

POLICY NOTE

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

SSI 2019/83

Introduction

1. The above instrument was made in exercise of the powers conferred by sections 5A and 195(4A) of the Road Traffic Act 1988 (the 1988 Act). The instrument is subject to affirmative procedure.

Policy Objectives

2. These regulations provide for the controlled drugs and associated limits that apply for the offence of driving, or attempting to drive or be in charge of a motor vehicle on a road or other public place with a specified controlled drug in his or her body, if the proportion of the drug in blood exceeds the specified limit for the drug. This offence is contained in section 5A of the 1988 Act. Prior to these regulations coming into force, this offence does not operate in Scotland.
3. The Scottish Government believes that introduction of the new drug driving offence and associated limits will help make Scotland's roads safer. Along with the continuing operation of the driving while impaired through alcohol or drugs offence (in section 4 of the 1988 Act), this new offence will better empower Scotland's law enforcement agencies in holding to account those who take drugs and drive. This should help deter such irresponsible driving behaviour and make Scotland's roads safer for all users.

Background

4. In 2012, the UK Government announced proposals for a new offence in regard to driving with a specific controlled drug in the body above that drug's accepted limit.
5. The Crime and Courts Act 2013 inserted provision into the 1988 Act creating such a new offence of drug driving. This 2013 Act devolved to the Scottish Government powers to bring forward regulations specifying what controlled drugs and associated limits would be included in the operation of this new offence.
6. Following the lowering of the drink-drive limit in 2014, [the Scottish Government announced](#) in April 2017 that a new offence of drug driving would be introduced in 2019.

Consultation

7. A [joint UK Government and Scottish Government consultation](#) was published in 2013 seeking views as to what controlled drugs should be included within the new offence and what the associated limits should be.
8. An [analysis of Scottish responses](#) to the consultation was published in 2015.

9. The Scottish Government policy proposed in the 2013 consultation was that there should be:
 - a zero tolerance approach to 8 drugs most associated with illegal use, with limits set at a level where any claims of accidental exposure can be ruled out, and
 - a road safety risk based approach to 8 drugs most associated with medical uses.
10. Two-thirds of Scottish respondents to the 2013 consultation supported this policy approach. **The content of the regulations is based on this policy approach.**
11. In addition, the policy approach on amphetamines has been determined so as not to identify this drug type within either the zero tolerance approach or the road safety risk based approach as amphetamines are both capable of illegal use and being used for medical purposes.
12. As part of consideration of what drug types should be included within the new offence, the Scottish Police Authority have undertaken an analysis of what drug types have been identified amongst drivers caught over a recent 6 month period (July-Dec 2017) under the existing 'driving while impaired through drugs' offence.
13. That analysis reveals that of the 261 drug driving impairment cases included in the analysis:
 - just over half (51%) involved Cannabis,
 - just less than half (49%) involved Diazepam,
 - just over a quarter (28%) involved Cocaine/Benzoyllecgonine.
14. These drug types are included in the drug types covered by the new offence.
15. Overall, 95% of the 261 impairment cases revealed the presence of at least one of the drug types included within the new offence. This either represented where a drug type included within the new offence was the only drug type identified or it was identified in combination with other drug types including drug types not included within the new offence.
16. This analysis suggests that the list of 17 drug types provided for in the new offence provides good coverage of the drug types most commonly in use in Scotland by those currently being caught driving while impaired through drugs.
17. Although 95% of all cases (blood and urine) tested contain at least one drug type included within the new offence, it should be noted that only 43% of samples had one or more drug type included within the new offence that was over limit associated with each drug type. This indicates that there will be a continuing need to consider prosecution for drivers who have drugs within their system under the 'driving while impaired through drugs' offence in certain cases.
18. What this analysis also revealed is the extent of polydrug use with approximately 45% all impairment offences showing 4 or more drug types in a person's system. What this suggests is that where a drug type has been taken that is not on the list of 17, it has very often been taken in combination with a drug that is on the list and so would be caught by the new offence (if the drug type limit has been exceeded for the drug type in question).

19. On this basis and following consideration of the Scottish views offered to the 2013 consultation, the Scottish Government considers it appropriate to proceed with the introduction of the limits in Scotland based on the 17 drug types used in England and Wales.
20. With the power to add new drugs to the list covered by the offence and making changes to the limits both capable of being made through the secondary legislative power, the Scottish Government will keep the operation of the new offence under review with the ability to respond as necessary if evidence suggests a need to re-consider the list of drug types and/or the associated limits.

Impact Assessments

21. The Scottish Government has considered the impact of the regulations on particular groups of people (whatever their age, race, gender, sexual orientation, religion or whether they are disabled or not). There is no evidence to suggest that any of the equality strands will be affected by the introduction of the drug driving offence.

Financial Effects

22. A Financial Note has been published, setting out the financial implications of the new drug driving offence for the Scottish Administration and for other bodies, individuals and businesses.

**Justice Directorate
Scottish Government
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