

Crime and Courts Bill

Fact Sheet: New Drug Driving Offence

1. Driving whilst under the influence of drugs is a significant cause of injuries and deaths on the road. Impairment by drugs was recorded as a contributory factor in about 3% of fatal road incidents in Great Britain in 2011 or 49 fatal road incidents with 54 deaths, (this compares to 9% or 156 fatal road incidents, with 166 deaths, having impairment by drink reported as a contributory factor)¹.
2. In 2011, impairment by drugs (illicit or medicinal) was reported as a contributory factor in road traffic accidents which resulted in 1,012 casualties including 54 deaths.
3. Under section 4 of the Road Traffic Act 1988 (“the 1988 Act”), it is already an offence to drive whilst being unfit to do so through drugs². However, securing a conviction for that offence requires a complex set of evidence to prove that: i) the offender was driving, attempting to drive or in charge of a vehicle; ii) the offender was impaired so as to be unfit to drive; and iii) the impairment was caused by drugs. The cases rely on being able to bring together the evidence of the impaired driving and the drug test result so as to convince the court of a causal link.
4. In 2011 only some 2,600 proceedings were brought under the existing impairment offence in section 4 of the 1988 Act. This is compared to around 52,000 for the prescribed limit drink driving offence (in section 5 of the 1988 Act).³ European evidence suggests drug driving is about half as prevalent as drink driving, so enforcement related to drugs is disproportionately low.
5. The proportion of guilty findings arising from proceedings for the section 4 impairment offence currently used to prosecute drug impaired drivers was only 53%. This compares to 96% for the specific drink drive offence.
6. A recent RAC survey showed that the percentage for all motorists who admitted to driving under the influence of drugs (at some point in their lives) has gone up from 3% in 2011 to 5% in 2012. The number of 17 to 24-year-olds who admitted to driving under the influence of drugs (at some point in their lives) was 9% in 2012.

New Drug Driving Offence

7. Clause 37 creates a new offence of driving with the concentration of a specified controlled drug in the body in excess of the specified limit for that

¹ Department for Transport, Reported Road Casualties in Great Britain, 2011 Annual Report

² Under section 4 of the 1988 Act a person driving or attempting to drive - or in charge of - a mechanically propelled vehicle on a road or other public place, while unfit to drive through drink or drugs is guilty of an offence.

³ Ministry of Justice Criminal Justice Statistics in England and Wales 2011

drug - for insertion as a new section 5A in the 1988 Act. This is similar to the existing drink driving prescribed limit offence (in section 5 of the 1988 Act) in terms of not requiring proof of impairment.

8. Specifically, under new section 5A of the 1988 Act, it will be an offence to **drive or attempt to drive or be in charge of a motor vehicle with a specified controlled drug in the body, above the specified limit for that drug**. The drugs to be covered by the offence and the specified limits for each will be set out in regulations⁴.
9. As with the existing drink driving offence in section 5 of the 1988 Act, a person found guilty of the offence of driving or attempting to drive with a specified controlled drug in their body above the specified limit will be subject to a maximum penalty of six months imprisonment or a £5,000 fine, or both. The person would also be disqualified from driving for a minimum of 12 months. In cases where a person is accused of being in charge of a motor vehicle with a specified controlled drug in their body above the specified limit, the maximum penalty will be three months imprisonment or a £2,500 fine, or both. The person may also be disqualified from driving or if not receive ten penalty points on the licence.
10. The Department for Transport set up a panel of experts to advise on those drugs which should be covered by the offence and, for each drug, the concentration above which it is unsafe to drive. The expert panel has now completed its work and the Government intends to publish the report shortly.. The drugs and threshold levels for each which will be proposed for inclusion in regulations will be the subject of a public consultation. This will include the ability to set lower limits for both alcohol and a specified controlled drug when both are present in the body at the same time, as there is evidence that the road safety risks of driving in such circumstances are increased.
11. Thereafter the draft regulations would need to be debated and approved by each House of Parliament. Subject to Parliamentary approval of the provisions in the Bill and the related regulations, it is expected that the new offence will come into force some time in 2014.
12. The existing offence in section 4 of the 1988 Act, of driving while impaired by drink or drugs, will remain in place alongside the new offence. It would continue to be used to deal with those whose driving is impaired by drugs which are not specified for the purposes of the offence. It would also continue to be used to deal with those whose driving is impaired by specified controlled drugs taken in accordance with medical advice, as there is a statutory defence covering such cases in new section 5A(3) of the 1988 Act.

⁴ Regulations will be made by the Secretary of State for Transport in respect of England and Wales and by the Scottish Ministers in respect of Scotland.

13. The associated Schedule 18 to the Bill also makes provision for multiple preliminary tests (a maximum of 3, rather than just one, as at present) to be taken for the purpose of investigating whether a drug driving offence (under the 1988 Act) has been committed. Failure to provide the samples without a reasonable excuse is an offence under section 6 the 1988 Act.
14. Consequential amendments in Schedule 18 also make provision so that if a person has a controlled drug in the body in excess of the specified limit for that drug, and causes death by careless driving, that person can be charged with the offence of causing death by careless driving when under the influence of drink or drugs under section 3A of the 1988 Act. Greater maximum penalties are available for the section 3A offence than for the offence of causing death by careless driving under section 2B of the 1988 Act, which is currently used when it is not possible to prove that the person was impaired by drugs at the time of committing the offence.

Drug Testing Devices

15. For the most effective enforcement of the new offence, the police will be assisted by the availability of reliable drug testing devices. Such devices are required by the 1988 Act to be of a type approved by the Secretary of State. The Home Office is committed to the approval of suitable drug testing devices to support the introduction of the new offence in 2014 and approved a device to support the investigation of the current impairment offence in police stations at the end of 2012.
16. It is essential in order to provide a secure basis for further action that the devices are consistent, accurate, precise and reliable. Type approval (meaning approval to minimum safety and technical standards) will therefore only be given following the satisfactory completion of operational and laboratory tests of devices against the type approval specification.
17. Drug testing devices will remove the need for the police to seek medical assessment of the suspect before requiring him or her to provide a blood or urine sample for laboratory analysis. It is the result of the laboratory analysis that will be used in any prosecution.
18. Having a similar device that can be used for drug testing at the road side will provide further help by indicating to the police the presence and level of specified controlled drugs in the body before they decide whether to take the suspect to the police station to obtain a blood or urine specimen. The additional environmental, operational and other requirements a roadside device will have to meet will be finalised in the light of the conclusions of the expert panel and subsequent debate.

**Department for Transport/Home Office
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