DrugScope response to Department for Transport consultation on regulations to specify the drugs and corresponding limits for the new offence of driving with a specified controlled drug in the body above the specified limit – September 2013

About DrugScope

DrugScope is the UK's leading independent centre of expertise on drugs and drug use, and the national membership organisation for the drug and alcohol field. We represent around 450 member organisations involved in drug and alcohol treatment, young people's services, drug education, criminal justice and related services, such as mental health and homelessness. DrugScope also incorporates the London Drug and Alcohol Network (LDAN). Our website is at http://www.drugscope.org.uk/

Consultation response

1. DrugScope welcomes the opportunity to respond to this consultation. Our response does not consider individual questions, but rather submits general comments on the proposed regulations that we hope will be of use.

2. We fully recognise the dangers of drug driving. However, we would raise some questions about the pursuit of a 'zero tolerance' approach to the eight illegal controlled drugs specified, as set out in policy option 1, and the evidence upon which such an approach is based.

3. One of the key reasons highlighted for a zero tolerance approach – which, as the consultation document acknowledges, goes against the recommendations of the Expert Panel on Drug Driving[1] – is its potential deterrent effect, with particular reference to young people. The consultation points to figures from the Crime Survey for England and Wales, which show that the 16-24 age group are "most likely to report driving under the influence of drugs", and explains that a zero tolerance approach may act to deter young people from drug driving, as well as, more broadly, from "taking illegal drugs".

4. The Transition to Adulthood (T2A) Alliance, which encompasses leading criminal justice, health and youth organisations, and which evidences and promotes effective approaches for young people in the transition to adulthood (16-25 year olds) throughout the criminal justice process, has highlighted that "it is widely recognised that young adults potentially face greater difficulties in controlling behaviour, are more prone to risky behaviour and are less able to plan for the future";[2] a 2009 report from the Alliance, *Universities of Crime: Young adults, the criminal justice system and social policy*, notes that, in terms of cognitive development, "the human brain continues to mature until at least the age of twenty-five, particularly in the areas of judgment,

[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/167971/drug-driving-expert-panel-report.pdf

[2] http://www.t2a.org.uk/wp-content/uploads/2011/09/T2A-Alliance-response-to-Breaking-the-Cycle.pdf

reasoning, and impulse control."[3] It seems possible, therefore, that a deterrent approach may not be the most effective approach for this particular age group.

5. Adopting a zero tolerance approach in relation to illegal drugs may result in prosecutions and convictions of those who, according to the Expert Panel's recommendations, are unlikely to pose a risk to road safety. We would highlight, too, the T2A Alliance's observation that "young adults aged 18-24, who constitute less than 10% of the population, are disproportionately involved in the criminal justice system".[4] A zero tolerance approach to drug driving may exacerbate this.

6. The consultation document explains that "in taking a zero tolerance approach to these drugs we are proposing to set the limits at a level that does not catch someone who has consumed a very small amount of the drug in question inadvertently"; it sets out that the proposed limits are "at the lowest level at which a valid and reliable analytical result can be obtained, yet above which issues such as passive consumption or inhalation can be ruled out – a 'lowest accidental exposure limit'." However, we would suggest that the very low threshold limit in blood for cannabis (which is overwhelmingly the principal drug that drivers are likely to be accidentally exposed to) may not, in fact, protect against criminalising those who have traces of drugs in their blood through accidental exposure.

7. Additionally, it is worth highlighting the lengthier periods of time cannabis remains detectable compared with other illegal drugs. Given that, under the new offence of driving with a specified controlled drug in the body above the specified limit, there is no requirement to demonstrate impairment, it is possible that an individual who has smoked cannabis some days before driving could be stopped, test positive and be prosecuted for and convicted of drug driving on the basis of this. This would not, we would suggest, be in line with the intention of the legislation.

8. There may also be potential difficulties around 'spiking' – that is, for individuals who inadvertently take illegal drugs that have been added to drinks. It is possible, for instance, that with a drug such as MDMA, effects would not be noticeable for up to an hour after being 'spiked', during which time an individual might drive and be stopped by the police. The onus would then be on the arrestee to prove that he or she had been spiked.

9. It is important to recognise that, as the consultation document highlights, policy option 1 would come at an overall net cost of £-5 million over a ten-year period, while policy option 2 – the option recommended by the Expert Panel, which specifies 15 controlled drugs and sets limits for each, in accordance with "the limits at which a road safety risk is most likely to be increased" – would come at a net benefit of £27 million over the same period.

10. There are significant dangers in terms of the disproportionate targeting of those from black and minority ethnic communities attached to this new offence. A recently

[3] http://www.t2a.org.uk/wp-content/uploads/2011/09/T2A-Universities_of_Crime.pdf
[4] http://www.t2a.org.uk/wp-content/uploads/2011/09/T2A-Alliance-response-to-Breaking-the-Cycle.pdf

published report by Release and the London School of Economics[5] has highlighted that black and Asian people are subject to heightened rates of stop and search for drugs; the report's analysis showed that black people are stopped and searched for drugs at 6.3 times the rate of white people, while Asian people are stopped and searched for drugs at 2.5 times the rate of white people. While the consultation document highlights that police officers "are not entitled to conduct random drug testing", it also points to the circumstances under which they can administer preliminary drug tests, including if the driver has committed a moving traffic offence – which can include, for instance, relatively minor violations such as failing to signal at a junction or not wearing a seat belt. We would suggest, therefore, that there is real scope for a similar racial disparity to emerge in the policing of this new offence.

11. This point was raised by DrugScope at a consultation event on the new regulations on 26th July. While we were assured by a representative of ACPO that this would be unlikely to happen as a result of the cost of conducting a drug test – which, it was suggested, would act as a disincentive to stopping and testing people on a widespread basis – it is worth noting that the cost of drug testing is unlikely to remain high over an indefinite period of time; as with all new technology, as usage increases, prices decrease. This would disinhibit more pervasive testing, and afford the opportunity for discriminatory practices to emerge.

12. Finally, we would suggest that, while public support for legislation that tackles drug driving where there is impairment is likely to be widespread (which can increase levels of compliance), legislation that is seen to go outside of this remit may be less readily supported.

For further information about this response, please contact Gemma Lousley, Policy and Engagement Officer, on 0207 234 9735, or at gemmal@drugscope.org.uk

[5] http://www.release.org.uk/sites/release.org.uk/files/pdf/publications/Release%20-%20Race%20Disparity%20Report%202013_0.pdf