

Justice Committee

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

Written submission from Scotland's Campaign Against irresponsible Drivers

Scotland's Campaign Against irresponsible Drivers (S.C.I.D.) welcomes the proposed new draft regulations and opportunity to give our views on the draft regulations which will come into force on 21st October 2019.

Drug driving and roadside testing has been a campaign issue for S.C.I.D. since 2002. The review of the Drink and Drug Driving Law by Sir Peter North¹ published in June 2010 concluded "There was "a significant drug problem" with drug driving-related deaths and injuries in Great Britain. Around 41% of the prosecutions in magistrates' courts (in England & Wales) for driving whilst impaired through drugs were withdrawn or dismissed - the comparable figure for exceeding drink drive limit is just 3%."

The Justice Committee seeks views 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.

Agree with Scottish Government's decision.

The new Section 5a offence within the Road Traffic Act 1988 defines prescribed limits for a number of drugs both illicit substances and prescribed medications above which it is an offence to drive, or be in charge of, a motor vehicle.

In the U.K. the initial stumbling block to introducing Drug Driving Regulations was the lack of a device that was sensitive enough to determine whether a particular controlled substance had been taken and, if so, the amount of it that was present in a person's system. Drug driving testing units have been implemented in other countries with very favourable results in detecting and deterring drug driving. In 2015 police officers in England & Wales welcomed the introduction of roadside drug testing and since that time there has been a four-fold increase in the number of motorists in England and Wales charged with driving under the influence of drugs. The successful conviction rate has nearly doubled from 52 per cent in 2012 to 95 per cent now. A spokesperson for the National Police Chiefs' Council (NPCC) said the new legislation has made it easier to identify and prosecute drug drivers and "***These results show that new legislation and detection devices have helped us to keep the roads safe.***"

¹ Report available at:

<http://webarchive.nationalarchives.gov.uk/20100921035225/http://northreview.independent.gov.uk/report>

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

Agree with the view that there is a degree of uncertainty regarding the financial impact of the new regulations. However, the introduction of new offence in section 5A of the Road Traffic act 1988 (driving or being in charge of a motor vehicle with concentration of specified controlled drug above specified limit) would produce greater certainty regarding the offence, reduce previous wasted time, expense and effort involved for the police, the Prosecution Service and the Courts when prosecutions fail under the existing offence in section 4 of the Road Traffic Act 1988 of driving under the influence of drink or drugs (known as “the impairment offence”) due to the difficulty of proving impairment’s.

The Department of Transport reports² the average cost of **each** fatality in 2017 was £1,897,129. Full cost analysis of all severities can be found on their website.

Reducing the number of all road casualties caused by drug driving would reduce the financial impact across all agencies.

Initially, as there will be more costs associated with the new offence; continuing media campaigns to educate the public and raise awareness of the regulations should be paramount to reinforce the message “don’t take drugs and drive.”

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

Difficulties:

(a) The use of Dragger unit at the roadside or elsewhere is limited to testing for cannabis or cocaine which limits the police ability to accurately detect drug driving at the roadside. Research carried out by BRAKE³ in 2005 in Glasgow, revealed that of the 1,396 drivers stopped at random and asked to participate voluntarily in a saliva test, one in six (17%) tested positive for at least one drug. In 85% of cases, one drug had been taken, with the most common drug being MDMA (ecstasy). As yet there is no type approved testing device for MDMA. Police will still have to rely on the very basic imprecise field impairment test when suspected drug drivers test negative for cocaine & cannabis.

(b) The success of the new regulations will depend upon:

1. The number of Dragger units purchased by Police Scotland.
2. The number of police officers trained in the accurate use of Dragger testing units.

² <https://www.gov.uk/government/publications/reported-road-casualties-great-britain-annual-report-2017>

³ <http://www.brake.org.uk/rsw/15-facts-a-resources/facts/482-drugdriving->

3. The number of trained police officers deployed across Scotland to proactively test drivers when there is cause to do so. (The fear of being caught has always been the biggest deterrent.)
4. One of the most commonly used defence arguments in drink driving offences in court is the omission by some police officers to routinely check the calibration of breathalysers; resulting in charges being dropped. Therefore it is to be hoped that a robust calibration programme will be put in place of all Dragger units to provide undisputable evidence when required in court.

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

The then ACPOS in giving evidence to the Justice Committee approved the Scottish Ministers being given the new power to set the drug-driving limit as “an excellent example of forward thinking”. Roadside drug testing has been welcomed in England and Wales. The definitive test for the police in England and Wales makes it a confident tool to arrest drivers for further testing on suspicion of taking drugs over the prescribed limit. Positive scientific testing allows police and prosecutors to prosecute robustly with undisputed evidence saving court time.

Drivers involved in a collision in England & Wales or stopped by the police for suspected driving offences will be breathalysed and subject to a drug test. To make the new regulations effective, in Scotland, this approach should be mirrored and guidelines included in the Police Scotland Road Death Investigation Manual.

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

The accuracy of the new dragger testing units will be under scrutiny in court proceedings. The recent alleged testing failure of drug drivers in England & Wales by Radox Testing Services, based in Northern Ireland, illustrates the need for a well audited calibration trail of all scientific forensic testing equipment used in association with drug testing.

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