



Forensic Science Regulator Guidance

Section 5A Road Traffic Act 1988 Use of Limits

FSR-G-221

Issue 3

© Crown Copyright 2020

The text in this document (excluding the Forensic Science Regulator’s logo and material quoted from other sources) may be reproduced free of charge in any format or medium providing it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown Copyright and its title specified.

1. PURPOSE

1.1.1 This document provides guidance on the comparison of analytical results to limits created under the provisions of s5A Road Traffic Act 1988 (RTA).

2. MODIFICATION

2.1.1 This is the **third** issue of this document.

2.1.2 Significant changes to the text have been highlighted in grey.

2.1.3 The modifications made to create Issue 3 of this document were, in part, to ensure compliance with The Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018.¹

2.1.4 The Regulator uses an identification system for all documents. In the normal sequence of documents this identifier is of the form 'FSR-#-###' where (a) the '#' indicates a letter to describe the type or document and (b) '###' indicates a numerical, or alphanumeric, code to identify the document. For example, the Codes are FSR-C-100. Combined with the issue number this ensures each document is uniquely identified.

2.1.5 In some cases, it may be necessary to publish a modified version of a document (e.g. a version in a different language). In such cases the modified version will have an additional letter at the end of the unique identifier. The identifier thus becoming FSR-#-####.

2.1.6 In all cases the normal document, bearing the identifier FSR-#-###, is to be taken as the definitive version of the document. In the event of any discrepancy between the normal version and a modified version the text of the normal version shall prevail.

3. IMPLEMENTATION

3.1.1 This guidance was published on **22 September 2020**.

¹ To facilitate compliance with the Regulations changes to the document are noted here. The following sections of the document have been changed – 2.1.1, 2.1.2, 2.1.3, 2.1.4, 2.1.5, 2.1.6, 3.1.1, 5.1.1.c and 7. The following footnotes have been altered – 1 and 2.

4. GUIDANCE

4.1 Legislation

- 4.1.1 Section 56 of the Crime and Courts Act 2013 inserted the new section 5A in the RTA. This created a new offence of driving, attempting to drive or being in charge of a motor vehicle on a public road if the concentration of a specified drug in the blood is above the limit prescribed for that drug.
- 4.1.2 This is designed to mirror the provisions for alcohol which already exist in s5 of the RTA.
- 4.1.3 The drugs covered by the new offence, and the limits for each, were established by The Drug Driving (Specified Limits) (England and Wales) Regulations 2014 [Statutory Instrument 2868 of 2014]. The Regulations were amended by The Drug Driving (Specified Limits) (England and Wales) (Amendment) Regulations 2015 [Statutory Instrument 911 of 2015].

4.2 The Limits

- 4.2.1 Sixteen drugs are covered by the Regulations as initially introduced. Subsequently a limit was set for amphetamine. These drugs can be divided into two groups: drugs which have widespread medicinal uses (8 in total; the opioids and benzodiazepines) and those that do not (9 in total, including MDMA and cocaine).
- 4.2.2 For those drugs for which there is a widespread medicinal use, limits were set through consideration of blood drug concentrations at which there is an increased risk of road traffic collision. For those drugs without a common medicinal use, a “zero-tolerance” approach to setting limits was adopted.
- 4.2.3 This is different from the approach taken when setting the limit for alcohol, where the limit was set at a point where the effect of the alcohol would be expected to have impaired driving ability to a significant degree.

4.3 Use of Results

- 4.3.1 The fact that the concentration of alcohol in a person’s blood is above the legal limit has been used for purposes other than a prosecution under s5 (e.g. in civil

actions or coroners' inquests). Given the manner in which the alcohol limit was set this is not unreasonable.

- 4.3.2 The limits for drugs should not be used for purposes other than an investigation/prosecution under the provisions of the Road Traffic Act 1988. There are a number of reasons for this.

Relevance of the Limits

Drugs Not Routinely Prescribed

- 4.3.3 The limits set for the drugs for which there is no widespread medicinal use are very low and were not set through consideration of any impairment. Effectively a zero tolerance approach was adopted.

- 4.3.4 For these drugs the legal limit does not necessarily provide any indication that the individual's behaviour and/or abilities have been affected by the drug.

Routinely Prescribed Drugs

- 4.3.5 The limits set for the routinely prescribed drugs in the Regulations are generally higher than would be expected in an individual who has been prescribed the drug. For example people using Lorazepam would be expected to have a blood concentration of the drug in the region of 10 to 20µg/L. The legal limit is 100µg/L.

- 4.3.6 It follows that the fact a person has a blood concentration of the drug below, and even greatly below, the legal limit does not mean their behaviour and/or abilities have not been affected by the drug. Indeed, most individuals with a concentration of 100µg/L in blood of Lorazepam would be seriously affected.

Analytical Results

- 4.3.7 Analysis of blood for a potential prosecution under s5A RTA will involve addressing the uncertainty of measurement inherent in the method. The result will be reported as a concentration not less than a given figure. Thus, for example, a result of 22µg/L of a given drug may be reported as not less than 11µg/L (with a confidence level of 99.7%).

- 4.3.8 If the toxicology analysis is not reported in relation to a s5A investigation the report may, for example, note 22µg/L concentration of the drug in the blood.

This may lead to comparisons with the legal limit which would be unjustified as the uncertainty of measurement may not have been taken into account in reporting this value.

Post Mortem Samples

4.3.9 The analysis of post mortem blood samples to determine the concentrations of drugs in the body before death is a complex matter and comparison of post mortem results against legal limits will not provide meaningful information.

4.4 Advice

4.4.1 This note sets out reasons why the legal limits for drugs should not be used to infer whether an individual has, or had, been affected by drugs.

4.4.2 If evidence is required as to whether an individual has, or had, been affected by drugs advice should be sought from either (a) a suitably qualified person who assessed the individual or (b) a forensic toxicologist.

5. ACKNOWLEDGEMENTS

5.1.1 The Regulator acknowledges the assistance of the following in the preparation of this guidance.

- a. The United Kingdom and Ireland Association of Forensic Toxicologists.
- b. Mr M Scott-Ham.
- c. The Home Office Centre for Applied Science and Technology and in particular Dr Duncan Harding. ²
- d. The Department for Transport.

6. REVIEW

6.1.1 This document is subject to review at regular intervals.

6.1.2 If you have any comments please send them to the address or e-mail set out on the Internet at URL: <https://www.gov.uk/government/organisations/forensic-science-regulator>.

² The Centre for Applied Science and Technology has become part of Dstl.

7. ABBREVIATIONS AND ACRONYMS

Text	Meaning
Dstl	Defence Science and Technology Laboratory
RTA	Road Traffic Act 1988

Published by:

The Forensic Science Regulator

5 St Philip's Place

Colmore Row

Birmingham

B3 2PW

<https://www.gov.uk/government/organisations/forensic-science-regulator>