

<b>Title:</b> New offence of driving with a specified controlled drug in the blood in excess of the specified limit for that drug (and related consequential amendments)  <b>Lead department or Agency:</b> Department for Transport  <b>Other Departments or Agencies:</b> Ministry of Justice, Home Office	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 29 May 2012		
	<b>Stage:</b> Legislation		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Primary legislation		
<b>Contact for enquiries:</b> Duncan.Price@dft.gsi.gov.uk			

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b>
--	---------------------

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out? Measure qualifies as Zero Net Cost
£86m	£0	£0	No

**What is the problem under consideration? Why is government intervention necessary?**  
 Drug driving contributes to or causes road deaths and injury and therefore is a problem in road safety terms. Very few proceedings are brought under the existing offence available to proceed against drug driving, especially when compared to proceedings brought under the prescribed limit drink driving offence. There is a low rate of convictions resulting from proceedings brought under the existing offence, compared to the offence for drink driving. Therefore government intervention is required to bring in a new offence to provide for more effective enforcement against drug driving.

**What are the policy objectives and the intended effects?**  
 The overall aim of these proposals is to improve road safety by reducing the risk arising from drug impaired driving via reducing its prevalence. To achieve this overall aim, it is also our objective to:

- enable more effective and proportionate enforcement against drug impaired drivers; and
- increase the efficiency of enforcement activity against drug impaired drivers.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
**Option 0:** Doing nothing. This would maintain the existing position and incur no fresh costs or benefits.  
**Option 1:** To create a new offence of driving with a specified controlled drug above the specified limit in the body. This option is being pursued as it relieves the need to prove impairment by a drug on a case by case basis and will therefore enable more efficient enforcement against drug driving.  
  
 The impact of smaller consequential legal amendments related to the new offence is included here, and the planned introduction of drug screening technology is also assumed to take place.

<b>Will the policy be reviewed?</b> It will not be reviewed. <b>If applicable, set review date:</b>					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> No	<b>&lt; 20</b> No	<b>Small</b> No	<b>Medium</b> No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> £0		<b>Non-traded:</b> £0

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:  Date: 30/05/2012

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** New offence of driving with a controlled drug in the blood in excess of the specified limit for that drug (and related consequential amendments).

## FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 2014-23	Net Benefit (Present Value (PV)) (£m) £85m		
			Low: Optional	High:	Best: £85m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate		£18m	£144m

### Description and scale of key monetised costs by 'main affected groups'

The Crown Prosecution Service (CPS), criminal justice system and police are estimated to incur net present costs of £11m, £72m and £62m respectively. The criminal justice system costs include the costs of the courts, legal aid, prisons and probation. The police costs include the costs of screening suspects and preparation for prosecution.

### Other key non-monetised costs by 'main affected groups'

Police non-monetised costs: We have no estimate of the costs of the screening device, nor do we have an estimate of the costs related to suspects who are not prosecuted.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate		£28.5m	£230m

### Description and scale of key monetised benefits by 'main affected groups'

The net present benefit of road casualty savings is estimated at £219m as a result of the new offence deterring driving while under the influence of drugs. The Exchequer is estimated to accrue net present benefits of £11m as a result of fine income.

### Other key non-monetised benefits by 'main affected groups'

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

The impact assessment for the specific offence of drug impaired driving assumes the offence operates across a range of controlled drugs consistent with the set of controlled drugs identified in the North review about drink and drug driving. It also assumes the availability of approved screening equipment. The impact assessment includes a central case, with some sensitivity tests on key parameters, although the range of uncertainty related to the costs of the proposals is significantly greater than the size of the sensitivity tests. Further impact assessments will accompany the regulations required to specify the controlled drugs and limits for the new offence and these assessments will identify the effects of the offence as it is planned to be put into operation via the more specific regulations

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0	Benefits: £0	Net: £0	No	Zero net cost

# Evidence Base

## Problem under consideration and rationale for intervention

### Road Casualty Problem

1. Driving is a complex task and the capacity to drive safely may be impaired in a variety of ways due to drugs. The North review<sup>1</sup> set out the ways in which different drugs have an adverse effect on the behaviours and skills required to drive safely. It describes how depressant drugs can for example slow response times and recall, lower alertness and lead to more errors. Hallucinogens and drugs that cause sedation have adverse effects on driving performance. Stimulants may improve reaction time, but can negatively affect critical judgement, increase impulsiveness, lead to more errors and disrupt sleep patterns.
2. 'Impaired by drugs' was recorded by the police as a contributory factor in 51 road deaths, or about 2% of fatal road incidents in Great Britain in 2010<sup>2</sup>. This is about a third of the share of fatal accidents which had 'impaired by alcohol' assigned as a contributory factor. Both these figures are substantial under-estimates, as the attribution of contributory factors is largely subjective, reflecting the police officer's opinion at the time of reporting; and as only those accidents where the police attended the scene and reported at least one contributory factor are included in the data.
3. The official estimate for drink drive related road deaths in 2010 is 250<sup>3</sup>. If the under-reporting of the 'impaired by drugs' contributory factor in police data on road traffic incidents (STATS19) is in the same proportion as for the 'impaired by alcohol' contributory factor, the figure of road deaths related to drug impaired driving would be about 80. However, it is likely that the under-reporting of drug impairment in the STATS19 contributory factor system is greater than for drink, because the practical difficulties of testing for drugs are greater.
4. European research<sup>4</sup> suggests that the prevalence of illicit drugs in the general driving population is about 55% that of alcohol. Assuming that this relationship also translates to impairment, the prevalence of drug impaired driving safety problems can be estimated to be roughly half that of drink driving. If this held in Great Britain this would suggest that there were about 140 road deaths related to drug impaired driving in 2010.
5. The estimated number of drink driving deaths in 2010 is substantially lower than previous years (having been in the range of 380 to 410 per year from 2007 to 2009 and been more than 500 in each year in the decade before. It may be that levels of drug impaired driving did not decline in proportion to drink driving deaths in 2010, compared to earlier years. If drug impaired driving deaths amounted to 55% of the drink driving death levels in these earlier years, they would be running at about 220 per year.
6. Work by Tunbridge et al<sup>5</sup> suggested that illicit drugs could be present in about 18% of road fatalities in 2000. If sustained, in 2010 this would involve 330 deaths, but no assessment was made of the actual impairment at the time of driving.

---

<sup>1</sup> North Report of the Review of Drink and Drug Driving Law (published in June 2010), <http://webarchive.nationalarchives.gov.uk/20100921035225/http://northreview.independent.gov.uk/>

<sup>2</sup> Contributory Factor Type: Report Accidents by Severity GB 2010 (Reported Road Casualties GB 2010), Department for Transport

<sup>3</sup> Based on Coroners' data

<sup>4</sup> DRUID, Driving under the Influence of Drugs, Alcohol and Medicines, Main DRUID Results, 6<sup>th</sup> Framework Programme, 2011. This report estimates the prevalence of illicit drugs (1.90%) and prevalence of alcohol (3.48%) in the driving population across Europe.

<sup>5</sup> Tunbridge RJ, Keigan M and James F (2001) The incidence of drugs and alcohol in road accident fatalities. TRL Report 495. Crowthorne: TRL.

7. For a central estimate of the current drug-driving related casualty problem we have applied a factor of 55% (reflecting the relative prevalence of drink and drug driving in the European research) to the 2008 to 2010 average of the number of drink driving deaths and injuries. For later years it has been assumed the casualty problem would reduce consistent with the projections for all road deaths and injuries, if this policy intervention were not made.

	Casualties (Great Britain)			
	Deaths	Serious	Slight	Total
Drink Drive (2008 - 2010 averages)	340	1,450	9,780	<b>11,570</b>
<b>Estimates</b>				
Drug Impaired (Central estimate)	190	800	5,380	<b>6,360</b>

(All figures rounded to nearest 10).

### Level of Enforcement

8. 2010 Ministry of Justice returns indicate that there were far fewer proceedings brought related to drug impaired driving than for drink driving. There were about 56,000 proceedings brought to Magistrates' Courts in England and Wales<sup>6</sup> for the specific offence of driving with alcohol above the prescribed limits (under section 5 of the Road Traffic Act 1988). There were fewer than 2,700 proceedings related to the impairment offence of being unfit to drive through drink or drugs (under section 4 of the 1988 Act) which is the main offence available to proceed against drug driving. This is less than 5% of the drink drive proceedings. The ratio in Scotland is similar.
9. Given drink and drug impaired driving are issues of a similar dimension (albeit the prevalence of drink driving may be about double that of drug impaired driving), the prosecution activity related to drug impaired driving appears disproportionately low.

### Effectiveness of Enforcement

10. Approximately 40% of the proceedings at Magistrates' Courts in England and Wales for impairment were withdrawn or dismissed in 2010 (compared to about 3% for the prescribed limit drink drive offence). Work for the North review indicated that in a sample police force area (with above average experience of using the current drug driving enforcement regime) only 35% of positive preliminary tests led to findings of guilt at court in 2008 and 2009.
11. The existing offence used to prosecute drug impaired drivers requires impairment of their driving to be established case by case, as well as the detection of specific drugs. This differs from the approach taken to the prescribed limit drink driving offence, where the evidence required is simpler to obtain.
12. Given that the current system is hindering effective enforcement, Government intervention is required to address this, improve driver compliance with required driving standards and, in doing so, improving road safety.

### **Aims and Objectives**

13. The overall aim of these proposals is to improve road safety by reducing the risk arising from drug impaired driving. To achieve this overall aim, it is also our objective to:

<sup>6</sup> Ministry of Justice, Court proceedings database

- enable more effective and proportionate enforcement against drug impaired drivers; and
- increase the efficiency of enforcement activity against drug impaired drivers.

## Proposal in Context

14. The North Review's recommendations in relation to drug driving law proposed a five step strategy to improve the law and the regime for drug testing. This comprised:
1. improving the current drug testing process;
  2. preliminary screening tests;
  3. a specific prescribed limit drug drive offence;
  4. drug screening at the roadside;
  5. evidential saliva testing.
15. The new offence of driving with a specified controlled drug in the body above the level specified for that drug, which was introduced in the Crime and Courts Bill enables the third step of the process to be implemented. It is described in detail below. Work on steps 1 and 2 has been proceeding. In respect of step 2, drug screening equipment is scheduled to be type approved by the Home Secretary by the end of 2012 for use in preliminary screening tests at police stations. These devices would operate initially under the existing legislative framework.
16. Planning work is underway in relation to drug screening equipment for use at the roadside (step 4). Type approval work is planned so the equipment can be available to enable the objectives for the new offence to be achieved.
17. The new offence can be introduced without roadside screening equipment in place. However, the objectives for the new offence would only be partially achieved if this equipment were not available. Both the benefits and costs of in this impact assessment assume the availability of on-road screening equipment. Step 5 is a longer term plan and is not included in this assessment.

## The new specific drug driving offence

18. Legislation has been introduced in the Crime and Courts Bill to create a new offence across Great Britain of driving or being in charge of a motor vehicle with a specified controlled drug in the blood or urine in excess of the level specified for that drug. It is already an offence to drive whilst impaired by drugs (under section 4 of the 1988 Act), and this will remain in place alongside the new, more specific offence. The penalty options for the new offence are similar to those for the existing offence of driving or being in charge of a motor vehicle with alcohol concentration above the prescribed limit (under section 5 of the 1988 Act).
19. The legislation introduces a regulation-making power (exercisable by the Secretary of State in relation to England and Wales and by the Scottish ministers in relation to Scotland) to specify which controlled drugs are covered by the offence, and the specified limit in relation to each. These regulations will be subject to the affirmative resolution procedure in Parliament<sup>7</sup>, and there is a requirement to carry out a public consultation before making them<sup>8</sup>. The intention behind the new offence is to improve public safety on roads.
20. Different specified limits can be set for different controlled drugs. For some controlled drugs the specified limit might be set at a level where the average person's driving would be impaired. However, for other controlled drugs which are also associated with road safety problems (as they can impair driving), it may not be technically possible to determine a level which impairs most people's driving. This may be, for example, because tolerances vary

<sup>7</sup> By virtue of the amendment to section 195 of the Road Traffic Act 1988 made by subsection (3).

<sup>8</sup> By virtue of section 195(2) of the 1988 Act.

widely in the population, or because the drug is often taken in conjunction with other drugs and is associated with abuse or risk-taking behaviour. For such drugs a specified limit may be set at a lower level than may be considered likely to impair most people's driving. In some cases the level may be very low (for example minimum detectable amounts); this can be described as a zero tolerance approach. Specified limits could also be zero.

21. The North review of drink and drug driving law advised that a new specific offence should be developed, and identified eight drugs or categories of drug which should be considered for inclusion. The exact drugs and limits involved will be determined following further technical advice, including from an expert panel. The panel began work in April 2012 with a view to providing advice in early autumn.
22. There will be a defence available if a specified controlled drug is taken in accordance with medical advice. The impairment offence (section 4 of the 1988 Act) will continue to be used to deal with those whose driving is impaired by specified controlled drugs where they are taken in accordance with medical advice. The impairment offence would also continue to be used to deal with those whose driving is impaired by drugs which are not specified for the purposes of the offence.
23. Consequential amendments related to the new offence also make provision so that if a person has a specified controlled drug in the blood or urine 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). More substantial penalties are available for that offence than for the offence of causing death by careless driving (under section 2B of the 1988 Act), which is currently used if it cannot be proven that the person was impaired by drugs at the time of committing the offence.
24. The legislation also provides for a maximum of three preliminary saliva or sweat screening tests to be taken to check for drugs. The current position is that one sample can be taken, but this is an impractical limitation for the new offence given the current drug screening technology. Evidential testing for drugs would continue to be through blood or urine samples. Saliva or sweat tests would not be evidential tests, in contrast to breath tests for alcohol, which can be – and are the most frequently used – type of evidential test for the offence of drink driving.

## **New Offence and Regulations**

25. For the offence to be put into operation, regulations specifying the controlled drugs covered and the specified limits for each need to be implemented. A technical panel will be providing technical advice for the purpose of preparing the regulations and there will be a public consultation about the controlled drugs and levels which are proposed for inclusion. This impact assessment assumes the offence will be introduced via regulations for a range of controlled drugs. Based on the further technical work and the identification of specific drugs and limits for the new offence we will produce a more detailed impact assessment alongside the regulations. There is a possibility that a new impact assessment will show a different impact, with different casualty savings, net benefits and costs.

## **Costs**

26. Given that data and evidence for the new offence of driving with a specified controlled drug in the body above the specified limit for that drug is limited, low and high scenarios have not been produced to avoid the impression of a precise range of uncertainty. For this reason we have provided analysis for a central scenario and conducted sensitivity tests for two of the

most important variables, i.e. the forecast for the existing offence of driving while impaired by drink or drugs (under section 4 of the 1988 Act), which is used as the baseline against which the creation of the new offence is compared, and the forecast for the new offence. The actual range of uncertainty is substantially higher than the size of the effects in the sensitivity tests.

## **Central Scenario**

### **Forecast**

27. The introduction of the new criminal offence – of driving with a specified controlled drug in the body above the specified limit for that drug – will create a new set of offenders. Because this offence is new, there is a lot of uncertainty regarding the forecast increase in the number of drug-driving offenders. This is primarily due to a lack of evidence regarding the prevalence of drug-driving, currently and into the future, and enforcement levels in the future.
28. To highlight the risk of the changes to enforcement, we have conducted two sensitivity tests:
- a. The first examines the cost and benefit implications of a change in the number of offenders prosecuted under the existing impairment offence.
  - b. The second examines the cost and benefit implications of a change in the number of offenders prosecuted under the new drug drive offence.
29. These sensitivity tests are contained in contained in the sections following the central scenario.
30. We estimate that there will be **approximately 8,200 proceedings brought per annum due to the new offence**. This estimate has been discussed informally with the police, prior to being included in this assessment.
31. It is consistent with the following information and assumptions:
- for the existing prescribed limit drink-drive offence there were 59,353<sup>9</sup> court proceedings in 2010;
  - the prevalence of drug-related driving relative to drink driving is 55%<sup>10</sup>;
  - the new offence enables the rate of proceedings (ie court proceedings/volume of driving) to rise so that for the new offence proceedings will be between approximately one fifth and a quarter of the rate for drink driving<sup>11</sup>; and
  - the ratio of guilty findings to proceedings brought has been assumed to be the same as for the prescribed limit drink drive offence.
32. The detailed cost estimates have been produced on the basis that the 8,200 extra proceedings relate to the new offence (or associated failures to provide samples). However the costs would be very similar if the extra 8,200 proceedings included some extra cases taken forward under the existing impairment offence or some extra cases taken forward under the drink drive offence. The existence of the new offence is also likely to result in some cases that would have been taken forward under the existing impairment offence instead proceeding under the new offence. For the detailed cost estimates it has been assumed that the net change in the impairment offence numbers is zero. However the cost

---

<sup>9</sup> This is an England and Wales figure and has been increased by approximately 8.5% to produce a GB wide estimate including Scotland

<sup>10</sup> Druid main results estimated EU prevalence of illicit drugs (1.90%) vs. prevalence of alcohol (3.48%) in the driving population

<sup>11</sup> The one fifth to one quarter rate is built up from two assumptions. Firstly the reduction in complexity of the enforcement procedures removes about 40% of the greater complexity of bringing drug impaired offenders to justice compared to drink drivers. Secondly this has been reduced by nearly half consistent with the North review which suggested that 50% to 75% by volume of single controlled drugs would be capable of testing.

estimates would be very similar if there were a net change in the number of proceedings under the impairment offence, provided the overall increase in the total proceedings under all the offences was about 8,200.

33. To extend the analysis to cover the 10 year appraisal period we have made two further assumptions:
- the number of proceedings per annum, 8,200, remains constant throughout the appraisal period; and
  - the number of offenders charged under the existing impairment offence will be unchanged.<sup>12</sup>
34. The new offence is assumed to operate in the same manner as the existing prescribed limit drink drive offence, such that offenders will be charged under one of the following:
- Driving or attempting to drive with a specified controlled drug in the blood or urine above the prescribed limit
  - Being in charge of a motor vehicle with a specified controlled drug in the blood or urine above the prescribed limit
  - Failing to provide a specimen for analysis or laboratory test (evidential test).
  - Being in charge of a motor vehicle and failing to provide a specimen for analysis or laboratory test (evidential test).
35. Given the similarity between the drug and drink driving offences, we have assumed that the distribution of proceedings among the 4 above-mentioned scenarios will be identical to that for the drink-driving offence.<sup>13</sup> Table 1 shows the annual distribution of proceedings brought among the 4 offence types.

**Table 1: Total Additional Completed Proceedings by Offence Types per Annum**

Offence Type	Central Scenario
Driving or attempting to drive with a specified controlled drug in the blood or urine above the prescribed limit	7,616
Being in charge of a motor vehicle with a specified controlled drug in the blood or urine above the prescribed limit	300
Driving and failing to provide specimen for analysis or laboratory test	153
Being in charge of a motor vehicle and failing to provide specimen for analysis or laboratory test	92

36. In addition to the creation of the new offence, there will be two consequential legislative changes, affecting section 3A and section 6 of the Road Traffic Act 1988. The costs arising

<sup>12</sup> There may be a certain transfer of cases between the existing impairment offence and the new specific drug offence, and vice versa. There may also be interactions with the prescribed limit drink driving offence.

<sup>13</sup> The distribution of drink-drivers among the offence types is from MOJ 2010 Data



from the additional proceedings brought and proportion of guilty findings is included in this assessment.<sup>14</sup>

- Section 3A will be amended so that if a person had a specified controlled drug in the blood or urine in excess of the specified limit for that drug, and caused a death by careless driving, the person could be charged with the offence of causing death by careless driving when under the influence of drink or drugs. Currently, where a case-specific impairment due to drugs cannot be established, the person may be charged with the offence of causing death by careless, or inconsiderate, driving in section 2B of the 1988 Act, which has a lesser punishment. It is estimated that this change will affect up to 14 people annually who will be charged with the more serious Section 3A offence instead of the section 2B offence.
- Section 6 will be amended such that refusing to provide up to a maximum of 3 samples for the preliminary drug screening test will be an offence. We estimate that this will affect approximately 50 people per annum.<sup>15</sup>

## Casualties

37. The key objective for the new offence is to contribute to improving road safety. It is expected to reduce the number of drug-related road casualties. Elvik et al<sup>16</sup> identify an average effect of road user information and campaigns on drink driving prevalence of 19%. For road safety campaigns more generally, campaigns with enforcement resulted on average in a 13% reduction in accidents, compared to campaigns on their own having very little effect.
38. Without this legislative change, there would be no reasonable prospect of a substantial, effective and sustained increase in enforcement against drug impaired driving, due to the existing legislation being so complex to operate. With the new legislation in place, the expectation is that effective enforcement against drug impaired drivers would be possible and that it would be accompanied by campaigns. If the effects on drink driving behaviours are translated to drug impaired driving, this legislative change would enable accident reductions of 13% to 19% to be attained.
39. Shults et al (2001)<sup>17</sup> identified nine US studies on the effect of changes to drink driving laws. These studies met the criteria for inclusion in a NICE 'Cochrane' study.<sup>18</sup> The studies indicated a median change in alcohol-related motor vehicle fatalities of 9% as a result of changes in the law. The studies also considered changes to fatal crashes following increased drink driving enforcement (via selective or random breath testing) with reductions of about 20% to 26%.
40. Using this international evidence on the impact on drink driving would suggest a range of change as a result of changing the law and associated enforcement of between 10% and 20%. However, drug impaired driving is a far more complex behaviour than drink driving, involving a great variety of drugs, some obtained legally and others illegally. Evidence from European research (DRUID) suggests that a tripling of enforcement, control and detection reduces drug-related road casualties by 5 % per annum.<sup>19</sup> DRUID used the 'dose response' model of Elvik (2001)<sup>20</sup> and suggests "that increased enforcement increases expected cost

<sup>14</sup> It is assumed that the same ratio of guilty findings to proceedings brought as now will remain after the offences have been amended.

<sup>15</sup> This is based on the number of proceedings brought under this offence with respect to failing to provide a breath test for the purpose of investigating the prescribed limit drink driving offence. CHECK!

<sup>16</sup> The Handbook of Road Safety Measures: Rune Elvik, Alena Hoye, Truls Vaa and Michael Sorensen

<sup>17</sup> Shults RA, Elder RW, Sleet DA et al. (2001) Reviews of evidence regarding interventions to reduce alcohol-impaired driving (Brief record). American Journal of Preventive Medicine 21 (4 supplement): 66-88

<sup>18</sup> 'Review of effectiveness of laws limiting blood alcohol concentration levels to reduce alcohol-related road injuries and deaths' (Centre for Public Health Excellence, Amanda Killoran, Una Canning, Nick Doyle, Linda Sheppard; March 2010)

<sup>19</sup> DRUID, 'Cost-benefit analysis of drug driving enforcement by the police' 2011, page 13.

<sup>20</sup> Elvik, R. 2001. "Cost-benefit analysis of police enforcement." Working Paper 1, Enhanced Safety

of crime (the deterrence effect), particularly through increases in the perceived risk of being caught in police checks, such that some potential drunk/drugged drivers end up with a different decision – *not* to drive when having taken drugs, medicines or alcohol (or not taking drugs, medicines or alcohol because of the need to drive) instead of driving under the influence (reducing prevalence, and thus, attributable fatalities/injuries).”

41. Therefore on balance, the calculations of casualty savings have been done using a cautious assumption of a 5% reduction in drug related road deaths and injuries.
42. The estimated numbers of drug impaired driving casualties are discussed in the Problem section above. The estimates for 2010 have been reduced by approximately 3.5% per year for deaths and 3.85% per year for injuries to reflect the central projection for casualty reductions contained in the Department for Transport’s strategic road safety framework. These reductions have been applied to the estimates of the numbers of drug impaired driving casualties for 2010.
43. The central estimate for the casualty savings for 2014 is 9 deaths, 35 serious injuries and 239 other injuries. These are valued at about £26m.
44. Based on this we estimate that there will be approximately 80, 300 and 2,100 less fatal, serious and slight casualties respectively over the appraisal period as a result of the introduction of the new offence (**Table 2**). This is based on the following assumptions:
  - increased enforcement will deter motorists from driving while under the influence of drugs;
  - the forecast of proceedings brought is a substitute for the actual level of enforcement;
  - drug-driving related casualties are equivalent to 55% of drink-driving casualties; and
  - drug-related road casualties will be reduced by 5% per annum from the baseline forecast.

**Table 2: Estimated Casualty Reductions, total over appraisal period**

	<b>Fatal</b>	<b>Serious</b>	<b>Slight</b>
<b>Estimated Casualty Savings</b>	84	305	2059

45. The size of the deterrence effect - the reaction of motorists - is uncertain. The assumptions for the magnitude of the deterrence effect are discussed above. The key factors which determine the deterrence effect are:
  - the level of Police enforcement activity;
  - the number of drugs which will be included in the regulations and screened for; and
  - to a lesser extent, the costs/punishments associated with the new offence.

## Unit Costs

46. **Tables 3 and 4** demonstrate the costs incurred by the Criminal Justice System and Police, respectively, for each drug-drive suspect. When applying the criminal justice and police unit costs to the forecast above we have made several assumptions and need to bear in mind a number of risks. These assumptions and risks are:

- **Sentencing:** We have assumed that sentencing outcomes for the new specific drug driving offence (and its different scenarios) will be the same as for the prescribed limit drink driving offence. There is a however a risk that magistrates or judges will sentence some drug drivers more harshly due to the illegality of the possession of Class A drugs.
- **Interactions:** We have also not included any interaction between drink drive offences and the new drug drive offence. Similarly we have not considered the interaction of the new offence with other more serious offences.
- **Additional cases:** We are assuming that the additional cases will not displace any existing cases in either the Magistrates court or the Crown Court. Similarly we have assumed that there will not be a significant displacement of police activity (ie the police undertaking less other activity) in the estimates of police costs.
- **Legal aid:** We have assumed that the offences in question will have the same average Legal Aid costs and eligibility as all other summary motoring offences. In reality these more serious motoring offences should have higher Legal Aid eligibility.
- **Imprisonment/community sentences:** A risk is that the cost of imprisonment/community sentences might be higher than the standard unit costs, as it may be that if we are dealing with offenders with a drug dependency, this may require more expensive orders or increased orders within a community sentence or higher prison costs. But we don't have any evidence for this assumption, or for how much a drug-dependant offender costs.
- **Remand:** We have not included the potential increase in remand costs from those charged with the new offence or any of the amended offences. We believe that any increase in remand costs would be extremely small given the very small percentage of people remanded in custody for these offences.
- **HM Courts and Tribunal Service (HMCTS) Costs:** We have not taken into account the Crown Court costs where defendants have been committed for trial or committed for sentence.
- **Breaches:** We are not including any potential consequences of breaches (including potential custodial sentences) of the additional suspended sentences

**Table 3: Unit cost - Criminal justice**

	<b>Description</b>	<b>2012 Price and Values</b>
<b>Legal Aid</b>	Cost of a legal aid trial in the Magistrates Court	£496
<b>HMCTS – Magistrates court</b>	Cost per case at Magistrates Court	£90
<b>HMCTS – Crown court</b>	Cost per case at Crown Court	£606
<b>CPS – Magistrates court</b>	Cost per defendant in a Magistrates Court	£147

<b>CPS – Crown court</b>	Cost per defendant in a Crown Court	£2,578
<b>Community Service</b>	Cost per offender per year	£3,000
<b>Prison</b>	Cost per offender per year	£30,800
<b>Victim Surcharge</b>	Victim surcharge applied to all fines	£15
<b>Court Fine</b>	Average relevant court fine <sup>21</sup>	£246

**Table 4: Unit Costs - Police Costs**

	<b>Description</b>	<b>2012 Prices and Values</b>
<b>Forensic Medical Examiner</b>	Forensic Medical Examiner (FME) call out charge for taking blood sample at Police Station.	£102
<b>Blood/Urine Test Kit</b>	Cost per suspect	£6.50
<b>Lab Test Analysis</b>	Cost of examining specimen	£350
<b>Custodial Costs<sup>22</sup></b>	Custodial cost per suspect per hour	£200
<b>Police Costs</b>	Cost of on duty policeman/woman (below sergeant) per hour	£37

47. **Table 5** contains the value of preventing a casualty for different levels of severity.

**Table 5: Value of Preventing a Casualty<sup>23</sup>**

<b>Casualty Severity</b>	<b>2012 Prices and Values</b>
Fatality	£1,767,673
Serious	£198,634
Slight	£15,319

<sup>21</sup> The average fine at Magistrates' Courts for offence group 3 (drink and drug driving) was £239 in 2010, table 6.5 MoJ Criminal Justice Statistics. The £239 has been converted to 2012 values.

<sup>22</sup> This is an estimate of the costs involved in the charging of a suspect and include factors, such as duty Custody Sergeant.

<sup>23</sup> DfT Webtag 3.4.1 The Accidents Sub-Objective, Table 1

48. The unit costs in tables 3-5 have been up-rated using the forecast GDP per capita growth rate.<sup>24</sup> We used the forecast GDP per capita growth rate for two reasons:

- we have assumed that the primary determinant of the unit costs is staff costs; and
- the index is a measure of income growth.

## Appraisal – Central Scenario

49. The net present benefit of the new offence is approximately £85m over the appraisal period 2014-2023, see **Table 6**. The total benefits and costs are estimated at approximately £230m and £144m respectively.

50. Casualty savings account for the vast majority of the total benefits of this option, approximately £219m. The casualty savings arise due to the reduced prevalence of drug-driving as a result of the introduction of the new legislation and amendments.

51. The total costs have been grouped under three main headings: police costs, CPS costs and criminal justice costs. The police costs are approximately £62m and include all the costs associated with enforcing the offence of driving with a prescribed drug in the body above the specified limit for that drug. The CPS costs and the criminal justice costs are approximately £11m and £72m respectively.

52. The Police costs in Table 6 are likely to be an underestimate of the true costs because we have neither an estimate of the unit cost of the screening device nor a forecast for the number of screening devices, which will be used annually. In addition we have no estimate of the number of screening tests, which will not result in court proceedings.

53. We have assumed that all court costs and other relevant criminal justice system costs will fall at the Magistrates courts. We have not taken into account crown courts and there is a risk that some cases would go through the crown court. Therefore the overall costs to the Criminal Justice System may be an underestimate.

**Table 6: Net Present Benefits of Option 1: Central Scenario**

		<b>Total 2014-2023</b>
<b>BENEFITS</b>		
Casualty Savings		£218,918,079
Exchequer	Fines	£10,081,086
	Victim Surcharge	£560,681
<b>Total Present Value Benefits</b>		<b>£229,559,845</b>
<b>COSTS</b>		
Police Costs		£61,790,041
CPS Costs		£10,968,462
Criminal Justice System		£71,733,541
<b>Total Present Value Costs</b>		<b>£144,492,044</b>
<b>Net Present Value Benefits</b>		<b>£85,067,801</b>

<sup>24</sup> DfT Webtag 3.5.6: [Values of Time and Operating Costs](#), Table 3a

## Impairment Sensitivity Test

54. As mentioned in paragraph 27 there is a lot of uncertainty regarding the forecast for the number of additional drug drive offenders resulting from the introduction of the new offence. This sensitivity test examines the sensitivity of the costs and benefits to a change in the number of offenders charged under the existing impairment offence (under Section 4 of the 1988 Act), which was assumed to remain unchanged in the central scenario. There are several uncertainties why this assumption may not hold. Some of these are:
- the range of drugs for which the screening test is available will affect the number of offenders;
  - the uptake of the screening devices by Police Forces and the number of screening tests will affect the enforcement of the new offence; and
  - the prevalence of drug driving in the motoring population will affect the number of possible offences.
55. Given these uncertainties, we have conducted a sensitivity test, which measures the impact on the costs and benefits resulting from a 10% increase in the number of proceedings brought under the existing impairment offence (on top of the 8,200 extra proceedings under the new offence).
56. The level of the sensitivity test, a 10% increase in drug drive offenders, has been chosen because, given the linear nature of the cost and benefit calculations, it can be used to estimate a range of different possible impacts. The range of uncertainty associated with the central scenario exceeds 10%.
57. There is currently no data regarding the share of impairment offences that is drug-related as opposed to drink related. Therefore in order to analyse the effects of a change in the number of impairment offences, we have had to make the following assumptions:
- all those proceedings brought under the impairment offence in 2010 were for drug-related offences<sup>25</sup>; and
  - the number of proceedings brought under the impairment offence will remain unchanged over the appraisal period from the 2010 level of 2,518.
58. The sensitivity test models the impact of a 10% increase of the baseline assumed in this assessment. Because the cost and benefit calculations are linear, the sensitivity test calculation can also be used to consider the impact of alternative assumptions for increases or reductions of the baseline. For example, a 20% increase in the number of impaired driving offences would be double the net benefits. Similarly a 10% decrease in the number of impaired drivers would have the opposite net present benefit effect.
59. **Table 7** contains the net present benefit implications of a permanent 10% increase in the number of proceedings brought for impaired driving from the assumed baseline of 2,518 for the appraisal period 2014-2023.
60. A 10% increase in the number of impaired driving offences will have a net present cost of £3.88m. The Police, CPS and Criminal justice costs will increase by approximately £1.95m, £0.34m and £1.60m respectively. In contrast, the exchequer will have cost decrease of approximately £146,000 due to an increase in fine income.

---

<sup>25</sup> This seems likely as impairment by alcohol will most likely be all dealt with by the prescribed limit drink driving offence under section 5 of the 1988 Act.

**Table 7: Impairment Sensitivity Test: 10% Increase in Number of Impaired Driving Offenders**

		Total 2014-2023
<b>BENEFITS</b>		
Exchequer	Fines	£138,171
	Victim Surcharge	£7,684
<b>Total Present Value Benefits</b>		£145,856
<b>COSTS</b>		
Police Costs		£1,946,370
CPS Costs		£336,498
Criminal Justice System		£1,599,226
<b>Total Present Value Costs</b>		£3,882,094
<b>Net Present Value Benefits</b>		<b>-£3,736,238</b>

## Central Scenario Sensitivity Test

61. This sensitivity test is the second sensitivity test and examines the cost and benefit implications from a change in the number of offenders charged under the new offence. The central scenario assumed approximately 8,200 offenders per annum would be charged under the new offence. There are several uncertainties why this assumption may not hold:

- the range of drugs for which the screening test is available will affect the number of offenders;
- the uptake of the screening devices by Police Forces and the number of screening tests will affect the enforcement of the new offence; and
- the prevalence of drug driving in the motoring population will affect the number of possible offences.

62. Given these uncertainties, we have conducted a sensitivity test, which measures the impact on the costs and benefits resulting from a 10% increase in the number of offenders brought under the new offence.

63. The level of the sensitivity test, a 10% increase in drug drive offenders, has been chosen because, given the linear nature of the cost and benefit calculations, it can be used to estimate a range of different possible impacts. The range of uncertainty associated with the central scenario exceeds 10%.

64. The sensitivity test demonstrates the cost and benefit implications of a 10% increase in the new offence forecast from the assumed 8,200 for the appraisal period 2014-2023. The calculation can also be used to consider the impact of alternative assumptions for increases or reductions of the number of proceedings brought forecast for the central scenario. **Table 8** provides a break down of the 10% increase in offenders among the 4 scenario types.

**Table 8: Central Forecast Sensitivity Test: 10% increase in drug-driving offences**

Offence Type	Central Scenario Sensitivity Test
Driving or attempting to drive with a specified controlled drug in the blood or urine above the prescribed limit	762

Being in charge of a motor vehicle with a specified controlled drug in the blood or urine above the prescribed limit	30
Driving and failing to provide specimen for analysis or laboratory test	15
Being in charge of a motor vehicle and failing to provide specimen for analysis or laboratory test	9

65. A 10% increase in the number of drug-driving offences will have a net present cost of £12.82m. The Police, CPS and Criminal Justice Costs will increase by approximately £6.17m, £1.09m and £6.62m respectively. In contrast the exchequer will have benefit increases of approximately £1.06m due to an increase in fine income.

66. The cost and benefits in **Table 9** are linear, such that a 20% increase in the number of drug-driving offences would double those in Table 9. Similarly, a decrease in the number of proceedings would have the opposite effect.

**Table 9: Central Scenario Sensitivity Test: 10% increase in drug-driving offences**

		Total 2014-2023
<b>BENEFITS</b>		
Exchequer	Fines	1,005,343
	Victim Surcharge	55,912
<b>Total Present Value Benefits</b>		<b>£1,061,255</b>
<b>COSTS</b>		
Police Costs		£6,173,215
CPS Costs		£1,090,617
Criminal Justice System		£6,616,495
<b>Total Present Value Costs</b>		<b>£13,880,327</b>
<b>Net Present Value Benefits</b>		<b>-£12,819,071</b>

## Risks and Assumptions

67. This impact assessment for the specific offence of drug impaired driving assumes the offence operates across a range of controlled drugs consistent with the set of controlled drugs identified in the North review about drink and drug driving.

68. It also assumes the availability of approved screening equipment. The assessment assumes significant changes to enforcement practices. In addition there are some uncertainties related to the policing and criminal justice system costs discussed under a previous heading of 'unit costs'.

69. The impact assessment includes a central case, with some sensitivity tests on key parameters, although the range of uncertainty related to the costs of the proposals is significantly greater than the size of the sensitivity tests.



70. Further impact assessments will accompany the regulations required to specify the controlled drugs and limits for the new offence and these assessments will identify the effects of the offence as it is planned to be put into operation via the more specific regulations. Which controlled drugs and the limit values for them in the will affect the level of enforcement and the costs and benefits of the changes.
71. The costs in this assessment do not include publicity or campaigning costs.

## **Equality Impact Assessment**

1. This Equality Impact Assessment (EIA) relates to the provisions in the Crime and Courts Bill for a new offence of driving with a specified controlled drug in the body above the specified limit for that drug to be inserted as a new Section 5A into the Road Traffic Act 1988 (the 1988 Act). It also relates to the consequential amendments to other related offences in the 1988 Act.

### Equality duties

2. Under the Equality Act 2010, when exercising its functions, the Department for Transport has an ongoing legal duty to pay 'due regard' to:
  - the need to eliminate unlawful discrimination, harassment and victimisation;
  - advance equality of opportunity between different groups; and
  - foster good relations between different groups.
3. The payment of 'due regard' needs to be considered against the nine protected characteristics – namely race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender identity, pregnancy and maternity. The Department for Transport has a legal duty to investigate how policy proposals are likely to impact on the protected characteristics and take proportionate steps to mitigate the most negative ones and promote the positive ones. The Department for Transport records how 'due regard' has been exercised by completing an Equality Impact Assessment (EIA).

### Aims and outcomes for the policy

4. It is already an offence to drive whilst unfit through drugs. However, securing a conviction for that offence requires a complex set of evidence to prove that: the offender was driving or in charge of a vehicle; the offender was impaired so as to be unfit to drive; and the impairment was caused by drugs. 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. Because this is difficult, levels of enforcement against drug driving are low and for the proceedings brought using the impairment offence there is a low rate of guilty findings.
5. As a result of introducing a new offence of driving or attempting to drive or being in charge of a motor vehicle with a specified controlled drug in the body, above the specified limit for that drug, we expect that more offenders will be convicted of drug driving. As a result of the greater threat of conviction and a more objective assessment of when an offence of drug driving is committed we expect that over time less people will be driving while they are under the influence of drugs and that road safety will improve.

## Methodology and evidence sources:

6. Data on court disposals are from the Court Proceedings Database. This holds information on defendants proceeded against, found guilty and sentenced for criminal offences in England and Wales. It includes information on the age of the defendant, their gender, ethnicity, the police force area and court where proceedings took place as well as the offence and statute for the offence. Information on gender reassignment, disability, pregnancy and maternity, sexual orientation, religion or belief or marriage and civil partnership for criminal offences may be held by the courts on individual case files. However, it has not been possible to collate these data for this Equality Impact Assessment because of practical difficulties.

## Stakeholder consultation and engagement

7. The new offence has been created following the recommendation of the independent North Review into the law on drink and drug driving, which reported to the Secretary of State for Transport in June 2010. The Review drew on large amounts of research and consulted widely with interested experts and stakeholders. The DfT will consult on the regulations related to the new offence, which will specify the controlled drugs to be covered by the new offence and the specified limit for each.

## **Analysis**

### Impact on victims:

8. The introduction of the new offence is expected to have an impact on reducing the numbers of road casualties. For the purpose of assessing the possible impact on victims we have looked at the data on road casualties where drugs were recorded as a contributory factor. In 2010, impairment by drugs (illicit or medicinal) was reported as a contributory factor in 1,094 casualties of all severities, including 51 deaths.
9. Looking at the average for the three years from 2008 to 2010, young people between the ages of 16 and 30 are over-represented among Killed and Seriously Injured (KSI) casualties in road traffic accidents (excluding pedestrians) who had a contributory factor of impaired by drugs (illicit or medicinal) attributed to them by the police. Of the total of 296 KSI casualties for all age groups, 156 or around half fell into that age group.
10. Looking at the average for the three years from 2008 to 2010, men are over-represented among Killed and Seriously Injured (KSI) casualties in road traffic accidents (excluding pedestrians) who had a contributory factor of impaired by drugs (illicit or medicinal) attributed to them by the police. Of the total 296 KSI casualties, 224 or three quarters were male.
11. Assuming that around 390 KSI casualties will be saved over the appraisal period as a result of the new offence being introduced this may also disproportionately benefit the younger age group, as well as men. It may be assumed that the casualty saving may include around 200 young people aged 16 to 30, and around 300 men.

### Impact on offenders:

12. In order to assess the impact on offenders, we have looked at the offenders who are currently being charged under the offence of driving or in charge of a motor vehicle while impaired by drink or drugs (the impairment offence). We are assuming that the vast majority of these offences are related to drug rather than drink driving (as the majority of drink driving cases will be charged under the prescribed alcohol limit offence in section 5 of the 1988 Act).

*Potential Age Impacts:*

In 2010, 2,674 proceedings were brought at Magistrates Courts under the impairment offence, and of these a total of 1,413 resulted in findings of guilt (at Magistrates or Crown Court). Of those found guilty, 46% were aged between 17 and 29 years, and another 29% were 30 to 39 years old, so those found guilty were more likely to be in these age groups than members of the general population.

If the age distribution of guilty findings for drug driving following the introduction of the new offence is in line with the current age distribution, these data suggest that there are potential impacts in relation to age, with people in younger age groups more likely to be found guilty.

*Potential Disability Impacts*

Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

*Potential Gender Reassignment Impacts*

Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

*Potential Marriage and Civil Partnership Impacts*

Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

*Potential Pregnancy and Maternity Impacts*

Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

*Potential Race Impacts*

Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

*Potential Religion or Belief Impacts*

Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

*Potential Sex Impacts*

Due to data on the split of guilty finding at Magistrates Courts only being available at aggregate level for the group of motoring offences that the impairment offence falls into, we assume that that split is the same for the impairment offence. This suggests that those found guilty of the impairment offence are significantly more likely to be male than female compared to the general population. This suggests that there are potential impacts in relation to gender.

*Potential Sexual Orientation Impacts*

Due to limitations in the available evidence we are unable to rule out the potential for any differential impact.

Mitigation

13. We consider the potential impacts on equality groups among offenders to be justified on the basis that it is a proportionate means of achieving the legitimate aim of addressing drug driving and its impact on road safety. We also consider that the disproportionate benefits for the same equality groups in terms of casualty savings provides additional justification.
14. We will consider the equality impact of the new offence more fully ahead of specifying the types and levels of drugs to be covered by the offence in regulations.