

Drug Driving

Caroline Dunne writing on how the new legislation to tackle drug driving has been working

In March 2015 new legislation was introduced to specifically tackle drug driving. Prior to that date it had been an offence to drive a vehicle whilst unfit to do so through drink or drugs and this offence remains. Whilst this offence still remains the prosecution would need to prove that driving was impaired. The new legislation made it an offence to drive with eight prescription medications above a prescribed limit and with eight illegal substances. In order to assist police in implementing this offence “drugalysers” were also introduced making it possible for police to test for cocaine and cannabis at the road side using a saliva test. The detection of all other substances requires a blood sample to be taken.

What Has Been the Impact of These Changes?

Figures obtained from 35 of the 43 police forces in England and Wales have revealed that between the introduction of this offence and April 2016 that 7,796 people have been arrested for the offence of drug driving. What is not yet clear is how many of these arrests relate to the “misuse” of prescription medication and how many relate to illegal substances.

Prescription Medications Covered by the New Legislation

Limits were set for the use of prescription medications by a panel of medical experts who assessed the effect of the medication upon road safety risks. The medications covered are:

- Clonazepam
- Diazepam
- Flunitrazepam
- Lorazepam
- Methodone
- Morphine or opiate and opioid based drugs such as tramadol, codeine and fentanyl
- Oxazepam
- Temazepam

What Are the Consequences of Breaching the Law?

If a driver is found to have one or more of the listed medications above the prescribed limit they will be guilty of the offence of drug driving unless they can prove that the medication and dose have been set according to a medical practitioner or taken in accordance with an accompanying leaflet and there is no impairment of driving.

Upon conviction of an offence of drug driving the driver can



receive an unlimited fine disqualification from driving and up to six months imprisonment. However, unlike the offence of drink driving there have been no sentencing guidelines issued to assist the Court when dealing with these new offences.

A driver convicted of a drink drive offence will receive a disqualification from driving of a minimum period of 12 months and this will increase in length depending how far above the legal limit to drink and drive they are found to be. The driver will however be offered an opportunity to reduce that disqualification by up to one quarter if they complete a drink drivers awareness course. These courses aim to educate drivers upon the impact of alcohol on road safety. Whilst it would be unlikely that there would be such an opportunity to reduce a disqualification having been driving after consuming illegal drugs no course is available for the misuse of prescription medications so the minimum disqualification of 12 months cannot be reduced. A driver convicted of a second drink drive conviction within a 10 year period will be subject to a mandatory three year disqualification from driving but no equivalent provision has been introduced for drug driving.

Without guidelines disparity on sentencing such offences will be inevitable, however, it is not yet known when guidelines will be issued in relation to the drug driving offences. Until further information is made available as to the type of drugs being detected when arrests are made for this offence it will be hard to know if drivers are unwittingly exceeding the prescribed limits of prescription medications or indeed if they are routinely doing so. The medications

to which this offence applies are proven to have an impact upon road safety and will carry warnings about the dangers of driving. The sentences available for this offence do not currently distinguish between prescription medications and illegal substances.

The offence of drug driving has not replaced the offence of driving whilst unfit to do so and it is worth remembering that if it can be established that a driver was impaired by a

substance even if below the prescribed limits for drug driving they could still be prosecuted.

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