboratory test.

(2) (a) A police officer shall, on requiring any person to provide a specimen of blood or urine for a laboratory test under this section, warn him that a failure, without reasonable excuse, to provide the specimen may render him liable to prosecution and may be used against him as evidence.

(b) In a prosecution under section 123D or 123E, a failure, without reasonable excuse, by a person to provide a specimen of blood or urine where required to do so under this section shall be held against him as prima facie evidence that at the material time he was under the influence of an intoxicating substance.

(c) Paragraph (b) shall not apply where the person has not been warned by a police officer in accordance with paragraph (a).

10. Section 123J of principal Act repealed and replaced

Section 123J of the principal Act is repealed and replaced by the following section –

123J. Arrest for failure to provide specimen of breath, blood, urine or saliva, or failure to undergo field impairment test

(1) Subject to subsection (2), a police officer may arrest a person without warrant where that person refuses to –

- (a) provide a specimen of breath for a breath test, a specimen of breath for analysis or a specimen of blood or urine for a laboratory test following a requirement under section 123F and the police officer has reasonable ground to suspect that the person is under the influence of alcohol;
- (b) undergo a field impairment test following a requirement under section 123G and the police officer has reasonable ground to suspect that the person is under the influence of a drug;
- (c) provide a specimen of saliva or urine for a preliminary drug test following a requirement under section 123G and the police officer has reasonable ground to suspect that the person is under the influence of a drug;
- (d) provide a specimen of blood or urine for a laboratory test following a requirement under section 123G and the police officer has reasonable ground to suspect that the person is under the influence of a drug;
- (e) provide a specimen of blood or urine for a laboratory test following a requirement under section 123H and the police officer has reasonable ground to suspect that the person is under the influence of an intoxicating substance.

(2) Notwithstanding subsection (1), a person shall not be arrested where he is at a hospital as a patient.

11. New section 123JA inserted in principal Act

The principal Act is amended by inserting, after section 123J, the following new section –

123JA. Penalties for failure to provide specimen of breath, blood, urine or saliva, or to undergo field impairment test

(1) (a) A person, other than a person who rides a cycle on a road or any other public place, who, without reasonable excuse, fails to –

- (i) provide a specimen of breath for a breath test following a requirement under section 123F;
- (ii) undergo a field impairment test following a requirement under section 123G; or
- (iii) provide a specimen of saliva or urine for a preliminary drug test following a requirement under section 123G,

shall commit an offence and shall, on conviction, be liable to a fine of not less than 20,000 rupees nor more than 25,000 rupees.

(b) A person who rides a cycle on a road or any other public place who, without reasonable excuse, fails to provide a specimen of –

- (i) breath for a breath test following a requirement under section 123F;
- (ii) undergo a field impairment test following a requirement under section 123G; or
- (iii) saliva or urine for a preliminary drug test following a requirement under section 123G,

shall commit an offence and shall, on conviction, be liable to a fine of not less than 5,000 rupees nor more than 25,000 rupees.

(c) In the case of a second or subsequent conviction, the offender under paragraph (a) or (b) shall be liable to a fine of not less than 25,000 rupees nor more than 50,000 rupees and to imprisonment for a term not exceeding 12 months.

(2) (a) A person, other than a person who rides a cycle on a road or any other public place, who, without reasonable excuse, fails to provide a specimen of –

- (i) breath for analysis or a specimen of blood or urine for a laboratory test following a requirement under section 123F; or
- (ii) blood or urine for a laboratory test following a requirement under section 123G or 123H,

shall commit an offence and shall, on conviction, be liable to a fine of not less than 20,000 rupees nor more than 50,000 rupees and to imprisonment for a term not exceeding 5 years.

(b) The offender under paragraph (a) shall, in the case of a second or subsequent conviction, be liable to a fine of not less than 50,000 rupees nor more than 75,000 rupees together with imprisonment for a term of not less than 12 months nor more than 8 years.

(3) (a) A person who rides a cycle on a road or any other public place who, without reasonable excuse, fails to provide a specimen of –

- (i) breath for analysis or a specimen of blood or urine for a laboratory test following a requirement under section 123F; or
- (ii) blood or urine for a laboratory test following a requirement under section 123G or 123H,

shall commit an offence and shall, on conviction, be liable to a fine of not less than 5,000 rupees nor more than 25,000 rupees.

(b) The offender under paragraph (a) shall, in the case of a second or subsequent conviction, be liable to a fine of not less than 25,000 rupees nor more than 50,000 rupees and to imprisonment for a term not exceeding 12 months.

12. Section 123K of principal Act amended

Section 123K of the principal Act is amended, in subsection (2), by deleting the words “section 123H(5)” and replacing them by the words “section 123F(5)(a), 123G(4)(a) or 123H(2)(a)”.

13. Section 123L of principal Act amended

Section 123L of the principal Act is amended –

- (a) in the heading, by deleting the words **“affected by alcohol or drugs”** and replacing them by the words **“under influence of alcohol, drug or intoxicating substance”**;
- (b) in subsection (1), by deleting the words **“123D, 123E or 123F”** and replacing them by the words **“123D or 123E”**;
- (c) by adding the following new subsection –
 - (2) A person required to provide a specimen of saliva or urine shall –
 - (a) if the preliminary drug test indicates that the person is under the influence of a drug; or
 - (b) upon a refusal to submit to a preliminary drug test,

be detained at a police station until it appears to the police officer that, were that person then driving or attempting to drive a motor vehicle on a road or other public place, he would not be committing an offence under section 123D or 123E.

14. Section 123LA of principal Act amended

Section 123LA of the principal Act is amended –

- (a) in the heading, by deleting the words **“intoxicating drinks or drugs”** and replacing them by the words **“alcohol, drug or intoxicating substance”**;
- (b) in subsection (1) –
 - (i) in paragraph (a), by deleting the words **“section 123D, 123E or 123F”** and replacing them by the words **“section 123D or 123E”**;
 - (ii) in paragraph (b), by deleting the words **“section 123G or 123H”** and replacing them by the words **“123F, 123G or 123H”**;
- (c) in subsection (3) –
 - (i) in paragraph (a), by deleting the words **“123G or 123H”** and replacing them by the words **“section 123F”**;

- (ii) by inserting, after paragraph (a), the following new paragraphs, the word “or” at the end of paragraph (a)(iii) being deleted –
 - (aa) where a test carried out pursuant to section 123G on a person referred to in subsection (1)(a) indicates that he is under the influence of a drug specified in Part I of the Twelfth Schedule;
 - (ab) where a test carried out pursuant to section 123G on a person referred to in subsection (1)(a) indicates that he is under the influence of a drug specified in Part II of the Twelfth Schedule and the proportion of the drug in his urine or blood exceeds the specified limit;
 - (ac) where a test carried out pursuant to section 123H on a person referred to in subsection (1)(a) indicates that he is under the influence of an intoxicating substance; or

15. Section 123M of principal Act amended

Section 123M of the principal Act is amended –

- (a) in subsection (1), by inserting, after the words “for analysis”, the words “a specimen of urine or saliva for a preliminary drug test”;
- (b) in paragraph (b), by inserting, after the words “breath test”, the words “or preliminary drug test”.

16. Section 123AB of principal Act repealed

Section 123AB of the principal Act is repealed.

17. Section 133 of principal Act amended

Section 133 of the principal Act is amended, in subsection (2)(b), by deleting the words “sections 123A, 123C, 123E or 123F” and replacing them by the words “section 123A, 123C, 123D or 123E”.

18. Section 134 of principal Act amended

Section 134 of the principal Act is amended, in subsection (1)(a), by deleting the words “, 123E, 123F and 123H” and replacing them by the words “or 123E”.

19. Second Schedule to principal Act amended

The Second Schedule to the principal Act is amended –

- (a) in item 123D, in the second column, by deleting the words “intoxicating drink or drug” and replacing them by the words “alcohol, drug or intoxicating substance”;
- (b) in item 123E, in the second column, by deleting the words “intoxicating drink or drug” and replacing them by the words “or alcohol, drug or intoxicating substance”;
- (c) by deleting item 123F and its corresponding entries;
- (d) in item 123G, in the first column, by deleting the word “123G” and replacing it by the word “123F”;
- (e) in item 123H, in the first column, by deleting the word “123H” and replacing it by the words “123F, 123G or 123H”.

20. Twelfth Schedule and Thirteenth Schedule added in principal Act

The principal Act is amended by adding the Twelfth Schedule and Thirteenth Schedule set out in the Schedule to this Act.

21. Consequential amendment

The Dangerous Drugs Act is amended, in section 40 –

- (a) in the heading, by deleting the word “**Driving**” and replacing it by the words “**Steering or flying**”;
- (b) in subsection (1), by deleting the words “drives a motor-powered land vehicle,”.

22. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

SCHEDULE
[Section 20]

TWELFTH SCHEDULE
[Section 2]

DRUGS

PART I – DRUGS WITH ZERO TOLERANCE

Amphetamine

Benzoyllecgonine

Cocaine

Delta-9-tetrahydrocannabinol (cannabis)

Lysergic acid diethylamide

Methylamphetamine

MDMA

6-monoacetylmorphine (heroin)

PART II – DRUGS WITH SPECIFIED LIMIT

	Threshold limit in blood
Clonazepam	50µg/L
Diazepam	550µg/L
Flunitrazepam	300µg/L
Lorazepam	100µg/L
Methadone	500µg/L
Morphine	80µg/L
Oxazepam	300µg/L

THIRTEENTH SCHEDULE

[Section 123G]

FIELD IMPAIRMENT ASSESSMENT QUESTIONNAIRE

Name of police officer carrying out the assessment

Rank of police officer

Department number of police officer

Place where assessment test carried out

Name of driver

Age of driver

NIC number of driver

Residential address of driver

Profession of driver

Vehicle number

Make

Colour

Type

Date

Time

Reasons for suspicion		Tick as appropriate	
		Yes	No
1.	Difficulty to keep balance		
2.	Difficulty to stand up properly		
3.	Slurred speech		

4.	Signs of over excitation, euphoria, apathy or anxiety		
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Any one of the above shall give a positive field impairment test.

.....
Signature of police officer conducting
the field impairment test

.....
Date
