



G B LAW and PENALTIES RELATING TO DRUG DRIVING, WITH COMMENTARY

PART 1. The Road Traffic Act 1988

Motor vehicles: drink and drugs

The Primary Law relating to drug driving comes under various sections of The Road Traffic Act (RTA) 1988. The relevant law is covered in sections 4 to 10. However these sections cover both drink (alcohol) and drugs. The following summary covers only those parts of the Act relevant to drug driving.

Section 4.

Driving, or being in charge, when under influence of drink or drugs

(1) A person who, when driving or attempting to drive a motor vehicle on a road or other public place, is unfit to drive through drink or drugs is guilty of an offence.

(5) For the purposes of this section, a person shall be taken to be unfit to drive if his properly is for the time being impaired.

It should be noted that nowhere in the Act are the terms unfit or impaired further defined.

Section 7.

Provision of specimens for analysis

(1) In the course of an investigation into whether a person has committed an offence under section 4 or 5 of this Act a constable may, subject to the following provisions of this section and section 9 of this Act, require him

(b) to provide a specimen of blood or urine for a laboratory test.

(3) A requirement under this section to provide a specimen of blood or urine can only be made at a police station or at a hospital; and it cannot be made at a police station unless;

(c) The suspected offence is one under section 4 of this Act and the constable making the requirement has been advised by a medical practitioner that the condition of the person required to provide the specimen might be due to some drug;

This sub section of the Act is of fundamental importance since it does not require the medical practitioner to confirm that the person is impaired, but only that his condition may be due to a drug

If a medical practitioner is of the opinion that for medical reasons a specimen of blood cannot or should not be taken the specimen shall be a specimen of urine.

(5) A specimen of urine shall be provided within one hour of the requirement for its provision being made and after the provision of a previous specimen of urine.



(6) A person who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this section is guilty of an offence.

(7) A constable must, on requiring any person to provide a specimen in pursuance of this section, warn him that a failure to provide it may render him liable to prosecution.

Section 9.

Protection for hospital patients

(1) While a person is at a hospital as a patient he shall not be required to provide a specimen of breath for a breath test or to provide a specimen for a laboratory test unless the medical practitioner in immediate charge of his case has been notified of the proposal to make the requirement; and

(a) if the requirement is then made, it shall be for the provision of a specimen at the hospital, but

(b) if the medical practitioner objects on the ground specified in subsection (2) below, the requirement shall not be made.

(2) The ground on which the medical practitioner may object is that the requirement or the provision of a specimen or, in the case of a specimen of blood or urine, the warning required under section 7(7) of this Act, would be prejudicial to the proper care and treatment of the patient.

Section 10.

Detention of persons affected by alcohol or a drug

(1) Subject to subsections (2) and (3) below, a person required to provide a specimen of breath, blood or urine may afterwards be detained at a police station until it appears to the constable that, were that person then driving or attempting to drive a motor vehicle on a road, he would not be committing an offence under section 4 or 5 of this Act.

(2) A person shall not be detained in pursuance of this section if it appears to a constable that there is no likelihood of his driving or attempting to drive a motor vehicle whilst his ability to drive properly is impaired or whilst the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit.

(3) A constable must consult a medical practitioner on any question arising under this section whether a person's ability to drive properly is or might be impaired through drugs and must act on the medical practitioner's advice.

Section 11.

Interpretation of sections 4 to 10

(1) The following provisions apply for the interpretation of sections 4 to 10 of this Act.

(2) In those sections -

- "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,



Source: Dr Rob Tunbridge - Leading Drug Expert

The legal content of the act as outlined above is of necessity rather complex yet, the fundamental principle under the current law is that a medical practitioner only needs to confirm that a person may have a condition due to a drug before a police officer can require that a blood or urine sample be taken for evidential analysis and possible court use in any proposed legal proceedings.

PART 2. Railways and Transport Safety Act 2003

Prior to 2003 the RTA 1988, was the only legislation pertaining to drug driving. However, subsequent to much research in the 1990's and early 2000's suggesting that drug driving was becoming an increasing problem, new legislation was passed to allow police increased powers to try to detect drug impaired drivers at the roadside.

This legislation was incorporated in Section 107 of the Railways and Transport Safety Act 2003. In terms of testing for possible drug use at the roadside this act effectively replaces the RTA 1988.

It does this by making provision for 3 separate tests; a preliminary breath test, a preliminary impairment test and a preliminary drug test.

The first breath test is used to test for alcohol use. Normally, if a driver is judged to be impaired and provides a positive breath test further tests for drugs would not be carried out unless there were additional evidence of drug use.

However if a negative breath test is obtained and a driver is judged as impaired by a police officer the additional test would be proceed with.

Section 107

Road Traffic: testing for drink and drugs

For section 6 of the Road Traffic Act 1988 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.

The following 3 Sections apply to current law under the RTA 1988, where a police officer is allowed to stop and require a test for alcohol or drugs if the driver appears to be impaired, has committed a moving traffic offence or has been involved in an accident.

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.

(8) In this section -

(a) a reference to a preliminary test is to any of the tests described in sections 6A to 6C.

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.

(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.

A detailed Code of Practice to this effect was issued by the Department for Transport (DfT) in December 2004 and is available on the DfT website. www.dft.gsi.gov.uk

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.

To date (July 2009) although several such devices are being used by European Jurisdictions for roadside drug screening, no such device has gained Home Office Type Approval for use within GB!

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.

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



6 E. Power of entry

An additional Section (6 E) of the RATS Act 2003 covers the minutiae of detail under which a police officer may require a specimen but does not throw further light on the basic requirements as listed above.

PART 3. Drug Driving Penalties

Penalties for driving while Unfit through Drugs are identical to those applying to Alcohol.

Code	Offence	Endorsable points	Disqualification	Maximum punishment	Provision creating the offence
DR80	Driving or attempting to drive when unfit through drugs	3-11	12 months minimum	6 Months imprisonment or fine up to £5000 or both	RTA section 4 (1)
DR90	In charge of vehicle when unfit through drugs	10	Discretionary	3 Months imprisonment or fine up to £2500 or both	RTA section 4 (2)

Causing death by driving while unfit through drugs carries a maximum sentence of 14 years in prison and a minimum two years driving ban plus taking an extended driving test before being able to drive again.