

DEREGULATION ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 11: Enforcement of transport legislation

Part 1: Drink and drug driving offences

Removal of “statutory option” to have breath specimen replaced: road and rail transport

714. Section 8(1) of the Road Traffic Act 1988 (the “RTA”) provides that out of the two specimens of breath provided, it is the one with the lower proportion of alcohol in the breath that is used (the other being disregarded). Section 8(2) of the RTA provides that if the lower specimen of breath has a reading of no more than 50mcg/100 ml of breath, then that person has the right to elect to have that specimen replaced with a blood or urine specimen. If that person then provides such a specimen, neither specimen of breath is used. It is this right to have the breath reading replaced with either a blood or urine test that is commonly known as “the statutory option”.
715. *Paragraph 1* omits subsections (2), (2A), (3) and (4) of the RTA and makes consequential amendments. This removes the option for individuals to opt for a replacement blood or urine specimen and means that the evidential breath test is now the primary means of testing unless there are particular reasons (e.g. medical) why breath specimens cannot be obtained.
716. The statutory option is also provided for in the corresponding regime for railways in the Transport and Works Act 1992 (the “TWA”). *Paragraph 2* removes the statutory option by omitting section 32(2) to (4) of the TWA.

No need for preliminary breath test before evidential breath test: road transport

717. The current legal provisions for breath testing drivers involves a preliminary test, usually at the roadside (carried out under section 6A of the RTA), and two evidential breath tests at a police station or elsewhere (for example in a hospital under section 7(2) of the RTA). The type approved equipment used to conduct preliminary tests includes an indication and or display of the result of the test, which can then be judged against the prescribed limit for breath by a police officer deciding whether to arrest a drink-driver.
718. At the police station the suspect is required to provide two evidential breath specimens. There is minimal time delay between the two evidential tests, with the tests being conducted in quick succession. The two specimens of breath are tested separately and a decision on whether or not to charge the driver with an offence under section 5 of the RTA is taken on the basis of the lower result from the two tests at the police station.
719. *Paragraph 3* would allow a police officer to proceed directly to evidential breath testing at the roadside in those instances where a portable evidential breath test device is available. This does not remove the ability to require a preliminary breath test.

Removing restriction that evidential breath test must be taken at police station: rail transport

720. Under the current regime for railways evidential tests can only be taken at a police station. *Paragraph 4* amends section 31(2) of the TWA so that a constable may require an evidential breath test at a police station or hospital or, if the constable is in uniform, anywhere else.

Healthcare professionals advising whether condition is due to drugs: road and rail transport

721. Section 6 of the RTA provides the police with a power to administer one or more of three types of preliminary test, one of which is a preliminary impairment test intended to assist an officer to ascertain whether a suspected drug driver is impaired. In circumstances where the officer considers that they have sufficient evidence (with or without a preliminary impairment test) the constable may arrest the suspect under section 24 of the Police and Criminal Evidence Act 1984 in order to continue with the investigation by obtaining a specimen of blood or urine for analysis.
722. Section 7(3)(c) of the RTA provides that a specimen may be taken if the suspected offence is one under section 3A or section 4 of the RTA and the constable requiring the specimen has been advised by a medical practitioner that the condition of the person required to provide the specimen might be due to a drug. *Paragraph 5* amends the RTA to provide that in addition to a medical practitioner, a registered healthcare professional may make the assessment of the suspect's condition in these circumstances.
723. Section 31 of the TWA enables a constable to require a person to provide a blood or urine test when investigating a suspected offence relating to drugs under the railways regime. Section 31(4)(c) provides that a specimen may be taken if the suspected offence is one under section 27(1) of the TWA and the constable making the requirement has been advised by a medical practitioner that the condition of the person required to provide the specimen may be due to some drug. *Paragraph 6* amends the TWA to provide that in addition to a medical practitioner, a registered healthcare professional may make the assessment of the suspect's condition in these circumstances.

Further extension of role of healthcare professionals: road and rail transport

724. *Paragraph 8* amends section 7A of the RTA to provide that, in addition to medical practitioners, a registered healthcare professional may, in the course of an investigation, take a blood specimen from a person who may be incapable of consenting to that specimen being taken. *Paragraph 12* makes a corresponding change to the TWA for the railways regime.
725. *Paragraph 9* amends section 11 of the RTA to remove a restriction on a registered healthcare professional from taking a specimen of blood only in a police station. *Paragraph 13* makes a corresponding change to the TWA for the railways regime.

Extent and commencement: road and rail transport

726. The amendments to the road and railways regimes by Part 1 of the Schedule form part of the law of England and Wales and Scotland and will come into force on a day to be appointed by the Secretary of State in a commencement order.

Application of Road Traffic Act provisions in shipping regime

727. *Paragraphs 14 and 15* provide for the changes made by the Schedule to the enforcement provisions in the RTA to flow through to the shipping regime.
728. *Sections 78 to 80* in Part 4 of the Railways and Transport Safety Act 2003 (the "RTSA") create a number of drink driving offences applicable to professional staff on and off duty and to non-professionals. The RTSA applies the enforcement provisions

*These notes refer to the Deregulation Act 2015 (c.20)
which received Royal Assent on 26 March 2015*

of the RTA and the Road Traffic Offenders Act 1988 (the “RTOA”) to the maritime regime by reference. The RTSA also modifies these provisions where appropriate. The amendment in paragraph 14(2) makes it clear that the references in the RTSA to provisions of the RTA and RTOA are ambulatory and so changes to the RTA and RTOA enforcement provisions (for example through the Deregulation Act) also apply to those provisions as applied by the RTSA, unless the contrary intention appears. Paragraph 14 also adds some modifications to the way that the RTA provisions apply in the shipping regime in order to deal with the amendments to the RTA made by the Crime and Courts Act 2013 which are not to flow through to the shipping regime.

729. Paragraphs 14 and 15 form part of the law of England and Wales, Scotland and Northern Ireland. They will apply, as part of the shipping regime, to United Kingdom ships everywhere, foreign ships in United Kingdom waters and unregistered ships in United Kingdom waters. They will come into force on a day to be appointed by the Secretary of State in a commencement order.

Application of Road Traffic Act provisions in aviation regime

730. Part 5 of the RTSA deals with drink and drug driving offences in the aviation regime. The Part applies the enforcement provisions of the RTA and RTOA to the aviation regime by reference. Paragraph 16 of the Schedule makes changes to Part 5 of the RTSA corresponding to those made by paragraph 14 of the Schedule for the maritime regime. This will enable the changes made by Schedule 11 to the enforcement provisions in the RTA to flow through to the aviation regime.
731. Paragraph 16 forms part of the law of England and Wales, Scotland and Northern Ireland. It will apply, as part of the aviation regime, in relation to aviation functions and activity performed or carried out in the United Kingdom (with some limitations in relation to Scotland), and in relation to certain functions carried out on a United Kingdom aircraft. Paragraph 16 will come into force on a day to be appointed by the Secretary of State in a commencement order.