



Railways and Transport Safety Bill

General

84 Consequential repeal

Section 117 of the Merchant Shipping Act 1995 (c. 21) (drunkenness on duty) shall cease to have effect.

85 Orders and regulations

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- (1) An order or regulations under this Part may—
 - (a) make transitional, supplemental and incidental provision;
 - (b) make provision generally or for specified purposes only;
 - (c) make different provision for different purposes.
- (2) The power under section [81\(3\)\(c\)](#) for the Secretary of State to designate a class of person includes a power for him to designate—
 - (a) himself, or
 - (b) one or more persons employed in his Department.
- (3) An order or regulations under this Part shall be made by statutory instrument.
- (4) Regulations under this Part shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (5) An order under section [81\(3\)\(c\)](#) shall be subject to annulment in pursuance of

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a resolution of either House of Parliament.

- (6) Before making regulations under section 78(2) the Secretary of State shall consult such organisations as he thinks fit. 20

86 Interpretation

- (1) In this Part—
- (a) “ship” includes every description of vessel used in navigation, and
- (b) a reference to the navigation of a vessel includes a reference to the control or direction, or participation in the control or direction, of the course of a vessel. 25
- (2) Section 313 of the Merchant Shipping Act 1995 (interpretation) shall apply to the following expressions used in this Part—
- (a) fishing vessel,
- (b) foreign ship, 30
- (c) Government ship,
- (d) harbour authority,
- (e) master,
- (f) registered,
- (g) seaman, 35
- (h) United Kingdom ship, and
- (i) United Kingdom waters.
- (3) In this Part “pilot” has the meaning given by section 31(1) of the Pilotage Act 1987 (c. 21) (interpretation).
- (4) Regulations under section 267(4)(a) of the Merchant Shipping Act 1995 (power to define “accident” for the purposes of provisions about marine accident 40

(4) investigations) shall, so far as is practicable, apply to the word “accident” as used in relation to this Part.

- (5) In this Part “drug” includes any intoxicant other than alcohol.

87 Crown application

- (1) This Part— 5
- (a) shall apply, except for section [81](#), in relation to ships forming part of the Royal Fleet Auxiliary Service, but
- (b) shall not apply in relation to a function or activity performed or carried out by a person who at the time is subject to service law (within the meaning given by section 225(1) of the Army Act 1955 (c. 18) (interpretation)). 10
- (2) This Part shall not otherwise apply in relation to—
- (a) ships belonging to Her Majesty, or
- (b) other Government ships.

88 Territorial application 15

- (1) This Part shall have effect in relation to—
- (a) United Kingdom ships,
- (b) foreign ships in United Kingdom waters, and
- (c) un-registered ships in United Kingdom waters.
- (2) But section [77](#) shall have no effect in relation to anything done in— 20
- (a) internal waters of Scotland, or
- (b) any part of the internal waters or territorial sea of the United Kingdom that is adjacent to Scotland (for which purpose any Order in Council made under section 126(2) of the Scotland Act 1998 (c. 46) (meaning of adjacent) shall have effect). 25
- (3) Section [83](#) shall not extend to Scotland.

Part 5

Aviation: Alcohol and Drugs

Offences

89 Being unfit for duty 30

- (1) A person commits an offence if—

- (a) he performs an aviation function at a time when his ability to perform the function is impaired because of drink or drugs, or
- (b) he carries out an activity which is ancillary to an aviation function at a time when his ability to perform the function is impaired because of drink or drugs.

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- (2) In this section “drug” includes any intoxicant other than alcohol.
- (3) Section 91 defines “aviation function” and “ancillary activity” for the purposes of this Part.

90 Prescribed limit

(1) A person commits an offence if—

- (a) he performs an aviation function at a time when the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit, or
- (b) he carries out an activity which is ancillary to an aviation function at a time when the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit.

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(2) The prescribed limit of alcohol is (subject to subsection (3))—

- (a) in the case of breath, 9 microgrammes of alcohol in 100 millilitres,
- (b) in the case of blood, 20 milligrammes of alcohol in 100 millilitres, and
- (c) in the case of urine, 27 milligrammes of alcohol in 100 millilitres.

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(3) In relation to the aviation function specified in section 91(1)(h) the prescribed limit is—

- (a) in the case of breath, 35 microgrammes of alcohol in 100 millilitres,
- (b) in the case of blood, 80 milligrammes of alcohol in 100 millilitres, and
- (c) in the case of urine, 107 milligrammes of alcohol in 100 millilitres.

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- (4) The Secretary of State may make regulations amending subsection (2) or (3).
- (5) Section 91 defines “aviation function” and “ancillary activity” for the purposes of this Part.

91 Aviation functions

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(1) For the purposes of this Part the following (and only the following) are aviation functions—

- (a) acting as a pilot of an aircraft during flight,
- (b) acting as flight navigator of an aircraft during flight,
- (c) acting as flight engineer of an aircraft during flight,
- (d) acting as flight radio-telephony operator of an aircraft during flight,
- (e) acting as a member of the cabin crew of an aircraft during flight,
- (f) attending the flight deck of an aircraft during flight to give or supervise training, to administer a test, to observe a period of practice or to monitor or record the gaining of experience,
- (g) acting as an air traffic controller in pursuance of a licence granted under or by virtue of an enactment (other than a licence granted to a student), and
- (h) acting as a licensed aircraft maintenance engineer.

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(2) For the purposes of subsection (1)(h) a person acts as a licensed aircraft maintenance engineer if—

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- (a) he issues a document relating to the maintenance, condition or use of an aircraft or equipment in reliance on a licence granted under or by virtue of an enactment relating to aviation, or
- (b) he carries out or supervises work on an aircraft or equipment with a view to, or in connection with, the issue by him of a document of the kind specified in paragraph (a).

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(3) For the purposes of this Part a reference to an activity which is ancillary to an aviation function is a reference to anything which falls to be treated as such by virtue of subsections (4) to (6).

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(4) An activity shall be treated as ancillary to an aviation function if it is undertaken—

- (a) by a person who has reported for a period of duty in respect of the function, and

- (b) as a requirement of, for the purpose of or in connection with the performance of the function during that period of duty. 5
- (5) A person who in accordance with the terms of an employment or undertaking holds himself ready to perform an aviation function if called upon shall be treated as carrying out an activity ancillary to the function.
- (6) Where a person sets out to perform an aviation function, anything which he does by way of preparing to perform the function shall be treated as an activity ancillary to it. 10
- (7) For the purposes of this Part it is immaterial whether a person performs a function or carries out an activity in the course of an employment or trade or otherwise. 15
- (8) The Secretary of State may by regulations—
- (a) amend this section;
- (b) make an amendment of this Part which is consequential on an amendment under paragraph (a).

Enforcement

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92 Penalty

A person guilty of an offence under this Part shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

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93 Specimens, &c.

- (1) The provisions specified in the first column of the table below, with the modifications specified in the third column and any other necessary modifications, shall have effect in relation to an offence under this Part. 30

<i>Provision</i>	<i>Description</i>	<i>Modification</i>
Road Traffic Act 1988 (c. 52) Section 6	Preliminary breath tests	In place of subsections (1) and (2), the power to require the provision of a specimen shall apply where— (a) a constable in uniform reasonably suspects that the person is committing an offence under section 90 , or (b) a constable in uniform reasonably suspects that the person has committed an offence under section 90 and still has alcohol in his body.
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Railways and Transport Safety Bill
Part 5 — Aviation: Alcohol and Drugs

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<i>Provision</i>	<i>Description</i>	<i>Modification</i>
		In place of subsection (3), a person may be required to provide a specimen either— (a) at or near the place where the requirement is made, or (b) at a police station specified by the constable.
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Section 7	Provision of specimen	In subsection (1) the reference to an offence under section 3A, 4 or 5 of the 1988 Act shall be treated as a reference to an offence under section 89 or 90 of this Act. In subsection (3)(c) the reference to an offence under section 3A or 4 of the 1988 Act shall be treated as a reference to an offence under section 89 of this Act.
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Section 7A	Specimen of blood taken from person incapable of consenting	
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Section 8	Choice of specimen of breath	In subsection (2) the reference to 50 microgrammes of alcohol shall, except in relation to the aviation function specified in section 91 (1)(h), be treated as a reference to
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Section 9	Protection for hospital patient	15 microgrammes of alcohol.	25
Section 10	Detention of person affected by alcohol or drug	In subsection (1)— (a) the reference to driving or attempting to drive a mechanically propelled vehicle on a road shall be treated as a reference to performing an aviation function of the kind in respect of which the requirement to provide a specimen was imposed, and (b) the reference to an offence under section 4 or 5 of the 1988 Act shall be treated as a reference to an offence under section 89 or 90 of this Act.	30
		In subsection (2) the reference to driving a mechanically propelled vehicle shall be treated as a reference to performing an aviation function.	35
		In subsection (3) the reference to driving properly shall be treated as a reference to performing an aviation function.	40
Section 11	Interpretation	For the definition of “the prescribed limit” there shall be substituted the definition given in this Part (and the definition of “drug” shall be disregarded).	45
Road Traffic Offenders Act 1988 (c. 53)			50
Section 15	Use of specimens	In subsection (1), the reference to an offence under section 3A, 4 or 5 of the Road Traffic Act 1988 shall be treated as a reference to an offence under section 89 or 90 of this Act.	55

<i>Provision</i>	<i>Description</i>	<i>Modification</i>
		The relevant time for the consumption of alcohol for the purpose of subsection (3)(a) shall be before providing the specimen and after the time of the alleged offence.
		In subsection (3)(b) the reference to driving shall be treated as a reference to undertaking an aviation function or an activity ancillary to an aviation function.
Section 16	Documentary evidence	

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(2) The Secretary of State may by regulations amend the table in subsection (1) so as—

- (a) to add a provision relating to an offence which concerns alcohol or drugs in relation to road traffic;
- (b) to add, remove or amend a modification (whether or not in connection with an amendment of a provision specified in the table).

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(3) For the purpose of the application by subsection (1) of a provision listed in the table in that subsection—

- (a) the provision shall extend to the whole of the United Kingdom, and
- (b) a reference to the provision shall be treated, unless the context otherwise requires, as including a reference to the provision as applied.

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94 Arrest without warrant

(1) A constable may arrest a person without a warrant if the constable reasonably suspects that the person—

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- (a) is committing an offence under section [89](#), or
- (b) has committed an offence under that section and is still under the influence of drink or drugs.

(2) But a person may not be arrested under this section while he is at a hospital as a patient.

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(3) In subsection (2) “hospital” means an institution which provides medical or surgical treatment for in-patients or out-patients.

(4) Arrest under this section shall be treated as arrest for an offence for the purposes of—

- (a) Part IV of the Police and Criminal Evidence Act 1984 (c. 60) (detention),

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and

- (b) Part V of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (detention).

95 Right of entry

- (1) A constable in uniform may board an aircraft if he reasonably suspects that he may wish to exercise a power by virtue of section [93](#) or under section [94](#) in respect of a person who is or may be on the aircraft. 40

Railways and Transport Safety Bill
Part 5 — Aviation: Alcohol and Drugs

42

- (2) A constable in uniform may enter any place if he reasonably suspects that he may wish to exercise a power by virtue of section [93](#) or under section [94](#) in respect of a person who is or may be in that place.
- (3) For the purposes of boarding an aircraft or entering a place under this section a constable— 5
- (a) may use reasonable force;
- (b) may be accompanied by one or more persons.

General

96 Regulations

- (1) Regulations under this Part may— 10
- (a) make transitional, supplemental and incidental provision;
- (b) make provision generally or for a specified purpose only;
- (c) make different provision for different purposes.
- (2) Regulations under this Part— 15
- (a) shall be made by statutory instrument, and
- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (3) Before making regulations under section [90](#) or [91](#) the Secretary of State shall consult such organisations as he thinks appropriate.

97 Crown application

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- (1) This Part shall apply to a function or activity performed or carried out in relation to an aircraft which belongs to or is employed in the service of the Crown.
- (2) This section is subject to section [98](#).

98 Military application

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- (1) This Part shall not apply to a function or activity which is performed or carried out—
 - (a) in relation to a military aircraft, and
 - (b) by a person who at the time is subject to service law.

- (2) For the purposes of this section—

- (a) “military aircraft” has the meaning given by section 92(5) of the Civil Aviation Act 1982 (c. 16) (application of criminal law to aircraft),
- (b) the power under that provision to certify that an aircraft is or is not a military aircraft shall apply, and
- (c) “service law” has the meaning given by section 225(1) of the Army Act 1955 (c. 18) (interpretation)).

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99 Territorial application

- (1) This Part applies in relation to—

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