



# Railways and Transport Safety Act 2003

## 2003 CHAPTER 20

### PART 5

#### AVIATION: ALCOHOL AND DRUGS

##### *Offences*

#### **92 Being unfit for duty**

- (1) A person commits an offence if—
  - (a) he performs an aviation function at a time when his ability to perform the function is impaired because of drink or drugs, or
  - (b) he carries out an activity which is ancillary to an aviation function at a time when his ability to perform the function is impaired because of drink or drugs.
- (2) In this section “drug” includes any intoxicant other than alcohol.
- (3) Section 94 defines “aviation function” and “ancillary activity” for the purposes of this Part.

#### **Commencement Information**

**II** [S. 92](#) in force at 30.3.2004 by [S.I. 2004/827](#), [art. 3\(o\)](#)

#### **93 Prescribed limit**

- (1) A person commits an offence if—
  - (a) he performs an aviation function at a time when the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit, or
  - (b) he carries out an activity which is ancillary to an aviation function at a time when the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit.

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- (2) The prescribed limit of alcohol is (subject to subsection (3))—
- (a) in the case of breath, 9 microgrammes of alcohol in 100 millilitres,
  - (b) in the case of blood, 20 milligrammes of alcohol in 100 millilitres, and
  - (c) in the case of urine, 27 milligrammes of alcohol in 100 millilitres.
- (3) In relation to the aviation function specified in section 94(1)(h) the prescribed limit is—
- (a) in the case of breath, 35 microgrammes of alcohol in 100 millilitres,
  - (b) in the case of blood, 80 milligrammes of alcohol in 100 millilitres, and
  - (c) in the case of urine, 107 milligrammes of alcohol in 100 millilitres.
- (4) The Secretary of State may make regulations amending subsection (2) or (3).
- (5) Section 94 defines “aviation function” and “ancillary activity” for the purposes of this Part.

**Commencement Information**

**I2** S. 93 in force at 30.3.2004 by S.I. 2004/827, art. 3(p)

**94 Aviation functions**

- (1) For the purposes of this Part the following (and only the following) are aviation functions—
- (a) acting as a pilot of an aircraft during flight,
  - (b) acting as flight navigator of an aircraft during flight,
  - (c) acting as flight engineer of an aircraft during flight,
  - (d) acting as flight radio-telephony operator of an aircraft during flight,
  - (e) acting as a member of the cabin crew of an aircraft during flight,
  - (f) attending the flight deck of an aircraft during flight to give or supervise training, to administer a test, to observe a period of practice or to monitor or record the gaining of experience,
  - (g) acting as an air traffic controller in pursuance of a licence granted under or by virtue of an enactment (other than a licence granted to a student), and
  - (h) acting as a licensed aircraft maintenance engineer.
- (2) For the purposes of subsection (1)(h) a person acts as a licensed aircraft maintenance engineer if—
- (a) he issues a document relating to the maintenance, condition or use of an aircraft or equipment in reliance on a licence granted under or by virtue of an enactment relating to aviation, or
  - (b) he carries out or supervises work on an aircraft or equipment with a view to, or in connection with, the issue by him of a document of the kind specified in paragraph (a).
- (3) For the purposes of this Part a reference to an activity which is ancillary to an aviation function is a reference to anything which falls to be treated as such by virtue of subsections (4) to (6).
- (4) An activity shall be treated as ancillary to an aviation function if it is undertaken—

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- (a) by a person who has reported for a period of duty in respect of the function, and
  - (b) as a requirement of, for the purpose of or in connection with the performance of the function during that period of duty.
- (5) A person who in accordance with the terms of an employment or undertaking holds himself ready to perform an aviation function if called upon shall be treated as carrying out an activity ancillary to the function.
- (6) Where a person sets out to perform an aviation function, anything which he does by way of preparing to perform the function shall be treated as an activity ancillary to it.
- (7) For the purposes of this Part it is immaterial whether a person performs a function or carries out an activity in the course of an employment or trade or otherwise.
- (8) The Secretary of State may by regulations—
- (a) amend this section;
  - (b) make an amendment of this Part which is consequential on an amendment under paragraph (a).

**Commencement Information**

**I3** S. 94 in force at 30.3.2004 by S.I. 2004/827, art. 3(q)

*Enforcement*

**95 Penalty**

A person guilty of an offence under this Part shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

**Commencement Information**

**I4** S. 95 in force at 30.3.2004 by S.I. 2004/827, art. 3(r)

**96 Specimens, &c.**

- (1) The provisions specified in the first column of the table below, with the modifications specified in the third column and any other necessary modifications, shall have effect in relation to an offence under this Part.

[<sup>F1</sup>(1A) The references in the table to provisions of the Road Traffic Act 1988 or the Road Traffic Offenders Act 1988 are, subject to any contrary intention expressed in this Part or in any other enactment, references to those provisions as amended from time to time.]

| <i>Provision</i>                     | <i>Description</i> | <i>Modification</i> |
|--------------------------------------|--------------------|---------------------|
| <i>Road Traffic Act 1988 (c. 52)</i> |                    |                     |

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| Section 6         | Power to administer preliminary tests                   | <p>In place of subsections (2) to (5) the power to require a person to co-operate with a preliminary test shall apply where—</p> <ul style="list-style-type: none"> <li>(a) a constable in uniform reasonably suspects that the person is committing an offence under section 92 or 93,</li> <li>(b) a constable in uniform reasonably suspects that the person has committed an offence under section 92 or 93 and still has alcohol or a drug in his body or is still under the influence of a drug,</li> <li>(c) an aircraft is involved in an accident and a constable reasonably suspects that the person was undertaking an aviation function, or an activity ancillary to an aviation function, in relation to the aircraft at the time of the accident, or</li> <li>(d) an aircraft is involved in an accident and a constable reasonably suspects that the person has undertaken an aviation function, or an activity ancillary to an aviation function, in relation to the aircraft.</li> </ul> |
| Sections 6A to 6E | Preliminary breath test, impairment test, and drug test | <p>In place of sections 6A(2) and (3), 6B(4) and 6C(2), a preliminary breath test, preliminary impairment test or preliminary drug test</p>   |

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may be administered by a constable—

- (a) at or near the place where the requirement to co-operate with the test is imposed, or
- (b) at a police station specified by the constable.

In section 6B(3) a reference to unfitness to drive shall be treated as a reference to having an impaired ability, because of drink or drugs, to perform an aviation function or to carry out an activity which is ancillary to an aviation function.

[<sup>F2</sup>In section 6C, the following shall be disregarded—

- (a) in subsection (1)(b), the words following “in his body”;
- (b) subsection (3).

In section 6D, subsection (1)(b) shall be disregarded.]

Section 7

Provision of specimen

In subsection (1) the reference to an offence under section 3A, 4 or 5 of the 1988 Act shall be treated as a reference to an offence under section 92 or 93 of this Act.

[<sup>F3</sup>Subsection (1A) shall be disregarded.

In subsection (2)(b), the reference to the circumstances in which section 6(5) of the 1988 Act applies shall be treated as a reference to the circumstances in which the following provisions of this table apply: paragraphs (c) and (d) of the modifications specified for section 6 of the 1988 Act.]

In subsection (3)(c) the reference to an offence

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|            |   | under section 3A <sup>F4</sup> , 4 or 5A] of the 1988 Act shall be treated as a reference to an offence under section 92 of this Act.   |
| Section 7A | Specimen of blood taken from person incapable of consenting                     |   |
| Section 8  | [ <sup>F5</sup> Breath specimen showing higher alcohol level to be disregarded] | <sup>F6</sup><br>...  |
| Section 9  | Protection for hospital patient   |   |
| Section 10 | Detention of person affected by alcohol or drug                                 | In subsection (1)—<br>(a) the reference to driving or attempting to drive a mechanically propelled vehicle on a road shall be treated as a reference to performing an aviation function of the kind in respect of which the requirement to provide a specimen was imposed, and<br>(b) the reference to an offence under section 4 <sup>F7</sup> , 5 or 5A] of the 1988 Act shall be treated as a reference to an offence under section 92 or 93 of this Act.<br><br>In subsection (2) the reference to driving a mechanically propelled vehicle shall be treated as a reference to performing an aviation function.<br>[ <sup>F8</sup> In subsection (2), paragraph (c) shall be disregarded.]<br>In subsection (3) the reference to driving properly shall be treated as a reference to performing an aviation function. |

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| Section 11                                     | Interpretation       | For the definition of “the prescribed limit” there shall be substituted the definition given in this Part.   |
| <b>Road Traffic Offenders Act 1988 (c. 53)</b> |                      |  |
| Section 15                                     | Use of specimens     | <p>In subsection (1), the reference to an offence under [<sup>F9</sup>any of sections 3A to 5A] of the Road Traffic Act 1988 shall be treated as a reference to an offence under section 92 or 93 of this Act.</p> <p>[<sup>F10</sup>Subsection (2)(b) shall be disregarded.]</p> <p>The relevant time for the consumption of alcohol for the purpose of subsection (3)(a) shall be before providing the specimen and after the time of the alleged offence.</p> <p>In subsection (3)(b) the reference to driving shall be treated as a reference to undertaking an aviation function or an activity ancillary to an aviation function.</p> <p>[<sup>F11</sup>Subsection (3A) shall be disregarded.]</p> |
| Section 16                                     | Documentary evidence |  |

(2) The Secretary of State may by regulations amend the table in subsection (1) so as—

- to add a provision relating to an offence which concerns alcohol or drugs in relation to road traffic;
- to add, remove or amend a modification (whether or not in connection with an amendment of a provision specified in the table).

(3) For the purpose of the application by subsection (1) of a provision listed in the table in that subsection—

- the provision shall extend to the whole of the United Kingdom, and
- a reference to the provision shall be treated, unless the context otherwise requires, as including a reference to the provision as applied.

#### Textual Amendments

**F1** S. 96(1A) inserted (10.4.2015) by [Deregulation Act 2015 \(c. 20\)](#), s. 115(7), [Sch. 11 para. 16\(2\)](#); [S.I. 2015/994](#), art. 4

*Changes to legislation: There are currently no known outstanding effects for the Railways and Transport Safety Act 2003, Part 5. (See end of Document for details)*

- F2** Words in s. 96 inserted (10.4.2015) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 11 para. 16(4)**; S.I. 2015/994, art. 4
- F3** Words in s. 96 inserted (10.4.2015) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 11 para. 16(5)(a)**; S.I. 2015/994, art. 4
- F4** Words in s. 96 substituted (10.4.2015) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 11 para. 16(5)(b)**; S.I. 2015/994, art. 4
- F5** Words in s. 96 substituted (10.4.2015) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 11 para. 16(6)(a)**; S.I. 2015/994, art. 4
- F6** Words in s. 96 omitted (10.4.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 11 para. 16(6)(b)**; S.I. 2015/994, art. 4
- F7** Words in s. 96 substituted (10.4.2015) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 11 para. 16(7)(a)**; S.I. 2015/994, art. 4
- F8** Words in s. 96 inserted (10.4.2015) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 11 para. 16(7)(b)**; S.I. 2015/994, art. 4
- F9** Words in s. 96 substituted (10.4.2015) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 11 para. 16(8)(a)**; S.I. 2015/994, art. 4
- F10** Words in s. 96 inserted (10.4.2015) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 11 para. 16(8)(b)**; S.I. 2015/994, art. 4
- F11** Words in s. 96 inserted (10.4.2015) by Deregulation Act 2015 (c. 20), s. 115(7), **Sch. 11 para. 16(8)(c)**; S.I. 2015/994, art. 4

#### Commencement Information

- I5** S. 96 in force at 29.3.2004 for specified purposes by S.I. 2004/827, **art. 2(a)**
- I6** S. 96 in force at 30.3.2004 in so far as not already in force by S.I. 2004/827, **art. 3(s)**

## 97 Arrest without warrant

- (1) A constable may arrest a person without a warrant if the constable reasonably suspects that the person—
- (a) is committing an offence under section 92, or
  - (b) has committed an offence under that section and is still under the influence of drink or drugs.
- (2) But a person may not be arrested under this section while he is at a hospital as a patient.
- (3) In subsection (2) “hospital” means an institution which provides medical or surgical treatment for in-patients or out-patients.
- (4) Arrest under this section shall be treated as arrest for an offence for the purposes of—
- (a) Part IV of the Police and Criminal Evidence Act 1984 (c. 60) (detention), and
  - (b) Part V of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (detention).

#### Commencement Information

- I7** S. 97 in force at 30.3.2004 by S.I. 2004/827, **art. 3(f)**



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## 98 Right of entry

- (1) A constable in uniform may board an aircraft if he reasonably suspects that he may wish to exercise a power by virtue of section 96 or under section 97 in respect of a person who is or may be on the aircraft.
- (2) A constable in uniform may enter any place if he reasonably suspects that he may wish to exercise a power by virtue of section 96 or under section 97 in respect of a person who is or may be in that place.
- (3) For the purposes of boarding an aircraft or entering a place under this section a constable—
  - (a) may use reasonable force;
  - (b) may be accompanied by one or more persons.

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### Commencement Information

**18** S. 98 in force at 30.3.2004 by S.I. 2004/827, art. 3(u)

### General

## 99 Regulations

- (1) Regulations under this Part may—
  - (a) make transitional, supplemental and incidental provision;
  - (b) make provision generally or for a specified purpose only;
  - (c) make different provision for different purposes.
- (2) Regulations under this Part—
  - (a) shall be made by statutory instrument, and
  - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (3) Before making regulations under section 93 or 94 the Secretary of State shall consult such organisations as he thinks appropriate.

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### Commencement Information

**19** S. 99 in force at 30.3.2004 by S.I. 2004/827, art. 3(v)

## 100 Crown application

- (1) This Part shall apply to a function or activity performed or carried out in relation to an aircraft which belongs to or is employed in the service of the Crown.
- (2) This section is subject to section 101.

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### Commencement Information

**110** S. 100 in force at 30.3.2004 by S.I. 2004/827, art. 3(w)

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## 101 Military application

- (1) This Part shall not apply to a function or activity which is performed or carried out by a member of [<sup>F12</sup>any of Her Majesty's forces (within the meaning of the Armed Forces Act 2006) ], acting in the course of his duties.
- (2) This Part shall not apply to a function or activity which is performed or carried out by—
  - (a) a member of a visiting force, within the meaning which that expression has in section 3 of the Visiting Forces Act 1952 (c. 67) by virtue of section 12(1) of that Act, acting in the course of his duties, or
  - (b) a member of a civilian component of a visiting force, within that meaning, acting in the course of his duties.
- (3) This Part shall not apply to a function or activity which is performed or carried out by a military or civilian member of a headquarters, within the meaning given by paragraphs 1 and 2 of the Schedule to the International Headquarters and Defence Organisations Act 1964 (c. 5), acting in the course of his duties.

### Textual Amendments

**F12** Words in s. 101(1) substituted (28.3.2009 for specified purposes, 31.10.2009 in so far as not already in force) by [Armed Forces Act 2006 \(c. 52\)](#), s. 383(2), [Sch. 16 para. 199](#); [S.I. 2009/812](#), art. 3(a)(b) (with transitional provisions in [S.I. 2009/1059](#)); [S.I. 2009/1167](#), art. 4

### Commencement Information

**I11** S. 101 in force at 30.3.2004 by [S.I. 2004/827](#), [art. 3\(x\)](#)

## 102 Territorial application

- (1) This Part applies in relation to—
  - (a) a function or activity performed or carried out in the United Kingdom, and
  - (b) a flight function performed or flight activity carried out on a United Kingdom aircraft.
- (2) In subsection (1)—
 

“flight function” means a function falling within section 94(1)(a) to (f),

“flight activity” means an activity which for the purposes of this Part is ancillary to a flight function, and

“United Kingdom aircraft” means an aircraft which is registered, in accordance with an enactment about aircraft, in the United Kingdom.
- (3) Her Majesty may by Order in Council direct that a provision of this Part shall apply (with or without modification)—
  - (a) to a function or activity performed or carried out in any of the Channel Islands or a British overseas territory;
  - (b) to a function performed or activity carried out on an aircraft which is registered, in accordance with an enactment about aircraft, in any of the Channel Islands or a British overseas territory.
- (4) Section 98 shall not extend to Scotland.

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(5) Subsection (4) does not affect any rule of law or enactment concerning the right of a constable in Scotland to board an aircraft or enter any place for any purpose.

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**Commencement Information**

**I12** S. 102 in force at 30.3.2004 by S.I. 2004/827, art. 3(y)

**Changes to legislation:**

There are currently no known outstanding effects for the Railways and Transport Safety Act 2003, Part 5.