

# Rail Safety (Drug and Alcohol Testing) Regulation 2003

[2003-531]



New South Wales

## Status Information

### Currency of version

Historical version for 4 August 2006 to 3 December 2006 (accessed 19 November 2024 at 12:27)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**

*Transport Legislation Amendment (Implementation of Waterfall Rail Inquiry Recommendations) Bill 2005*

[Non-government Bill: Mr B R O'Farrell, MP]

*Statute Law (Miscellaneous Provisions) Bill (No 2) 2006*

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 15 November 2006

# Rail Safety (Drug and Alcohol Testing) Regulation 2003



New South Wales

## Contents

<b>Part 1 Preliminary</b> .....	4
1 Name of Regulation .....	4
2 Commencement .....	4
3 Definitions .....	4
4 Authorisation of testing officers.....	6
<b>Part 2 Offences relating to alcohol or other drugs</b> .....	7
5 Offence—carrying out railway safety work with prescribed concentration of alcohol in blood .....	7
6 Offence—carrying out railway safety work while under influence of alcohol or other drug .....	7
7 Double jeopardy .....	7
<b>Part 3 Testing for alcohol or other drugs</b> .....	8
8 Random and targeted testing of railway employees .....	8
9 Testing of railway employees in specified situations .....	8
10 Assessment of sobriety if breath testing device not available.....	9
11 Breath analysis of railway employees following breath testing .....	9
12 Blood or urine samples taken at hospitals from railway employees involved in accidents in carrying out railway safety work .....	10
13 Additional circumstances when blood or urine samples may be taken .....	11
14 Taking of blood or urine samples .....	11
15 Restrictions on requiring breath test, assessment, breath analysis or sample .....	12
16 Action to be taken with respect to blood samples .....	13

17 Action to be taken with respect to urine samples.....	13
18 Analysis of samples .....	14
19 Medical practitioners, nurses and testing officers—protection from liability .....	15
<b>Part 4 Offences relating to testing for alcohol or other drugs.....</b>	<b>15</b>
20 Refusal to be tested.....	15
20A Failure to conduct test.....	16
21 Interfering with results of test .....	16
22 Taking of samples .....	16
23 Interfering or tampering with, or destroying, samples .....	17
<b>Part 5 Certificate evidence in proceedings.....</b>	<b>18</b>
24 Certificate evidence of concentration of alcohol in blood determined by breath analysis.....	18
25 Certificate evidence of concentration of alcohol in blood determined by analysis of blood sample .....	19
26 Certificate evidence of presence of drugs .....	20
27 Certificate evidence of authorisation of testing officer .....	22
<b>Part 6 Miscellaneous .....</b>	<b>23</b>
28 Effect of positive test.....	23
29 Notification of drug and alcohol testing.....	23
30 Savings and transitional .....	24

# Rail Safety (Drug and Alcohol Testing) Regulation 2003



New South Wales

## 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 person employed by the owner or operator of an approved laboratory as an analyst.

**approved laboratory** means:

- (a) in relation to blood samples—the laboratory at Lidcombe of the Division of Analytical Laboratories, ICPMR, Western Sydney Area Health Service, and
- (b) in relation to urine samples—a laboratory that has been accredited by the National Association of Testing Authorities, Australia for the purposes of AS/NZS 4308:2001.

**AS/NZS 4308:2001** means Australian/New Zealand Standard AS/NZS 4308:2001, *Procedures for the collection, detection and quantitation of drugs of abuse in urine*.

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

**breath test** means a test for the purpose of indicating the concentration of alcohol in a person's blood, carried out on that person's breath by means of a device, not being a breath analysing instrument, of a type that complies with the requirements of AS 3547—1997, *Breath alcohol testing devices for personal use*.

**drug** means:

- (a) alcohol, or
- (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.

**on-site drug screening device** means a device which determines the presence or absence of drugs in urine using an immunoassay technique that meets the initial test cut-off levels listed in Table 1 of AS/NZS 4308:2001.

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

**prescribed incident** means any of the following that occur on railway premises:

- (a) a collision between trains,
- (b) a collision between a train and a person,
- (c) a collision between a train and a road vehicle or plant equipment,
- (d) the derailment of a train,
- (e) a breach of the rail infrastructure owner's safeworking rules,
- (f) such other incident that the ITSRR may, by notice in writing to the operator of a railway, declare to be a type of prescribed incident in respect of that railway.

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

**testing officer** means:

- (a) a person authorised for the time being under clause 4 as a testing officer, or
- (b) an authorised officer.

**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 Authorisation of testing officers**

- (1) The ITSRR may, by notice in writing, authorise any person to be a testing officer for the purposes of exercising functions under this Regulation.
- (2) An operator of a railway may, by notice in writing, authorise any person to be a testing officer for the purposes of exercising functions under this Regulation.
- (3) The operator of a railway or the ITSRR may authorise as a testing officer:
  - (a) a person by name, or
  - (b) the holder from time to time of an office by reference to the title of the office concerned.
- (4) The authority of a testing officer authorised under this clause is limited:
  - (a) by any conditions or other limitations specified in the relevant notice of authorisation, and
  - (b) in the case of a testing officer authorised by the operator of a railway—to the railway specified in the accreditation of the operator.
- (5) The operator of a railway must furnish a testing officer authorised by the operator with a certificate of authorisation as a testing officer.
- (6) The ITSRR must furnish a testing officer authorised by the ITSRR with a certificate of authorisation as a testing officer.
- (7) A testing officer must, if requested to do so, produce the certificate of authorisation to any person required by the officer to submit to a breath test or to do any other thing under this Regulation.
- (8) If a person is authorised as a testing officer by virtue of being the holder of an office, evidence that the testing officer holds the office concerned has the same effect as the production of a certificate of authorisation as a testing officer.
- (9) The ITSRR may, by notice in writing to the operator of a railway, revoke the authorisation of a person authorised as a testing officer by the operator.
- (10) The ITSRR may, by notice in writing, revoke the authorisation of a person authorised

as a testing officer by the ITSRR.

- (11) The operator of a railway may, by notice in writing, revoke the authorisation of a person authorised as a testing officer by the operator.

## **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.

### **Part 3 Testing for alcohol or other drugs**

#### **8 Random and targeted testing of railway employees**

- (1) A testing 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:
  - (a) breath tested or required to undergo breath analysis whether or not there is any suspicion that the employee has recently consumed alcohol, or
  - (b) required to provide a urine sample whether or not there is any suspicion that the employee has recently taken drugs.
- (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) or the result of any such testing or analysis performed on a sample of the employee's urine 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) A testing 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) a testing 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**

(1) If:

(a) it appears to a testing 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 a testing 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 a police officer is entitled to require a railway employee to submit to a breath analysis, the officer may:

(a) arrest the employee without a warrant, and

(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.

(2A) If a testing officer is entitled to require a railway employee to submit to a breath analysis, the officer may direct the employee to attend the nearest police station, or

such other place as the officer may reasonably require, and there submit to a breath analysis.

- (3) A breath analysis must be carried out by:
  - (a) a testing 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 testing 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 testing officer or police officer making the requisition to arrange for the taking (in the presence of a testing 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, a testing 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 testing 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) A testing 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) A testing 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.

- (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 a testing 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 testing officer or police officer that the sample is required to be taken by the practitioner or nurse under this Regulation.
- (6) If a police officer is entitled to require a railway employee to provide a sample of blood, the officer may:
  - (a) arrest the employee without a 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.
- (7) If a testing officer is entitled to require a railway employee to provide a sample of blood, the officer may direct the employee to attend the nearest hospital for the purpose of obtaining the sample.

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

A testing 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
- (ca) in the case of a person other than an employee who has been involved in an accident or irregular incident while carrying out railway safety work, after the

employee has ceased to be on duty on a particular day, 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 testing 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 an approved laboratory for analysis by an analyst to determine the concentration of alcohol (and, where required, of other drugs) in the blood.
- (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) If a testing officer or police officer requires a railway employee to provide a sample of urine, the sample must be collected in accordance with section 3 of AS/NZS 4308:2001.
- (2) The testing officer or police officer who required the employee to provide a sample must arrange for the sample to be submitted for initial testing.
- (3) Initial testing may be carried out:

- (a) at the place where the sample was taken, using an on-site drug screening device, or
  - (b) by an analyst at an approved laboratory, in accordance with section 4 of AS/NZS 4308:2001.
- (4) A sample that is submitted for initial testing or confirmatory analysis at an approved laboratory is to be transported in accordance with section 3 of AS/NZS 4308:2001.
- (5) If initial testing of the sample indicates that the urine contains a drug or drugs:
- (a) in the case of an initial test conducted in accordance with subclause (3) (a)—the testing officer or police officer who required the employee to provide the sample must arrange for the sample to be submitted to an analyst at an approved laboratory for confirmatory analysis in accordance with clause 18, or
  - (b) in the case of an initial test conducted in accordance with subclause (3) (b)—the analyst is to conduct a confirmatory analysis in accordance with clause 18.
- (6) If a confirmatory analysis is carried out on a urine sample, the person from whom the sample was taken may, within 12 months after the taking of the sample, apply to the laboratory at which the sample is being kept for a portion of the sample to be sent for analysis, at the person's own expense, to an approved laboratory nominated by the person.
- (7) Samples are to be stored in accordance with section 3 of AS/NZS 4308:2001.

## **18 Analysis of samples**

- (1) (Repealed)
- (2) An analyst to whom a sample of blood is submitted for analysis under clause 16 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 to determine whether the blood contains alcohol or another drug or drugs, as the case requires.
- (3) An analyst to whom a sample of urine is submitted for analysis under clause 17 may carry out a confirmatory analysis of the sample, or a portion of the sample, to determine whether the urine contains a drug or drugs. The confirmatory analysis must be carried out, and a report provided, in accordance with sections 5 and 6 of AS/NZS 4308:2001.
- (4) A confirmatory analysis under subclause (3) may be carried out only if initial testing determines that the urine contains a drug or drugs.
- (5) For the purpose of sections 3 and 4 of AS/NZS 4308:2001 as it applies under this Regulation, initial testing done in accordance with clause 17 (3) (a) is taken to have been performed in the same approved laboratory as subsequent confirmatory analysis

of the sample under subclause (3).

- (6) Without limiting subclause (3), the ITSRR may, generally or in a particular case or class of cases, direct that an 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, nurses and testing officers—protection from liability**

- (1) 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
  - (b) was informed by a testing 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.
- (2) No civil or criminal liability is incurred by a testing officer in respect of anything properly and necessarily done by the officer in the course of administering a breath test or breath analysis, conducting an assessment of sobriety or taking a sample of urine in the exercise of the functions of a testing officer under this Regulation.

### **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.

## **20A Failure to conduct test**

An operator of a railway must not, without reasonable excuse, fail to ensure that a railway employee is required:

- (a) to undergo a breath test and, if it appears to the testing officer as a result of the breath test that the prescribed concentration of alcohol may be present in the employee's blood, a breath analysis, or
- (b) to provide a sample of blood or urine,

within 3 hours immediately after the employee is involved, or is reasonably suspected of being involved, in a prescribed incident while carrying out railway safety work.

Maximum penalty: 250 penalty units.

## **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 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.

## 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) a testing 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 a testing officer or a police officer and certifying that:
  - (a) the officer is duly authorised as a testing 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
  - (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 blood sample**

- (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,
  - (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 a testing 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, employed by the owner or operator of an approved laboratory as an analyst,

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 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.

- (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 a testing 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 (or testing and 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 (or testing and 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, employed by the owner or operator of an approved laboratory as an analyst,

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.

## **27 Certificate evidence of authorisation of testing officer**

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

## **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.

### **29 Notification of drug and alcohol testing**

- (1) An operator of a railway is to notify the ITSRR, in a form approved by the ITSRR, of the following:
  - (a) any analysis of blood confirming the presence of a drug (other than alcohol) in the blood of an employee,
  - (b) any analysis of blood confirming that the prescribed concentration of alcohol is present in the employee's blood,
  - (c) any analysis of urine confirming the presence of a drug in the urine of an employee,
  - (d) any breath test confirming that the prescribed concentration of alcohol is present in the employee's blood,
  - (e) any breath analysis confirming that the prescribed concentration of alcohol is present in the employee's blood,
  - (f) any employee who, when required to do so under this Regulation, fails to undergo a breath test, undergo a breath analysis, or provide a sample of blood or urine,
  - (g) any incident or suspected incident involving the interference or tampering with, or the destruction of, a sample of a person's blood or urine provided or taken under this Regulation in contravention of this Regulation,

- (h) any incident or suspected incident involving something being done in contravention of this Regulation to introduce, or alter the concentration of, alcohol or any other drug in a railway employee's blood or urine before the employee submitted to a breath analysis or provided a sample of blood or urine under this Regulation.

**Note—**

Clause 3 of this Regulation provides that drug includes alcohol.

- (2) An operator of a railway is to provide the ITSRR with statistical reports relating to the conduct of drug and alcohol testing at such times as requested by the ITSRR, in the form provided by the ITSRR for that purpose.

**30 Savings and transitional**

- (1) Any person who, immediately before the commencement of the *Rail Safety (Drug and Alcohol Testing) Amendment (Samples) Regulation 2006*, was authorised under clause 4 (as in force immediately before the commencement of that Regulation) to exercise the functions of an authorised officer under this Regulation, is taken (on that commencement) to have been authorised as a testing officer under clause 4.
- (2) This Regulation, as in force immediately before the commencement of the *Rail Safety (Drug and Alcohol Testing) Amendment (Samples) Regulation 2006*, continues to apply in respect of any sample of urine or blood collected before that commencement.