

**EXPLANATORY MEMORANDUM TO**  
**THE DRUG DRIVING (SPECIFIED LIMITS) (ENGLAND AND WALES)**  
**REGULATIONS 2014**

**[2014] No. [XXXX]**

**1.** This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The instrument specifies the controlled drugs (within the meaning given by the Misuse of Drugs Act 1971) and the limits in blood above which it will be an offence to drive. The legislation will therefore bring enforcement of drug driving into line with that of drink driving, by introducing a strict liability offence to avoid the need to prove impairment. This will enable more effective law enforcement to take place, with the aim of improving road safety by deterring potential drug drivers and bringing more drug drivers to justice.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Context**

4.1 Section 4 of the 1988 Act makes it a criminal offence to drive when under the influence of drink or drugs. The difficulties involved in proving impairment due to drugs means that section 4 is not often used in drug driving cases. Section 5 of the 1988 Act makes it an offence to drive or be in charge of a motor vehicle with a concentration of alcohol in the body above the prescribed limit.

4.2 Section 56 of the Crime and Courts Act 2013 inserted a new section 5A into the 1988 Act, which makes it an offence to drive above the specified limit for a specified controlled drug. This instrument specifies the drugs and the limits for the purposes of the section 5A offence.

4.3 The Misuse of Drugs Act 1971 prohibits the production, import, export, possession and supply of “controlled drugs” (subject to regulations made under the Act).

4.4 The drugs which are specified in this instrument are all controlled drugs within the meaning of section 2 of the Misuse of Drugs Act 1971. They are either listed in their own right in Schedule 2 to that Act, or else they come within the terms of Schedule 2 – for example due to being an ester or ether of a drug which is listed in Schedule 2.

4.5 Some of the controlled drugs specified in this instrument and listed in Schedule 2 to the Misuse of Drugs Act (“MDA”) 1971 are more commonly known by other names or need some further explanation. These are:

- Benzoylceognine – This is often shortened to “BZE” and is the main metabolite of cocaine. It is included in the “MDA” by the phrase in Schedule 2, Part 1, paragraph 1(a), *“Ecognine and any derivative of ecognine which is convertible to ecognine or to cocaine.”*
- Delta-9-Tetrahydrocannabinol – This is the active ingredient in cannabis and cannabinol. Cannabinol is listed as a controlled drug under Schedule 2, Part 1 of the “MDA” as a Class A controlled drug except when found in cannabis when it is a Class B drug.
- Methylenedioxymethamphetamine – This is often shortened to “MDMA”, for which “Ecstasy” is the common name. It is included in the “MDA” by the phenethylamine generic definition in Schedule 2, Part 1 paragraph 1(c).
- 6-Monoacetylmorphine – This is the unique metabolic marker for heroin and diamorphine, and will enable blood tests to distinguish whether heroin or diamorphine has been consumed. Morphine is included in Schedule 2, Part 1, paragraph 1(a). 6-Monoacetylmorphine is an ester of morphine and Schedule 2, Part 1, paragraph 3 states that *“any ester or ether of a substance for the time being specified in paragraph 1 or 2 [not being a substance for the time being specified in Part II of the Schedule]”*

## **5. Territorial Extent and Application**

- 5.1 This Instrument extends to England and Wales.
- 5.2 The regulation-making power in new section 5A of the 1988 Act is exercisable by Scottish Ministers in relation to Scotland.

## **6. European Convention on Human Rights**

- 6.1 The Parliamentary under Secretary of State, Robert Goodwill MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Drug Driving (Specified Limits) (England and Wales) Regulations 2014 are compatible with the Convention rights.”

## **7. Policy background**

- **What is being done and why**

- 7.1 In December 2009, Sir Peter North CBE QC was appointed by the then Secretary of State for Transport, to conduct an independent review of the law on drink driving and drug driving. Sir Peter North’s *Report of the Review of Drink and Drug Driving Law* was published in June 2010 and made a variety of recommendations with regard to drink and drug driving, including that further consideration should be given to introducing a new specific offence of driving or being in charge of a motor vehicle with a concentration of a controlled drug above a specified limit. Following Sir Peter North’s report the Transport Select Committee published, in December 2010, a report on drink and drug driving law

(HC 460). The Committee favoured, for the new offence, the adoption of a “zero-tolerance” approach for illegal drugs which are known to impair driving.

- 7.2 The Secretary of State for Transport made a written ministerial statement on 21<sup>st</sup> March 2011 (House of Commons, Official Report, column 44WS to 46WS) which announced the publication of the Government’s response to the reports by Sir Peter North and the Transport Select Committee on Drink and Drug Driving (CM 8050). The response endorsed Sir Peter North’s recommendation that the case for a new offence relating to drug driving should be examined further.
- 7.3 Fewer than 2,500 proceedings were brought in 2012 under the existing section 4 impairment offence, with the proportion of guilty findings from the proceedings at only around 52%. This is compared to the 49,000 proceedings for the section 5 drink driving offence and the 96% proportion of guilty findings. European evidence suggests drug driving is about half as prevalent as drink driving, so enforcement related to drug driving is disproportionately low.
- 7.4 The new section 5A offence has therefore been created and this instrument specifies the controlled drugs to be covered by the offence and the limit for each in blood. Whilst the primary legislation allows for the limits to be specified in urine as well, limits have only been specified in blood. This is because currently it is not possible to determine with sufficient scientific certainty what the corresponding limits would be for each drug in urine.

- **Consolidation**

This is the first time that the regulation-making power in section 5A of the 1988 Act is being used. Therefore the instrument is not amending other regulations, and a consolidation is not required.

## **8. Consultation outcome**

- 8.1 The consultation on the proposed drugs and their limits took place from 9<sup>th</sup> July to 17<sup>th</sup> September 2013. Three different proposals were set out:
- Option 1 – zero tolerance approach to 8 illegal drugs and a risk based approach to 8 drugs most associated with medical uses;
  - Option 2 – risk based approach to 15 drugs (illegal and medical);
  - Option 3 – zero tolerance approach to 16 drugs (illegal and medical).
- 8.2 Option 1 received the most support and is the approach the Government is taking in this statutory instrument. A second consultation took place on a proposed limit for amphetamine from 19<sup>th</sup> December 2013 to 30<sup>th</sup> January 2014 after considering views in the earlier consultation. The proposed limit received objections from the medical community and the Government is considering further on a suitable limit for amphetamine. The Government will consult later in 2014 and intends to include amphetamine in further regulations at the earliest opportunity. The response to both consultations is available at <https://www.gov.uk/government/consultations/drug-driving-proposed-regulations>.

## **9. Guidance**

9.1 To support the introduction of the new offence, the Department aims to do the following:

- Raise awareness of the new offence, and the penalties if caught;
- Make drug driving as socially unacceptable as drink driving;
- Raise awareness of the dangers of driving whilst impaired by drugs, deter drivers from driving under the influence of drugs and ultimately reduce casualties;
- Illustrate the action Government is taking to improve road safety;
- Work with communication and policy teams from different government departments so that they are aware of the activity we are undertaking and key messages well in advance;
- Give clear, timely, accurate and consistent advice to stakeholders – including the rationale for the new offence and how it will be enforced.

9.2 A further objective is to ensure that those taking properly prescribed and supplied medicines continue to do so, and are not discouraged from taking their medication or indeed from driving. To this end the Department has liaised with the Medicines Healthcare products Regulatory Agency (“MHRA”), an agency of the Department of Health. The MHRA has a communication role through the provision of accurate, timely and authoritative information to healthcare professionals, patients and the public. The MHRA has identified the medicines that contain controlled drugs which are specified for the purposes of the new offence. They have contacted the manufacturers of these drugs about highlighting in patient information leaflets the importance of taking specified controlled drugs in accordance with medical advice.

9.3 We are also working with healthcare professionals to explore other methods of explaining the new offence to patients. The aim is to provide healthcare professionals with suitable advice to use in discussions with those in their care who are taking medicines containing specified controlled drugs.

9.4 We have taken steps to ensure that the offence and the effect of the regulations have been fully explained to the police to enable them to provide appropriate guidance to enforcement officers.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is £5.74m. This cost is to the pharmaceutical companies to amend the product information for the medicines that contain the controlled drugs to be specified in the regulations. This will bring the new drug driving offence to the attention of the prescriber and the patient and how to raise the medical defence.

10.2 The impact on the public sector is through an expected increase in proceedings in the criminal justice system. The Impact Assessment estimates there will be an increase of 8,200 proceedings each year over a 20 year period (2015-2034) leading to costs to the Crown Prosecution Service of £22m and to the criminal justice system of £133.5m and to the police of £136m over a 20 year period. We further estimate the new offence will lead to 31,620 people receiving a community order sentence and 4,400 people will serve a custodial sentence. The costs will be offset by casualty savings where we estimate 84 fewer fatalities, 331 fewer serious injuries and 843 fewer slight casualties over a 20 year period. This will result in estimated casualty savings of around £218m plus income from fines and victim surcharge of £16m over this period, thus providing an estimated overall net cost of £79m over the 20 year period.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the UK legislation website at [www.legislation.gov.uk](http://www.legislation.gov.uk)

## **11. Regulating small business**

11.1 The legislation does not apply to small business. The businesses affected are the large pharmaceutical companies who are amending the product information for the medicines containing specified controlled drugs.

## **12. Monitoring and review**

12.1 The Department will monitor and evaluate the effect of the new section 5A offence. A specification for evaluating the new offence was issued to tenderers in 2013 and a supplier selected who is currently collecting baseline data.

## **13. Contact**

13.1 Martin Ellis at the Department for Transport, Tel: 020 7944 6945 or e-mail: [martin.ellis@dft.gsi.gov.uk](mailto:martin.ellis@dft.gsi.gov.uk) can answer any queries regarding the instrument.