Justice Committee

13th Report, 2014 (Session 4)

Road Traffic Act 1988 (Prescribed Limit) (Scotland) Regulations 2014

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Justice Committee

Remit and membership

Remit:

To consider and report on:

a) the administration of criminal and civil justice, community safety and other matters falling within the responsibility of the Cabinet Secretary for Justice; and

b) the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

Membership:

Christian Allard
Roderick Campbell
John Finnie
Christine Grahame (Convener)
Alison McInnes
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Irene Fleming
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Justice Committee

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Road Traffic Act 1988 (Prescribed Limit) (Scotland) Regulations 2014

The Committee reports to the Parliament as follows—

BACKGROUND

1. At its meeting on 4 November 2014 the Committee formally considered the following instrument—

   • Road Traffic Act 1988 (Prescribed Limit) (Scotland) Regulations 2014 [draft].¹

2. The instrument was referred to the Justice Committee as lead committee and is subject to affirmative procedure. The Cabinet Secretary for Justice, Kenny MacAskill, gave evidence on the instrument and also moved the relevant motion recommending approval of the instrument.

3. To inform that session the Committee took evidence on 28 October from Chief Superintendent Iain Murray (Police Scotland), Margaret Dekker (Scotland’s Campaign against Irresponsible Drivers) and Dr Peter Rice (Scottish Health Action on Alcohol Problems).

4. The draft Regulations were made under sections 8(3) and 11(2) of the Road Traffic Act 1988 as amended by section 20 of the Scotland Act 2012. The 2012 Act devolves to the Scottish Ministers powers to make regulations prescribing drink-driving limits in Scotland. The purpose of the instrument is to provide for the drink-drive limit in Scotland to be lowered from 80 milligrams (mg) of alcohol in 100 millilitres (ml) of blood to 50mg of alcohol in 100ml of blood, and for equivalent changes to be made to the limits for the concentration of alcohol in breath and urine.

5. By way of context, the report of North Review of Drink and Drug Driving Law was published in 2010. This report recommended a lower limit, noting that by the time blood alcohol concentration reaches 50mg in 100ml, the majority of studies showed significant levels of impairment². Following the devolution of powers over

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¹ Available at: http://www.legislation.gov.uk/sdsi/2014/9780111024478.
setting drink driving limits in Scotland under the 2012 Act, the Scottish Government consulted on the issue in September 2012.\(^3\)

6. Reducing the limit to 50mg brings Scotland into line with the majority of European countries.\(^4\) It does however mean that there will be differing limits across the United Kingdom.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

7. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 7 October 2014 and agreed that it did not need to draw the attention of the Parliament to it on any grounds within its remit.\(^5\)

JUSTICE COMMITTEE CONSIDERATION

8. During the sessions on 28 October and 4 November, a number of issues arose which the Committee has commented on in this report.

9. At the outset, the Committee makes clear its support for the reduction in the drink driving limit, noting that the Scottish Government has acted timeously following the North Review\(^6\) and the devolution of the power to set the limit under the Scotland Act 2012. The Committee also notes the Cabinet Secretary’s comments that, following the Scottish Government’s announcement in March 2013 of its intention to legislate, it has engaged with the UK Government to provide “type approval” of the evidential breath-testing devices that are used by Police Scotland, so that those devices are suitably recognised as being able to operate at the proposed lower limit.\(^7\)

10. The Committee is keen to ensure that the public is fully aware of, and informed about, these significant changes in advance of them becoming law.

11. The report therefore gives further consideration to issues of enforcement and public awareness. It also comments on evidence heard on penalties and differential limits for particular categories of driver as well as powers for the police to carry out random breath tests, issues which are currently reserved to Westminster.

Enforcement

12. How Police Scotland, Crown Office and Procurator Fiscal Service (COPFS) and Scottish Courts Service (SCS) will allocate resources to enforce the regulations arose during oral evidence.

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13. The Committee received assurances from Chief Superintendent Murray that Police Scotland fully supported the change being made and was ready to implement the regulations on 5 December, the date they come into force.

14. When asked what plans the Scottish Government and Police Scotland had to provide resources to deal with a possible initial spike in the number of people being over the drink-drive limit, Chief Superintendent Murray stated—

“We estimate that we are likely to catch around a third more drink drivers than we do at the moment in the initial phase … research shows that drink driving and alcohol counts across the board tend to drop following the introduction of lower limits. My hope, therefore, would be that the public would learn. A quite significant campaign will be ratcheted up through November into December to make people aware of the implications.”

15. Asked to respond to this point, the Cabinet Secretary drew on evidence gathered from the Republic of Ireland following its lowering of the drink-driving limit in 2011—

“The raw stats that Chief Superintendent Murray provided are correct. Equally, the proof of the pudding will be in the practical delivery of the measure … In Ireland, where in many ways, the culture and the demography ties in with that of Scotland, the number of convictions went down. The change drove home the message, don’t drink and drive. Did everybody heed that warning? No. People who flouted the law got dealt with, but fewer did because more took on the message, don’t drink and drive.”

16. When pressed on the issue, the Cabinet Secretary drew again on the experience of the Republic of Ireland—

“The received wisdom was that more people would be caught because more people were between 50mg and beyond the upper limit before the body cannot take it any more than were between 80mg and that upper limit. In reality, what happened was that fewer people were caught because more people adhered to the law and did not risk it.”

17. He added that the effect in Ireland was immediate and that, once the limit was reduced, “people stopped taking the risk and thinking that they would be within the margin of error when they were not”. He assured the Committee that the COPFS, the police and the SCS feel capable of dealing with the circumstances that will arise when the regulations come into force.

18. Responding to specific concerns raised about deployment of specialist road policing units beyond hubs in Glasgow, Edinburgh and Motherwell, the Cabinet Secretary stated—

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“You will find that, although road policing might be hubbed… the spokes that those officers travel down are extensive and significant. Equally, there will be local area command. However, I think that the biggest change in drink driving is not simply enforcement by the police, although that is vital to driving home the message, but the attitude taken by the public, which is that drink driving is entirely unacceptable and that they will report it. I would expect the police to act appropriately to ensure that the law is enforced and that there is a visible police presence.”

19. The Committee welcomes the assurances of Police Scotland that it is ready to enforce the regulations, and of the Scottish Government that the COPFS and SCS are also ready to enforce them. The Committee calls on the Scottish Government and Police Scotland to monitor the enforcement of the regulations over the first year so that adequate resources are deployed to allow the regulations to be rigorously and consistently enforced across Scotland.

Public awareness

20. In scrutinising the regulations, the Committee was keen to ensure that the public are fully informed about the proposed changes.

Education and publicity

21. The analysis of consultation responses carried out for the Scottish Government indicated that respondents commented on the need for education to raise awareness of the issues and the effects of alcohol, with an emphasis on education for young or new drivers, along with publicity campaigns to promote the new limit and the “don't drink and drive” message.

22. When asked about publicising the changes being made by the regulations, Chief Superintendent Murray advised that—

“A marketing campaign is about to kick in. Obviously, we need to tell the public when the reduction is going to happen … There will be television advertising and all sorts of other marketing—all sorts of media stuff is waiting to kick in as soon as there is a green light. We are doing live education when we stop motorists; we are making them aware of the reduction. There will be education. The question is whether the committee thinks that the time will be enough. That is for the committee to decide, but a significant amount of money is being spent through the safer Scotland initiative and Road Safety Scotland to make it happen.”

23. Dr Rice argued that, whilst education on its own was not an effective tool, education backed up by enforcement was “a powerful shaper of behaviour” on issues such as drink driving and the wearing of seat belts. He noted that—

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“Although we would love to think that the answer is to explain things clearly to people and then they will change their attitudes, any marketer will say that the product also has to be easily accessible and easily bought. The combination of education and legislation, as we are talking about here, is the optimum mix.”

24. The Cabinet Secretary and Patrick Down from the Scottish Government’s Criminal Law and Licensing Division outlined details of the marketing strategies the Scottish Government is using to get the message across. These included—

- TV and radio adverts that will reach 88% of the adult population (including ITV Borders, STV and Channel 4 in Scotland);
- use of social media;
- using the existing Christmas anti-drink driving campaign to inform the public of the change;
- working with Visit Scotland to inform potential visitors of the change via its channels;
- working with supermarkets to disseminate posters at petrol stations;
- working with Farmer Autocare and local authorities communications teams to disseminate information through their contacts;
- working with Transport Scotland to make information available on its overhead gantries on main roads;
- a 10-day field marketing road show to inform drivers in key locations across Scotland.

25. The Cabinet Secretary advised that “every possible avenue and communication medium is being looked at”. He indicated that the campaign would begin on 17 November, which he considered would allow a sufficient period of time to elapse before the regulations come into force.

26. The Committee considers that a concerted marketing and education campaign in the lead up to the regulations coming into force, targeted where appropriate on young and new drivers, is essential if the regulations are to be effective in reducing incidences of drink driving and the number of deaths on the road.

27. The Committee therefore welcomes the Scottish Government’s plans for a comprehensive advertising campaign beginning on 17 November. The Committee invites the Scottish Government to give further consideration to

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how it can most appropriately target young and new drivers through that campaign, and to monitor the success of campaign.

Next day drivers
28. The Committee sought clarification from witnesses on the extent to which the reduced limit would affect people driving the day after having consumed alcohol and whether guidance would target such drivers. Responding to those issues, Dr Rice argued that “The problem about driving the following day will crop up only when someone has drunk a pretty substantial amount the night before”. 23

29. He confirmed that, for someone who has had eight hours sleep, a “substantial amount” would mean consumption of in excess of “a bottle of wine, half a bottle of spirits, six pints of average-strength beer ... if people are drinking at that level they are running risks other than in relation to driving”. 24

30. Describing how the body metabolises alcohol, Dr Rice used the analogy of a supermarket checkout—

“If it takes you two minutes to put people through a checkout and someone comes into your shop every minute, you are going to end up with a long queue. Some shops will be able to call people through from the back to open another checkout, but your liver is not like that. It does not speed up. It chugs away at about 10ml or a standard unit an hour and nothing—not coffee, not sleep, not a shower, not exercise, not eating a full Scottish breakfast—will speed that up or make any difference ... time is the only thing that clears alcohol from your system”. 25

31. Dr Rice acknowledged that “although any response can be couched in caveats about individual variability and so on, people need some relatively firm guidelines.” 26

32. Chief Superintendent Murray stated that, ultimately, these were matters of personal responsibility—

“A person must make a decision, if they are driving in the morning. People must decide who is driving and who is not driving and they must balance their lives accordingly. That is my personal view”. 27

33. He added that—

“Of the 434 detections that we made during the four weeks of last winter’s drink-drive campaign, 10 per cent were after 6 o’clock in the morning, so there is the risk of a slight increase...my simple message is that anyone who is going to be driving in the morning should not drink the night before”. 28

34. The Cabinet Secretary made clear that the message to people considering driving the day after having consumed alcohol was one of zero tolerance—

“If we look back many years ago, it was all about what state the person was in when they left the pub or the event that they were at. Over recent years, there has been a realisation about the number of people who are breathalysed the following morning—indeed, I think that the statistics show that. In recent campaigns, considerable emphasis has certainly been put on not only people not taking the car if they are going to a Christmas party or another function, but on ensuring that, if they are going to drive the following day, they have acted responsibly“.

35. The Committee agrees with the witnesses that people should exercise caution and responsibility if driving after consuming alcohol the previous night. The Committee welcomes the zero tolerance approach proposed by Chief Superintendent Murray.

36. In welcoming its comprehensive publicity campaign the Committee calls on the Scottish Government to ensure that drivers are fully informed to make a responsible decision on when they are able to drive the day after having consumed alcohol.

Cross border issues

37. As set out earlier in this report, the changes would result in Scotland having a lower drink driving limit than England and Wales. The Committee therefore considered issues of awareness of the limit among people living elsewhere but driving in Scotland. This would include, for example, people living in the north of England but working in Scotland, and people arriving in Scotland at airports, train stations or ferry terminals before driving.

38. When asked about advertising for people crossing the border or coming from a country where the limit is higher, Chief Superintendent Murray advised—

“As I understand it, there will be national elements to the campaign in the media, including the broadcast media. It is being considered whether to extend the campaign to other modes of transport to make people think about whether they are having a drink on the train or a drink in the airport. That is being included in our consideration of how we engage with the operating companies and those who provide services. We are considering whether to place adverts strategically at motorway services, so that drivers will be aware of the change as they head north or south. That is all being considered as part of the campaign. A number of agencies are involved. There will be a heavy reliance on social media to make sure that the message is out there”.

39. Dr Rice added—

“In other parts of Europe, it is not unusual to have people driving across borders to countries where there are different limits. Systems have developed in other places, so there might be some benefit from international learning. It is not a great problem that we hear about from my colleagues in other countries. There are examples where similar policies have worked without any great difficulty”.

40. Margaret Dekker stated her belief that it is only a matter of time before the limit is reduced across the rest of the UK in any case.

41. The Cabinet Secretary reassured the Committee that, through advertising on channels such as ITV Borders, the Scottish Government’s information campaign would “help raise the awareness of drivers who live close to the border and who might travel into Scotland each working day”.

42. The Committee welcomes the thought given to these cross-border issues by the Scottish Government when preparing to launch its publicity campaign. The Committee calls on the Scottish Government to ensure that adverts are placed at strategic locations such as airports, railway stations and ferry terminals, in addition to signposting at the border, so that people arriving in Scotland are fully aware of the lower limit before considering whether to drive.

Reserved issues

43. As previously mentioned, the 2012 Act devolved powers in relation to setting drink driving limits. The following powers have not been devolved—

- setting different drink driving limits for different categories of driver;
- altering the penalties for drink driving offences;
- empowering the police to carry out random or intelligence-led breath tests.

44. Nevertheless, these issues arose in evidence and the Committee therefore wishes to reflect the views expressed in this report.

Penalties

45. The Committee asked witnesses for their views on whether a sliding scale of penalties, similar to Sweden and Poland, would be appropriate. The North Report noted that the current penalty regime in the UK is “considerably tougher than the regimes of many other countries with a lower limit”. A concern was expressed by the Institute of Advanced Motorists about the limit being lowered without consequential reductions in the penalties arguing that—

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“this may risk public support in the long term for the overall drink drive enforcement approach in Scotland. Whilst our policy is to advocate taking no drink whatsoever when driving we are aware that policing in Scotland requires the consent and support of the majority of the population and this must not be jeopardised”. 35

46. Chief Superintendent Murray expressed concern about any consequential variation of penalty for drivers who have between 50mg and 80mg in their blood—

“individuals who drink alcohol before they drive, even at the new lower limit that is being proposed, are three times more likely to die in a crash than they would be if they had not taken alcohol before they drove... With the existing limit, people are six times more likely to die in a crash. I do not think that you would want to vary penalties depending on whether somebody was three times or six times more likely to kill themselves or somebody else. My view is that people who drink alcohol before driving are putting other people and themselves at risk and, therefore, the penalty needs to be such that it has a deterrent effect”. 36

47. This was a position shared by Margaret Dekker, who added that sentencing would be a matter for the courts anyway. 37

48. In responding to these issues, the Cabinet Secretary reiterated that the only power devolved under the 2012 Act is the power to set the limit. He added, however, that he considered that the police would welcome—

“an opportunity to vary the penalties, which might allow us to lower the limit even further and make our roads even safer; and targeting specific age groups and occupations. The Government does not have a view on such matters and would consult on them, but we know that people including the Institute of Advanced Motoring and the police think that step changes can be made”. 38

49. The Committee notes that these powers are reserved and that discussions about the powers of the Scottish Parliament within the UK are taking place elsewhere. The Committee notes the comments of the Cabinet Secretary in respect of additional powers that would be welcomed.

Differential limits

50. The Committee explored issues such as whether there should be a lower limit for different categories of drivers, such as younger drivers, given that statistically they pose a greater risk than average to themselves and others 39, and professional drivers.

35 Institute of Advanced Motorists, written submission, p1. Available at: http://www.scottish.parliament.uk/S4_JusticeCommittee/Meeting%20Papers/Papers20141028.pdf
51. Dr Rice indicated that measures to introduce a lower limit for certain categories of drivers would be supported by the British Medical Association (BMA) and by the Royal Colleges.\textsuperscript{40}

52. Whilst welcoming lower limits such as 20mg in Sweden and acknowledging that younger drivers are at greater risk in respect of their tolerance, capacity and maturity, Chief Superintendent Murray cautioned against a graduated structure with lower limits for younger drivers, stating—

“...I would personally have a difficulty if we were to say, “Well done. You’ve held your licence for two years. Now you can drink more”.”\textsuperscript{41}

53. Margaret Dekker made clear that Scotland's Campaign against Irresponsible Drivers would support a level of 20mg for “professional drivers such as taxi drivers, school bus drivers and anyone who drives in a care capacity”\textsuperscript{42}, alongside a general limit of 50mg.

54. In his evidence, the Cabinet Secretary indicated that, in addition to being able to set penalties for drink driving, the Scottish Parliament should have the power to consider differential limits.\textsuperscript{43}

55. The Committee notes the arguments around differential limits but recognises that these are not currently within devolved powers.

**Random breath testing**

56. The Committee also considered issues around the introduction of random breath testing for motorists.

57. Both Dr Rice and Chief Superintendent Murray indicated that such measures would have public support. As with measures to introduce a lower limit for certain categories, Dr Rice indicated that random breath testing would have the support of the BMA and Royal Colleges.\textsuperscript{44}

58. The Cabinet Secretary indicated that the police had hoped that powers to reduce the limit would tie in with powers to introduce random breath testing.\textsuperscript{45}

59. When asked about the percentage of drivers who have been breath tested, the Cabinet Secretary indicated that he did not have the figure to hand\textsuperscript{46}. The Scottish Government subsequently advised that Police Scotland does not collect statistics on the total number of breath tests that they carry out but that the Reported Road Casualties Statistics for 2013 show that, in 2013, 60% of motorists involved in injury accidents were asked for a breath test. Of those 2.4% either tested positive


or refused the test. This represented 1.5% of all motorists involved in an injury accident in 2013.47

60. **The Committee notes the evidence it has heard on random breath testing, whilst recognising that relevant powers are not currently devolved.**

*Formal consideration of the Regulations*

61. After taking evidence from the Cabinet Secretary and a Scottish Government official, the Committee formally considered the regulations on 4 November 2014.

62. The Cabinet Secretary moved the motion lodged in his name: S4M-11277—That the Justice Committee recommends that the Road Traffic Act 1988 (Prescribed Limit) (Scotland) Regulations 2014 [draft] be approved.

63. The motion was agreed to.

64. **The Justice Committee therefore recommends to the Parliament that it approve the draft instrument.**

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47 Reported Road Casualties Statistics for 2013, Figure 1 - Reported Accidents by Severity, Transport Scotland (2013). Available at: [http://www.transportscotland.gov.uk/statistics/j340611-04.htm](http://www.transportscotland.gov.uk/statistics/j340611-04.htm)
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