

Advisory panel about the impairing levels of certain drugs in the context of a possible future specific offence of driving whilst under the influence of drugs in excess of prescribed concentrations

Summary of Background:

The government in its response to the North review indicated its belief that driving while impaired by drugs, whether illegal drugs, or legal prescription medicines, is as important an issue as drink-driving, given the risks involved to other road users, the relative lack of public awareness and the difficulties impeding adequate police enforcement. It is now relatively easy to enforce the law against drink-driving, while the equally serious of driving whilst impaired by drugs is more difficult to deal with effectively.

The response agreed to implement recommendations from the North review on making current law more effective and "...to examine the case for a new specific offence - alongside the existing one - which would relieve the need for the police to prove impairment case-by-case where a specified drug had been detected."

The Home Office is actively pursuing type approval of a preliminary drug screening device and deciding what to do about roadside devices. Ministers at the Home Office and Department for Transport are currently deciding on how best to proceed on both issues.

Context

An advisory panel with expertise about the influences of alcohol and drugs has been established, with the following Terms of Reference:

1. To discern which compounds from the following list should form part of the statutory instrument related to a specific offence of driving whilst under the influence of drugs:
 - a. Amphetamine-type;
 - b. Benzodiazepines and hypnotics;
 - c. Cannabinoids (natural and synthetic);
 - d. Cocaine (including salt and crystalline forms);
 - e. Hallucinogens;
 - f. Opioids (natural and synthetic)
 - g. Other substances if the group considers they have a similar and significant presence in the population
2. To consider different sources of evidence to help to establish the degree of risk associated with specific drugs in relation to road safety

Terms of Reference – advisory panel on new drug driving offence

3. To establish whether it is possible to identify for average members of the adult population concentrations of the drugs identified (1a – 1g above) that would have an impairment effect broadly equivalent to a blood alcohol content (BAC) of 80mg / 100ml
4. To establish whether in some specific circumstances different concentrations of these drugs (broadly equivalent to a blood alcohol content (BAC) of 50mg/100ml and 20mg/100ml, zero) may be deemed necessary for road safety
5. To consider in cases where such concentrations can be identified, for an average member of the adult population the degree of variability across the population, including for habitual users of these substances;
6. To establish the likelihood of whether these concentrations would be exceeded through prescribed or otherwise legally obtained drugs (as distinct from illicit drugs)¹;
7. To consider the evidence relating to poly-substance use, such as the interactions between the drugs listed and alcohol in order to determine the effects of such interactions and the prevalence of impairment (risk in relation to road safety) due to such causes; and
8. To report on all of the above to the Secretary of State.

¹ Medical defence for offence of driving above the statutory prescribed drug limit:

Some drugs which may be proscribed for driving might also be used legitimately, in accordance with medical advice (for example morphine may be prescribed for chronic pain or diazepam (a benzodiazepine) may be prescribed for anxiety). Indeed, the Review recognises that in some circumstances it may be more dangerous for a person to drive having not taken their medically prescribed drug than driving without having taken it. Drugs have different effects on different people and levels at which they are prescribed are likely to reflect this. It would clearly be wrong to put in jeopardy of prosecution those who are properly and safely taking medically prescribed drugs and driving in accordance with medical advice, for whom, despite the presence of a proscribed drug, there is no evidence of any driving impairment.

Recommendation (14): A statutory defence should be available in respect of any new offence of driving with a listed drug or category of drug in the body above the statutory prescribed level if the defendant had taken the drug in accordance with medical advice. This defence should not be available in respect of the impairment offence under section 4 of the Road Traffic Act 1988 of driving while unfit due to drugs. (Extract from North Review, June 2010, pp. 177f)