

## Justice Committee

### Drug Driving (Specified Limits) (Scotland) Regulations 2019 [draft]

#### Written submission from Police Scotland

The Justice Committee of the Scottish Parliament sought the views of Police Scotland on:

**The decision by the Scottish Government to select a zero-tolerance approach to eight controlled substances most commonly associated with illegal drug misuse (with limits set high enough to rule out accidental exposure), and a road safety risk approach to controlled substances associated with medical use – effectively replicating the approach taken in England and Wales in 2015?**

Police Scotland cannot comment on the specified drug types or their prescribed limits, as the impact each has on a person's ability to drive is beyond our field of expertise. Where such opinion is necessary, for prosecution purposes or otherwise, we would seek qualified and professional opinion from our forensic colleagues in the Scottish Police Authority.

Clearly we are in favour of any measure which would deter illegal drug use, whether that be in connection with driving or otherwise. We therefore have no objection to the zero tolerance approach detailed in the regulations and welcome the provisions made to account for accidental exposure.

**The resource implications of the new offence, including whether these are accurately reflected in the Scottish Government's financial impact assessment?**

Police Scotland have met regularly with representatives of the Scottish Government and were instrumental in preparing the financial impact assessment. There are a number of policy decisions yet to be made, which will have an impact on the number of officers trained in the use of the screening device, and the circumstances under which drug testing will be carried out. The costs of replicating current policies relative to drink driving are significant, and work is ongoing to cost each alternative option.

To date, funding has already been secured from Scottish Government to fund the officers and staff required to undertake the implementation project.

**Whether the planned implementation of the new offence from 21 October 2019 will create any difficulties?**

Police Scotland meets regularly with COPFS, SPA and Scottish Government to discuss implementation of the new Section 5A offence. Plans are well underway and with a procurement framework already in place for the screening devices and training in their use relatively straightforward, no issues are foreseen in terms of meeting the 21 October 2019 deadline.

## **Any lessons to be learned from the implementation of the same offence in England and Wales?**

While some research and engagement has already taken place with Forces in England and Wales, this piece of work is very much ongoing. What is clear is the policies adopted in E&W have evolved considerably since the introduction of the S5A legislation there in 2015. While the number of tests undertaken has fallen, the number of positive results has increased. This is due to reducing the number of officers equipped with the screening devices, but ensuring that those who are, are particularly proficient and skilled at identifying the right opportunities to use them. It may also be the case that their use is far more intelligence led.

One learning point of particular note is the vital importance of exploring possible Section 4 offences in the first instance. If there is any suggestion of impairment, the section 4 procedure should be followed. This involves examination by a Forensic Medical Examiner (Doctor), and where a condition that may be due to a drug is apparent, the requirement is made to provide a specimen of blood or urine. In normal circumstances, that same FME would obtain the blood sample. In Section 5A cases, there is no requirement for such examination.

What should be avoided is officers pursuing a Section 5A offence where impairment is also apparent. Subsequent analysis of the blood in these circumstances will be restricted to the 17 listed in the regulations. Even if further analysis was carried out on the same sample which showed traces of other drugs which would impair a person's ability to drive, the case would not be competent, as the sample was taken without a doctor's examination.

## **Any other matters concerning the regulations you may wish to raise?**

While there are no issues identified at present, work in relation to these regulations is very much ongoing. The information provided above is accurate to the best of our knowledge as of 18 January 2019.