

DEREGULATION ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 11: Enforcement of transport legislation

Part 1: Drink and drug driving offences

Removal of “statutory option” to have breath specimen replaced: road and rail transport

714. Section 8(1) of the Road Traffic Act 1988 (the “RTA”) provides that out of the two specimens of breath provided, it is the one with the lower proportion of alcohol in the breath that is used (the other being disregarded). Section 8(2) of the RTA provides that if the lower specimen of breath has a reading of no more than 50mcg/100 ml of breath, then that person has the right to elect to have that specimen replaced with a blood or urine specimen. If that person then provides such a specimen, neither specimen of breath is used. It is this right to have the breath reading replaced with either a blood or urine test that is commonly known as “the statutory option”.
715. *Paragraph 1* omits subsections (2), (2A), (3) and (4) of the RTA and makes consequential amendments. This removes the option for individuals to opt for a replacement blood or urine specimen and means that the evidential breath test is now the primary means of testing unless there are particular reasons (e.g. medical) why breath specimens cannot be obtained.
716. The statutory option is also provided for in the corresponding regime for railways in the Transport and Works Act 1992 (the “TWA”). *Paragraph 2* removes the statutory option by omitting section 32(2) to (4) of the TWA.