

RAILWAYS AND TRANSPORT SAFETY ACT 2003

EXPLANATORY NOTES

THE ACT

Part 5 - Aviation: Alcohol and Drugs

127. This Part extends to the flight and cabin crew of an aircraft, air traffic controllers and licensed aircraft maintenance engineers in the United Kingdom. It also applies to the crew of an aircraft registered in the United Kingdom wherever it may be in the world.

Background

128. At present the only specific legislation to regulate alcohol consumption in the aviation industry is in the Air Navigation Order 2000 (“the ANO”) ¹, made under the Civil Aviation Act 1982.
129. The ANO makes it an offence for a crew member of an aircraft, an air traffic controller or a licensed maintenance engineer to be under the influence of drink or drugs so as to impair his capacity to carry out his aviation related functions. (See articles 13(8), 65(2) and 96.)
130. Previously, there was no set limit as to the amount of alcohol that could be consumed prior to carrying out an aviation function, although it was an offence for a member of the flight deck crew, an air traffic controller or a licensed maintenance engineer to carry out their licence privileges whilst impaired through drink or drugs. Similarly, there was previously no power to test a relevant individual suspected of being under the influence of alcohol or drugs.

Commentary on sections

131. This Act puts in place an alcohol-testing regime in a similar manner to that already existing in other transport modes. The provisions in this Act therefore largely mirror those of the Road Traffic Act 1988, the Road Traffic Offenders Act 1988 and the Transport and Works Act 1992. The following table shows the sections of the current Act which are drawn from provisions in the 1988 Acts and 1992 Act, along with a brief description of their effects.

<i>RTS Section</i>	<i>Road Traffic Act 1988</i>	<i>Road Traffic Offenders Act 1988</i>	<i>Transport & Works Act 1992</i>	<i>Description</i>
92	Sections 4(1) and (5)		Sections 27(1) and (4)	Being impaired through drugs or alcohol

¹ S.I. 2000/1562

<i>RTS Section</i>	<i>Road Traffic Act 1988</i>	<i>Road Traffic Offenders Act 1988</i>	<i>Transport & Works Act 1992</i>	<i>Description</i>
93	Section 5(1) (a)		Section 27(2)	Having alcohol in body above prescribed limit
93(2) & (3)	Section 11(2)		Section 38(2)	Prescribed limit
96	See table on face of Act	See table on face of Act	Sections 29, 31, 32, 33, 34, 35	See table on face of Act
97	Sections 4(6) and 6(5)		Sections 30(1) and (2)	Powers of arrest without a warrant
98	Sections 4(7) and 6(6)		Section 30(3) and 30(4)	Right of entry

Section 92: Being unfit for duty

132. **Section 92** makes it an offence to perform an aviation function or an ancillary activity whilst impaired through alcohol or drugs.

Section 93: Prescribed limit

133. **Section 93(1)** makes it an offence to perform or prepare to perform certain aviation-related functions with more than a prescribed level of alcohol in the body. Subsections (2) and (3) set the prescribed blood/alcohol limits at 20 milligrammes of alcohol per 100 millilitres of blood for those activities carried out by aircrew and air traffic controllers, and 80 milligrams per 100 millilitres for licensed aircraft maintenance engineers. In the former case, this is a quarter of the limit prescribed by the Road Traffic Act 1988 and the Transport and Works Act 1992 for drivers and railway workers respectively. The different limits reflect the fact that although licensed aircraft maintenance engineers perform a safety critical role in aviation, they do not necessarily require the same speed of reaction as aircrew or air traffic controllers may need in an emergency situation. The equivalent limits in respect of breath and of urine are also set out in this section.

Section 94: Aviation functions

134. **Section 94** subsections (3), (4), (5) and (6) apply the offences of being either over the limit or unfit, to people preparing to carry out an aviation function or otherwise holding themselves ready to carry out one of those functions by virtue of being on duty or standby.

Section 95: Penalty

135. The penalties set out in section 95 are set at the same level as those currently applying to aircrew and air traffic controllers under Article 122 of the ANO. This section will bring the penalty for licensed maintenance engineers under the influence of alcohol or drugs into line with them.

Section 96: Specimens, &c.

136. **Section 96** replicates certain provisions of the Road Traffic Act 1988 and the Road Traffic Offenders Act 1988, amended where appropriate to apply to aviation. Section 96 also replicates the new provisions of the Road Traffic Act 1988, set out in Schedule 7 to this Act, amended where appropriate to apply to aviation.

Sections 97 and 98: Arrest without a warrant, Right of entry

137. **Section 97** provides the police with the power to arrest suspected offenders. **Section 98** provides the police with powers to board an aircraft or enter any place in connection with an offence committed under sections 92 and 93. It spells out that the police may use reasonable force in exercising these powers and that they may be accompanied when doing so.

Sections 100 and 101: Crown and military application

138. **Sections 100** and **101** apply the offences created to personnel in organisations such as the police and customs, but not to service personnel operating in the course of their military duties. When acting in the course of their duties, service personnel may be subject to separate disciplinary procedures if found under the influence of alcohol or drugs. However, service men and women carrying out aviation functions during their free time will be subject to this legislation.
139. **Section 101** disapplies the offences for the civil or military components of visiting military forces and for personnel belonging to international headquarters or defence organisations such as NATO, but only whilst carrying out their duties. UK military personnel in analogous circumstances are protected similarly from criminal prosecution when they are based overseas.
140. **Section 101** relies upon certain definitions in the Army Act 1955, the Visiting Forces Act 1952 and the International Headquarters and Defence Organisations Act 1964. These are as follows:
- Section 225(1) of the Army Act 1955 provides that:
“Her Majesty’s air forces, Her Majesty’s military forces or Her Majesty’s naval forces, except where otherwise expressly provided, does not include any Commonwealth force
 - Section 3 of the Visiting Forces Act 1952 protects members of visiting forces and members of the civilian components of such forces from being tried for an offence by a United Kingdom Court in certain circumstances.
 - By virtue of section 12(1) of the Visiting Forces Act 1952, “visiting force” for the purpose of section 3 means:
“any body, contingent or detachment of the forces of a country to which [the] provision applies, being a body, contingent or detachment for the time being present in the United Kingdom on the invitation of Her Majesty’s Government in the United Kingdom
 - The International Headquarters and Defence Organisations Act 1964 defines headquarters as a headquarters or organisation designated by Order in Council under that Act. The International Headquarters and Defence Organisations (Designation and Privileges) Order 1965 lists the organisations to which the Act applies, for example Allied Forces North Western Europe. A military member of a headquarters is defined by the 1964 Act as:
“a member of any country’s forces who is for the time being appointed to serve in the United Kingdom under the orders of a headquarters, except that it does not include a member of the home forces.
 - Section 10 of the Visiting Forces Act 1952 and paragraph 2 of the Schedule to the International Headquarters and Defence Organisations Act 1964 make similar provision to define a member of the civilian component of a visiting force and a civilian member of a headquarters etc. Such a member must satisfy certain conditions relating to his passport which should be issued by a foreign government,

contain an entry confirming his status and a note that the Secretary of State recognises that entry.

Section 102: Territorial application

141. **Part 5** applies to functions or activities in the United Kingdom and to “flight functions” or “flight activities” abroad carried out on UK registered aircraft. There is power by Order in Council to extend the provisions to the Channel Isles or to a British Overseas Territory.
142. **Section 102(4)** and **(5)** ensure that the Scottish common law powers of entry apply to the investigation of offences committed under the aviation part of this Act in the same way that they apply to alcohol and drug offences committed on Scottish roads, railways and, under part 4 of this Act, to shipping. Section 102(4) provides that section 98 does not extend to Scotland. Section 102(5) expressly preserves the rights of entry which police in Scotland already have.

Public sector financial and manpower cost

143. It is difficult to quantify the financial costs to the public purse from the introduction and enforcement of an alcohol limit for aviation. The same issues on police resources apply as for mariners. The lower blood/alcohol limit for aircraft crew and air traffic controllers will mean that existing police roadside screening devices will need to be re-assessed and approved for use at the new aviation limit. It is anticipated that the cost of the necessary work to support the re-certification of the six most commonly used models of screening device currently used by UK police forces will be in the region of £30,000. A limited number of new screening devices would need to be purchased by those police forces exclusively using older screening equipment not suitable for use at the aviation limit. Each new device costs in the region of £450, but the number of new devices required would depend on the extent of aviation activity in the police area, and the cost offset by their potential ability to be used in normal road traffic cases. It is not possible to quantify the number of tests that may be carried out, but it is anticipated that approximately 10 to 15 cases per year may be brought before the courts. The Department for Constitutional Affairs has indicated that the associated policy costs to the courts as a result of these additional prosecutions, could be absorbed within its existing resources.
144. Alcohol and drugs provisions, both in the marine and aviation sectors, will not require recruitment of more public sector workers, though there will be additional responsibilities on existing police, marine and legal officers.

Human Rights assessment

145. This Part potentially engages Article 5 (right to liberty and security), Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life) of the European Convention on Human Rights.
146. **Article 5** is subject to the qualification of lawful arrest on reasonable suspicion that an offence has been committed or for its prevention. The powers of arrest and detention contained in this Part are considered necessary and proportionate and within the qualification mentioned.
147. **Article 6** (which is linked to the privilege against self-incrimination) is engaged principally by the provisions requiring specimens of breath, blood or urine to be provided by a suspect. However, the courts have held that the privilege is not absolute in circumstances where a proportionate response is required to combat a serious social problem. This is considered to be such a case.
148. **Article 8** is subject to the qualification that a public authority may interfere with the right to private and family life provided that it does so in a proportionate manner for the prevention of crime and protection of the public.

*These notes refer to the Railways and Transport Safety Act
2003 (c.20) which received Royal Assent on 10 July 2003*

149. This Part is considered to be compatible with the Convention.