



Transport and Works Act 1992

1992 CHAPTER 42

PART II

SAFETY OF RAILWAYS ETC

CHAPTER I

OFFENCES INVOLVING DRINK OR DRUGS

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.

Status: Point in time view as at 25/06/2013.

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- (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.

Commencement Information
II Pt. II Ch. 1 (ss. 26-40) wholly in force at 7. 12. 1992 see s. 70 and S.I. 1992/2043, art. 2(a).

30 Powers of arrest and entry.

^{F1}(1)

- (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.

^{F2}(3)

- (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
 - (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.

Textual Amendments
F1 S. 30(1) repealed (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), Sch. 7 para. 29, Sch. 17 Pt. 2; S.I. 2005/3495, art. 2(1)(m)(u)
F2 S. 30(3) repealed (1.1.2006) by Serious Organised Crime and Police Act 2005 (c. 15), s. 178(8), Sch. 7 para. 29, Sch. 17 Pt. 2; S.I. 2005/3495, art. 2(1)(m)(u)

Commencement Information
I2 Pt. II Ch. 1 (ss. 26-40) wholly in force at 7. 12. 1992 see s. 70 and S.I. 1992/2043, art. 2(a).

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

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- (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,^{F3} . . .
- [^{F4}(bb) a device of the type mentioned in subsection (1)(a) above has been used at the police station but the constable who required the specimens of breath has reasonable cause to believe that the device has not produced a reliable indication of the proportion of alcohol in the breath of the person concerned, 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 [^{F5}and, in the case of a specimen of blood, the question who is to be asked to take it shall be decided (subject to subsection (6A)) by the constable making the requirement] .
- [^{F6}(6A) Where a constable decides for the purposes of subsection (6) to require the provision of a specimen of blood, there shall be no requirement to provide such a specimen if—
- (a) the medical practitioner who is asked to take the specimen is of the opinion that, for medical reasons, it cannot or should not be taken; or
 - (b) the registered health care professional who is asked to take it is of that opinion and there is no contrary opinion from a medical practitioner,
- and, where by virtue of this subsection there can be no requirement to provide a specimen of blood, the constable may require a specimen of urine instead.]
- (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.

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- [^{F7}(9A) In this section “health care professional” means a person (other than a medical practitioner) who is—
- (a) a registered nurse; or
 - (b) a registered member of a health care profession which is designated for the purposes of this paragraph by an order made by the Secretary of State.
- (9B) A health care profession is any profession mentioned in section 60(2) of the Health Act 1999 (c. 8) other than the profession of practising medicine and the profession of nursing.
- (9C) An order under subsection (9A)(b) shall be made by statutory instrument; and any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

- F3** Word in s. 31(4)(b) repealed (4.7.1996) (but with effect (1.4.1997) as mentioned in s. 63(3)) by 1996 c. 25, ss. 63(2)(3), 80, **Sch. 5 para. 2** Table 5 (with s. 78(1)); S.I. 1997/682, **art. 2**
- F4** S. 31(4)(bb) inserted (4.7.1996) (but with effect (1.4.1997) as mentioned in s. 63(3)) by 1996 c. 25, ss. **63(2)(3)** (with s. 78(1)); S.I. 1997/682, **art. 2**
- F5** Words in s. 31(6) substituted (1.4.2003) by Police Reform Act 2002 (c. 30), ss. **58(1)**, 108(2); S.I. 2003/808, **art. 2(e)**
- F6** S. 31(6A) inserted (1.4.2003) by Police Reform Act 2002 (c. 30), ss. **58(2)**, 108(2); S.I. 2003/808, **art. 2(e)**
- F7** S. 31(9A)-(9C) inserted (1.10.2002 for specified purposes, 1.4.2003 in so far as not already in force) by Police Reform Act 2002 (c. 30), ss. **58(3)**, 108(2); S.I. 2002/2306, **art. 4(d)**; S.I. 2003/808, **art. 2(e)**

Commencement Information

- I3** Pt. II Ch. 1 (ss. 26-40) wholly in force at 7. 12. 1992 see s. 70 and S.I. 1992/2043, **art. 2(a)**.

[^{F8}31A Specimens of blood taken from persons incapable of consenting

- (1) A constable may make a request to a medical practitioner for him to take a specimen of blood from a person (“the person concerned”) irrespective of whether that person consents if—
- (a) that person is a person from whom the constable would (in the absence of any incapacity of that person and of any objection under section 33) be entitled under section 31 to require the provision of a specimen of blood for a laboratory test;
 - (b) it appears to that constable that that person has been involved in—
 - (i) an accident that constitutes or is comprised in the matter that is under investigation or the circumstances of that matter; or
 - (ii) a dangerous incident (within the meaning given by section 29(3)) that constitutes or is comprised in that matter or those circumstances;
 - (c) it appears to that constable that that person is or may be incapable (whether or not he has purported to do so) of giving a valid consent to the taking of a specimen of blood; and
 - (d) it appears to that constable that that person’s incapacity is attributable to medical reasons.
- (2) A request under this section—

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- (a) shall not be made to a medical practitioner who for the time being has any responsibility (apart from the request) for the clinical care of the person concerned; and
 - (b) shall not be made to a medical practitioner other than a police medical practitioner unless—
 - (i) it is not reasonably practicable for the request to be made to a police medical practitioner; or
 - (ii) it is not reasonably practicable for such a medical practitioner (assuming him to be willing to do so) to take the specimen.
- (3) It shall be lawful for a medical practitioner to whom a request is made under this section, if he thinks fit—
- (a) to take a specimen of blood from the person concerned irrespective of whether that person consents; and
 - (b) to provide the sample to a constable.
- (4) If a specimen is taken in pursuance of a request under this section, the specimen shall not be subjected to a laboratory test unless the person from whom it was taken—
- (a) has been informed that it was taken; and
 - (b) has been required by a constable to give his permission for a laboratory test of the specimen; and
 - (c) has given his permission.
- (5) A constable must, on requiring a person to give his permission for the purposes of this section for a laboratory test of a specimen, warn that person that a failure to give the permission, may render him liable to prosecution.
- (6) A person who, without reasonable excuse, fails to give his permission for a laboratory test of a specimen of blood taken from him under this section is guilty of an offence.
- (7) In this section “police medical practitioner” means a medical practitioner who is engaged under any agreement to provide medical services for purposes connected with the activities of a police force.]

Textual Amendments

F8 S. 31A inserted (1.10.2002) by [Police Reform Act 2002 \(c. 30\)](#), s. 58(4); S.I. 2002/2306, art. 2(d)(v)

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.

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- (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.

Commencement Information

I4 Pt. II Ch. 1 (ss. 26-40) wholly in force at 7. 12. 1992 see s. 70 and S.I. 1992/2043, art. 2(a).

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.

[^{F9}(1A) While a person is at a hospital as a patient, no specimen of blood shall be taken from him under section 31A of this Act and he shall not be required to give his permission for a laboratory test of a specimen taken under that section unless the medical practitioner in immediate charge of his case—

- (a) has been notified of the proposal to take the specimen or to make the requirement; and
- (b) has not objected on the ground specified in subsection (2).

(2) The ground on which the medical practitioner may object is—

- (a) in a case falling within subsection (1), that the requirement or the provision of the specimen or (if one is required) the warning required by section 31(9) of this Act would be prejudicial to the proper care and treatment of the patient; and
- (b) in a case falling within subsection (1A), that the taking of the specimen, the requirement or the warning required by section 31A(5) of this Act would be so prejudicial.]

(3) A person shall not be arrested under section 30(2) above while he is at a hospital as a patient.

Textual Amendments

F9 S. 33(1A)(2) substituted (1.10.2002) for s. 33(2) by [Police Reform Act 2002 \(c. 30\)](#), s. 58(5); S.I. 2002/2360, art. 2(d)(v)

Commencement Information

I5 Pt. II Ch. 1 (ss. 26-40) wholly in force at 7. 12. 1992 see s. 70 and S.I. 1992/2043, art. 2(a).

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