

Response to P.32/2026

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Produced by



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At the outset, the [Draft Road Traffic Law \(Drug Driving\) \(Jersey\) Amendment Regulations 202-](#) appears straightforward.

No one should drive while impaired, whether that be from alcohol, prescribed medication or illicit drugs.

Measures that can assist the States of Jersey Police in bringing successful prosecutions for those persons driving while impaired from illicit or prescribed drugs are to be welcomed.

However, there are issues with the law as drafted that require due consideration.

Aside from alcohol and other recreational drugs, there are many substances that can impair driving ability.

For example, many of us will be aware of prescription labelling that requires those using the medication not to drive or operate heavy machinery, or to not drive if feeling drowsy.

The current [Road Traffic \(Jersey\) Law 1956](#) specifies offences for persons being “unfit to drive through drink or drugs”.

Impairment from any drug can be determined at the roadside by a police officer who is trained in the use of Field Impairment Tests, as defined in the UK by the [Code of Practice for Preliminary Impairment Tests](#).

Many countries have, to varying degrees, introduced legislation that specifies limits for a number of prescribed and illicit drugs. Some countries define a zero tolerance regime for some drugs, while others such as [the UK](#) apply an "accidental exposure" limit in the case of illicit drugs, and a "risk based approach" for prescription medicines.

Roadside saliva tests are available for a small number of prescribed and illicit drugs to determine the presence of a drug in a person's system, which if positive can then be quantified by a blood test.

The [Drug Driving \(Specified Limits\) \(England and Wales\) Regulations 2014](#) and [The Road Traffic \(Drink Driving\) \(Guernsey\) Law, 1989 \(Amendment\) Ordinance 2025](#) also include a [statutory medical defence](#) “to protect those patients who may test positive for certain specified drugs taken in accordance with the advice of a healthcare professional or the patient information leaflet that accompanies the medicine.”

Drugs for which either a roadside test is unavailable or where no limit is specified in the law, or where a medical defence may be applicable, require the use of the aforementioned Field Impairment Test to determine whether someone is fit to drive.

Despite the lack of defined drug limits in our current Road Traffic Law, the prosecution in Jersey does currently take into account UK guidance in determining whether a person should be charged for being unfit to drive through drugs.

Our new Bailiff, Robert MacRae, presided over a drug driving case that he wrote about in The Jersey & Guernsey Law Review 2023 relating to a false positive test result for THC – [Acquitting the "guilty"? Quashing a conviction after a guilty plea](#).

Paragraph 3 reads as follows:

"The statutory provisions that the appellant had ostensibly contravened, namely driving a vehicle whilst unfit through drink or drugs contrary to [Article] 27 of the Road Traffic (Jersey) Law 1956, is silent as to any de minimis levels of drugs that may be contained in the blood of a suspect and disregarded for the purpose of prosecution. However, the court learnt that the prosecuting authorities in Jersey had regard to guidance published in England and Wales on a non-statutory basis for the purpose of considering whether or not a person should be charged with an offence of driving whilst unfit through consumption of drugs."

The Crown Prosecution Service's [Prosecution Guidance on Road Traffic – Drink and Drug Driving](#) includes reference to the application of the statutory medical defence ([Section 5A of the law](#)).

We must therefore assume that medicinal cannabis patients in Jersey would currently be protected from prosecution provided that they were deemed fit to drive, by the extension of the medical defence from UK guidance.

The draft law would remove that medical defence from medicinal cannabis patients that currently exists by virtue of the prosecution's application of UK guidance.

Not only that, as no other drugs are specified in the draft law, we must assume that the prosecution will continue to rely on the UK guidance – including the medical defence – for the 16 other drugs specified in that law, or indeed any prescribed drug.

Consequently, we consider the omission of a statutory medical defence for those who use medicinal cannabis compared with those who use other prescription drugs to be in contravention of the [Discrimination \(Jersey\) Law 2013](#).

It would be unseemly for the prosecution to cherry-pick the UK guidance. However, should it be the case that the prosecution does not currently apply the medical defence in Jersey in their interpretation of the UK guidance, we remain concerned about the compatibility of the draft law with the [Discrimination \(Jersey\) Law 2013](#) and the [Human Rights \(Jersey\) Law 2000](#).

The lack of a medical defence will become a greater issue as additional drugs are included in the law in future.

Will a medical defence become necessary as other prescribed drugs are added? Would that then also apply to medicinal cannabis?

Unlike most other drugs, THC is fat soluble and can remain detectable in the blood for several days post consumption.

Consequently, numerous scientific studies show that blood concentration levels do not necessarily correlate with cannabis impairment:

“Blood and oral fluid THC concentrations are relatively poor indicators of cannabis/THC-induced impairment.”

[Are blood and oral fluid \$\Delta\$ 9-tetrahydrocannabinol \(THC\) and metabolite concentrations related to impairment? A meta-regression analysis](#), Neuroscience & Biobehavioral Reviews, Volume 134, March 2022.

“Blood THC >2 ng/mL, and possibly even THC >5 ng/mL, does not necessarily represent recent use of cannabis in frequent cannabis users.”

[Residual blood THC levels in frequent cannabis users after over four hours of abstinence: A systematic review](#), Drug and Alcohol Dependence, Volume 216, November 2020.

Furthermore, [some patients find that medicinal cannabis improves their driving](#) and reduces their risk of being involved in an accident.

Given that blood tests are a poor indicator of impairment from cannabis, further evidence of impairment should be required for prosecution, such as in the use of Field Impairment Tests at the roadside.

From [statements provided to Scrutiny](#) during Quarterly Hearings, we understand that the police intend to only undertake roadside tests where impairment is suspected. However, we anticipate that over time, the use of roadside tests will be expanded to include random testing, such as during the annual Christmas drink driving campaigns.

In practice, every medicinal cannabis patient will test positive to a roadside saliva test for THC, for which a blood test will be required to determine their blood concentration level.

Looking at the scientific evidence, a proportion of the Island's medicinal cannabis patients will inevitably test above the 2 microgram and even the 5 microgram limits proposed in the draft law for several days after last consumption.

As there is no way for a cannabis user to know what level of THC is present in their body at any given time without a blood test, many medicinal cannabis patients are worried that they may inadvertently infringe the proposed limits despite not being impaired.

Those patients who hold a Group 2 driving licence for medium goods, heavy goods and public service vehicles, as well as driving instructors, will effectively be excluded from using medicinal cannabis due to the low threshold of 2 micrograms per litre defined for these drivers in the draft law.

Should the law be adopted as proposed, i.e. without a statutory medical defence, they will have to make a choice between their job and the medication that they find effective for their particular condition.

For those patients that decide to give up their medicinal cannabis prescriptions as a consequence of the draft law, they will return to other pharmaceuticals to treat their conditions, which are likely less effective, have unwanted side-effects, and may also induce impairment – for which they will not be subjected to roadside testing.

Given that since October 2024 [driving licence applications require the disclosure of medicinal cannabis prescriptions](#), will the police target these drivers for roadside testing?

Furthermore, will a medicinal cannabis prescription exclude a person from applying for a Group 2 driving licence in future?

There is a great deal of public business for States Members to contend with at the last sitting of the current term.

P.32/2026 has perhaps not therefore received the attention it deserves from States Members as it appears so simple at first glance.

However, the draft drug driving regulations raise a number of questions as touched upon above, which require further scrutiny:

- Why has no statutory medical defence been included in the draft law as implemented in the UK and the other Crown Dependencies?
- Is the omission of a medical defence compatible with the Discrimination (Jersey) Law 2013?
- Why have no other drugs been included in the draft law, many of which pose a greater crash risk than cannabis?
- In the case of cannabis, are blood tests sufficient evidence of impairment for prosecution given the lack of scientific evidence of their effectiveness in determining impairment?
- What are the projected financial and manpower implications for undertaking blood tests for cannabis users?
- Should Field Impairment Tests be more widely used by the States of Jersey Police to determine impairment from any drug?
- Why is there no reference in the draft law to providing education for cannabis users and medicinal cannabis patients in particular?

We obviously need to reduce the risk of impairment on our roads.

However, we risk undermining the law by conflating the detection of cannabis in bodily fluids with impairment, which is not supported by scientific evidence.

Patients using their medication as prescribed, whether that be medicinal cannabis or any other prescribed drug added to the law in future, need the protection of a statutory medical defence to ensure that they are not unfairly prosecuted where they are not impaired.

We should utilise Field Impairment Tests in conjunction with roadside saliva tests (where available) to define evidence of impairment from all prescribed and illicit drugs.