

SCHEDULES

SCHEDULE 8

Section 25.

PROVISIONS SUBSTITUTED FOR SECTIONS 6 TO 12 OF THE ROAD TRAFFIC ACT 1972

“6 Driving or being in charge of a motor vehicle with alcohol concentration above prescribed limit.

- (1) If a person—
 - (a) drives or attempts to drive a motor vehicle on a road or other public place ; or
 - (b) is in charge of a motor vehicle on a road or other public place ;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.
- (2) It is a defence for a person charged with an offence under subsection (1)(b) above to prove that at the time he is alleged to have committed the offence the circumstances were such that there was no likelihood of his driving the vehicle whilst the proportion of alcohol in his breath, blood or urine remained likely to exceed the prescribed limit; but in determining whether there was such a likelihood the court may disregard any injury to him and any damage to the vehicle.

7 Breath tests.

- (1) Where a constable in uniform has reasonable cause to suspect—
 - (a) that a person driving or attempting to drive or in charge of a motor vehicle on a road or other public place has alcohol in his body or has committed a traffic offence whilst the vehicle was in motion ; or
 - (b) that a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place with alcohol in his body and that that person still has alcohol in his body; or
 - (c) that a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place and has committed a traffic offence whilst the vehicle was in motion;he may, subject to section 9 below, require him to provide a specimen of breath for a breath test.
- (2) If an accident occurs owing to the presence of a motor vehicle on a road or other public place a constable may require any person who he has reasonable cause to believe was driving or attempting to drive or in charge of the vehicle at the time of the accident to provide a specimen of breath for a breath test, but subject to section 9 below.
- (3) A person may be required under subsection (1) or subsection (2) of this section to provide a specimen either at or near the place where the requirement is made or, if the requirement is made under subsection (2) and the constable making the requirement thinks fit, at a police station specified by the constable.

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- (4) 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.
- (5) A constable may arrest a person without warrant if—
- (a) as a result of a breath test he has reasonable cause to suspect that the proportion of alcohol in that person's breath or blood exceeds the pre-scribed 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 this section and the constable has reasonable cause to suspect that he has alcohol in his body ;
- but a person shall not be arrested by virtue of this subsection when he is at a hospital as a patient.
- (6) For the purpose of requiring a person to provide a specimen of breath under subsection (2) above in a case where he has reasonable cause to suspect that the accident involved injury to another person or of arresting him in such a case under subsection (5) 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.
- (7) Subsection (6) above does not extend to Scotland and nothing in that subsection shall affect any rule of law in Scotland concerning the right of a constable to enter any premises for any purpose.
- (8) In this section " traffic offence " means an offence under any provision of this Act except Part V, or under any provision of Part III of the Road Traffic Act 1960, the Road Traffic Regulation Act 1967 or Part I of the Transport Act 1980.

8 Provision of specimens for analysis.

- (1) In the course of an investigation whether a person has committed an offence under section 5 or section 6 of this Act a constable may, subject to the following provisions of this section and section 9 below, 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 can only be made at a police station.
- (3) A requirement under this section to provide a specimen of blood or urine can only be made at a police station or at a hospital; and it cannot be made at a police station unless!
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- (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 ; or
 - (b) at the time the requirement is made a device or a reliable device of the type mentioned in subsection (1)(a) is not available at the police station or it is then for any other reason not practicable to use such a device there ; or
 - (c) the suspected offence is one under section 5 of this Act 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 some drug; but may then be made notwithstanding that the person required to provide the specimen has already provided or been required to provide two specimens of breath.

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- (4) 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, except that 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.
- (5) 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.
- (6) Of any two specimens of breath provided by any person in pursuance of this section that with the lower proportion of alcohol in the breath shall be used and the other shall be disregarded; 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 a specimen as may be required under subsection (4), and if he then provides such a specimen neither specimen of breath shall be used.
- (7) 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.
- (8) On requiring any person to provide a specimen in pursuance of this section a constable shall warn him that a failure to provide it may render him liable to prosecution.
- (9) The Secretary of State may by regulations substitute another proportion of alcohol in the breath for that specified in subsection (6).

9 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 8(8) above, would be prejudicial to the proper care and treatment of the patient.

10 Evidence in proceedings for an offence under s. 5 or s. 6.

- (1) The following provisions apply with respect to proceedings for an offence under section 5 or section 6 of this Act.
- (2) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by the accused shall, in all cases, be taken into account, and 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; but if the proceedings are for an offence under section 6 of this Act, or for an offence under section 5 of this Act in a case where the accused is alleged to have been unfit through drink, the assumption shall not be made if the accused proves—

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- (a) that he consumed alcohol after he had ceased to drive, attempt to drive or be in charge of a motor vehicle on a road or other public place and before he provided the specimen ; and
 - (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, if the proceedings are for an offence under section 5 of this Act, would not have been such as to impair his ability to drive properly.
- (3) Evidence of the proportion of alcohol or a drug in a specimen of breath, blood or urine may, subject to subsections (5) and (6) below, be given by the production of a document or documents purporting to be whichever of the following is appropriate, that is to say—
 - (a) a statement automatically produced by the device by which the proportion of alcohol in a specimen of breath was measured and a certificate signed by a constable (which may but need not be contained in the same document as the statement) that the statement relates to a specimen provided by the accused at the date and time shown in the statement; and
 - (b) a certificate signed by an authorised analyst as to the proportion of alcohol or any drug found in a specimen of blood or urine identified in the certificate.
- (4) A specimen of blood shall be disregarded unless it was taken from the accused with his consent by a medical practitioner ; but evidence that a specimen of blood was so taken may be given by the production of a document purporting to certify that fact and to be signed by a medical practitioner.
- (5) A document purporting to be such a statement or such a certificate, or both such a statement and such a certificate, as is mentioned in subsection (3)(a) above is admissible in evidence on behalf of the prosecution in pursuance of this section only if a copy of it either has been handed to the accused when the document was produced or has been served on him not later than seven days before the hearing, and any other document is so admissible only if a copy of it has been served on the accused not later than seven days before the hearing; but a document purporting to be a certificate (or so much of a document as purports to be a certificate) is not so admissible 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.
- (6) Where, at the time a specimen of blood or urine was provided by the accused, he asked to be supplied with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen is not admissible 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.
- (7) In Scotland—
 - (a) a document produced in evidence on behalf of the prosecution in pursuance of subsection (3) or (4) 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 of the document or of the notice in terms of subsection (5) above, together with, where appropriate, a post office

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receipt for the relative registered or recorded delivery letter shall be sufficient evidence of the handing or service of such a copy or notice.

- (8) A copy of a certificate required by this section to be served on the accused or a notice required by this section to be served on the prosecutor may be served personally or sent by registered post or recorded delivery service.
- (9) In this section "authorised analyst" means any person possessing the qualifications prescribed by regulations made under section 89 of the Food and Drugs Act 1955 or section 27 of the Food and Drugs (Scotland) Act 1956 as qualifying persons for appointment as public analysts under those Acts, and any other person authorised by the Secretary of State to make analyses for the purposes of this section.

11 Detention of persons affected by alcohol or a drug.

A person required to provide a specimen of breath, blood or urine may thereafter be detained at a police station until it appears to a constable that, were that person then driving or attempting to drive a motor vehicle on a road, he would not be committing an offence under section 5 or section 6 of this Act; but—

- (a) a person shall not be detained in pursuance of this section if it appears to a constable that there is no likelihood of his driving or attempting to drive a motor vehicle whilst his ability to drive properly is impaired or whilst the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit; and
- (b) a constable shall consult a medical practitioner on any question arising under this section whether a person's ability to drive properly is or might be impaired through drugs and shall act on the medical practitioner's advice.

12 Interpretation of sections 5 to 11.

- (1) The following provisions apply for the interpretation of sections 5 to 11 of this Act.
- (2) In those sections—
- "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 ;
 - "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) A person does not provide a specimen of breath for a breath test or for analysis unless the specimen is sufficient to enable the test or the analysis to be carried out.
- (4) 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."