

Status: Point in time view as at 30/03/2004.

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VALID FROM 01/07/2004

SCHEDULE 5

Section 73

BRITISH TRANSPORT POLICE: CONSEQUENTIAL AMENDMENTS>

.....

SCHEDULE 6

Section 103

CONVENTION ON INTERNATIONAL CARRIAGE BY RAIL

***PROVISION WHICH MAY BE INCLUDED IN REGULATIONS
MADE UNDER OR BY VIRTUE OF SECTION 103***

Introduction

- 1 (1) In this Schedule “regulations” means regulations which are made—
- (a) in connection with the Convention specified in section 103(1), and
 - (b) under section 103(1) or section 2 of the European Communities Act 1972 (c. 68) (implementation of Community obligations).
- (2) An expression used in this Schedule and in the Convention has the same meaning in this Schedule as in the Convention.
- (3) In this Schedule—
- “court” includes “tribunal”, and
 - “legal proceedings” includes arbitration.

Commencement Information

- II** Sch. 6 para. 1 in force at 30.3.2004 by S.I. 2004/827, art. 3(hh)

General

- 2 Regulations may—
- (a) make provision enabling a right or duty arising under the Convention to be enforced;
 - (b) deal with any matter arising out of or related to the Convention;
 - (c) supplement or amplify a provision of the Convention;
 - (d) amend an enactment;
 - (e) apply, disapply or modify the effect of an enactment;
 - (f) confer jurisdiction on a court;
 - (g) confer a function (which may include a discretionary function) on the Secretary of State or a person appointed in accordance with the regulations;

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- (h) impose a duty to co-operate with a person exercising a function under the Convention or the regulations;
- (i) enable a fee to be charged in connection with an inspection or the exercise of another function under the Convention or the regulations;
- (j) require a person to provide information to the Secretary of State or another person;
- (k) make provision about the disclosure of information;
- (l) make provision about the admission of railway vehicles or other railway material to international traffic, which may include provision—
 - (i) which concerns the movement or treatment of vehicles or other material following admission;
 - (ii) which concerns the movement or treatment of passengers following admission;
- (m) make provision which applies generally or only in specific circumstances;
- (n) make different provision for different circumstances;
- (o) include consequential provision (which may include provision amending or repealing an enactment);
- (p) include transitional, supplemental or incidental provision.

Commencement Information

I2 Sch. 6 para. 2 in force at 30.3.2004 by S.I. 2004/827, art. 3(hh)

Changes to Convention

- 3 (1) Regulations may make provision about modification of the Convention in accordance with its provisions.
- (2) In particular, the regulations may—
- (a) provide for a reference to the Convention to be treated following modification (whether occurring before or after the reference first takes effect) as a reference to the Convention as modified;
 - (b) make different provision in respect of modification by decision of a committee and modification by decision of the General Assembly;
 - (c) provide for a suspension under Article 35(4) of the Convention to be disregarded except in so far as it relates to the United Kingdom;
 - (d) give effect to a transitional provision made by or under the Convention;
 - (e) make transitional provision in relation to a modification of the Convention.
- (3) In this paragraph a reference to modification of the Convention includes a reference to—
- (a) the validation of a technical standard, and
 - (b) the adoption of a uniform technical prescription.

Commencement Information

I3 Sch. 6 para. 3 in force at 30.3.2004 by S.I. 2004/827, art. 3(hh)

- 4 Regulations may make provision about the publication of—

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- (a) a change to the list of parties to the Convention;
- (b) a declaration, objection or reservation by a party to the Convention;
- (c) the suspension of part of the Convention in relation to a party;
- (d) a modification of the Convention (including the validation of a technical standard or the adoption of a uniform technical prescription).

Commencement Information

I4 Sch. 6 para. 4 in force at 30.3.2004 by S.I. 2004/827, art. 3(hh)

Imposition of conditions

- 5 (1) Regulations may specify conditions which must be satisfied before a person may—
- (a) exercise a right under the Convention, or
 - (b) do something to which the Convention applies.
- (2) The conditions may, in particular, relate to—
- (a) the making of an application;
 - (b) the determination of an application by the Secretary of State or another person;
 - (c) the payment of a fee;
 - (d) the provision of information;
 - (e) the display of a sign on a rail vehicle;
 - (f) the attendance of a constable.

Commencement Information

I5 Sch. 6 para. 5 in force at 30.3.2004 by S.I. 2004/827, art. 3(hh)

Sanctions

- 6 (1) Regulations may provide a criminal or other sanction in connection with a duty arising under the Convention or the regulations.
- (2) But regulations may not create a criminal offence which—
- (a) is punishable with imprisonment, or
 - (b) is punishable on summary conviction with a fine exceeding the statutory maximum or level 5 on the standard scale.
- (3) Sub-paragraph (2) shall not apply to an offence created in reliance on section 2(2) of the European Communities Act 1972 (c. 68).
- (4) Sub-paragraph (2) shall also not apply to an offence created by way of or in connection with a provision which—
- (a) applies (with or without modification) a provision made in reliance on an Act other than this Act,
 - (b) is similar to provision made in reliance on an Act other than this Act, or
 - (c) is made partly in reliance on this Act and partly in reliance on another Act.

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Commencement Information

16 Sch. 6 para. 6 in force at 30.3.2004 by S.I. 2004/827, art. 3(hh)

Related legal proceedings

- 7 (1) Regulations may make provision designed to prevent double recovery.
- (2) In particular, regulations may require or enable a court to—
- (a) have regard to the result or possible result of other proceedings, whether in the United Kingdom or elsewhere and whether actual or potential;
 - (b) make an award wholly or partly conditional on the result of other proceedings.

Commencement Information

17 Sch. 6 para. 7 in force at 30.3.2004 by S.I. 2004/827, art. 3(hh)

Enforcement of judgments

- 8 (1) Regulations may make provision about the enforcement of judgments.
- (2) The regulations may, in particular, make provision about the application of Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 (c. 13).

Commencement Information

18 Sch. 6 para. 8 in force at 30.3.2004 by S.I. 2004/827, art. 3(hh)

Special drawing rights

- 9 (1) Regulations may make provision for the conversion of special drawing rights into sterling in connection with the application of the Convention or the regulations to legal proceedings.
- (2) Regulations may, in particular—
- (a) make provision by reference to determinations of the International Monetary Fund;
 - (b) require or enable a matter to be certified by or on behalf of the Treasury;
 - (c) provide for the proof and treatment of a certificate under paragraph (b);
 - (d) enable a fee to be charged for the issue of a certificate under paragraph (b).

Commencement Information

19 Sch. 6 para. 9 in force at 30.3.2004 by S.I. 2004/827, art. 3(hh)

Saving

- 10 This Schedule is without prejudice to the generality of—

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- (a) section 103(1), or
- (b) section 2 of the European Communities Act 1972 (c. 68).

Commencement Information

I10 Sch. 6 para. 10 in force at 30.3.2004 by S.I. 2004/827, art. 3(hh)

SCHEDULE 7

Section 107

ROAD TRAFFIC: TESTING FOR DRINK AND DRUGS

- 1 For section 6 of the Road Traffic Act 1988 (c. 52) (testing for drink or drugs) substitute—

“6 Power to administer preliminary tests

- (1) If any of subsections (2) to (5) applies a constable may require a person to co-operate with any one or more preliminary tests administered to the person by that constable or another constable.
- (2) This subsection applies if a constable reasonably suspects that the person—
 - (a) is driving, is attempting to drive or is in charge of a motor vehicle on a road or other public place, and
 - (b) has alcohol or a drug in his body or is under the influence of a drug.
- (3) This subsection applies if a constable reasonably suspects that the person—
 - (a) has been driving, attempting to drive or in charge of a motor vehicle on a road or other public place while having alcohol or a drug in his body or while unfit to drive because of a drug, and
 - (b) still has alcohol or a drug in his body or is still under the influence of a drug.
- (4) This subsection applies if a constable reasonably suspects that the person—
 - (a) is or has been driving, attempting to drive or in charge of a motor vehicle on a road or other public place, and
 - (b) has committed a traffic offence while the vehicle was in motion.
- (5) This subsection applies if—
 - (a) an accident occurs owing to the presence of a motor vehicle on a road or other public place, and
 - (b) a constable reasonably believes that the person was driving, attempting to drive or in charge of the vehicle at the time of the accident.
- (6) A person commits an offence if without reasonable excuse he fails to co-operate with a preliminary test in pursuance of a requirement imposed under this section.
- (7) A constable may administer a preliminary test by virtue of any of subsections (2) to (4) only if he is in uniform.

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- (8) In this section—
- (a) a reference to a preliminary test is to any of the tests described in sections 6A to 6C, and
 - (b) “traffic offence” means an offence under—
 - (i) a provision of Part II of the Public Passenger Vehicles Act 1981 (c. 14),
 - (ii) a provision of the Road Traffic Regulation Act 1984 (c. 27),
 - (iii) a provision of the Road Traffic Offenders Act 1988 (c. 53) other than a provision of Part III, or
 - (iv) a provision of this Act other than a provision of Part V.

6A Preliminary breath test

- (1) A preliminary breath test is a procedure whereby the person to whom the test is administered provides a specimen of breath to be used 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 the person’s breath or blood is likely to exceed the prescribed limit.
- (2) A preliminary breath test administered in reliance on section 6(2) to (4) may be administered only at or near the place where the requirement to co-operate with the test is imposed.
- (3) A preliminary breath test administered in reliance on section 6(5) may be administered—
 - (a) at or near the place where the requirement to co-operate with the test is imposed, or
 - (b) if the constable who imposes the requirement thinks it expedient, at a police station specified by him.

6B Preliminary impairment test

- (1) A preliminary impairment test is a procedure whereby the constable administering the test—
 - (a) observes the person to whom the test is administered in his performance of tasks specified by the constable, and
 - (b) makes such other observations of the person’s physical state as the constable thinks expedient.
- (2) The Secretary of State shall issue (and may from time to time revise) a code of practice about—
 - (a) the kind of task that may be specified for the purpose of a preliminary impairment test,
 - (b) the kind of observation of physical state that may be made in the course of a preliminary impairment test,
 - (c) the manner in which a preliminary impairment test should be administered, and
 - (d) the inferences that may be drawn from observations made in the course of a preliminary impairment test.

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- (3) In issuing or revising the code of practice the Secretary of State shall aim to ensure that a preliminary impairment test is designed to indicate—
 - (a) whether a person is unfit to drive, and
 - (b) if he is, whether or not his unfitness is likely to be due to drink or drugs.
- (4) A preliminary impairment test may be administered—
 - (a) at or near the place where the requirement to co-operate with the test is imposed, or
 - (b) if the constable who imposes the requirement thinks it expedient, at a police station specified by him.
- (5) A constable administering a preliminary impairment test shall have regard to the code of practice under this section.
- (6) A constable may administer a preliminary impairment test only if he is approved for that purpose by the chief officer of the police force to which he belongs.
- (7) A code of practice under this section may include provision about—
 - (a) the giving of approval under subsection (6), and
 - (b) in particular, the kind of training that a constable should have undergone, or the kind of qualification that a constable should possess, before being approved under that subsection.

6C Preliminary drug test

- (1) A preliminary drug test is a procedure by which a specimen of sweat or saliva is—
 - (a) obtained, and
 - (b) used for the purpose of obtaining, by means of a device of a type approved by the Secretary of State, an indication whether the person to whom the test is administered has a drug in his body.
- (2) A preliminary drug test may be administered—
 - (a) at or near the place where the requirement to co-operate with the test is imposed, or
 - (b) if the constable who imposes the requirement thinks it expedient, at a police station specified by him.

6D Arrest

- (1) A constable may arrest a person without warrant if as a result of a preliminary breath test the constable reasonably suspects that the proportion of alcohol in the person's breath or blood exceeds the prescribed limit.
- (2) A constable may arrest a person without warrant if—
 - (a) the person fails to co-operate with a preliminary test in pursuance of a requirement imposed under section 6, and
 - (b) the constable reasonably suspects that the person has alcohol or a drug in his body or is under the influence of a drug.

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- (3) A person may not be arrested under this section while at a hospital as a patient.

6E Power of entry

- (1) A constable may enter any place (using reasonable force if necessary) for the purpose of—
- (a) imposing a requirement by virtue of section 6(5) following an accident in a case where the constable reasonably suspects that the accident involved injury of any person, or
 - (b) arresting a person under section 6D following an accident in a case where the constable reasonably suspects that the accident involved injury of any person.
- (2) This section—
- (a) does not extend to Scotland, and
 - (b) is without prejudice to any rule of law or enactment about the right of a constable in Scotland to enter any place.”

Commencement Information

I11 Sch. 7 para. 1 in force at 29.3.2004 for specified purposes by S.I. 2004/827, art. 2(b)

I12 Sch. 7 para. 1 in force at 30.3.2004 in so far as not already in force by S.I. 2004/827, art. 3(ii)

- 2 In section 7(3) of that Act (provision of specimen for analysis) after the word “or” after subsection (bb) insert—
- “(bc) as a result of the administration of a preliminary drug test, the constable making the requirement has reasonable cause to believe that the person required to provide a specimen of blood or urine has a drug in his body, or”.

Commencement Information

I13 Sch. 7 para. 2 in force at 30.3.2004 by S.I. 2004/827, art. 3(ii)

- 3 In section 9(1) of that Act (protection for hospital patients)—
- (a) for “to provide a specimen of breath for a breath test” substitute “ to co-operate with a preliminary test ”, and
 - (b) in paragraph (a), for “it shall be for the provision of a specimen at the hospital” substitute “ it shall be for co-operation with a test administered, or for the provision of a specimen, at the hospital ”.

Commencement Information

I14 Sch. 7 para. 3 in force at 30.3.2004 by S.I. 2004/827, art. 3(ii)

- 4 In section 10(1) of that Act (detention of persons affected by alcohol or drugs) in subsection (1) after “a person required” insert “ under section 7 or 7A ”.

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Commencement Information

I15 Sch. 7 para. 4 in force at 30.3.2004 by S.I. 2004/827, art. 3(ii)

- 5 In section 11 of that Act (interpretation)—
- (a) in subsection (2), omit the definition of “breath test”, and
 - (b) in subsection (3) for “A person does not provide a specimen of breath for a breath test or for analysis unless the specimen” substitute “ A person does not co-operate with a preliminary test or provide a specimen of breath for analysis unless his co-operation or the specimen ”.

Commencement Information

I16 Sch. 7 para. 5 in force at 30.3.2004 by S.I. 2004/827, art. 3(ii)

- 6 In section 184(1)(f) of that Act (application of sections 5 to 10 to military personnel) for “in section 6(1) the reference to a traffic offence” substitute “ in section 6 a reference to a traffic offence ”.

Commencement Information

I17 Sch. 7 para. 6 in force at 30.3.2004 by S.I. 2004/827, art. 3(ii)

- 7 In Schedule 1 to the Road Traffic Offenders Act 1988 (c. 53) (offences to which certain provisions apply), in the entry for section 6 of the Road Traffic Act 1988 (c. 52) for the description of the general nature of the offence substitute “ Failing to co-operate with a preliminary test ”.

Commencement Information

I18 Sch. 7 para. 7 in force at 30.3.2004 by S.I. 2004/827, art. 3(ii)

- 8 In Schedule 2 to that Act (prosecution and punishment of offenders), in the entry for section 6 of the Road Traffic Act 1988 (c. 52) for the description of the general nature of the offence substitute “ Failing to co-operate with a preliminary test ”.

Commencement Information

I19 Sch. 7 para. 8 in force at 30.3.2004 by S.I. 2004/827, art. 3(ii)

- 9 In section 34A(1D)(a) of the Army Act 1955 (c. 18) (testing for drugs) for subparagraph (i) substitute—
- “(i) any provision of the Road Traffic Act 1988 (c. 52),”.

Commencement Information

I20 Sch. 7 para. 9 in force at 30.3.2004 by S.I. 2004/827, art. 3(ii)

- 10 In section 34A(1D)(a) of the Air Force Act 1955 (c. 19) (testing for drugs) for subparagraph (i) substitute—

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“(i) any provision of the Road Traffic Act 1988 (c. 52),”.

Commencement Information

I21 Sch. 7 para. 10 in force at 30.3.2004 by S.I. 2004/827, art. 3(ii)

11 In section 12A(1D)(a) of the Naval Discipline Act 1957 (c. 53) (testing for drugs) for sub-paragraph (i) substitute—

“(i) any provision of the Road Traffic Act 1988 (c. 52),”.

Commencement Information

I22 Sch. 7 para. 11 in force at 30.3.2004 by S.I. 2004/827, art. 3(ii)

12 In section 34(6) of the Police and Criminal Evidence Act 1984 (c. 60) (arrest) for “section 6(5) of the Road Traffic Act 1988” substitute “ section 6D of the Road Traffic Act 1988 ”.

Commencement Information

I23 Sch. 7 para. 12 in force at 30.3.2004 by S.I. 2004/827, art. 3(ii)

13 In section 32(8)(a) of the Armed Forces Act 2001 (c. 19) (testing for drink or drugs) for sub-paragraph (i) substitute—

“(i) any provision of the Road Traffic Act 1988 (c. 52),”.

Commencement Information

I24 Sch. 7 para. 13 in force at 30.3.2004 by S.I. 2004/827, art. 3(ii)

SCHEDULE 8

Section 118

REPEALS

Commencement Information

I25 Sch. 8 partly in force; Sch. 8 in force for specified purposes at Royal Assent and in force for other specified purposes at 10.9.2003, see s. 120

I26 Sch. 8 in force at 30.3.2004 for specified purposes by S.I. 2004/827, art. 3(jj)

Short title and chapter

Extent of repeal

British Transport Commission Act 1949
(c. xxix)

Section 53.

House of Commons Disqualification Act
1975 (c. 24)

In Part III of Schedule 1, the entry relating to
the Rail Regulator.

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Road Traffic Act 1988 (c. 52)	In section 11(2), the definition of “breath test”.
Road Traffic Offenders Act 1988 (c. 53)	In section 76(2)(a), the words “of police”.
Railways Act 1993 (c. 43)	Section 1. In section 4(5)(c), the words “under this Part”. In section 15(4A)— the words “he or”, and in paragraphs (a) and (b), the words “it proposes to”. In section 15C(3), in each place, the words “his or”. In section 21(5), the words “of his”. In section 57B— in subsection (3), the words “or his”, and in subsection (4)(a), the words “his or”. In section 74(8)— the definition of “first relevant financial year”, and the word “or” immediately preceding it. Sections 132 and 133. In section 151(1), the definition of “the Regulator”. Schedule 1. Schedule 10.
Merchant Shipping Act 1995 (c. 21)	Section 117. Section 311.
Greater London Authority Act 1999 (c. 29)	Section 425(3).
Transport Act 2000 (c. 38)	Section 251(2). In Schedule 18, paragraphs 7 to 10. In Schedule 27, paragraph 45.
Anti-terrorism, Crime and Security Act 2001 (c. 24)	In Schedule 7, paragraphs 6 and 25.

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