

## Drug driving: Proposed regulations – An analysis of consultation responses

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The Crime and Courts Act 2013 (the 2013 Act) introduces, for the first time, an offence of driving under the influence of a specified drug over a specified limit. This legislation aims to make it easier to prosecute drug drivers. Under previous legislation, it was only possible to prosecute an individual for drug driving if it could be demonstrated that the individual's driving was impaired as a result of drug use. This is in contrast to drink driving, where it has been possible to collect clear evidence of a driver being 'over the limit'.

In 2013, the UK Government and Scottish Government undertook a joint public consultation about proposals for new regulations under the 2013 Act. This report relates to Scottish responses to the consultation and will inform decisions about whether Scottish regulations should be brought forward under the 2013 Act and if so, what policy approach should be adopted for the setting of drug driving limits for specific types of drug.

### Main Findings

- A total of 43 responses were included in the Scottish analysis. Most of these were from organisational respondents.
- Two-thirds of respondents agreed with the Scottish Government's preferred policy approach (option 1). This takes a zero tolerance approach to eight controlled drugs which are mostly associated with illegal drug use, and a road safety risk-based approach to eight controlled drugs which have medical uses.
- Most of the respondents who disagreed with the option 1 approach argued instead in favour of the approach set out in option 2. This takes a road safety risk-based approach to 15 controlled drugs. Just one respondent expressed a preference for option 3, which takes a zero tolerance approach to 16 controlled drugs.
- In relation to other questions in the consultation, respondents generally supported the Government's proposal not to set limits in urine, and the proposal to set a zero tolerance limit for cannabis / Sativex.
- There was no clear consensus among respondents about a specific limit for amphetamine, although a majority of those who commented on this question wanted the limit to be lower than 600 µg/L (the limit previously recommended by a UK Government expert panel).
- Around one-fifth of respondents offered a suggestion about other drugs which they thought should be considered in the legislation.

## Background

Under the Road Traffic Act 1988, it has long been illegal in the UK to drive when impaired by drugs. However, it has been difficult to prosecute offences under this legislation because of the need to demonstrate actual impairment – unlike with drink-driving offences, where it has been possible to collect clear evidence of a driver being ‘over the limit’. The Crime and Courts Act 2013 is an attempt to overcome this difficulty. It introduces, for the first time, an offence of driving under the influence of a **specified drug over a specified limit**.

In order to determine which drugs should be included in the legislation, and what the appropriate limits for each drug should be, the UK Government set up an independent expert panel in early 2012 to consider, among other things, how it will be possible to set levels for the impairing effects of specific drugs on someone driving, and how to measure these levels. The expert panel’s report, ‘Driving under the influence of drugs’, was published in March 2013.<sup>1</sup>

Following publication of the expert panel’s report, the UK Government and the Scottish Government then undertook a joint public consultation, setting out three different options for the policy approach to be followed.

The consultation document was published in July 2013,<sup>2</sup> and a later consultation was carried out in England and Wales specifically in relation to proposed limits for amphetamine. The findings of both these consultations, in relation to England and Wales, were published in March 2014.

Under the 2013 Act, it is for the Scottish Government and Scottish Parliament to decide whether a new drug driving offence should be introduced in Scotland and if so, what the limits for specified drugs should be.

Therefore, at the Scottish Government’s request, the initial (July 2013) consultation was extended to Scotland, and it was agreed that the Scottish responses would be analysed separately by the Scottish Government. This approach would allow the Scottish regulations to take into account the views of people in Scotland and the particular context of Scotland’s drug strategy.

## About the consultation

The consultation document contained eight questions, and invited views on three different policy options for the regulatory approach to be followed. These were:

- **Option 1:** (both the Scottish and UK Governments’ preferred option): takes a zero tolerance approach to eight controlled drugs (including LSD) which are mostly associated with illegal drug use, and a road safety risk-based approach to eight controlled drugs which have medical uses.
- **Option 2:** takes the expert panel’s recommendations in full – specifying 15 controlled drugs (not including LSD) and setting limits based on evidence of impairment to driving and / or on evidence of increased odds of a road traffic accident, death or injury.
- **Option 3:** takes a zero tolerance approach to all 15 controlled drugs and LSD.

The limits given in the consultation document for each drug were in microgrammes per litre (mg/L) of blood.

The consultation also sought views on:

- Whether respondents agreed with the Government’s proposal not to set limits for drugs in urine
- The proposed zero tolerance limit for cannabis (and the prescribed cannabis-based drug, Sativex)
- What would be a suitable limit for amphetamine which has medical use in specific circumstances, but which is also often taken illegally
- Whether any other drugs should be considered for inclusion in the regulations
- The impacts of the proposals.

## Consultation respondents

Forty-three (43) responses were included in the Scottish analysis – 4 from individuals and 39 from organisations.

Altogether, 22 responses came from Scotland-based respondents and 20 from organisations outside of Scotland but with a UK-wide remit. One respondent was from Europe.

<sup>1</sup> <https://www.gov.uk/government/publications/driving-under-the-influence-of-drugs--2>

<sup>2</sup> The title of consultation document was: ‘Regulations to specify the drugs and corresponding limits for the new offence of driving with a specified controlled drug in the body above the specified limit’.

Organisational respondents included: road safety, motoring and licensing organisations; medical, clinical and research bodies; pharmacy groups; alcohol and drug partnerships; and charitable organisations and forums supporting people with chronic pain.

## Views about the policy options

Altogether, two-thirds of respondents (28 out of 43) agreed with the Scottish Government's preferred policy approach (option 1). Seven respondents disagreed. The remaining eight respondents either did not state their view, specifically said they had no view, or their view was unclear.

Six of the seven respondents who disagreed with the option 1 approach argued instead in favour of option 2, while one respondent expressed a preference for option 3. This latter respondent argued that option 1 did not fully address the significant problem of drug driving and its effect on communities, and felt that option 3 sent out the 'strongest message' that illegal drug use would not be tolerated.

Those who were in favour of policy option 1 expressed general support for the proposed zero tolerance approach to the eight illegal controlled drugs – because it 'sends a clear message that you cannot take illegal drugs and drive'. This group also largely expressed agreement with the distinction made by policy option 1 between the eight illegal drugs and the eight controlled drugs which may be prescribed for legitimate reasons. This group did not support policy option 2 because they felt it 'would send out mixed messages' and would cause 'confusion' if higher limits were set for what are already illegal substances.

The six respondents who supported option 2 over option 1 expressed the views that policy option 1 was not evidence-based; appeared to be an attempt to tackle drug use rather than dangerous driving; and was inconsistent with the Government's risk-based policy on alcohol. There were also concerns among this group about the likely increased costs associated with the implementation of policy option 1 as compared with option 2.

In general, policy option 3 was rejected by respondents as it was considered to have a greater potential for unintended consequences (particularly for those who were taking prescribed medications), and to be too costly.

## Setting limits in urine

The Government proposed not to set drug limits in urine because the expert panel had advised that it would not be possible to establish evidence-based concentrations of drugs in urine which would indicate that the drug was having an effect on a person's nervous system. The consultation asked respondents if they agreed with this proposal.

Among those who replied to this question, nearly all (22 out of 24) agreed with the Government's proposal.

## Cannabis / Sativex

The consultation document discussed a proposed limit for cannabis. The point was made that a relatively small number of people in the UK are currently prescribed Sativex (a cannabis plant-based drug licensed for medical use in the UK in the treatment of multiple sclerosis), and a small proportion of these (around 200 people) may be driving.

Roadside screening tests are unable to distinguish between cannabis and Sativex. However, given the very small number of drivers using prescribed Sativex, and the more prevalent use of illegal cannabis, the Government proposed to take a zero tolerance approach to the use of cannabis.

Respondents were asked if they thought this approach was reasonable. Of those who commented, nearly three-quarters (23 out of 32) agreed with the proposal to set a zero tolerance limit for cannabis / Sativex.

## A limit for amphetamine

The consultation document discussed options for a drug driving limit for amphetamine. The point was made that amphetamine has some medical use; in particular, it is often used to treat Attention Deficit Hyperactivity Disorder (ADHD) among children and adolescents, and its use among adults diagnosed with ADHD is becoming more common. However, amphetamine (and drugs containing it) are also frequently used illicitly.

The expert panel had recommended a limit of 600 mg/L for amphetamine. However, there had been some comment following publication of the expert panel's report that this limit was too high.

The consultation sought views on what would be a suitable limit for amphetamine.

Among the respondents who addressed this question, there was no clear consensus about a specific limit. However, the majority (10 out of 17) wanted the limit to be set lower than the expert panel's recommendation of 600 mg/L.

## Other drugs which should be considered for inclusion in the regulations

The consultation document asked whether there were any other medicines which should be considered by the regulations.

Just over a fifth of respondents (10 out of 43) offered one or more suggestions.

Respondents commented that there are a range of medications, including a number of over-the-counter medications, which can affect driving ability. In addition, respondents identified other controlled drugs, non-controlled drugs frequently prescribed for pain relief, and so-called 'legal highs', which they suggested should be considered for inclusion in any regulations.

## Impact assessment

Finally, the consultation document contained a detailed analysis of evidence used as the basis for an impact assessment conducted by the UK Government into the likely effects of the new offence on costs for businesses, the third sector and the public sector. The impact assessment focused on estimating the likely

changes in the number of proceedings and reductions in the number of casualties which may result from the introduction of the new regulations, and associated costs.

Although there was no specific impact assessment produced for Scotland as part of the consultation, a small number of respondents made comments regarding the UK Government's draft impact assessment for England and Wales.

Respondents highlighted possible impacts on a range of businesses and services, including those involved in providing training, awareness raising and advice about road safety; healthcare professionals including community pharmacies; the police; the courts; alcohol and drug treatment services; the DVLA; and private companies involved in the manufacture and sale of drug screening devices.

## Other comments

In addition to their comments on the questions posed in the consultation document, respondents also sometimes made comments that were not directly related to the consultation questions. These addressed a range of issues, including: concerns about implementation of the proposed regulations and the possibility of unintended consequences for people taking prescribed medication; the need for raising awareness of the regulations, both among members of the public and among doctors / prescribers; and the need to review procedures for reporting patients to the DVLA when their driving may be impaired as a result of their medical condition or their medication.

This document, along with full research report of the project, and further information about social and policy research commissioned and published on behalf of the Scottish Government, can be viewed on the Internet at: <http://www.gov.scot/socialresearch>. If you have any further queries about social research, please contact us at [socialresearch@scotland.gsi.gov.uk](mailto:socialresearch@scotland.gsi.gov.uk) or on 0131-244 2111.