

THE DRUG DRIVING (SPECIFIED LIMITS) (SCOTLAND) REGULATIONS 2019

FINANCIAL IMPACT ASSESSMENT

Background

1. This note sets out the Scottish Government's assessment of the financial impact of the Drug Driving (Specified Limits) (Scotland) Regulations 2019. These regulations provide for the introduction of a new drug driving offence relating to 17 different drug types and associated drug driving limits being set.

Financial impact on the Scottish Administration

2. The introduction of the new drug driving offence and associated limits for 17 drug types will impact on:
 - the Scottish Police Authority (SPA);
 - Police Scotland;
 - National Health Service (NHS);
 - Crown Office and Procurator Fiscal Service (COPFS);
 - Scottish Courts and Tribunals Service (SCTS);
 - Scottish Legal Aid Board;
 - Criminal Justice Social Work (Local Authorities); and
 - Scottish Prison Service
3. There is flexibility to respond to changes in legislation as part of the normal ebbs and flows in the use of resources in the justice system. However, the flexibilities available clearly have limits and each change in legislation must always be considered within the constraints existing at the time legislative change takes effect. Criminal justice system agencies will require the Scottish Government to ensure the overall pressures arising from the introduction of the new offence are accounted for through future justice spending review settlements.

Costs associated with the investigation and enforcement of the new offence

Scottish Police Authority (SPA)

4. In order to ensure that appropriate evidence is available for use in court when prosecutions for the new offence are taken forward, the SPA have developed new forensic testing procedures.
5. Although the SPA currently undertake analysis of substances recovered by the police e.g. drugs recovered from alleged drug dealers, as well as analysing blood samples taken from those suspected of driving while impaired through the use of drugs, the requirements of the new offence are such that forensic analysis is required to not only identify any drugs that may be contained in a person's system, but also the concentration level. This is because the new offence is triggered when a concentration of at least one of 17 different drug types is above the limit for that drug type as specified in the regulations.

6. The SPA have assessed the requirements for implementation to be as follows:

Forensic testing equipment and process

- £392,000

Staff resource – temporary forensic examiner

- £52,000

7. These costs are non-recurring and being incurred in 2018/19 and 2019/20 with the bulk falling in 2018/19.

8. In more detail, the costs relating to forensic testing equipment and establishing agreed processes for the testing of samples can be broken down as follows:

FORENSIC TESTING EQUIPMENT AND ESTABLISHING AGREED PROCESSES – COSTS TO SPA	
Triple quad mass spectrometer	£205,000
Gas Chromatography – mass spectrometer	£50,000
Specialist sample extraction instrumentation	£70,000
Laboratory extraction for instruments	£5,000
Liquid nitrogen supply installation	£15,000
Method development equipment and consumables	£37,000
UKAS service accreditation	£10,000
Total	£392,000

9. The £52,000 costs relate to the appointment of a new temporary forensic examiner who will remain in post for approximately 15-18 months (spanning the period prior to implementation to 6-8 months after implementation). This new post will build resilience in the forensic testing team and help ensure capacity exists to deal with the volume of tests that will be required.

10. After the new offence has been introduced, the costs associated with testing samples will be incurred as part of the operation of the forensic testing services within the SPA.

Police Scotland

Equipment

10. Police Scotland advise that exact operating procedures in respect of the new drug driving offence are in the process of being determined ahead of implementation in October 2019. The information given below is necessarily constrained as it is provided within the context of operational policy decisions that have yet to be made.

11. It is planned that Police Scotland will use drug screening devices known as 'drug testing kits' or 'drugalysers' which are single use only. These can be used at the roadside or elsewhere to provide an indication that specified drugs (currently

limited to cannabis and cocaine) are in an individual's system, providing reasonable grounds to arrest and convey them to a police station for further testing¹.

12. These devices are currently used in England and Wales where the prescribed limits for cannabis and cocaine mirror those proposed for Scotland. They are Home Office Type Approved and can therefore be purchased from approved suppliers without any further type approval or accreditation.
13. The cost of each screening device is £20.50. As noted above, Police Scotland operating procedures are in the process of being developed for implementation and estimating a figure for the likely use of the devices is very difficult to do prior to operational policy decisions being made.
14. For the purposes of this financial impact estimate and for illustrative purposes, if Police Scotland were to use 2000 of the devices in the first year of operation of the new offence, this would cost £41,000. Using 3000 of the devices would cost £61,500. These figures are purely given for illustrative purposes with actual usage of the devices subject to operational decisions yet to be made.
15. Police Scotland are also considering purchasing station based 'Dragger Unit' which are an alternative means of testing for cannabis or cocaine. Each Dragger Unit costs £1,500 and has annual servicing costs of £350. Each time the Dragger Unit is used, there is a need to use a Dragger Cartridge which costs £12.50.
16. Again purely for illustrative purposes, if Police Scotland were to purchase 30 of the Dragger Units, this would cost £45,000 and £10,500 in annual servicing costs. Acquiring, say, 600 Dragger Cartridges would cost £7,500.
17. The projected staffing costs required to implement changes to Police Scotland policy and procedure, and to amend the associated forms and guidance, has been calculated on similar work undertaken during reduction of the drink drive limit in 2014.
18. Within Police Scotland, it is anticipated a small team will be required to complete the necessary changes, broken down as follows:
 - 2 X Constable – 12 weeks minimum (960 hours)
 - 1 X Sergeant - 6 weeks (240 hours)
 - 1 X Inspector – 2 weeks (80 hours)

Item	Cost per Unit	Cost
Constable - 480 hours	@ £28.04 per hour	£26,918.40
Sergeant - 240 hours	@ £31.94 per hours	£7,665.60
Inspector – 80 hours	@ £39.44 per hour	£3,155.20
	TOTAL	£37,739.20

¹ Impairment field tests can also be used as necessary as a means of assessing whether a reasonable suspicion exists in respect of having taken drugs and driven a vehicle.

The National Health Service

19. Where a person is taken back to a Police Station and it is decided to arrest them, a blood sample will be taken. This is to allow for forensic testing by the SPA.
20. Such samples can be taken by trained NHS nurses and/or a doctor/forensic medical examiner. The exact practice to be followed will be determined ahead of implementation as operating procedures are agreed.
21. The practice of taking samples (both blood and urine) for the existing driving while under the influence of drugs offence is undertaken by the NHS. Specific costings for the provision of this existing service are not separately identified as part of the provision of NHS services for the police. As a result of this and because demand for the taking of samples for the new offence will depend on, in part, operational decisions yet to be made, it is very difficult to provide an estimate of the specific impact on the NHS.
22. It is however clear that more blood samples than are currently taken will require to be obtained in the future and this will have an impact on the use of trained NHS nurses and/or doctor/medical examiners.

The court process

Prosecution of cases - Crown Office and Procurator Fiscal Service, Scottish Courts and Tribunals Service and Scottish Legal Aid Board

23. As noted, estimating with any degree of precision the number of people who may be arrested and subsequently prosecuted is very difficult. There are a number of factors that will influence the numbers of cases that may arise including in particular the operational approach adopted by Police Scotland in respect of the new offence.
24. However, in order to aid understanding of the potential impact of the new offence on justice agencies, the estimates that are provided below are based on the experience in England and Wales where the equivalent offence and associated drug type limits were introduced in March 2015.
25. Between April 2015 and March 2018, 23,847 drivers were convicted for the new drug driving offence. This equates to 7,847 drivers on average per year.
26. While accepting there are a range of factors that would influence such a Scottish estimate, it does appear appropriate to base an initial estimate using the fact that Scotland accounts for approximately 10% of the UK population.
27. On this basis, a central estimate of the number of drivers convicted would be 785.

28. If it is assumed there is a degree of uncertainty regarding this estimate, two further scenarios are provided below where 20% more drivers and 20% fewer drivers are convicted:

- 20% more drivers – 942
- 20% fewer drivers - 628

29. There is evidence to suggest that the introduction of the new drug driving offence in England and Wales was accompanied by an increase in the number of convictions for the existing offence of driving while impaired through the use of drink or drugs. While accepting this is a possible scenario in Scotland too, no estimates are included within this paper in this area as it is considered such a situation would not be a direct consequence of the new offence, but an indirect consequence.

30. Based on information provided by COPFS, between 2015 and 2017, the estimated conviction rate as a % of all charges reported to COPFS for prosecution for the section 5 offence in the Road Traffic Act 1988 (driving or being in charge of a vehicle with alcohol concentration above prescribed limit) was 85%.

31. It is considered appropriate to use this conviction rate as an estimate for the conviction for the new offence given the similarities between the offences. Extrapolating this to the central estimate of 785 drivers would provide an estimate of 924 reports being made by Police Scotland to the COPFS.

32. Again using information provided by COPFS, between 2015 and 2017 in approximately 3% of cases reported under the offence at section 4 of the 1988 Act (driving while impaired through alcohol or drugs) and the section 5 offence, COPFS took no further action. Applying this to the central estimate would lead to the following:

- 924 reports made by Police Scotland to COPFS
- 896 cases marked for action by COPFS
- 785 convictions result

33. Applying the same methodology to the upper and lower estimates would produce the following:

- Upper estimate
 - 1108 reports made by Police Scotland to COPFS
 - 1075 cases marked for action by COPFS
 - 942 convictions result
- Lower estimate:
 - 739 reports made by Police Scotland to COPFS
 - 717 cases marked for action by COPFS
 - 628 convictions result

34. It is assumed on the basis of the central estimate above that 896 additional cases would be prosecuted each year.

35. Between 2015 and 2017, 99% of section 4 and section 5 offences under the Road Traffic Act 1988 were prosecuted in the summary court and the remaining 1% being prosecuted at sheriff solemn level (i.e. a trial with a jury).

36. The average cost of a case in these two levels of courts is as follows:

COSTS OF CASES IN DIFFERENT LEVELS OF COURT*		
	Sheriff solemn	Sheriff summary
COPFS	£4,238	£421**
SCTS	£2,234	£441
SLAB	£1,614	£590
Total	£8,086	£1,452

* Figures taken from Costs of the Criminal Justice System in Scotland 2015-16

** The COPFS figure includes costs of Justice of the Peace court prosecutions

37. On the basis of 99% of cases are estimated to be prosecuted in the sheriff summary court and 1% in the sheriff solemn court, this provides the following central combined cost estimate for COPFS, SCTS and SLAB:

- 896 cases prosecuted:
 - 887 cases prosecuted in sheriff summary court = £1,287,924
 - 9 cases prosecuted in sheriff solemn court = £72,774
 - Total costs = £1,360,698

38. Estimated costs for the upper estimate would be as follows:

- 1075 cases prosecuted:
 - 1064 cases prosecuted in sheriff summary court = £1,544,928
 - 11 cases prosecuted in sheriff solemn court = £88,946
 - Total costs = £1,633,874

39. Estimated costs for the lower estimate would be as follows:

- 717 cases prosecuted:
 - 710 cases prosecuted in sheriff summary court = £1,030,920
 - 7 cases prosecuted in sheriff solemn court = £56,602
 - Total costs = £1,087,522

40. In summary, the estimated costs for justice agencies (COPFS, SCTS and SLAB) of the introduction of the new drug using the central estimate would be £1,360,698 a year. Using the upper estimate and lower estimate would indicate costs of £1,633,874 and £1,087,522 respectively.

Sentencing of cases – SCTS, Criminal Justice Social Work (Local Authorities), SPS

41. As noted above, section 4 of the Road Traffic Act 1988 provides for the offence of driving or being in charge of a vehicle while under the influence of drink or drugs and section 5 provides for the offence of driving or being in charge of a vehicle with alcohol concentration above prescribed limit. In 2016/17, 3,240 people were convicted of offences under section 4 and section 5 of the Road Traffic Act 1988.

42. It is considered that the sentencing profile for convictions for these two offences is likely to be similar to that that will emerge for the new offence. As such, the estimates below use this breakdown for estimating purposes for the new offence.

43. The breakdown of disposals was as follows:

DISPOSALS FOR SECTION 4 AND SECTION 5 CONVICTIONS (ROAD TRAFFIC ACT 1988) FOR 2016/17		
	Number	% of all disposals
Custody	85	2.6
Community sentence	585	18.1
Financial penalty	2540	78.4
Other	30	0.9
All	3240	100

44. For those given custody as main disposal in 2016/17, the average sentence length was 141 days. As a result of early release rules, a person receiving a sentence of 141 days will be released after serving 70 days in custody.

45. The cost of one prison place for one year is £34,961. One person serving 70 days in custody therefore costs £6,705.

46. Applying the custodial sentence rate of 2.6% to the central estimate of 785 convictions would result in 20 convictions receiving a custodial sentence of 141 days on average and serving 70 days in custody.

47. This equates to a cost of £134,100 (20*£6,705 (this being the cost of a person spending 70 days in custody)).

48. It is estimated that 18.1% of disposals will result in a community payback order. This totals 142 disposals (18.1% of 785). The average cost of a community payback order is £1,771. This means the total estimated costs in respect of community payback orders would be £251,482.

49. It is estimated that the increase in the number of community payback orders will incur additional annual costs to the SCTS set out in the table below:

CPOs	LOWER	ESTIMATE	UPPER
Estimated volume of Convictions	628	785	942
Increase in CPOs (18.1%)	114	142	171
Total costs	£46,400	£58,000	£69,600

50. The above estimate is inclusive of additional costs likely to arise as a result of an increase in review hearings and in the number of breach applications. The SCTS has also taken account of the likely number of increased applications such as applications to vary/ revoke community payback orders, which are generally more frequent than applications for breach.

51. It is estimated that 78.4% of disposals will result in a financial penalty. This totals 615 additional financial penalties imposed per annum. The SCTS advise that the enforcement process is complex and individual fines can go through a range of trajectories across multiple years.

52. The table below provides an estimate of the additional annual incremental costs only (of handling those additional fines) which the SCTS will incur:

DRUG DRIVING OFFENCES	LOWER	ESTIMATE	UPPER
Estimated volume of Convictions	628	785	942
Fines (78.4% of Convictions)	492	615	739
Additional Cost for Fines Enforcement	£9,882	£12,353	£14,823

53. The total costs of disposals associated with the central estimate of 785 convictions is in the table below. For illustrative purposes, costs are also shown for the upper and lower estimates numbers of convictions.

SENTENCING DISPOSAL ESTIMATED COSTS – CENTRAL CONVICTION ESTIMATE, UPPER CONVICTION ESTIMATE, LOWER CONVICTION ESTIMATE			
	Central estimate of convictions – 785	Upper estimate of convictions - 942	Lower estimate of convictions – 628
	Costs		
Custody	£134,100	£160,920	£107,280
Community Payback Orders	£251,482 £58,000	£302,841 £69,600	£201,894 £46,400
Financial Penalties	£12,353	£14,823	£9,882
Total	£455,935	£548,184	£365,456

SUMMARY OF TOTAL ESTIMATED COSTS

54. The information in the table below provides an estimate for both the non-recurring costs and recurring costs for the introduction of the drug driving offence. For the purposes of these estimates, no allowance has been made for the opportunity costs arising from staff in the SPA and Police Scotland spending time investigating and enforcing the new offence at the expense of other activity. It is accepted these opportunity costs will arise, but it is very difficult to accurately quantify them and so they are excluded for the purpose of these estimates.

TOTAL ESTIMATED COSTS FOR THE SCOTTISH ADMINISTRATION			
Costs associated with the investigation and enforcement of the new offence*			
<i>Non-recurring costs (to be incurred in 2018/19 and 2019/20)</i>			
Scottish Police Authority	£444,000		
Police Scotland	£37,739		
Total non-recurring costs	£481,739**		
Costs associated with the prosecution of cases for the new offence			
	Central estimate of convictions – 785	Upper estimate of convictions - 942	Lower estimate of convictions – 628
<i>Recurring costs (represents estimate for first full year of operation of the new offence in 2020/21)</i>			
Prosecution of cases costs	£1,360,698	£1,633,874	£1,087,522
Costs associated with the sentencing of cases for the new offence			
<i>Recurring costs (represents estimate for first full year of operation of the new offence in 2020/21)</i>			
Sentencing disposals costs	£455,935	£548,184	£365,456
Total recurring costs	£1,816,633	£2,182,058	£1,452,978

*Does not include an estimate for the taking of blood samples by the NHS.

** Does not include an estimate for purchasing of roadside drug testing devices and station based drug testing machines.