

Consultation on Compliance
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Road Safety Compliance Consultation November 2008: Drug Driving A response from the UK Drug Policy Commission

The UK Drug Policy Commission (UKDPC) is an independent body set up to improve public and professional understanding of the evidence about the effectiveness of drug policies across the UK. More information about our Commissioners and our work can be found at: www.ukdpc.org.uk

Our aim is to ensure that drug policy and practice generally is based on evidence and high quality analysis. The proposals for drug driving outlined in the Department of Transport's Road Safety Compliance Consultation (November 2008) are therefore relevant to the Commission, which shares the Governments concerns about the risks to drivers, passengers and the wider public resulting from illegal drug consumption and indeed inappropriate use of other psychoactive substances (alcohol and medicines).

As the Commission has not carried out any special research or analysis on this issue, our submission is necessarily limited. However, our response will draw on a few key pieces of research. Since the publication of the Departments proposals, the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) has published a literature review of available international evidence on this topic.¹ In addition, earlier Australian research has explored community attitudes, experiences and understanding about drugs and driving.² We are also aware that the European Commission, through the The Integrated Project DRUID (Driving under the Influence of Drugs, Alcohol and Medicines) has brought together 36 institutes from 18 European countries to "give scientific support to the EU transport policy to reach the 2010 road safety target by establishing guidelines and measures to combat impaired driving".³ This programme is scheduled to be completed in 2010.

The Commission appreciates the frank recognition in the consultation document about the limitations of available data on prevalence of the problem and some of the technical complexities involved in responding to it including the various challenges for enforcement agencies. One important conclusion made by the authors of the EMCDDA review is that: "it is already clear that driving under the influence of illicit or medicinal drugs is not uncommon and can cause a substantial risk to traffic safety.

¹ "Drug use, impaired driving and traffic accidents", EMCDDA (Lisbon) INSIGHTS 8, December 2008 <http://www.emcdda.europa.eu/publications/insights/driving> (accessed 25/02/2009)

² "Drugs and Driving in Australia" Australian Drug Foundation, 2007 http://www.druginfo.adf.org.au/downloads/External_Reports/Drugs_and_Driving_in_Australia_fullreport.pdf (accessed 25/02/2009)

³ http://www.druid-project.eu/clin_007/nn_107534/Druid/EN/about-DRUID/about-DRUID-node.html?_nnn=true (accessed 25/02/2009)

Nevertheless, at this early stage, policy responses already implemented are encountering numerous challenges to their effectiveness".⁴

Therefore we highlight the following reasons for urging caution in introducing new legislation for drug driving related offences:

- Even though roadside testing technology and reliability is continually improving, there remain the risks of "**false positive**" results.
- While the evidence to support the application of Blood Alcohol Concentration (BAC) was incontrovertible, the same cannot (yet) be said about illicit drugs and medicines. As the EMCDDA authors describe, "it is **difficult to apply the BAC parallel to other psychoactive substances** because of the vastly different pharmacological natures of the range of substances involved, the limitations of experimental and epidemiological research in trying to determine such a cut-off level, the ethical considerations involved in its enforcement, and the question of combining or separating drug abuse control and road safety measures".⁵
- A considerable number of drivers have been found to have **multiple drugs**, including alcohol, in their blood, some combinations of which have been proven to have synergistic effects which may improve or impair an individual's overall ability to drive.⁶
- Among the many considerations underpinning the use of sanctions and penalties in any legal context is the need for **proportionality**. The consultation document states that "penalties for the possible new offence should be the same as for the existing offence of driving while unfit through drugs, which is a mandatory minimum disqualification of 12 months; offenders may also be fined up to £5,000 and sent to prison for up to 6 months". Testing is a blunt tool and, in the absence of a reliable equivalent to BAC, we do not see how the principle of unfitness to drive (i.e. impairment) can be automatically adduced through the test. Hence the sanction may turn out to be a disproportionate one for many people. For example, evidence demonstrates that signs of cannabis may be detected through drug testing for some weeks, well beyond the time it affects functioning. Yet it would be unjust and disproportionate to apply sanctions beyond a point where impairment could be demonstrated.
- Targeting drug driving testing and sanctions on a few specific drugs as suggested, runs the risk of creating considerable **confusion** amongst the driving population. The Australian research demonstrates the confusion and lack of understanding and knowledge amongst the public about drug driving.⁷ In the UK there have been numerous claims (rightly or wrongly) that the process of reclassifying cannabis over the past six years has created confusion in the public's mind about the legal status of the drug and the associated penalties. To suggest that only some controlled drugs will be tested has the potential to create considerable confusion amongst the public. With so many drugs falling within the Misuse of Drugs Act it is highly probable that, even with strong education and information campaigns, many drivers will be unsure about which drugs are covered.

⁴ EMCDDA, *op cit*.

⁵ *Ibid*.

⁶ *Ibid*.

⁷ Australian Drug Foundation, *op cit*.

- There is no available evidence yet about the comparative **cost-effectiveness** and efficiency of different options to achieve a reduction in drug driving. Legislation might reasonably be considered as an avenue of “last- resort”.
- We see little concrete evidence to support the claim that the existing legal provisions are inadequate. It does not follow that because the incidence of drug driving has been increasing that the legal framework is inadequate. Cases of drug driving are likely to reflect wider societal drug use patterns. Furthermore, international evidence demonstrates that enhanced legal sanctions will not always affect behaviour as intended. For instance, compared to other European countries, the UK has some of the most severe penalties for drug possession and yet it also has some of the highest rates of illegal drug use.⁸

In more general terms therefore:

- We fully support the plans outlined in para 5.27 of the consultation document for improved detection, training, education and research. We believe there is good evidence to support their effectiveness which will probably represent value for money.
- We urge the UK to become fully involved, albeit belatedly, as active partners in the European DRUID programme.
- We conclude any proposals to introduce new legislation in the UK would be premature and the government should await the completion of the DRUID programme of research during 2010 and subsequent review of the lessons emerging from it.
- Overall, we are not convinced from the evidence available that a proposed new offence of drug driving as outlined would help make the regulation of drug driving more effective, nor that it would be a proportionate and cost effective response.

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⁸ “An Analysis of Drug Policy in the UK”, Reuter & Stevens, UKDPC, 2007
<http://www.ukdpc.org.uk/docs/UKDPC%20drug%20policy%20review.pdf> (accessed 25/02/2009)