



Police National Headquarters
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15 March 2017

David Johnstone

Email: David Johnston fyi-request-5485-b1cef293@requests.fyi.org.nz

Dear Mr Johnston

REQUEST FOR INFORMATION

I refer to your Official Information request received by email dated 4 March 2017, in which you ask:

'Please provide any formal police procedure document for the scenario where a police officer can smell cannabis in the car during a traffic stop.'

Please find attached copy of relevant parts of the chapter of the NZ Police Manual:

- Alcohol and drug impaired driving – 12 pages

You will notice that some of the text in the sections provided is in underlined blue type. This text links to other information in the Police Manual, which has not been provided to you.

I also refer you to the provisions of Part 2 of the [Search and Surveillance Act 2012](#).

If you have any queries about the information provided, please contact me.

If you are not satisfied with my response to your request you have the right to complain to the Office of the Ombudsman and seek an investigation and review of my decision.

Yours sincerely



C L Scott
Detective Inspector
National Criminal Investigations Group



Alcohol and drug impaired driving, Continued...

Version : 26.0

Part 3 - Drug impaired driving

**Good cause to suspect driver has consumed a drug or drugs? If yes,
require driver to accompany to undergo a Compulsory Impairment Test**

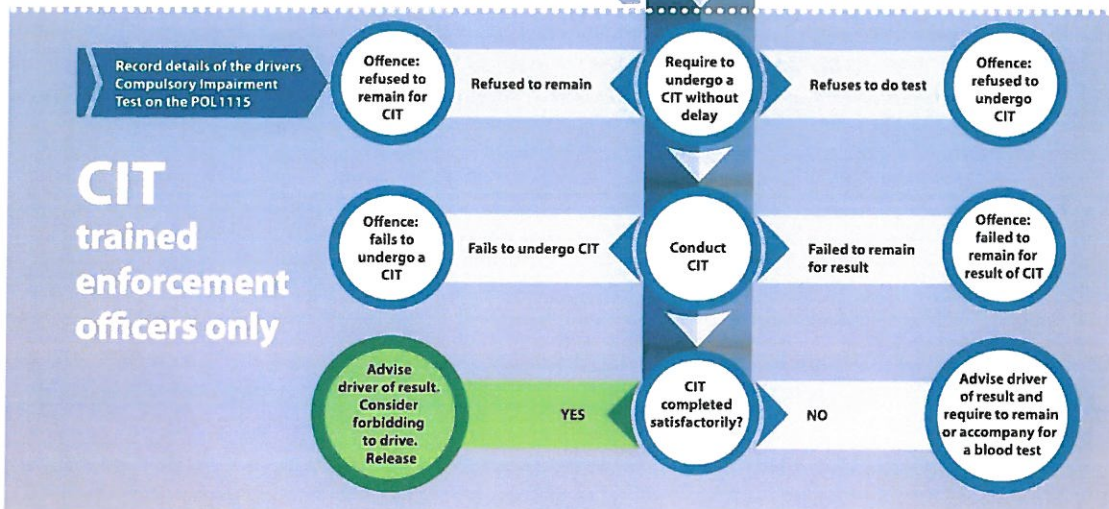
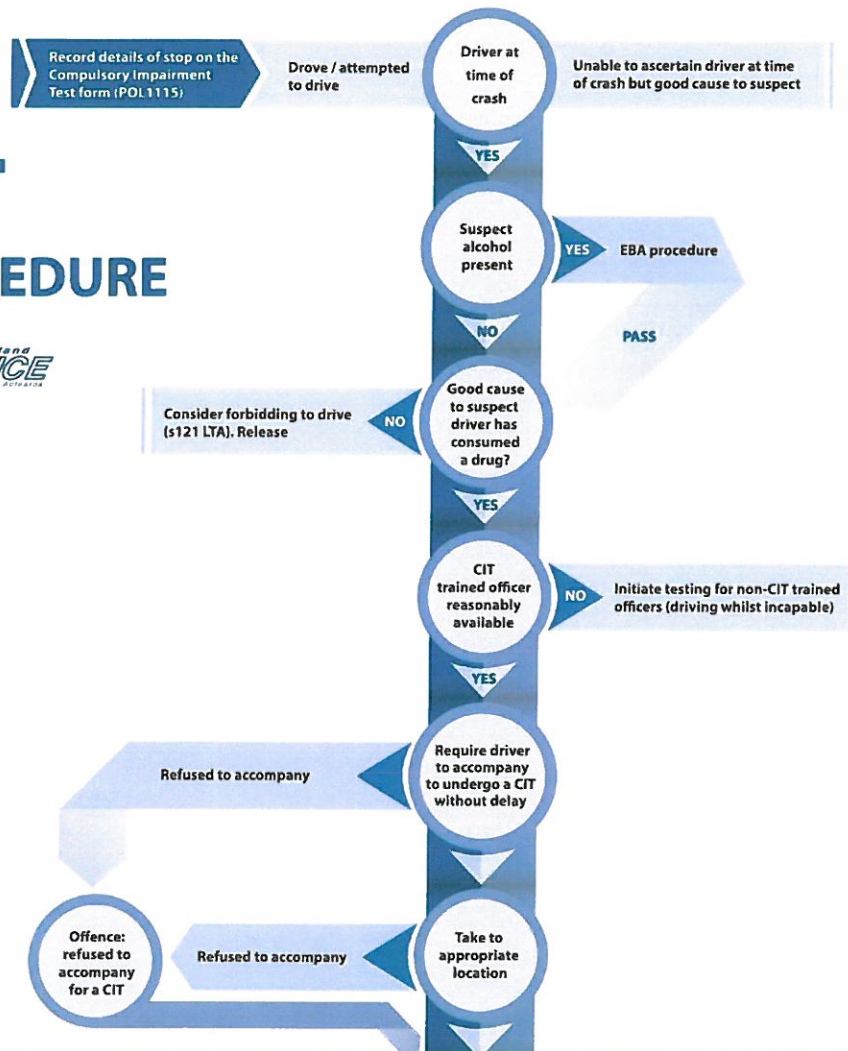
Process overview



Alcohol and drug impaired driving, Continued...

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CIT PROCEDURE



Download a printable PDF version of the [flowchart](#).

Introduction

It is illegal to drive or attempt to drive while impaired by a qualifying drug (s11A LTA). Qualifying drugs include most controlled drugs and can include prescription medicines.



Alcohol and drug impaired driving, Continued...

Section [57A](#) LTA provides that a driver commits an offence if he/she does not satisfactorily complete a Compulsory Impairment Test and an a blood specimen taken under section [72](#) LTA, contains evidence of qualifying drug.

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Conduct breath alcohol procedures prior to a CIT

Enforcement officers must always conduct breath alcohol procedures prior to commencing a CIT. There is little to be gained from initiating a CIT following a positive EBT.



Alcohol and drug impaired driving, Continued...

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Compulsory Impairment Test (CIT)

What is a CIT?

An impaired driver tends to concentrate only on the most critical driving task and disregard lesser tasks. The CIT is designed to test the driver's ability to concentrate on and carry out two or more tasks at the same time. The tasks include a walk and turn and a leg stand assessment. The test also includes an eye assessment. Trained enforcement officers also talk to the driver about any medical conditions that may affect their ability to perform the CIT.

Approved CIT

The CIT must be undertaken in strict accordance with the [Land Transport \(Compulsory Impairment Test\) Notice 2009](#). You must be able to explain how the CIT was carried out and satisfy the court that you administered it in accordance with the Notice.

Use the CIT Form ([POL1115](#)) to ensure the correct CIT procedure is followed and appropriate [advice and bill of rights](#) is given. If the driver fails to complete the CIT in a manner satisfactory to a CIT trained enforcement officer, is charged and pleads not guilty, the defence is likely to challenge how the test was administered.

Who can conduct a CIT?

While any enforcement officer [can require someone to undergo a CIT](#), provided they have [good cause to suspect](#) the driver has consumed a drug, only enforcement officers who have [successfully completed the compulsory impairment test training](#) can administer a [Compulsory Impairment Test](#) (CIT).

[Drivers in hospital](#) cannot be required to undergo a CIT.

Note: Use the CIT Form ([POL1115](#)) to record all factors you have relied upon to establish good cause to suspect the driver has consumed a drug.

Obligations of driver required to undergo CIT

A driver required to undergo a CIT must:

- remain in the place where stopped, for a period of time that is reasonable in the circumstances, to undergo the CIT, or
- accompany an enforcement officer to another place to undergo the CIT if going to be administered in another place. See '[CIT location](#)'.

([s71A\(1\)](#) LTA)

A driver who has undergone a CIT must remain at the place where they underwent the test, until after the result of the test is ascertained.

An enforcement officer may arrest a driver without warrant, if they refuse or fail to remain stopped or accompany the enforcement officer as required. See '[Powers to arrest](#)'.

CIT location

If possible, a CIT should be carried out at the nearest Police station or other place that provides a safe environment to conduct the CIT and the necessary means for the driver to speak to a lawyer, if required.

Note: When choosing the location to administer the CIT, consider the proximity to other people/bystanders, the surface on which the test will be conducted, and other distractions which may affect the result of the CIT. The location of the CIT may have



Alcohol and drug impaired driving, Continued...

implications during a prosecution if it is thought that a driver has been unfairly dealt with. Version : 27.0

Drivers in hospital or a doctor's surgery

A driver taken to a [hospital or doctor's surgery](#) following a motor vehicle crash cannot be required to undergo a CIT. See '[Blood tests at a hospital or surgery](#)'.

CIT initiation at an alcohol checkpoint

If you initiate a CIT while operating a CBT, you must require the driver to accompany you to a place to conduct a CIT and give Bill of Rights advice, even if this is only to the nearby booze bus.

Outcomes of a request for a CIT

| If a driver who has been required to undergo a CIT... | Police action | Specimen Charge (1st or 2nd offence) |
|---|--|--------------------------------------|
| refuses to accompany an officer to undergo a CIT | Arrest and charge with refused to accompany an enforcement officer. Take the driver to a location in order for a trained enforcement officer to conduct a CIT. | A306 |
| failed to remain for a CIT | Arrest and charge with failed to remain for a CIT. | A403 |
| refuses to undergo a CIT | Arrest and charge with refused to undergo CIT. | A405 |
| does the CIT then fails to remain for the result | Arrest and charge with fails to remain for the result of a CIT. | A404 |
| does not complete the CIT in a satisfactory manner | Advise driver of CIT result without delay and require to give a blood specimen without delay (give further Bill of Rights caution). | n/a |
| does complete the CIT in a satisfactory manner | Advise driver of result without delay and release. Consider forbidding to drive where appropriate. | n/a |

Note: This table is not comprehensive - refer to the '[Specimen charge book](#)' for a full list of offences. You must advise the driver of their CIT result without delay.

Blood test

If the driver has not satisfactorily completed the CIT, then the next stage is to require a blood specimen to be taken. See '[Taking a blood specimen](#)' for the procedure.

Misuse of Drugs Act 1975 offences

Evidence of controlled drugs in blood specimens taken under section [72](#) or [73](#) LTA may not be used as evidence of the use of a controlled drug in a prosecution for an offence under the [Misuse of Drugs Act 1975](#).

However, if you have reasonable grounds for believing a controlled drug is in the vehicle or in the possession of a person in the vehicle stopped for the purpose of LTA enforcement, consider your powers of search under [Part 2](#) of the Search & Surveillance Act 2012.



Alcohol and drug impaired driving, Continued...

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Part 6 – Charging decision

Drivers who [meet the level of proof](#) for alcohol or drug impaired driving offences will be charged or issued an ION.

Applicable offences

If a person's breath or blood alcohol reading results in a charging document, identify any applicable qualifying offence to ensure the correct [specimen charge](#) is used.

Alcohol impaired driving charging decision

The EBT machine or Analyst's [Certificate](#) shows:

- an alcohol result below the legal limit for the driver's age, then:
 - inform the driver of the result, and
 - that no further action will be taken in respect of an EBA charge
 - if the driver's licence has been suspended and vehicle impounded, return them immediately unless otherwise warranted
- an alcohol result at an infringement level for the driver's age, then:
 - inform the driver of the result and
 - issue an ION.
- an alcohol result at an offence level for the driver's age, then:
 - prepare prosecution file and serve a copy of the analyst's [certificate](#) (if applicable) and a summons on the driver as soon as possible, and arrange for a charging document to be filed
 - You can serve copies to the driver by mail, or in person

And if:

- the alcohol result exceeds 650 micrograms of alcohol per litre of breath or exceeds 130 milligrams of alcohol per 100 millilitres of blood then:
 - you must suspend the person's licence for 28 days, unless you have already suspended the licence for 28 days for the excess breath alcohol reading from the same incident.

Note: This following charges are not comprehensive - refer to the '[Specimen charge book](#)' for a full list of offences.

Drink driving infringement offence notices

When:

- a driver 20 years or over, without an Alcohol Interlock or Zero Alcohol Licence, provides a breath result of 251-400 micrograms of alcohol per litre of breath or 51-80mg/100 milligrams of alcohol per 100 millilitres of blood,

or

- a driver under 20 years, without an Alcohol Interlock or Zero Alcohol Licence, provides a breath result of 1-150 micrograms of alcohol per litre of breath or 1-30 milligrams of alcohol per 100 millilitres of blood,

then:

- send the completed evidential documents to the Police Infringement Bureau, once the ION is Affirmed, for processing. This file must include the:
 - Breath & Blood Alcohol Procedure sheet ([POL515](#)) with the ION number (Block O),
 - Officers note book entries,
 - ESR analyst's [certificate](#) (where applicable),
 - POL540 (where applicable), and
 - Any other applicable documents.

Note: the Police Infringement Bureau will link the [POL515](#) to the electronic ION.



Alcohol and drug impaired driving, Continued...

Refer to the following table for particular offences for age and licence types.

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| Alcohol and Drug Impaired Driving Guide | | Under 20 Years | Alcohol Interlock Licence | Zero Alcohol Licence | 20 Years And Over ⁽¹⁾ |
|---|--------------------------|---|---|---|--|
| STEP 1 Passive test | RESULT | | | | |
| | No Alcohol | The driver is free to go. <i>BUT</i> if good cause to suspect driver has consumed a drug, refer to the Compulsory Impairment Test (CIT) | | | |
| | Alcohol | Go to STEP 2 - BST | | | |
| STEP 2 Breath Screening Test (BST) | Pass | The driver is free to go. <i>BUT</i> if good cause to suspect driver has consumed a drug, refer to the Compulsory Impairment Test (CIT) | | | |
| | Under 250 mcg/L breath | Go to STEP 3 - EBT | | | |
| | 250+ over mcg/L breath | | | | |
| | Over 400 mcg/L breath | | | | |
| STEP 3 Evidential Breath Test (EBT) | 0-160 mcg/L breath | ION ⁽²⁾ s57(1A) Infringement fee \$200 and 50 demerits | Charging document s57AA(1) | | The driver is free to go. <i>BUT</i> if good cause to suspect driver has consumed a drug, refer to the Compulsory Impairment Test (CIT) |
| | 161-250 mcg/L breath | Charging document (17 years and over) s57(1) Youth Aid File (under 17 years) | | | |
| | 251-400 mcg/L breath | | Charging document s57AA(4) | | ION ⁽²⁾ No blood election option s56(1A) Infringement fee \$200 and 50 demerits |
| | 401-650 mcg/L breath | Charging document (17 years and over) s56(1) Youth Aid File (under 17 years) | | | Charging document s56(1) |
| | 650+ mcg/L breath | | | | |
| STEP 4 Blood Test, Cost Recovery, Fail or Refuse | No alcohol | The driver is free to go. Civil cost recovery ⁽³⁾ by PNHQ | | | |
| | 0-30 mg/100ml | ION ⁽²⁾ s57(2A) Infringement fee \$200 and 60 demerits Civil cost recovery ⁽³⁾ by PNHQ | Charging document s57AA(2) Costs to be sought at court | | |
| | 31-50 mg/100ml | Charging document (17 years and over) s57(2) Costs to be sought at court Youth Aid File (under 17 years) | | | |
| | 51-80 mg/100ml | | Charging document s57AA(5) Costs to be sought at court | s58(2A) Blood taken: • Driver lawfully elects • EBT device unavailable • Arrest under s120 • Hospital blood ION ⁽²⁾ s56(2A) Infringement fee \$200 and 60 demerits Civil cost recovery ⁽³⁾ by PNHQ | s58(2B) Blood taken: • Police requires EBT (driver fails, refuses or is unable to complete breath test) ION ⁽²⁾ s56(2B) Infringement fee \$700 and 60 demerits |
| | 81-130 mg/100ml | Charging document (17 years and over) s56(2) Costs to be sought at court Youth Aid File (under 17 years) | | | Charging document s56(2) Costs to be sought at court |
| | 131+ mg/100ml | | | | |
| Fail or refuse blood test | Charging document s60(1) | | | | |

⁽¹⁾ Drivers 20 years and over does not include drivers holding an Alcohol Interlock Licence or Zero Alcohol Licence.

⁽²⁾ Where a single incident leads to an infringement and an offence, prepare a charging document covering all matters eg a driver faces careless use and an infringement level EBT.

⁽³⁾ PNHQ may ask you about the circumstances leading to the taking of blood for the purpose of cost recovery. Costs relate to the blood test fee and any associated medical expenses.

Download a printable PDF version of the [flowchart](#).



Alcohol and drug impaired driving, Continued...

Drug impaired driving charging decision

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Blood test result

| If the analyst's certificate... | then... | Comments | Specimen Charge (1st or 2nd) |
|---|---|---|------------------------------|
| shows presence of a qualifying drug - where CIT not completed satisfactorily | prepare prosecution file and serve a copy of the analyst's certificate and a summons on the driver as soon as possible, and arrange for a charging document to be filed. | You can serve copies to the driver by mail, or in person. | A401 |
| shows presence of a controlled drug specified in schedule 1 drug MODA (except thalidomide) where a hospital blood specimen is collected | | | A402 |
| shows excess blood alcohol and presence of schedule 1 drug (except thalidomide) | prepare prosecution file for EBA and note the presence of drugs in the summary of facts. Then serve a copy of the analyst's certificate and a summons on the driver as soon as possible, and arrange for a charging document to be filed. | | A323 or A324 (under 20) |

The ESR approved analyst sends the analyst's certificate, which records the result, to the enforcement officer named in Part D of the Blood Specimen Medical Certificate (POL540). See '[Evidence certificates](#)'.



Alcohol and drug impaired driving, Continued...

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Part 7 – Subsequent enforcement action

Ensure all subsequent enforcement actions are taken against drivers to mitigate road safety risks.

Subsequent actions

The following actions may be applicable subsequent to processing impaired drivers.



Alcohol and drug impaired driving, Continued...

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Suspension of Licence and Vehicle Impoundment

| TYPE OF DRIVER | EXCESS BREATH ALCOHOL (EBA) OR DRUG IMPAIRED DRIVING | | ACTION IF PREVIOUSLY CONVICTED WITHIN LAST 4 YEARS OF A QUALIFYING OFFENCE. NOTE: SEE THE LEGEND BELOW FOR QUALIFYING OFFENCES FOR SUSPENSIONS AND IMPOUNDMENTS. | | | Consider exercise of powers under s121 if you have reasonable grounds. |
|--|--|------------------|--|--|---|--|
| | Breath | Blood | 0 previous | 1 previous | 2 or more previous | |
| Under 20 years old | 1-150 mcg/L | 1-30 mg/100ml | ION | ION | ION | s121(2) s121(2) |
| | 151-400 mcg/L | 31-80 mg/100ml | Charge | Charge | Charge | |
| | 401-650 mcg/L | 81-130 mg/100ml | Charge | Charge s95(1)(a)(i) SDPN | Charge s95(1)(a)(i) s96(1)(d) SDPN | |
| | >650 mcg/L | >131 mg/100ml | Charge s95(1)(a)(ii)(1) | Charge s95(1)(a)(ii)(1) SDPN | Charge s95(1)(a)(ii)(1) s96(1)(d) SDPN | |
| | 1 mg-400 mcg/L | 1 mg-80 mg/100ml | Charge s96(1)(ba) | Charge s96(1)(ba) | Charge s96(1)(ba) | |
| | 401-650 mcg/L | 81-130 mg/100ml | Charge s96(1)(ba) | Charge s95(1)(a)(i) s96(1)(ba) | Charge s95(1)(a)(i) s96(1)(d) | |
| Alcohol Interlock Licence (AIL) ⁽¹⁾ | >650 mcg/L | >131 mg/100ml | Charge s95(1)(a)(ii)(1) s96(1)(ba) | Charge s95(1)(a)(ii)(1) s96(1)(ba) | Charge s95(1)(a)(ii)(1) s96(1)(d) | |
| | Driving contrary to other conditions of licence | | Charge s96(1)(ba) | Charge s96(1)(ba) | Charge s96(1)(ba) | |
| | 1 mg-400 mcg/L | 1 mg-80 mg/100ml | Charge | Charge | Charge | |
| | 401-650 mcg/L | 81-130 mg/100ml | Charge | Charge s95(1)(a)(i) | Charge s95(1)(a)(i) s96(1)(d) | |
| Zero Alcohol Licence (ZAL) ⁽²⁾ | >650 mcg/L | >131 mg/100ml | Charge s95(1)(a)(ii)(1) | Charge s95(1)(a)(ii)(1) | Charge s95(1)(a)(ii)(1) s96(1)(d) | |
| | 251-400 mcg/L | 51-80 mg/100ml | ION | ION | ION | |
| | 401-650 mcg/L | 81-130 mg/100ml | Charge | Charge s95(1)(a)(i) SDPN | Charge s95(1)(a)(i) s96(1)(d) SDPN | |
| | >650 mcg/L | >130 mg/100ml | Charge s95(1)(a)(ii)(1) | Charge s95(1)(a)(ii)(1) SDPN | Charge s95(1)(a)(ii)(1) s96(1)(d) SDPN | |
| Adult | CIT NOT completed satisfactorily and a qualifying drug present | | Charge | Charge SDPN | Charge SDPN | |
| | Fail or refuse CIT | | Charge | Charge SDPN | Charge s96(1)(d)(i)(C) SDPN | |
| | Fail/refuse blood | | Charge s95(1)(b) | Charge s95(1)(b) SDPN | Charge s95(1)(b) SDPN | |
| All licences | | | | | | |

(1) Suspend on evidential breath test result, irrespective of blood election. Suspension ends if blood result returned is under 131 mg/100ml.
 (2) For AIL and ZAL holders, consider whether the driver's offence history triggers additional sanctions. Refer to licence suspension, impoundment and confiscation under s129 Sentencing Act.

LEGEND

Take away car keys if person is deemed incapable on reasonable grounds

Forbid to drive for up to 12 hours based on reasonable grounds

Suspend driver licence - previous against s56(1) or (2), 57A, 58(1), 60(1), or 61(1) or (2) within last 4 years

Impound vehicle - previous against s56(1) or (2), 57, 57AA, 57A, 58(1), 60(1), or 61(1) or (2) within last 4 years

Issue a vehicle safe or disposal prohibition notice (SDPN) (s98A LTA)

SUSPENSION OF LICENCE AND VEHICLE IMPOUNDMENT

Download a printable PDF version of the [flowchart](#).



Alcohol and drug impaired driving, Continued...

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Forbidding a person to drive

Forbidding to drive

Consider using your powers under section [121](#) LTA where it is in the interests of the driver and the public. [Forbid them to drive](#) if they are:

- for whatever reason, incapable of having proper control of the vehicle, or
- in breach of driving hours restrictions (heavy motor vehicle or transport service licence drivers only).

When you must forbid to drive for up to 12 hours

You must forbid a person from driving for up to 12 hours, if that person's EBT result is positive ([s121\(3\)](#) LTA). You **must** however, always be satisfied the driver is incapable of proper control.

This applies whether or not:

- the driver asks for a blood sample to be taken, and
- a blood sample is taken.

You do not have to wait and see if they drive or attempt to drive before intervening. The prosecution does not have to prove that the driver [in charge](#) intended to drive the vehicle, but it must be able to show the driver was incapable of having proper control of the vehicle because of their physical or mental condition. Where possible, use your powers under section [121](#) immediately when you become aware of the situation.

How to enforce prohibition

You can enforce this prohibition by:

- requiring the driver, or person [in charge of the vehicle](#), to surrender all vehicle keys, and/or
- rendering the vehicle immobile (no damage to the vehicle is permissible).

Forbid to drive in writing

| Step | Action |
|------|---|
| 1 | Make the prohibition in writing, usually on a TON, advising that the driver, or person in charge of the vehicle, is forbidden to drive any motor vehicle. |
| 2 | State where and when the keys (or other part of vehicle removed to make it immobile) can be uplifted. |
| 3 | Provide access to a phone to arrange transport home. For security reasons do not offer personal issue mobility devices. |
| 4 | Notify your FMC or Support Officer to load the alert immediately. If Winscribe is used identify: driver name, DLICNO, the creation date and period of forbidding. |

Failing to comply

If the driver fails to comply with any direction or carries out any forbidden act, they commit an offence under sections [52\(1\)\(c\)](#) and [121\(4\)](#) LTA and, if necessary, can be arrested.

Also remember your power under section [122](#) to seize and impound the vehicle for a period not exceeding 12 hours if you have reasonable grounds to believe public safety is at risk. But there must be no other action that can be taken.

What to do with seized keys or vehicle parts

Put the seized keys or removed vehicle part in the watchhouse and record the details in the Seized Key Book before you cease duty.



Alcohol and drug impaired driving, Continued...

If vehicle is moved to a safe place

If you have moved the vehicle to a safe place (or to remove a road hazard), record details of this in the Towed Vehicle Log and enter a NIA alert against the vehicle.

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