



Transport and Works Act 1992

1992 CHAPTER 42

PART II

SAFETY OF RAILWAYS ETC

CHAPTER I

OFFENCES INVOLVING DRINK OR DRUGS

Preliminary

26 Transport systems to which Chapter I applies

- (1) This Chapter applies to transport systems of any of the following kinds—
 - (a) a railway;
 - (b) a tramway;
 - (c) a system which uses another mode of guided transport and is specified for the purposes of this Chapter by an order made by the Secretary of State.
- (2) This Chapter shall not apply to a transport system unless it is used, or is intended to be used, wholly or partly for the carriage of members of the public.
- (3) The power to make orders under this section shall be exercisable by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Principal offences

27 Offences involving drink or drugs on transport systems

- (1) If a person works on a transport system to which this Chapter applies—

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- (a) as a driver, guard, conductor or signaller or in any other capacity in which he can control or affect the movement of a vehicle, or
- (b) in a maintenance capacity or as a supervisor of, or look-out for, persons working in a maintenance capacity,

when he is unfit to carry out that work through drink or drugs, he shall be guilty of an offence.

- (2) If a person works on a transport system to which this Chapter applies—
- (a) as a driver, guard, conductor or signaller or in any other capacity in which he can control or affect the movement of a vehicle, or
 - (b) in a maintenance capacity or as a supervisor of, or look-out for, persons working in a maintenance capacity,

after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit, he shall be guilty of an offence.

- (3) For the purposes of this section, a person works on a transport system in a maintenance capacity if his work on the system involves maintenance, repair or alteration of—
- (a) the permanent way or other means of guiding or supporting vehicles,
 - (b) signals or any other means of controlling the movement of vehicles, or
 - (c) any means of supplying electricity to vehicles or to the means of guiding or supporting vehicles,

or involves coupling or uncoupling vehicles or checking that they are working properly before they are used on any occasion.

- (4) For the purposes of subsection (1) above, a person shall be taken to be unfit to carry out any work if his ability to carry out that work properly is for the time being impaired.

28 Offences by operators of transport systems

- (1) If a person commits an offence under section 27 above, the responsible operator shall also be guilty of an offence.

- (2) In this section “the responsible operator” means—
- (a) in a case where the transport system on which the offence under section 27 above is committed has only one operator, that operator;
 - (b) in a case where the transport system on which the offence under section 27 above is committed has more than one operator, whichever of them is responsible for the work giving rise to the offence.

- (3) No offence is committed under subsection (1) above if the responsible operator has exercised all due diligence to prevent the commission on the transport system of any offence under section 27 above.

- (4) If a person commits an offence under section 27 above in the course of his employment with a person other than the responsible operator, his employer shall (without prejudice to any liability of that operator under subsection (1) above) also be guilty of an offence.

- (5) No offence is committed under subsection (4) above if the employer has exercised all due diligence to prevent the commission on the transport system by any of his employees of any offence under section 27 above.

Police powers etc

29 Breath tests

- (1) Where a constable in uniform has reasonable cause to suspect—
 - (a) that a person working on a transport system to which this Chapter applies in any capacity mentioned in section 27(1) and (2) above has alcohol in his body, or
 - (b) that a person has been working on a transport system to which this Chapter applies in any capacity mentioned in section 27(1) and (2) above with alcohol in his body and still has alcohol in his body,he may require that person to provide a specimen of breath for a breath test.
- (2) Where an accident or dangerous incident occurs on a transport system to which this Chapter applies, a constable in uniform may require a person to provide a specimen of breath for a breath test if he has reasonable cause to suspect that—
 - (a) at the time of the accident or incident that person was working on the transport system in a capacity mentioned in section 27(1) and (2) above, and
 - (b) an act or omission of that person while he was so working may have been a cause of the accident or incident.
- (3) In subsection (2) above “dangerous incident” means an incident which in the constable’s opinion involved a danger of death or personal injury.
- (4) A person may be required under subsection (1) or subsection (2) above to provide a specimen either at or near the place where the requirement is made or, if the requirement is made under subsection (2) above and the constable making the requirement thinks fit, at a police station specified by the constable.
- (5) A person who, without reasonable excuse, fails to provide a specimen of breath when required to do so in pursuance of this section shall be guilty of an offence.

30 Powers of arrest and entry

- (1) A constable may arrest a person without warrant if he has reasonable cause to suspect that that person is or has been committing an offence under section 27(1) above.
- (2) A constable may arrest a person without warrant if—
 - (a) as a result of a breath test under section 29 above he has reasonable cause to suspect that the proportion of alcohol in that person’s breath or blood exceeds the prescribed limit, or
 - (b) that person has failed to provide a specimen of breath for a breath test when required to do so in pursuance of section 29 above and the constable has reasonable cause to suspect that he has alcohol in his body.
- (3) For the purpose of arresting a person under subsection (1) above, a constable may enter (if need be by force) any place where that person is or where the constable, with reasonable cause, suspects him to be.
- (4) A constable may, for the purpose of—
 - (a) requiring a person to provide a specimen of breath under section 29(2) above in the case of an accident which the constable has reasonable cause to suspect involved the death of, or injury to, another person, or

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(b) arresting a person in such a case under subsection (2) above, enter (if need be by force) any place where that person is or where the constable, with reasonable cause, suspects him to be.

31 Provision of specimens for analysis

- (1) In the course of an investigation into whether a person has committed an offence under section 27 above, a constable may require him—
 - (a) to provide two specimens of breath for analysis by means of a device of a type approved by the Secretary of State, or
 - (b) to provide a specimen of blood or urine for a laboratory test.
- (2) A requirement under this section to provide specimens of breath shall only be made at a police station.
- (3) A requirement under this section to provide a specimen of blood or urine shall only be made at a police station or at a hospital; and it shall not be made at a police station unless subsection (4) below applies.
- (4) This subsection applies if—
 - (a) the constable making the requirement has reasonable cause to believe that for medical reasons a specimen of breath cannot be provided or should not be required,
 - (b) at the time the requirement is made, either a device (or reliable device) of the type mentioned in subsection (1)(a) above is not available at the police station or it is for any other reason not practicable to use such a device there, or
 - (c) the suspected offence is one under section 27(1) above and the constable making the requirement has been advised by a medical practitioner that the condition of the person required to provide the specimen might be due to a drug.
- (5) A person may be required to provide a specimen of blood or urine in pursuance of this section notwithstanding that he has already provided or been required to provide two specimens of breath.
- (6) If the provision of a specimen other than a specimen of breath may be required in pursuance of this section, the question whether it is to be a specimen of blood or a specimen of urine shall be decided by the constable making the requirement; but if a medical practitioner is of the opinion that for medical reasons a specimen of blood cannot or should not be taken, the specimen shall be a specimen of urine.
- (7) A specimen of urine shall be provided within one hour of the requirement for its provision being made and after the provision of a previous specimen of urine.
- (8) A person who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this section shall be guilty of an offence.
- (9) A constable shall, on requiring a person to provide a specimen in pursuance of this section, warn him that a failure to provide it may render him liable to prosecution.

32 Choice of specimens of breath

- (1) Of any two specimens of breath provided by a person in pursuance of section 31 above, the one with the lower proportion of alcohol in the breath shall be used and the other shall be disregarded.
- (2) But if the specimen with the lower proportion of alcohol contains no more than 50 microgrammes of alcohol in 100 millilitres of breath, the person who provided it may claim that it should be replaced by such specimen as may be required under section 31(6) above and, if he then provides such a specimen, neither specimen of breath shall be used.
- (3) The Secretary of State may by regulations substitute another proportion of alcohol in the breath for that specified in subsection (2) above.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument; and no such regulations shall be made unless a draft of the instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

33 Protection for hospital patients

- (1) While a person is at a hospital as a patient, he shall not be required to provide a specimen of breath for a breath test or to provide a specimen for a laboratory test unless the medical practitioner in immediate charge of his case has been notified of the proposal to make the requirement; and—
 - (a) if the requirement is then made, it shall be for the provision of a specimen at the hospital, but
 - (b) if the medical practitioner objects on the ground specified in subsection (2) below, the requirement shall not be made.
- (2) The ground on which the medical practitioner may object is that the requirement or the provision of a specimen or (in the case of a specimen of blood or urine) the warning required under section 31(9) above would be prejudicial to the proper care and treatment of the patient.
- (3) A person shall not be arrested under section 30(2) above while he is at a hospital as a patient.

Evidence in proceedings for offences under section 27

34 Use of specimens in proceedings

- (1) In proceedings for any offence under section 27 above—
 - (a) evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by the accused shall be taken into account, and
 - (b) it shall be assumed that the proportion of alcohol in the accused's breath, blood or urine at the time of the alleged offence was not less than in the specimen.
- (2) That assumption shall not be made if the accused proves—
 - (a) that he consumed alcohol before he provided the specimen and after he had stopped work on the occasion of the alleged offence, and

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- (b) that, had he not done so, the proportion of alcohol in his breath, blood or urine would not have exceeded the prescribed limit and, where the offence alleged is an offence of being unfit to carry out the work in question through drink, would not have been such as to impair his ability to carry out that work properly.
- (3) Where, at the time a specimen of blood or urine was provided by the accused, he asked to be provided with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen shall not be admissible in the proceedings on behalf of the prosecution unless—
 - (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the accused was divided at the time it was provided, and
 - (b) the other part was supplied to the accused.

35 Documentary evidence as to specimens

- (1) In proceedings for any offence under section 27 above, evidence of the proportion of alcohol in a specimen of breath may be given by the production of a document (or documents) purporting to be—
 - (a) a statement automatically produced by the device by which the proportion of alcohol in the specimen was measured, and
 - (b) a certificate signed by a constable (which may but need not be contained in the same document as the statement) that the specimen was provided by the accused at the date and time shown in the statement.
- (2) In such proceedings, evidence of the proportion of alcohol or a drug in a specimen of blood or urine may be given by the production of a document purporting to be a certificate signed by an authorised analyst identifying the specimen and stating the proportion of alcohol or drug found in it.
- (3) In such proceedings, evidence that a specimen of blood was taken from the accused with his consent by a medical practitioner may be given by the production of a document purporting to be a certificate to that effect signed by the practitioner.
- (4) A document such as is mentioned in subsection (1) above shall be admissible in evidence on behalf of the prosecution in pursuance of this section only if a copy of it either was handed to the accused when the document was produced or was served on him not later than seven days before the hearing.
- (5) A document such as is mentioned in subsection (2) or (3) above shall be admissible in evidence on behalf of the prosecution in pursuance of this section only if a copy of it was served on the accused not later than seven days before the hearing.
- (6) A document purporting to be a certificate (or so much of a document as purports to be a certificate) shall not be admissible in evidence on behalf of the prosecution in pursuance of this section if the accused, not later than three days before the hearing or within such further time as the court may in special circumstances allow, has served notice on the prosecutor requiring the attendance at the hearing of the person by whom the document purports to be signed.
- (7) In this section “served” means served personally or sent by registered post or recorded delivery service.

- (8) In subsection (2) above “authorised analyst” means—
- (a) any person possessing the qualifications prescribed by regulations made under section 76 of the Food Act 1984 or section 27 of the Food and Drugs (Scotland) Act 1956 as qualifying persons for appointment as public analysts under those Acts, or
 - (b) any other person authorised by the Secretary of State to make analyses for the purposes of this section.

Penalties

36 Penalties

- (1) A person guilty of any offence under this Chapter other than an offence under section 29(5) above shall be liable on summary conviction to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the standard scale or to both.
- (2) A person guilty of an offence under section 29(5) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Miscellaneous and supplementary

37 Special provision for Scotland

- (1) Section 30(3) and (4) above shall not extend to Scotland, and nothing in those subsections shall affect any rule of law in Scotland concerning the right of a constable to enter any premises for any purpose.
- (2) In proceedings for any offence under section 27 above in Scotland—
 - (a) a document produced in evidence on behalf of the prosecution in pursuance of section 35 above and, where the person by whom the document was signed is called as a witness, the evidence of that person, shall be sufficient evidence of the facts stated in the document, and
 - (b) a written execution purporting to be signed by the person who handed to or served on the accused or the prosecutor a copy document or notice under section 35 above, together with, where appropriate, a post office receipt for the relevant registered or recorded delivery letter, shall be sufficient evidence of the handing or service of the copy document or notice.

38 Interpretation of Chapter I

- (1) In this Chapter—
 - “breath test” means a preliminary test for the purpose of obtaining, by means of a device of a type approved by the Secretary of State, an indication whether the proportion of alcohol in a person’s breath or blood is likely to exceed the prescribed limit;
 - “drug” includes any intoxicant other than alcohol;
 - “fail” includes refuse;
 - “hospital” means an institution which provides medical or surgical treatment for in-patients or out-patients.

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- (2) In this Chapter “the prescribed limit” means, as the case may require—
- (a) 35 microgrammes of alcohol in 100 millilitres of breath,
 - (b) 80 milligrammes of alcohol in 100 millilitres of blood, or
 - (c) 107 milligrammes of alcohol in 100 millilitres of urine,
- or such other proportion as may be prescribed by regulations made by the Secretary of State.
- (3) For the purposes of this Chapter, it is immaterial whether a person who works on a transport system does so in the course of his employment, under a contract for services, voluntarily or otherwise.
- (4) For the purposes of this Chapter, a person does not provide a specimen of breath for a breath test or for analysis unless the specimen—
- (a) is sufficient to enable the test or the analysis to be carried out, and
 - (b) is provided in such a way as to enable the objective of the test or analysis to be satisfactorily achieved.
- (5) For the purposes of this Chapter, a person provides a specimen of blood if and only if he consents to its being taken by a medical practitioner and it is so taken.
- (6) The power to make regulations under subsection (2) above shall be exercisable by statutory instrument; and no such regulations shall be made unless a draft of the instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.

39 Amendment of scope of offences involving drink or drugs under Road Traffic Act 1988

The following section shall be inserted in the Road Traffic Act 1988 after section 192—

“192A Tramcars and other guided vehicles: drink and drugs

- (1) Sections 4 to 11 of this Act shall not apply (to the extent that apart from this subsection they would) to vehicles on any transport system to which Chapter I of Part II of the Transport and Works Act 1992 (offences involving drink or drugs on railways, tramways and certain other guided transport systems) applies.
- (2) Subject to subsection (1) above, the Secretary of State may by regulations provide that sections 4 to 11 of this Act shall apply to vehicles on a system of guided transport specified in the regulations with such modifications as he considers necessary or expedient.
- (3) Regulations under subsection (2) above may make different provision for different cases.
- (4) In this section—

“guided transport” means transport by vehicles guided by means external to the vehicles (whether or not the vehicles are also capable of being operated in some other way), and

“vehicle” includes mobile traction unit.”

40 Consequential amendment

In section 17 of the Railway Regulation Act 1842 (punishment of persons employed on railways guilty of misconduct) the words “who shall be found drunk while so employed upon the said railway” shall be omitted.