



Transport and Works Act 1992

1992 CHAPTER 42

PART II

SAFETY OF RAILWAYS ETC

CHAPTER I

OFFENCES INVOLVING DRINK OR DRUGS

Evidence in proceedings for offences under section 27

34 Use of specimens in proceedings.

- (1) In proceedings for any offence under section 27 above—
 - (a) evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by [^{F1}or taken from] the accused shall be taken into account, and
 - (b) 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.
- (2) That assumption shall not be made if the accused proves—
 - (a) that he consumed alcohol before he provided the specimen [^{F2}or had it taken from him] and after he had stopped work on the occasion of the alleged offence, and
 - (b) that, had he not done so, the proportion of alcohol in his breath, blood or urine would not have exceeded the prescribed limit and, where the offence alleged is an offence of being unfit to carry out the work in question through drink, would not have been such as to impair his ability to carry out that work properly.
- (3) Where, at the time a specimen of blood or urine was provided by the accused, he asked to be provided with such a specimen, evidence of the proportion of alcohol or any

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drug found in the specimen shall not be admissible in the proceedings on behalf of the prosecution unless—

- (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the accused was divided at the time it was provided, and
- (b) the other part was supplied to the accused.

[^{F3}(3A) Where a specimen of blood was taken from the accused under section 31A, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the prosecution in the proceedings unless—

- (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen taken from the accused was divided at the time it was taken; and
- (b) any request to be supplied with the other part which was made by the accused at the time when he gave his permission for a laboratory test of the specimen was complied with.]

Textual Amendments

- F1** Words in s. 34(1)(a) inserted (1.10.2002) by [Police Reform Act 2002 \(c. 30\), s. 58\(6\)](#); S.I. 2002/2306, [art. 2\(d\)\(v\)](#)
- F2** Words in s. 34(2)(a) inserted (1.10.2002) by [Police Reform Act 2002 \(c. 30\), s. 58\(7\)](#); S.I. 2002/2306, [art. 2\(d\)\(v\)](#)
- F3** S. 34(3A) inserted (1.10.2002) by virtue of [Police Reform Act 2002 \(c. 30\), s. 58\(8\)](#); S.I. 2002/2306, [art. 2\(d\)\(v\)](#)

Commencement Information

- I1** [Pt. II Ch. 1](#) (ss. 26-40) wholly in force at 7. 12. 1992 see [s. 70](#) and [S.I. 1992/2043, art. 2\(a\)](#).

35 Documentary evidence as to specimens.

- (1) In proceedings for any offence under section 27 above, evidence of the proportion of alcohol in a specimen of breath may be given by the production of a document (or documents) purporting to be—
 - (a) a statement automatically produced by the device by which the proportion of alcohol in the specimen was measured, and
 - (b) a certificate signed by a constable (which may but need not be contained in the same document as the statement) that the specimen was provided by the accused at the date and time shown in the statement.
- (2) In such proceedings, evidence of the proportion of alcohol or a drug in a specimen of blood or urine may be given by the production of a document purporting to be a certificate signed by an authorised analyst identifying the specimen and stating the proportion of alcohol or drug found in it.
- (3) In such proceedings, evidence that a specimen of blood was taken from the accused with his consent by a medical practitioner [^{F4}or a registered health care professional] may be given by the production of a document purporting to be a certificate to that effect signed by the practitioner [^{F4}or a registered health care professional] .
- (4) A document such as is mentioned in subsection (1) above shall be admissible in evidence on behalf of the prosecution in pursuance of this section only if a copy of it

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either was handed to the accused when the document was produced or was served on him not later than seven days before the hearing.

- (5) A document such as is mentioned in subsection (2) or (3) above shall be admissible in evidence on behalf of the prosecution in pursuance of this section only if a copy of it was served on the accused not later than seven days before the hearing.
- (6) A document purporting to be a certificate (or so much of a document as purports to be a certificate) shall not be admissible in evidence on behalf of the prosecution in pursuance of this section if the accused, not later than three days before the hearing or within such further time as the court may in special circumstances allow, has served notice on the prosecutor requiring the attendance at the hearing of the person by whom the document purports to be signed.
- (7) In this section “served” means [^{F5}, in relation to proceedings in England and Wales, served in accordance with Criminal Procedure Rules or, otherwise,] served personally or sent by registered post or recorded delivery service.
- (8) In subsection (2) above “authorised analyst” means—
- (a) any person possessing the qualifications prescribed by regulations made under section 76 of the ^{M1}Food Act 1984 or section 27 of the ^{M2}Food and Drugs (Scotland) Act 1956 as qualifying persons for appointment as public analysts under those Acts, or
 - (b) any other person authorised by the Secretary of State to make analyses for the purposes of this section.

Textual Amendments

F4 Words in s. 35(3) inserted (1.4.2003) by virtue of [Police Reform Act 2002 \(c. 30\)](#), **ss. 58(9)**, 108(2); [S.I. 2003/808](#), **art. 2(e)**

F5 Words in s. 35(7) inserted (28.6.2022) by [Judicial Review and Courts Act 2022 \(c. 35\)](#), s. 51(3), **Sch. 1 para. 12**

Commencement Information

I2 Pt. II Ch. 1 (ss. 26-40) wholly in force at 7. 12. 1992 see s. 70 and [S.I. 1992/2043](#), **art. 2(a)**.

Marginal Citations

M1 1984 c. 30.

M2 1956 c. 30.

Changes to legislation:

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