

Subject: Summary of the United Kingdom Breath and Blood Sample Legislation

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INTRODUCTION

Sections 3A to 11 of the *Road Traffic Act 1988* create various drinking and driving offences. Sections 3A(1)(a) and 4 require that the suspect be “unfit to drive” which is defined in terms of whether the person’s ability to drive is impaired. In contrast, sections 3A(1)(b) and 5 require proof that the person was driving with a level of alcohol in his or her breath, blood or urine above the prescribed limits. To prove the latter offences, the proportion of alcohol in the driver’s breath, blood or urine must be analyzed. However, a ‘screening’ breath test and an arrest will normally precede the demand of the evidential specimen.

SCREENING TESTS

The police are authorized to demand a screening breath test if they suspect that a person is driving, attempting to drive or in charge of a motor vehicle on a road or other public place and has alcohol in his or her body (s. 6(1)). It is important to note that the suspicion need not arise before the officer stops the vehicle. A uniformed constable may stop motorists at random to determine if there is a reasonable suspicion that they have consumed alcohol. If during the course of that stop the officer develops a reasonable suspicion, he or she may then demand a screening breath test.

The screening test is not intended to give a precise measure of a suspect’s breath or blood-alcohol concentration (BAC), but rather indicate whether these levels likely exceed the prescribed limits. The prescribed limits in the United Kingdom are 35 micrograms of alcohol in 100 millilitres of breath, 80 milligrams of alcohol in 100 millilitres of blood and 107 milligrams of alcohol in 100 millilitres of urine (s. 11(2)).

It is an offence for a person to fail to provide a breath specimen for a screening test (s.

6(4)). A failure to provide a specimen includes a refusal by words or actions (s. 11(2)), providing a specimen that is insufficient, or providing a specimen that does not enable the objective of the test or analysis to be achieved (s. 11(3)). There cannot be a conviction for failing to provide a breath specimen for a screening test where the requisite procedure for administering the test is not carried out. The test is not validly administered if the device used is not an approved one, if it is defective or if the constable fails to comply with the manufacturer's instructions as to its assembly. However, if the police realize the defect or mistake, they may require that another screening test be taken on another device, and failure to comply is an offence (s. 6(4)).

If, as a result of the screening test, the police reasonably believe that the suspect's breath or blood-alcohol concentration exceeds the prescribed limits, or if the suspect has refused to take the screening test, the police may arrest the suspect without a warrant (s. 6(5)).

(i) Screening Tests Following a Traffic Offence

The police may demand a screening breath test if they suspect that a person has been driving, attempting to drive or in charge of a motor vehicle and has committed a traffic offence (s. 6(1)(c)). The police need not believe that the person has alcohol in his or her body. Rather, the police need only suspect that the person committed an offence. Such offences include exceeding the speed limit, failing to wear a seatbelt, failing to comply with traffic signs, driving without a licence, and failing to stop the vehicle when required by a constable.

A person who fails the screening test (BAC of 0.08% or more) or refuses to take it, may be arrested without a warrant (s. 6(5)) and required to provide a specimen of breath, blood or urine for analysis (s. 7(1)).

(ii) Screening Tests Following a Crash

If an "accident" occurs, the police may require any person who they reasonably believe was driving at the time of the crash to take a screening breath test (s. 6(2)). The demand can be made whether or not the police believe that the person has alcohol in his or her body. Furthermore, the person's car need not have been physically involved in the crash for the police to lawfully demand a breath specimen. However, there must be a direct causal connection

between the person's car being on the road and the crash occurring. If the police reasonably suspect that the crash involved injury to another person, they may, for the purposes of demanding a screening test, enter any place where that person is or the police reasonably suspects him or her to be (s. 6(6)).

If the suspect fails the screening test (BAC of 0.08% or more) or refuses to take it, the police may arrest him or her without a warrant (s. 6(5)) and demand a sample of breath, blood or urine for analysis (s. 7(1)).

EVIDENTIAL BREATH, BLOOD AND URINE SAMPLES

When investigating the offences of causing death by careless driving when under the influence, driving when unfit to drive through drink or drugs, or driving with an alcohol concentration above the prescribed limits, the police may require a suspect to provide two breath specimens for analysis on an approved device (s.7(1)(a)). The demand for a breath specimen can only be made at a police station (s.7(2)).

Where two breath specimens are provided, the one with the lower alcohol concentration is used (s. 8(2)). If the specimen with the lower proportion of alcohol contains no more than 50 micrograms of alcohol in 100 millilitres of breath, the suspect may demand that it be replaced by a blood or urine sample (s. 8(3)). If the person then provides the sample, neither breath specimen is used (s. 8(3)).

If the police have reasonable cause to believe that, for medical reasons, an evidential breath specimen cannot be provided or should not be required, they may demand a blood or urine sample. Furthermore, a blood or urine sample may be demanded from anyone suspected of causing death by careless driving when under the influence, driving when unfit through drink or drugs, or driving with an alcohol concentration above the prescribed limits (s. 7(1)(b)).

Generally, the police decide whether the suspect must provide a blood or a urine sample (s. 7(4)). However, if a medical practitioner believes that a specimen of blood cannot or should not be taken for medical reasons, a urine sample will be required (s. 7(4)). A requirement for blood or urine must generally be made at a hospital (s. 7(3)). A specimen of blood may only be taken by a medical practitioner and it must be taken with the suspect's consent. If these requirements are not met, the sample must be disregarded. A specimen of

urine must be provided within one hour of its requirement (s. 7(5)). However, the fact that the relevant specimen is provided outside the prescribed time limit does not render it inadmissible. If the suspect asks for a sample of his or her own blood or urine, the specimen must be divided and one part must be given to him or her. A failure to do so makes the specimen inadmissible on the prosecution's behalf.

It is an offence to fail to provide a breath, blood or urine specimen without a reasonable excuse (ss. 6(4) and 7(6)). A reasonable excuse has been interpreted by the courts to mean a physical or mental inability to provide the specimen. Thus, a patient in a hospital is not required to provide a specimen if a medical practitioner objects on the ground that the provision of the specimen would be prejudicial to the patient's treatment (s. 9). A suspect's failure to provide a specimen because he or she was unlawfully arrested has been found not to constitute a reasonable excuse. The accused does not have the burden of establishing a reasonable excuse, but it is not enough to simply allege facts. There must be evidence in support of those facts. In the case of alleged physical or mental incapacity, medical evidence is normally required.

A person who has provided an evidentiary breath, blood or urine sample may be detained until it appears that he or she would no longer be unfit or over the prescribed limits for driving (s. 10(1)). However, a person shall not be detained if there is no likelihood of his or her driving or attempting to drive. To determine if a person's ability to drive is impaired through drugs, the constable must consult and act on a medical practitioner's advice (s. 10(3)).

Evidence of the alcohol or drug concentration in a suspect's breath, blood or urine sample shall be considered in proceedings for the offences of causing death by careless driving when under the influence, driving when unfit through drink or drugs or driving with an alcohol concentration above the prescribed limits. In any such proceedings, 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. However, the wording of this section suggests that the court may consider evidence that the accused's blood alcohol concentration was greater at the time of the offence than in the specimen. The assumption in section 15(2) does not apply if the accused proves that he consumed alcohol after ceasing to drive but before providing the specimen.

CONCLUSION

In the United Kingdom, the police may stop any motorist at random to determine if he or she has consumed alcohol. Once the police reasonably suspect that the driver has alcohol in his or her body, they may demand that the driver take a screening breath test. Furthermore, the police have statutory authority to demand a breath specimen for a screening test from any driver who is believed to have committed a traffic offence or who they reasonably believe was driving or in control of a motor vehicle involved in an accident. The police need not believe that the driver has any alcohol in his or her body. Rather, all that is required is a suspicion that the person committed an offence or was involved in an accident. If the person fails the screening test or refuses to take it, he or she may be arrested without a warrant.

Once at the police station, the suspect may be required to provide a breath specimen for an evidentiary breath test. If such a test cannot be taken for any reason, the police may demand an evidential blood or urine specimen for laboratory analysis. If a driver is taken to the hospital as a result of the accident, the police may demand that the suspect provide a sample of blood or urine. It is an offence to fail to provide a breath, blood or urine sample without reasonable excuse.

The results of the analysis will be used as evidence in proceedings against the suspect. In any such proceedings, it will be presumed that the proportion of alcohol in the suspect's breath, blood or urine at the time of the alleged offence was not less than that in the specimen.

ENDNOTES