

Advice to police drivers in the light of the Police, Crime, Sentencing and Courts Act 2022



Introduction

This document is produced jointly by the Police Federation of England and Wales and the National Police Chiefs' Council for officers to better understand the new laws regarding their driving, in particular in relation to the Police, Crime, Sentencing and Courts Act 2022.

It is not a definitive guide, nor does it amount to legal advice. The act should be consulted for more detailed information.

The Police, Courts, Sentencing and Crime Act 2022 amended the Road Traffic Act (RTA) 1988 to introduce a new test to assess the standards of driving of a police officer. When deciding if a constable or other designated person has been driving carelessly or dangerously, this new test will allow the courts to judge their standard of driving against a competent and careful peer with the same prescribed training, rather than with a member of the public as was previously the case.

This new test can only be used if they are driving for police purposes and have undertaken prescribed training. The new legislation applies in England, Wales and Scotland and includes a regulation making a power to prescribe training for police drivers and other designated persons. Additionally, the Police, Crime, Sentencing and Courts Act amends the RTA 1988 to allow different provision to be made for different persons or areas.

Frequently asked questions

Q. What has brought about the legislative change impacting police drivers?

A. The Police, Crime, Sentencing and Courts Act 2022 which came into effect in July 2022 and The Road Safety Act 2006.

The combined effect of these important pieces of legislation has meant better governance and consistency has to be applied for officers to work effectively to keep the public safe.

Q. Why did the law need to change?

A. The previous legislation did not recognise the training that police response drivers undertake and the tactics they may have to employ to respond to emergencies and pursue criminals.

In the case of *R v Bannister* [2010] 2 All ER 841, the Court of Appeal ruled that no account can be taken of a responder's skill or training in deciding whether the driving was careless or dangerous. The skill or training is considered irrelevant and is to be ignored.

Police drivers were held to the same standards as members of the public and had to rely on the discretion of the Independent Office for Police Conduct (IOPC) and the Crown Prosecution Service (CPS) to avoid conduct investigations and criminal prosecution. The previous exemptions designed to permit emergency service drives were unsatisfactory and unworkable.

Tim Rogers, the Federation's national pursuits driving and driver training lead, headed up an eight-year Police Federation campaign to secure the change in legislation required.

Q. What protection does the new legislation provide?

A. The Police, Crime, Sentencing and Courts Act provides for a new test to assess the standard of driving of a police officer. Should an officer be involved in a road traffic incident, this new test will allow the courts and/or CPS to judge their standard of driving against a competent and careful police constable with the same level of prescribed training, rather than with a member of the public as was previously the case.

Q. What is meant by "prescribed training"?

A. The regulations/legislation will prescribe minimum standards of police driver training required for the new legal test to be applied.

In post-incident investigations and court cases, it will be objectively assessed whether the officer (or other designated person) has undertaken the prescribed training. This will ensure that police drivers, depending on their role, are trained to a similar standard, and the legal test for police drivers will have a fairer comparator.

Training MUST be delivered by an accredited and licensed police driving instructor, in line with the nationally set learning standards and to be compliant with Section 19 of the Road Safety Act 2006 and The Police Driving (Prescribed Training) Regulations 2022. This act sets the national minimum requirement to enable officers to respond.

Q. Who will be responsible for assessing the standard of an officer's driving?

A. The new law demands that an officer's driving, when appropriate, is assessed by a professional, knowledgeable and competent individual. All users of the new legislation have agreed that this expertise is contained within policing. As such, each police force must have an appropriate mechanism by which these nationally agreed and enshrined in law standards are assessed. Locally, officers will have a driving standards unit. Nationally, and for matters requiring subject matter expert (SME) evidence there is the National Police Chiefs' Council (NPCC) SME group. All experts must have complete knowledge of the standards either through delivery of these and or competent performance of them. They will also have attended the approved SME course run through the NPCC.

Q. Will the assessing panel's report be comprehensive?

A. The main questions to be answered in line with the new legislative test are:

Was the police driver up to date with their training?

Was the delivering training unit accredited? It must have reached the required national standards for a driver development unit.

Was the tactic performed one that had been trained?

Was the officer performing the tactic to an appropriate standard?

Q. Will this report be available to both prosecutor and defence?

A: Yes, through this consistent professional process, we hope to see a reduction in the call for two reports. The SMEs will not produce a report unless they have all available evidence. They are the experts and must decide the relevance of such information, not the investigator.

Q. How can police drivers ensure that they do not find themselves facing legal proceedings?

A. Officers must be up to date with their training. The national standards are now enshrined in law. Deviance from these could constitute a criminal offence rather than a breach of policy. Officers must adhere to their prescribed training.

Q. Whose responsibility is it to ensure an officer is "in ticket" before driving?

A. There is an obligation on both the force and the officer. Even if "reassured" by a supervisor - be that a chief superintendent et al - the officer will not be covered if out of ticket and will be liable to prosecution. Likewise, a supervisor who does not check that an officer is up to date prior to a relevant posting would also be criticised.

Q. Are steps being taken to ensure that police driving schools across the country are training and assessing drivers to the same standards?

A. There will be an accreditation process with self-assessment. If a force does not comply, officers and police drivers must drive as per a normal member of the public as they will not be covered by the new legislation.

Q. Are driving schools likely to be licensed in the same way as firearms units?

A. Yes, there are 12 million immediate response calls each year, as well as pursuits, meaning more tactics are performed so licensing is essential.

Q. Will the College of Policing issue new Authorised Professional Practice (APP)?

A. Yes, this will be updated to reflect the new legislation.

Q. What if an officer comes across a situation in which they need to drive in a way that has not been formally trained to keep the public safe?

A. There is a permissive ability to deviate from the "standards" in prescribed and proportionate circumstances. Please see this section of the APP. You will have to justify this deviation.

Q. Who can I contact if I need further information about this change in legislation and how it impacts me?

A. Read the briefing documents or contact your local driver development unit or regional Federation roads policing lead.

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