



Rail Safety (Drug and Alcohol Testing) Regulation 2003

under the

Rail Safety Act 2002

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Rail Safety Act 2002*.

MICHAEL COSTA, M.L.C.,
Minister for Transport Services

Explanatory note

The object of this Regulation is to provide for the testing of railway employees for alcohol and other drugs.

Part 1 (Preliminary) of the Regulation contains definitions of expressions and provides for the appointment of authorised officers for the purposes of the Regulation.

Part 2 (Offences relating to alcohol or other drugs) of the Regulation contains offences relating to the use of drugs (including alcohol) by railway employees at work.

Part 3 (Testing for alcohol or other drugs) of the Regulation sets out the procedures for testing railway employees for alcohol and other drugs and obtaining samples of blood and urine for that purpose. It sets out the circumstances when tests may be carried out, including random tests and tests arising from specific situations such as accidents or irregular incidents, as well as the kinds of samples and tests that may be required. The Part also contains safeguards relating to the taking and analysis of samples. Medical practitioners or nurses, and persons acting under their direction, for the purposes of the Part are excluded from civil or criminal liability in respect of things properly and necessarily done.

Part 4 (Offences relating to testing for alcohol or other drugs) of the Regulation creates a number of offences relating to a refusal or failure to undergo testing or to provide a sample when lawfully required, interfering with test results, a refusal or failure of a

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qualified person to take a sample as required by the Regulation, hindering or obstructing a qualified person, and improperly interfering with, tampering with, or destroying samples.

Part 5 (Certificate evidence in proceedings) of the Regulation provides for certificates relating to the concentration of alcohol in blood to be prima facie evidence in proceedings for offences under the Regulation and also for certificates relating to the presence of other drugs in blood or urine samples to be prima facie evidence in such proceedings. Certificates as to the appointment of authorised officers will also be prima facie evidence of their contents.

Part 6 (Miscellaneous) of the Regulation provides that certain positive tests are relevant in determining whether a railway employee is a fit and proper person to be issued with a certificate of competency under section 36 of the *Rail Safety Act 2002*.

This Regulation is made under clause 2 of Schedule 1 to, and section 117 (the general regulation-making power) of, the *Rail Safety Act 2002*.

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under the

Rail Safety Act 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Rail Safety (Drug and Alcohol Testing) Regulation 2003*.

2 Commencement

This Regulation commences on 8 August 2003.

3 Definitions

(1) In this Regulation:

analyst means:

- (a) an analyst within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*, or
- (b) a person employed by the owner or operator of an approved laboratory as an analyst.

approved laboratory means a laboratory approved for the purposes of this Regulation by the Director-General.

ASNZ 4308 means Australian/New Zealand Standard AS/NZ 4308: *Procedures for the collection, detection and quantitation of drugs of abuse in urine*.

authorised officer means a person who is appointed as an authorised officer under clause 4.

breath analysing instrument, breath analysis and **breath test** have the same meanings as they have in the *Road Transport (Safety and Traffic Management) Act 1999*.

drug means:

- (a) alcohol, or

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(b) any substance that is a drug within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*.

hospital means a public or private hospital, and includes any premises, institution or establishment that is a hospital for the purposes of section 19 of the *Road Transport (Safety and Traffic Management) Act 1999* or that is prescribed by the regulations.

prescribed concentration of alcohol means a concentration of 0.02 grammes or more of alcohol in 100 millilitres of blood.

sample, in relation to urine, includes, if the sample is divided into portions, a portion of the sample.

the Act means the *Rail Safety Act 2002*.

- (2) A reference in this Regulation to a police officer authorised by the Commissioner of Police to operate breath analysing instruments is a reference to a police officer so authorised under the *Road Transport (Safety and Traffic Management) Act 1999*.
- (3) For the purposes of this Regulation, a thing is to be regarded as having been done by a medical practitioner or analyst if it is done by a person acting under the supervision or direction of the medical practitioner or analyst.
- (4) For the purposes of this Regulation, a power to require a person to provide a sample of blood or urine includes a power to require a person to provide samples of any one or more of blood or urine.
- (5) The notes in the text of this Regulation do not form part of this Regulation.

4 Appointment of authorised officers

- (1) The Director-General may, by instrument in writing, appoint any of the following persons to be an authorised officer for the purposes of exercising functions under this Regulation:
 - (a) an officer of the Department,
 - (b) in the case of a railway specified in an accreditation under the Act, a person nominated by a person accredited for railway operations in relation to that railway,
 - (c) any other person.
- (2) The Director-General may appoint as an authorised officer:
 - (a) a person by name, or

- (b) the holder from time to time of a particular office by reference to the title of the office concerned.
- (3) The authority of an authorised officer may be limited by the relevant instrument of appointment to a particular part of the State, to a particular railway or to particular railway employees, or otherwise.
- (4) The authority of an authorised officer who is the nominee of an accredited person is limited to the railway specified in the accreditation of the person who nominates the officer to the Director-General for appointment.
- (5) The Director-General must furnish authorised officers with certificates of their appointment as authorised officers.
- (6) If the Director-General has appointed as an authorised officer the holder of an office, evidence that the authorised officer holds the office concerned has the same effect as the production of a certificate of appointment as an authorised officer.
- (7) An authorised officer must, if requested to do so, produce the certificate of appointment to any person required by the officer to submit to a breath test or to do any other thing under this Regulation.

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Part 2 Offences relating to alcohol or other drugs

Part 2 Offences relating to alcohol or other drugs

5 Offence—carrying out railway safety work with prescribed concentration of alcohol in blood

A railway employee who carries out railway safety work while the prescribed concentration of alcohol is present in the employee's blood is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

6 Offence—carrying out railway safety work while under influence of alcohol or other drug

- (1) A railway employee who carries out railway safety work while under the influence of alcohol or any other drug is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

- (2) If a person is charged with an offence under this clause:
- (a) the document commencing proceedings may allege the person was under the influence of more than one drug and is not liable to be dismissed on the ground of uncertainty or duplicity if each of those drugs is described in the document, and
 - (b) the offence is proved if the court is satisfied beyond reasonable doubt that the defendant was under the influence of:
 - (i) a drug described in the document commencing proceedings, or
 - (ii) a combination of drugs any one or more of which was or were described in the document.

7 Double jeopardy

- (1) A railway employee is not liable to be convicted of both:
- (a) an offence under clause 5 of carrying out railway safety work while the prescribed concentration of alcohol is present in the employee's blood, and
 - (b) an offence under clause 6 of carrying out that railway safety work while under the influence of alcohol or any other drug.

- (2) A railway employee is not liable to be convicted of both:
- (a) an offence under clause 6 of carrying out railway safety work while under the influence of alcohol or any other drug, and
 - (b) an offence under clause 20 of refusing or failing to submit to a breath analysis or to provide a sample of blood or urine in connection with the carrying out of that railway safety work.

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Part 3 Testing for alcohol or other drugs

8 Random and targeted testing of railway employees

- (1) An authorised officer may require any railway employee who the officer has reasonable cause to believe is on duty for the purpose of carrying out railway safety work, or who the officer has reasonable cause to believe is about to carry out railway safety work:
 - (a) to undergo a breath test in accordance with the directions of the officer, or
 - (b) to provide a sample of the employee's urine for the purpose of testing for the presence of drugs,or both.
- (2) The selection of a railway employee for testing may be conducted on a random or targeted basis.
- (3) A railway employee may be breath tested or required to undergo breath analysis whether or not there is any suspicion that the employee has recently consumed alcohol.
- (4) A railway employee is to be regarded as being about to carry out railway safety work if the employee:
 - (a) has left home or a temporary residence for work (being railway safety work), and
 - (b) has not commenced work after having so left home or the temporary residence.
- (5) In the case of a railway employee who was about to carry out railway safety work, the result of any such breath test (or of any subsequent breath or other analysis) may be used for the purposes of any disciplinary proceedings against the railway employee, but is not admissible in any proceedings for an offence under this Regulation.

9 Testing of railway employees in specified situations

- (1) An authorised officer or a police officer who has reasonable cause to believe that a railway employee has been involved in an accident or irregular incident while carrying out railway safety work may require the employee:
 - (a) to undergo a breath test in accordance with the directions of the officer, or

-
- (b) to provide a sample of the employee's urine for the purpose of testing for the presence of drugs,
or both.

- (2) Nothing in this clause limits clause 8.

10 Assessment of sobriety if breath testing device not available

- (1) If:
 - (a) an authorised officer or a police officer is entitled under this Regulation to require a railway employee to undergo a breath test, and
 - (b) the device required to carry out the breath test is not readily available,the officer may require the employee to submit to an assessment of the employee's sobriety in accordance with the directions of the officer.
- (2) A requirement that a railway employee submit to such an assessment is not open to challenge in any proceedings on the basis that the device was readily available.

11 Breath analysis of railway employees following breath testing etc

- (1) If:
 - (a) it appears to an authorised officer or a police officer as a result of a breath test or assessment under this Regulation that the prescribed concentration of alcohol may be present in a railway employee's blood, or
 - (b) a railway employee who is required by an authorised officer or a police officer to undergo a breath test or to submit to an assessment under this Regulation refuses or fails to do so in accordance with the directions of the officer,the officer may require the employee to submit to a breath analysis in accordance with the directions of the officer.
- (2) If an authorised officer or a police officer is entitled to require a railway employee to submit to a breath analysis, the officer may:
 - (a) arrest the employee without warrant, and

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- (b) take the employee with such force as may be necessary to a police station or such other place as the officer considers desirable and there detain the employee for the purposes of the breath analysis.
- (3) A breath analysis must be carried out by:
 - (a) an authorised officer, or
 - (b) a police officer authorised by the Commissioner of Police to operate breath analysing instruments,at or near a police station or such other place as the officer considers desirable.
- (4) As soon as practicable after a railway employee has submitted to a breath analysis the authorised officer or police officer operating the breath analysing instrument must deliver to the employee a statement in writing signed by the officer specifying:
 - (a) the concentration of alcohol determined by the analysis to be present in the employee's blood and expressed in grammes of alcohol in 100 millilitres of blood, and
 - (b) the day on which and time of the day at which the breath analysis was completed.
- (5) A railway employee who is required to submit to a breath analysis may request the authorised officer or police officer making the requisition to arrange for the taking (in the presence of an authorised officer or a police officer) of a sample of the employee's blood for analysis, at the employee's own expense, by:
 - (a) a medical practitioner nominated by the employee, or
 - (b) a medical practitioner nominated by the officer at the employee's request.
- (6) The making of any such request or the taking of a sample of a railway employee's blood does not absolve the employee from the obligation imposed on the employee to submit to a breath analysis in accordance with this clause.

12 Blood or urine samples taken at hospitals from railway employees involved in accidents in carrying out railway safety work

- (1) If a railway employee attends or is admitted to a hospital for examination or treatment because the employee has been involved in an accident while carrying out railway safety work, an authorised officer or police officer may require the employee to provide as

soon as practicable a sample of the employee's blood or urine in accordance with the directions of a medical practitioner who attends the employee at the hospital.

- (2) If there is no medical practitioner present to attend the person at the hospital, the blood or urine sample is to be taken by a registered nurse who is accredited by a hospital as competent to perform the sampling procedures.
- (3) Any such medical practitioner or nurse must take the sample if informed by the authorised officer or police officer that the sample is required to be taken by the practitioner or nurse under this Regulation.
- (4) A requirement under subclause (1) need not be made directly to the railway employee concerned but may be made through a medical practitioner or any such nurse who attends the employee at the hospital.

13 Additional circumstances when blood or urine samples may be taken

- (1) An authorised officer may require a railway employee to provide a sample of the employee's blood or urine if:
 - (a) the officer is entitled under this Regulation to require the employee to submit to a breath analysis, and
 - (b) a breath analysing instrument is not readily available.
- (2) An authorised officer who has a reasonable belief that, by the way in which a railway employee was acting, the employee might be under the influence of a drug, may require the employee to provide a sample of the employee's blood or urine if:
 - (a) the employee has undergone a breath test in accordance with this Regulation, and
 - (b) the result of the test does not permit the employee to be required to submit to a breath analysis, and
 - (c) the officer has required the employee to submit to a sobriety assessment and:
 - (i) the employee refuses to submit to the assessment, or
 - (ii) after the assessment is made, the officer has a reasonable belief that the employee is under the influence of a drug.

Note. Under clause 8, a railway employee may be required at any time to provide urine samples.

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- (3) A requirement that a railway employee provide a sample is not open to challenge in any proceedings on the basis that a breath analysing instrument was readily available.

14 Taking of blood or urine samples

- (1) This clause applies if an authorised officer or a police officer is entitled under this Regulation to require a railway employee to provide a sample of the employee's blood or urine.
- (2) The officer may require the railway employee to provide the sample of urine in accordance with the directions of the officer.
- (3) The officer may require the railway employee to provide the sample of blood at a hospital in accordance with the directions of a medical practitioner who attends the employee.
- (4) If there is no medical practitioner present to attend the railway employee at the hospital, the blood sample is to be taken by a registered nurse who is accredited by a hospital as competent to perform the sampling procedures.
- (5) Any such medical practitioner or nurse must take a sample of blood if informed by the authorised officer or police officer that the sample is required to be taken by the practitioner or nurse under this Regulation.
- (6) If an authorised officer or a police officer is entitled under this Regulation to require a railway employee to provide a sample of blood, the officer may:
- (a) arrest the employee without warrant, and
 - (b) take the employee with such force as may be necessary to a hospital and there detain the employee for the purpose of obtaining the sample.

15 Restrictions on requiring breath test, assessment, breath analysis or sample

An authorised officer or a police officer must not require a railway employee to undergo a breath test, submit to an assessment or a breath analysis or provide a sample of blood or urine:

- (a) if the employee has been admitted to a hospital for medical treatment, unless the medical practitioner who attends the employee at the hospital (or, if no medical practitioner is present to attend the person, a registered nurse who is accredited by a hospital as competent to perform the sampling

procedures) has been notified of the intention to make the requisition and the medical practitioner or nurse does not object on the ground that compliance would be prejudicial to the proper care or treatment of the employee, or

- (b) if it appears to the officer that it would (because of injuries sustained by the employee) be dangerous to the employee's medical condition if the employee complied with the requisition, or
- (c) at any time after the expiration of 3 hours from the time the employee carried out the railway safety work (or was due to commence the railway safety work) to which the requisition relates, or
- (d) at the employee's home.

16 Action to be taken with respect to blood samples

- (1) A medical practitioner, nurse or other person by whom a sample of a railway employee's blood is taken under this Regulation must:
 - (a) place the sample into a container, and
 - (b) fasten and seal the container, and
 - (c) mark or label the container for future identification, and
 - (d) give to the person from whom the sample is taken a certificate relating to the sample that contains sufficient information to enable the sample to be identified as a sample of that person's blood, and
 - (e) as soon as reasonably practicable after the sample is taken, hand the sample to the authorised officer or police officer who was present at the time the sample was taken.
- (2) The authorised officer or police officer to whom a sample of blood is handed under subclause (1) must:
 - (a) immediately on being handed the sample, place the sample in a security box of a type approved by the Commissioner of Police and lock the box, and
 - (b) as soon as reasonably practicable thereafter, arrange for the sample to be submitted to the laboratory at Lidcombe of the Division of Analytical Laboratories, ICPMR, Western Sydney Area Health Service, for analysis by an analyst to determine the concentration of alcohol (and, where required, of other drugs) in the blood.

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- (3) The person from whom the sample was taken may, within 12 months after the taking of the sample, apply to the laboratory referred to in subclause (2) for a portion of the sample to be sent, for analysis at that person's own expense, to a medical practitioner or laboratory nominated by that person.

17 Action to be taken with respect to urine samples

- (1) A medical practitioner, nurse or other person by whom a sample of a railway employee's urine is taken under this Regulation must:
 - (a) divide the sample into 2 approximately equal portions or, if a railway employee indicates that he or she would like to keep part of a sample, 3 approximately equal portions, and
 - (b) place each portion into a container, and
 - (c) fasten and seal each container, and
 - (d) mark or label each container for future identification.
- (2) Of the sealed containers:
 - (a) one must be handed by the medical practitioner, nurse or other person to the railway employee from whom the sample was taken or to some other person on behalf of the employee, and
 - (b) one must be handed by the medical practitioner, nurse or other person to the authorised officer or police officer present when the sample was taken, and
 - (c) in a case where the railway employee has indicated that he or she would like to keep a part of the sample, the third container must be given to the employee.
- (3) The authorised officer or police officer to whom a sample of urine is handed under subclause (2) must:
 - (a) immediately on being handed the sample, place the sample in a security box of a type approved by the Commissioner of Police and lock the box, and
 - (b) as soon as reasonably practicable thereafter, arrange for the sample to be submitted for analysis by an analyst to determine the concentration of drugs other than alcohol in the urine.

18 Analysis of samples

- (1) If a blood or urine sample was obtained under clause 12, an authorised officer or a police officer may not make arrangements under clause 16 or 17 for the analysis of the sample to determine the

concentration in the blood or urine of a drug other than alcohol except in circumstances where the authorised officer or police officer has reasonable grounds to believe that, at the time of the accident concerned, the person from whom the sample was taken was under the influence of a drug other than alcohol and where:

- (a) no police officer or authorised officer attended the scene of the accident that led to the taking of the sample, or
 - (b) although a police officer or officers or one or more authorised officers attended the scene of the accident, there was no reasonable opportunity to require the person from whom the sample was taken to submit to a breath test or, in accordance with clause 13 (2), an assessment of his or her sobriety.
- (2) An analyst to whom a sample of blood or urine is submitted for analysis under clause 16 or 17 may carry out an analysis of the sample, or of a portion of the sample, to determine the concentration of alcohol in the blood or urine or to determine whether the blood or urine contains alcohol or another drug or drugs, as the case requires.
- (3) The analysis of sample of urine must be carried out, and a report provided, in accordance with:
- (a) ASNZ 4308, except as provided by paragraph (b), or
 - (b) such other procedure as may be directed by the Director-General.
- (4) Without limiting subclause (3) (b), the Director-General may, generally or in a particular case or class of cases, direct that the analysis is to be carried out in order to determine whether there is present in a sample a drug specified in Schedule 1 to the *Drug Misuse and Trafficking Act 1985*.

19 Medical practitioners and nurses—protection from liability

No civil or criminal liability is incurred by a medical practitioner or nurse (nor by any person acting under the supervision or direction of the medical practitioner or nurse) in respect of anything properly and necessarily done by the practitioner or nurse in the course of taking a sample of blood or urine from a person if the practitioner or nurse:

- (a) believed on reasonable grounds that the practitioner or nurse was required under this Regulation to take the sample of blood or urine from the person, or

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- (b) was informed by an authorised officer or a police officer that the person was a person from whom the practitioner or nurse was required under this Regulation to take the sample of blood or urine.

Part 4 Offences relating to testing for alcohol or other drugs

20 Refusal to be tested

- (1) Any railway employee who, when required under this Regulation to do so, refuses or fails:
 - (a) to undergo a breath test, or
 - (b) to submit to an assessment,in accordance with this Regulation is guilty of an offence.
Maximum penalty: 10 penalty units.
- (2) Any railway employee who, when required under this Regulation to do so, refuses or fails:
 - (a) to submit to a breath analysis, or
 - (b) to provide a sample of blood or urine,in accordance with this Regulation is guilty of an offence.
Maximum penalty: 25 penalty units or imprisonment for 9 months, or both.
- (3) It is a defence to a prosecution for an offence under this clause if the defendant satisfies the court that the defendant was unable on medical grounds to comply with the requirement concerned.

21 Interfering with results of test

- (1) A railway employee who does anything to introduce, or alter the concentration of, alcohol or any other drug in the employee's blood or urine before submitting to a breath analysis or providing a sample of blood or urine under this Regulation is guilty of an offence if the employee does so for the purpose of preventing or restricting the use of the results of the analysis in any proceedings against the employee.
Maximum penalty: 25 penalty units or imprisonment for 9 months, or both.
- (2) A person who does anything to introduce, or alter the concentration of, alcohol or any other drug in a railway employee's blood or urine before the employee submits to a breath analysis or provides a sample of blood or urine under this Regulation is guilty of an

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offence if the person does so for the purpose of preventing or restricting the use of the results of the analysis in any proceedings against the employee.

Maximum penalty: 25 penalty units or imprisonment for 9 months, or both.

22 Taking of samples

(1) Any medical practitioner or nurse who, when required under this Regulation to take a sample of blood or urine from a railway employee:

- (a) refuses or fails to take the sample, or
- (b) does not comply with the requirements of clause 16 or 17 with respect to any sample taken,

is guilty of an offence.

Maximum penalty: 10 penalty units.

(2) It is a defence to a prosecution for an offence under subclause (1) if the medical practitioner or nurse satisfies the court that:

- (a) the practitioner or nurse believed on reasonable grounds that the taking of the sample from the railway employee would be prejudicial to the proper care and treatment of the railway employee, or
- (b) the practitioner or nurse was, because of the behaviour of the railway employee, unable to take the sample, or
- (c) there was other reasonable cause for the practitioner or nurse not to take the sample.

(3) Any person who, when taking a sample of urine from a railway employee, does not comply with the requirements of clause 16 or 17 with respect to any sample taken is guilty of an offence.

Maximum penalty: 10 penalty units.

(4) A person who hinders or obstructs a medical practitioner, nurse or other person in attempting to take a sample of the blood or urine of any other person under this Part is guilty of an offence.

Maximum penalty: 20 penalty units.

23 Interfering or tampering with, or destroying, samples

A person must not interfere or tamper with, or destroy, a sample of a person's blood or urine provided or taken under this Regulation unless the sample is destroyed:

- (a) by or at the direction of an analyst in the course of or on completion of analysis, or
- (b) in the case of a sample handed to a person on behalf of a railway employee, by or at the direction of the person, or
- (c) after the expiration of 12 months commencing on the day on which the sample was taken.

Maximum penalty: 20 penalty units.

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Part 5 Certificate evidence in proceedings

Part 5 Certificate evidence in proceedings

24 Certificate evidence of concentration of alcohol in blood determined by breath analysis

- (1) In proceedings for an offence under clause 5, evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined by a breath analysing instrument operated by:
 - (a) an authorised officer, or
 - (b) a police officer authorised by the Commissioner of Police to operate breath analysing instruments.
- (2) The concentration of alcohol so determined is taken to be the concentration of alcohol in the blood of the person at the time the person carried out the railway safety work to which the breath analysis relates if the breath analysis was made within 3 hours after that time, unless the defendant proves that the concentration of alcohol in the defendant's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of blood.
- (3) In proceedings for an offence under clause 5, a certificate purporting to be signed by an authorised officer or a police officer and certifying that:
 - (a) the officer is a duly appointed authorised officer or (as the case requires) the police officer is authorised by the Commissioner of Police to operate breath analysing instruments, and
 - (b) the person named in the certificate submitted to a breath analysis, and
 - (c) the apparatus used by the officer to make the breath analysis was a breath analysing instrument within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*, and
 - (d) the analysis was made on the day and completed at the time stated in the certificate, and
 - (e) a concentration of alcohol (determined by that breath analysing instrument and expressed in grammes of alcohol in 100 millilitres of blood) was present in the blood of that person on the day and at the time stated in the certificate, and

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- (f) a statement in writing required by clause 11 (4) was delivered in accordance with that subclause,
- is prima facie evidence of the particulars certified in and by the certificate.
- (4) In proceedings for an offence under clause 5, a certificate purporting to be signed by the Commissioner of Police that the police officer named in the certificate is authorised by the Commissioner of Police to operate breath analysing instruments is prima facie evidence of the particulars certified in and by the certificate.
- (5) In any proceedings for an offence under clause 5, evidence of the condition of a breath analysing instrument or the manner in which it was operated is not to be required unless evidence that the instrument was not in proper condition or was not properly operated has been adduced.

25 Certificate evidence of concentration of alcohol in blood determined by analysis of sample of blood

- (1) In proceedings for an offence under clause 5, evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined by an analysis under this Regulation of a sample of the person's blood.
- (2) The concentration of alcohol so determined is taken to be the concentration of alcohol in the blood of the person charged at the time the person carried out the railway safety work to which the analysed sample of blood relates, if that sample of blood was taken within 3 hours after that time, unless the defendant proves that the concentration of alcohol in the defendant's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of the blood.
- (3) In proceedings for an offence under clause 5, a certificate purporting to be signed by a medical practitioner or nurse and certifying any one or more of the following matters:
- (a) that the practitioner or nurse was a medical practitioner or nurse who attended a specified person at a hospital,
 - (b) that the practitioner or nurse took a sample of the person's blood in accordance with this Regulation on the day and at the time stated in the certificate,
 - (c) that the practitioner or nurse dealt with the sample in accordance with clause 16 or 17,

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- (d) that the practitioner or nurse used equipment of a specified description in so taking and dealing with the sample,
- (e) that the container was sealed, and marked or labelled, in a specified manner,

is prima facie evidence of the particulars certified in and by the certificate.

- (4) In proceedings for an offence under clause 5, a certificate purporting to be signed by an authorised officer or a police officer and certifying any one or more of the following matters:

- (a) that the officer received a sample of a specified person's blood taken in accordance with this Regulation,
- (b) that the officer arranged for the sample to be submitted for analysis by an analyst to determine the concentration of alcohol in the blood,
- (c) that the container was sealed, and marked or labelled, in a specified manner,

is prima facie evidence of the particulars certified in and by the certificate.

- (5) In proceedings for an offence under clause 5, a certificate purporting to be signed by an analyst and certifying any one or more of the following matters:

- (a) that the analyst received, on a specified day, a sample of a specified person's blood in a container submitted for analysis under this Regulation,
- (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner,
- (c) that, on receipt by the analyst of the container, the seal was unbroken,
- (d) that the analyst carried out an analysis of the sample to determine the concentration of alcohol in the sample,
- (e) that the concentration of alcohol determined pursuant to the analysis and expressed in grammes of alcohol in 100 millilitres of blood was present in that sample,
- (f) that the analyst was, at the time of the analysis, an analyst within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*,

is prima facie evidence of the matters set out in subclause (6).

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- (6) A certificate under subclause (5) is prima facie evidence:
- (a) of the particulars certified in and by the certificate, and
 - (b) that the sample was a sample of the blood of that specified person, and
 - (c) that the sample had not been tampered with before it was received by the analyst.

26 Certificate evidence of presence of drugs

- (1) In proceedings for an offence under clause 6:
- (a) evidence may be given of:
 - (i) the presence of a drug, or
 - (ii) the presence of a particular concentration of a drug, in the blood or urine of the person charged, as determined pursuant to an analysis under this Regulation of a sample of the person's blood or urine, and
 - (b) the drug the presence of which is so determined or the particular concentration of the drug the presence of which is so determined, as the case may be, is taken to have been present in the blood or urine of that person at the time the person carried out the railway safety work to which the analysed sample relates,

if the sample was taken within 3 hours after that time, unless the defendant proves the absence of the drug, or the presence of the drug in a different concentration, at that time.

- (2) In proceedings for an offence under clause 6, a certificate purporting to be signed by a medical practitioner or nurse and certifying any one or more of the following matters:
- (a) that the practitioner or nurse was a medical practitioner or nurse who attended a specified person at a hospital,
 - (b) that the practitioner or nurse took a sample of the person's blood or urine in accordance with this Regulation on the day and at the time stated in the certificate,
 - (c) that the practitioner or nurse dealt with the sample in accordance with clause 16 or 17,

is prima facie evidence of the particulars certified in and by the certificate.

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Part 5 Certificate evidence in proceedings

- (3) In proceedings for an offence under clause 6, a certificate purporting to be signed by a person and certifying any one or more of the following matters:
- (a) that the person took a sample of a person's urine in accordance with this Regulation on the day and at the time stated in the certificate,
 - (b) that the person dealt with the sample in accordance with clause 16 or 17,
- is prima facie evidence of the particulars certified in and by the certificate.
- (4) In proceedings for an offence under clause 6, a certificate purporting to be signed by an authorised officer or a police officer and certifying any one or more of the following matters:
- (a) that the officer received a sample of a specified person's blood or urine taken in accordance with this Regulation,
 - (b) that the officer arranged for the sample to be submitted for analysis by an analyst to determine whether any drug was present in the sample,
 - (c) that the container was sealed, and marked or labelled, in a specified manner,
- is prima facie evidence of the particulars certified in and by the certificate.
- (5) In proceedings for an offence under clause 6, a certificate purporting to be signed by an analyst and certifying any one or more of the following matters:
- (a) that the analyst received, on a specified day, a sample of a specified person's blood or urine in a container submitted for analysis under this Regulation,
 - (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner,
 - (c) that, on receipt by the analyst of the container, the seal was unbroken,
 - (d) that the analyst carried out an analysis of the sample to determine whether any drug was present in the sample,
 - (e) that a specified drug ascertained pursuant to the analysis was present in that sample and, if so certified, was present in that sample in a specified concentration,

(f) that the analyst was, at the time of the analysis, an analyst within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*,

is prima facie evidence of the matters set out in subclause (6).

- (6) A certificate under subclause (5) is prima facie evidence:
- (a) of the particulars certified in and by the certificate, and
 - (b) that the sample was a sample of the blood or urine of that specified person, and
 - (c) that the sample had not been tampered with before it was received by the analyst.
- (7) Nothing in this clause enables evidence to be given of or in relation to:
- (a) the presence of a drug other than alcohol, or
 - (b) the presence of a particular concentration of a drug other than alcohol,

in the blood or urine of a person charged with an offence under clause 6, as determined by an analysis of a sample obtained under clause 12, unless the court is satisfied that the analysis was not arranged in contravention of clause 18 (1).

27 Certificate evidence of appointment of authorised officer

In proceedings for an offence under this Regulation, a certificate purporting to be signed by the Director-General and certifying that the officer named in the certificate is an authorised officer is prima facie evidence of the particulars certified in and by the certificate.

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Clause 28 Rail Safety (Drug and Alcohol Testing) Regulation 2003

Part 6 Miscellaneous

Part 6 Miscellaneous

28 Effect of positive test

- (1) If a railway employee tests positive to the presence of:
 - (a) more than 0.02 grammes of alcohol in 100 millilitres of the employee's blood, or
 - (b) a drug other than alcohol,the operator of the railway on whose behalf the railway employee is carrying out railway safety work is to have regard to the results of the test in determining whether the employee is a fit and proper person to be issued with a certificate of competency under section 36 of the Act.
- (2) If a certificate of competency has been issued by a person other than the operator referred to in subclause (1), the issuer is to have regard to the results of the test in determining whether the railway employee is a fit and proper person to be issued with a certificate of competency under section 36 of the Act.
- (3) The operator or issuer is to make a determination under this clause on the basis of any guidelines issued for the purposes of section 36 or 42 of the Act.

BY AUTHORITY
