



Transport and Works Act 1992

1992 CHAPTER 42

PART II **E+W+S**

SAFETY OF RAILWAYS ETC

CHAPTER I **E+W+S**

OFFENCES INVOLVING DRINK OR DRUGS

Miscellaneous and supplementary

38 Interpretation of Chapter I. **E+W+S**

(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.

(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.

[^{F1}(2A) In this Chapter “registered health care professional” means a person (other than a medical practitioner) who is—

Changes to legislation: There are currently no known outstanding effects for the Transport and Works Act 1992, Section 38. (See end of Document for details)

- (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.
- (2B) 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.
- (2C) An order under subsection (2A)(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.]
- (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.
- [^{F2}(5) For the purposes of this Chapter, a person provides a specimen of blood if and only if—
- (a) he consents to the taking of such a specimen from him; and
 - (b) the specimen is taken from him ^{F3}... either by a medical practitioner or by a registered health care professional.]
- (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.

Textual Amendments

- F1** S. 38(2A)-(2C) 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(10)**, 108(2); [S.I. 2002/2306](#), art. 4(d); [S.I. 2003/808](#), art. 2(e)
- F2** S. 38(5) substituted (1.4.2003) by [Police Reform Act 2002 \(c. 30\)](#), **ss. 58(11)**, 108(2); [S.I. 2003/808](#), art. 2(e)
- F3** Words in s. 38(5)(b) omitted (10.4.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(7), **Sch. 11 para. 13**; [S.I. 2015/994](#), art. 4

Commencement Information

- I1** 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)**.

Changes to legislation:

There are currently no known outstanding effects for the Transport and Works Act 1992, Section 38.