

Summary

Purpose - this document is intended to provide an understanding of a new drug driving offence for healthcare professionals involved in the prescription of drugs. This is in the context of clinical decisions being made. This guidance does not require any healthcare professional to explain how the new drug driving offence works to a patient.

Overview - A new criminal offence of driving with certain specified controlled drugs¹ in excess of specified levels in the body will come into force on 21 October 2019.² This offence is a new offence and will operate in addition to the existing offence of driving while impaired through alcohol or drugs³. The legislation that provides for the new offence includes a statutory “medical defence”. This defence is able to be utilised if patients are taking their medicines in accordance with instructions and advice given. In line with current professional practice, healthcare professionals prescribing or supplying medicines take account of the risks of medicines (such as whether a patient’s driving may be impaired by their medicines) and advise accordingly. This clinical practice should not change in any way as a result of the new drug driving offence. However, healthcare professionals are likely to want to understand the new rules concerning this offence. This Scottish Government guidance document is intended to assist healthcare professionals by clarifying key relevant information about the new offence.

Background

This guidance is intended to provide healthcare professionals with an understanding of the new law by:

- explaining the new legislation including the statutory “medical defence” available to patients who have taken their medicine in accordance with the advice of a healthcare professional and the information contained in the leaflet accompanying the medicine; and
- reiterating existing medical advice that healthcare professionals would normally consider giving to patients about medicines that could impair their driving.

There is no expectation that healthcare professionals should give advice on the new offence itself to patients.

The new drug driving offence

There is already an offence of driving whilst impaired through drugs (whether due to non-medical use of drugs or due to legitimate use of medicines) in section 4 of the Road Traffic Act 1988. This section 4 offence will remain in force alongside the new drug driving offence. The section 4 offence is not new and it has not changed. The

¹ Controlled drugs are defined in the Misuse of Drugs Act 1971

² The Drug Driving (Specified Limits) (Scotland) Regulations 2019

³ Section 4 of the Road Traffic Act 1988

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section 4 offence requires proof of impairment to driving, involving a field impairment test and an examination by a medical practitioner, before a confirmatory blood test can be taken, which may detect traces of any drug type.

The new offence refers to driving, attempting to drive or being in charge of a vehicle with a specified controlled drug in the body, in excess of a specified limit (Section 5A of the Road Traffic Act 1988). The drugs to be covered by this new section 5A offence are defined in regulations supporting the offence and are listed below. Implementation of the new offence will make it easier to hold irresponsible drivers to account. Evidence of impaired driving is not required for the new offence. Instead, the offence will be committed if a driver is over the specified limit for any of the individual drug types on a strict liability basis, similar to the operation of the existing drink driving over the limit offence.

A fundamental part of the new offence is protection for people taking prescribed medication. Those individuals who have taken their medicine(s) in accordance with the advice of the prescriber or supplier of the medicine(s) and any accompanying instructions included in the medicine pack (so far as the latter is consistent with advice given) who are found to have a blood level higher than that specified in the regulations are entitled to raise the statutory “medical defence” at any stage (see below for full explanation), and might then not be asked to provide a blood sample.

Impact of the new drug driving offence on patients

The new offence covers 17 controlled drugs. Regulation 2 of the Regulations specifies the 17 controlled drugs and associated limits for the purposes of section 5A of the 1988 Act.⁴

The 17 controlled drugs fall broadly into two groups.

The first group consists of commonly abused drugs for which low limits have been set. This group includes certain medicines that will be taken by only a small proportion of drivers. Given the low limits set, a patient prescribed one of these medicines who chooses to drive could test above the specified limit and would be entitled to raise the statutory “medical defence”.

This ‘zero tolerance’ group currently includes:

benzoylecgonine	50µg/L*
cocaine	10µg/L
delta-9-tetrahydrocannabinol (cannabis)	2µg/L
ketamine	20µg/L
lysergic acid diethylamide	1µg/L
methylamphetamine	10µg/L
Methylenedioxymethamphetamine (MDMA)	10µg/L
6-monoacetylmorphine (heroin)	5µg/L

⁴ <http://www.legislation.gov.uk/sdsi/2019/9780111040478/regulation/2>

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* *microgrammes per litre of blood*

The second group consists of mainly licensed medicines that have a significant liability to be abused, and for which the specified limits have been set at a higher level than the first group. The higher limits are generally above the normal therapeutic range so most patients are unlikely to be driving with a concentration of a specified drug in their body above the specified limit. However, those on particularly high doses, for example, could test above the specified limit and where that happens, then they would be entitled to raise the statutory “medical defence”.

This second group includes the following benzodiazepines:

Clonazepam	50µg/L
Diazepam	550µg/L
Flunitrazepam**	300µg/L
Lorazepam	100µg/L
Oxazepam	300µg/L
Temazepam	1,000µg/L

**No longer licenced in the UK

Plus:

Methadone	500µg/L
Morphine	80µg/L

A separate approach for Amphetamine

Amphetamine	250µg/L
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Amphetamine is also included as a specified controlled drug in the new regulations. An approach balancing risk has been adopted in recognition of the fact amphetamines are illegal but can also have a medicinal use.

The statutory “medical defence” can be raised by patients taking medicines in accordance with instructions, from either of these groups.

Information on whether any particular medicine is affected by the new legislation can be found in the Summary of Product Characteristics for that medicine.

The statutory "medical defence"

This new offence does not alter in any way the clinical advice that should be given to patients in future, which, as now, is based on a proper professional judgement for each patient of what is the appropriate discussion concerning the risks of their medicines.

A patient investigated for drug driving would generally be entitled to raise the statutory "medical defence" if:

- a. The drug was lawfully prescribed, supplied, or purchased over-the-counter, for medical or dental purposes; and
- b. The drug was taken in accordance with advice given by the person who prescribed or supplied the drug, and in accordance with any accompanying written instructions (so far as the latter are consistent with any advice of the prescriber).

In relation to (b) above, the advice from a prescriber can be considered patient specific advice following assessment of the particular prescribing needs for that individual patient. This advice can sometimes differ from the general instructions in the medicine's information leaflet. That healthcare professional's advice can be then properly used in such circumstances as a basis for the patient's statutory "medical defence".

If the police had evidence that the patient's driving was impaired due to drugs, whether prescribed or not, they can charge someone under the existing offence of driving whilst impaired through drugs offence described in section 4 of the Road Traffic Act 1988, for which there is no statutory "medical defence".

The following pages contain useful information for healthcare professionals regarding the operation of the medical defence.

Drug driving and the statutory "medical defence"

You may find the following points useful to aid your understanding of the medical defence available to patients:

- ◆ The police have new powers to test and report to the Crown Office and Procurator Fiscal Service (COPFS) drivers who are suspected of driving having taken certain specified controlled drugs in excess of specified levels in the body.
- ◆ If a driver tests positive at the roadside, they will be arrested and taken to a nearby police station for a confirmatory blood test.
- ◆ Unlike the existing offence of driving whilst impaired by a drug, the new offence has a statutory "medical defence" to protect those patients who may test positive for certain specified drugs taken in accordance with the advice of a healthcare professional and the patient information leaflet that accompanies the medicine.
- ◆ In deciding whether to raise criminal proceedings, the Procurator Fiscal will take into account any evidence patients have provided to the police that may satisfy the statutory 'medical defence.'
- ◆ However, it remains the responsibility of all drivers, including patients, to consider whether they believe their driving is, or might be, impaired on any given occasion, for example if they feel sleepy. It will remain an offence, as now, to drive whilst their driving is impaired by drugs; and, if in doubt, drivers should not drive. The statutory "medical defence" does not extend to be available for the existing 'impairment' offence because even if legitimately taking a medicine, the patient should not be driving if actually impaired.

Factors to consider when advising a patient as to whether their driving is likely to be impaired

It is a driver's responsibility to decide whether they consider their driving is, or they believe might be, impaired on any given occasion.

It is the responsibility of prescribers and suppliers of medicines to give suitable clinical advice to patients regarding the likely risks of their medicines as part of their normal professional practice (including advice on serious and common side effects), which might include, for example, for some drugs the advice that the drug may cause sleepiness and so might impair driving.

Care should be taken where a person is on repeat prescription(s) for suitable clinical advice related to 'medicines and driving' to be reiterated by the pharmacist as part of their normal professional practice.

Based on existing best practice, current advice given to patients about issues related to 'medicines and driving' typically covers the following points, as relevant to each case:

- ◆ Not to drive if any symptoms or signs develop suggesting that their driving may be impaired, such as experiencing sleepiness, poor coordination, impaired or slowed thinking, dizziness, or visual problems.
- ◆ Not to drive at certain times when the risk may be temporarily increased, for example, when first starting, or when first increasing or reducing the dose of, a medicine that may potentially impair their driving.
- ◆ To take particular care in circumstances that may increase the risk of their driving being impaired whilst taking their medicine, and to avoid driving if this occurs. Such situations could include:
 - if another prescribed medicine is added that could also impair their driving alongside the already potentially impairing medicine(s);
 - if they take an over-the-counter medicine that could also potentially impair their driving if taken alongside the prescribed medicine;
 - if other medicines are being obtained from other prescribers that may have an impact on their driving;
 - if there is a developing medical condition that could increase the risk of the impairing side-effects from the prescribed medicine (for example, during the development of a serious illness with recent marked loss of weight);
 - if the patient takes any new medicines that are known to be able to affect the metabolism of their existing medicine and so might impair their driving; or
 - other relevant situations, such as the effects of age or the re-initiation of a medicine that previously caused a period of sleepiness that impaired driving.
- ◆ To be aware that alcohol taken in combination with other impairing drugs can substantially increase the risk of accidents.

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- ◆ A patient suffering with a condition that is being treated by a medicine that is also one of the specified drugs for the new offence, should normally still be encouraged to keep taking their prescribed medicine for that clinical condition in accordance with the advice of the healthcare professional which may include advice about driving.

Alcohol

There is a body of evidence which shows that all of the drugs listed in the new drug driving offence result in a significantly greater road safety risk when taken in combination with alcohol, even in small amounts.

Other rules on fitness to drive

The new offence has been created in addition to the existing rules on reporting medical conditions which affect fitness to drive to the Driver and Vehicle Licensing Agency.

The latest information on the medical standards for driving in Great Britain and Northern Ireland can be found online at:

<https://www.gov.uk/government/publications/assessing-fitness-to-drive-a-guide-for-medical-professionals>

The medical standards are reviewed regularly and is usually updated every 6 months.