To: Environment, Housing and Infrastructure Scrutiny Panel
From: Evan Smith (Private Submission)
Subject: P.32/2026 — Road Traffic Law (Drug Driving) (Jersey) Amendment Regulations
Date: 15 March 2026

P.32/2026 — Road Traffic Law (Drug Driving) (Jersey) Amendment Regulations

Human Rights, Equality and Evidential Considerations

Briefing Note for Scrutiny

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1. Purpose of this Note

This note highlights potential human rights, equality, and evidential considerations arising from **P.32/2026 –Road Traffic Law (Drug Driving) (Jersey) Amendment Regulations 202-**.

The objective is not to question the legitimacy of improving road safety, which is widely supported, but to assist consideration of whether the legislative mechanism adopted appropriately targets impaired driving and operates proportionately in practice.

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2. Core Legislative Issue

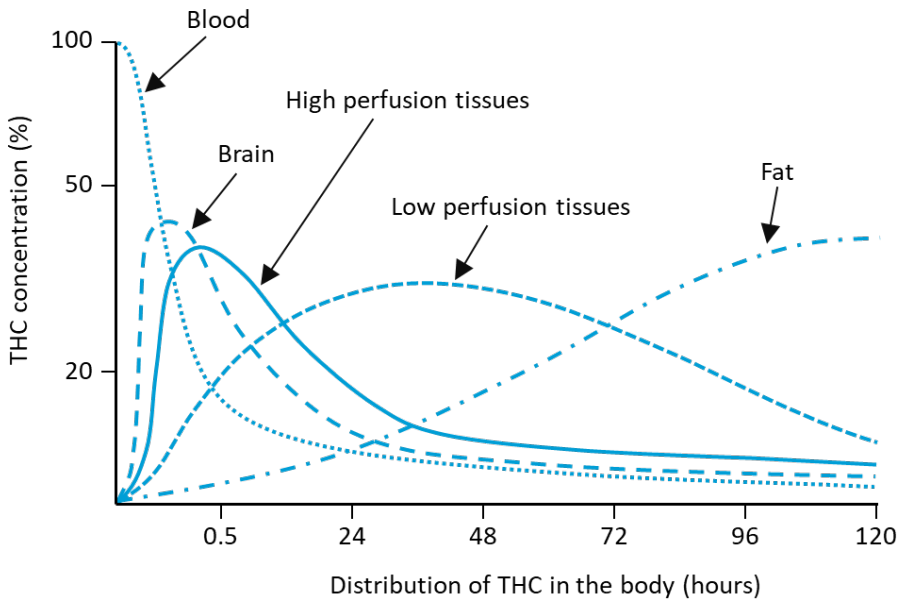
The proposition introduces criminal liability based on exceeding a fixed concentration of THC in blood.

Unlike alcohol, where blood alcohol concentration is strongly correlated with impairment, current scientific evidence indicates that **THC concentration does not reliably correlate with driving impairment**. Detectable levels may persist long after intoxicating effects have resolved, and individual pharmacokinetic variability is significant.

As a result, the framework risks substituting a measure of **drug presence** for a measure of **driver impairment**.

This distinction is central to the proportionality and fairness analysis set out below.

Figure 1 — Illustrative Pharmacokinetic Profiles Showing Divergence Between Drug Concentration and Functional Effect



Illustrative pharmacokinetic curves demonstrating that peak drug concentration, subjective effect, and residual detection occur at different times following administration. For substances such as THC, detectable blood concentrations may persist after functional impairment has resolved, meaning concentration alone may not reliably indicate impairment at the time of driving.

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3. Human Rights (Jersey) Law 2000

The European Convention on Human Rights applies in Jersey through the Human Rights (Jersey) Law 2000.

Article 8 — Right to Respect for Private Life

Article 8 protects bodily autonomy, personal health decisions, and lawful medical treatment.

Criminal liability arising from the lawful use of prescribed medication engages Article 8 rights. Interference may be justified only where it is:

1. lawful;
2. pursuing a legitimate aim (road safety qualifies); and
3. necessary and proportionate.

Where a legal threshold captures individuals who are not impaired because the proxy used does not reliably indicate impairment, questions may arise as to whether the interference is proportionate to the aim pursued.

Article 14 — Non-Discrimination (read with Article 8)

Article 14 requires that differences in treatment between comparable groups have objective and reasonable justification.

The proposition may result in differential treatment between:

- individuals prescribed cannabis-based medicines, and
- individuals prescribed other potentially impairing medications (e.g. opioids, benzodiazepines, sedating antidepressants),

who remain primarily subject to an impairment-based standard ("do not drive if affected").

Where one prescribed patient group is exposed to strict numerical liability while others are not, justification grounded in demonstrable risk would ordinarily be required.

Article 6 — Fair Trial Considerations

A strict per-se offence may also raise fairness considerations where liability arises without proof of impairment and defendants may have limited ability to demonstrate absence of wrongdoing despite not being impaired at the time of driving.

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4. Discrimination (Jersey) Law 2013

Under Article 7 of the Discrimination (Jersey) Law 2013, indirect discrimination may arise where a provision, criterion or practice places persons sharing a protected characteristic at a particular disadvantage unless objectively justified.

Many individuals prescribed cannabis-based medicines may qualify as disabled persons for the purposes of the Law.

The proposed threshold may therefore operate as a provision that:

- disproportionately affects a protected group; and
- differs from the regulatory approach applied to other prescribed medicines capable of impairing driving.

Whether such differential impact is objectively justified may merit consideration.

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5. Practical Risk of Over-Capture

The framework may unintentionally capture individuals who are not impaired, including:

a. Prescribed Medical Patients

Lawful treatment taken as directed may result in detectable THC despite absence of impairment.

b. Consumers of Lawful CBD Products

Jersey permits CBD products containing limited proportions of THC relative to CBD content. Evidence indicates detectable THC concentrations may persist for 24–48 hours following oral ingestion.

It is therefore conceivable that a law-abiding individual consuming a lawful, non-intoxicating product in the evening could exceed the proposed limit the following day despite experiencing no impairment.

c. Residual Detection

Residual pharmacological presence does not necessarily equate to impaired driving ability.

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6. Evidential Context

Public justification for the proposal has emphasised enforcement challenges and detectability.

However, publicly available Jersey road-safety data indicates alcohol remains the dominant contributor to road traffic incidents. Evidence linking detectable THC concentrations to collision causation within Jersey appears comparatively limited.

Scrutiny may therefore wish to examine:

- the evidential basis for the chosen threshold;
- whether impairment correlation has been demonstrated; and
- alternative approaches considered during policy development.

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7. Legislative Design Consideration

Numerical thresholds can assist enforcement and investigative efficiency. However, where scientific equivalence between concentration and impairment is uncertain,

thresholds may operate most proportionately when used **alongside impairment evidence rather than as a substitute for it**.

This distinction preserves enforcement capability while aligning liability more closely with demonstrable risk.

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8. Potential Amendment Path

The identified concerns could be addressed without weakening road-safety objectives through narrowly framed safeguards:

- retain roadside testing and numerical thresholds;
- clarify reliance on **impairment evidence** alongside concentration limits;
- maintain offences relating to impaired driving;
- introduce a limited **statutory medical defence** where:
    - the substance was lawfully prescribed,
    - taken in accordance with medical advice, and
    - the driver was not impaired;
- include a post-implementation review provision.

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9. Summary

The aim of reducing impaired driving is widely supported. The question for Scrutiny is whether the proposed framework appropriately targets impairment or risks extending criminal liability to individuals who are not impaired.

Ensuring that enforcement measures remain closely linked to demonstrable driving risk may strengthen proportionality, fairness, and long-term durability of the legislation.