

## **POLICE REFORM ACT 2002**

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### **EXPLANATORY NOTES**

#### **THE ACT**

##### *Commentary on Sections*

##### *Schedule 6: Specific offences which are arrestable offences*

##### *Section 56: Specimens taken from persons incapable of consenting*

312. Under existing legislation (Road Traffic Act 1988, section 11(4)) a person must consent before a blood specimen can be taken. If he does not consent, the person taking the specimen could be committing an offence. To take a sample without consent could constitute an assault. It could also, in affecting the relationship between patient and doctor, amount to a breach of medical ethics. As a result, if a person cannot give consent, typically because he is unconscious following a road traffic accident, there can be no specimen. This can prevent an appropriate drink driving prosecution because evidence as to the amount of alcohol in the person's blood is not available.
313. This section enables a medical practitioner (but not a registered health care professional) to take a specimen without consent when, and only when, a person cannot give consent because of his condition following an accident. However, once the person's condition has improved, he will be asked if he consents to the analysis of the specimen. If he does not consent, he will be committing an offence, but the sample will not be analysed. The person taking the sample will be a police surgeon whenever possible, but never a person with direct medical responsibility for the patient. He will not be obliged to take the specimen if it is against his own ethics or the medical well-being of the patient. Consequently, the changes enable a specimen to be taken from someone incapable of giving their consent, without the person taking it becoming potentially liable for assault and without putting a person unable to give consent at a disadvantage by comparison with one who can.
314. *Subsection (1)* inserts a new section 7A in the RTA 1988.
315. New *section 7A(1)* empowers a constable to request a medical practitioner to take a specimen without consent in appropriate cases. To exercise this power, a constable must, first, otherwise be entitled to require a specimen. It must then appear to him that the person concerned has been involved in an accident and that as a result of a medical condition he is unable to give valid consent. New *section 7A(3)* authorises, but does not require, the medical practitioner to act on this request, if he thinks fit. He can therefore refuse to do so. This recognises that some medical practitioners might have ethical objections to acting on a patient without consent other than where immediately necessary for the patient's medical well-being.
316. New *section 7A(2)* provides that a request under new section 7A(1) should not be made to a medical practitioner who is responsible for the subject's clinical care. This is to avoid undue pressure and a possible conflict of interests. The request should where possible be made to a police medical practitioner (defined in new *section 7A(7)*). This

*These notes refer to the Police Reform Act 2002  
(c.30) which received Royal Assent on 24 July 2002*

relieves pressure on other medical practitioners. The intention is to emphasise that the primary responsibility of the clinician remains the medical well-being of his patients.

317. New *section 7A(4)* provides that although a specimen has been taken it shall not be tested in a laboratory unless the subject, on regaining the ability to consent, has given consent. This is to avoid such a person being placed at a disadvantage by comparison with someone who has refused to provide a specimen. Its effect is that in both cases there will be no laboratory test results. New *sections 7A(5)* and *(6)* parallel the existing provision that refusal to consent is an offence and that the subject must be warned of his consequent liability to prosecution.
318. *Subsection (2)* extends to someone asked to consent to laboratory testing of a specimen the same protection enjoyed by someone required to provide a specimen. This means that a blood specimen cannot be taken, and consent cannot be required, if the medical practitioner objects on medical grounds.
319. *Subsections (3), (4)* and *(5)* make failure to consent to laboratory testing subject to the same penalties as refusal to provide a specimen.
320. Section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 gives courts the power to deprive offenders of property used for the purpose of committing an offence. Section 143(6)(b) of that Act deals with the offence of refusing to supply a specimen in a drink driving case. It provides that the vehicle driven by the person refusing shall be regarded as used for the purpose of the offence. He is therefore liable to be deprived of the vehicle. *Subsection (6)* makes the same provision for cases where a person refuses to consent to analysis of a specimen taken without consent.