

# STATES OF JERSEY



## **DRAFT ROAD TRAFFIC (No. 59) (JERSEY) REGULATIONS 200-**

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**Lodged au Greffe on 18th August 2009  
by the Minister for Home Affairs**

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**STATES GREFFE**





Jersey

## **DRAFT ROAD TRAFFIC (No. 59) (JERSEY) REGULATIONS 200-**

### **REPORT**

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The effect of these Regulations is to amend the Road Traffic (Jersey) Law 1956 to enable the police to request a medical practitioner to take a sample of blood from a person who is unable to give consent, in circumstances where the police are investigating a suspected offence and where, but for the incapacity, the police would have grounds for requesting a specimen of breath.

The need for the amendment to the principal Law was first recommended by the former Solicitor General in 2006 following several road traffic incidents, which came to the attention of the Law Officers' Department, where alcohol was believed to have been a contributing factor in the accident.

The reason for the amendment to the law is best demonstrated by way of example:

A motorcyclist is involved in an accident. The police officer who attends the scene of the accident smells alcohol on the motorcyclist's breath. The motorcyclist's journey is captured on CCTV, and the film is viewed by the police doctor, who gives it as his opinion that the motorcyclist appears grossly unfit to drive a motor vehicle.

On arrival at hospital the motorcyclist is unconscious, and remains so for several days. Had the motorcyclist been conscious, the police would have been able to ask for a specimen of breath/blood. If the specimen had been given, and shown the motorcyclist to be over the prescribed limit he could have been prosecuted for driving with excess alcohol in his blood stream; had he refused to provide a specimen, he could have been prosecuted for failing to supply a specimen. Because the motorcyclist is unconscious, however, any prosecution can only rely on the CCTV footage and the evidence of the police officer who smelt alcohol on his breath because the Law does not currently permit a sample to be taken from someone who is incapable of giving consent for the purpose of analysis and for use in evidence against the person from whom the blood has been taken.

In the UK, the situation is regulated by section 7A of the Road Traffic Act 1988 which, subject to the conditions set out in the section, allows a police officer to request a medical practitioner to take a blood sample from a person incapable of consenting in circumstances where the person has been involved in an accident connected to the matter under police investigation and, but for the incapacity, the officer would be entitled under the relevant statutory powers to request the provision of a specimen.

In Guernsey there is provision under the Road Traffic (Drink Driving) Guernsey Law 1989, as amended, for specimens of blood to be taken from persons incapable of consenting.

It is anticipated that these Regulations will assist in the investigation of offences under the Road Traffic (Jersey) Law 1956.

Consultation on the draft Regulations has been carried out with the States of Jersey Police, the Comité des Connétables and the Health and Social Services Department.

The requirement for a certificate of compatibility with the Convention rights under Article 16 of the Human Rights (Jersey) Law 2000 does not apply to draft Regulations. However, the advice received from the Law Officers' Department is that if such a statement were required, it could be made.

### **Financial and manpower implications**

There are no financial or manpower implications for the States arising from the adoption of these Draft Regulations.

## Explanatory Note

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These Regulations would amend the Road Traffic (Jersey) Law 1956.

Their effect is to enable a registered medical practitioner, at the request of a police officer, to take a specimen of blood from a person who is for medical reasons incapable of giving consent – for example, because he or she is in a coma following a motor accident.

If the person subsequently recovers and gives permission, the police officer could then have the specimen analysed in a laboratory.

Failure, without reasonable excuse, to give permission would be an offence – see new Article 30B(4) (*below*).

The amendments are intended to complement the existing provisions in the Law that apply to a person who is capable of agreeing to provide a blood specimen, but fails without reasonable excuse to do so. Accordingly, a person committing an offence under the new provisions will be liable to the same consequences.

The amendments are based on the Road Traffic Act 1988 (U.K.) and the Road Traffic Offenders Act 1988 (U.K.), as amended by sections 56 and 57 of the Police Reform Act 2002 (U.K.)

The Regulations are set out in the following way –

*Regulation 1* is the interpretation clause.

*Regulation 2* is a consequential amendment. It widens the definition “motoring offence” in the Law to include a failure without reasonable excuse to give permission for a laboratory test of a specimen of blood. (The definition already includes the offence of failing without reasonable excuse to provide a blood specimen.)

*Regulation 3* also contains consequential amendments.

One relates to a motorist who has caused death by careless driving, while under the influence of drink or drugs. The effect of the amendment is that such a person commits a further offence if he or she subsequently, without reasonable excuse, fails to allow a laboratory test of a blood specimen taken under the new provisions while the person was incapable of giving consent. (The new offence complements the existing offence of failing without reasonable excuse to provide a blood specimen, despite being capable of agreeing to do so.)

Article 26(5) of the Law contains a mandatory minimum period of disqualification on a first conviction for causing death by careless driving while under the influence of drink or drugs. It also stipulates a longer mandatory minimum period of disqualification for that offence if the offender has been previously convicted of such an offence, or of any of the following offences –

- (a) driving under the influence of drink or drugs;
- (b) driving or being in charge of a motor vehicle while exceeding the permitted limit of alcohol concentration; and
- (c) failing without reasonable excuse to provide a breath or blood specimen.

Regulation 3 of these amending Regulations provides that an earlier conviction under the new offence created by Article 30B(4) will also be treated as a prior offence for that purpose.

*Regulations 4 and 5* contain similar consequential amendments. Their effect is to treat the new offence under Article 30B as an earlier offence for the purposes of mandatory minimum periods of disqualification on convictions under Article 27 (driving when under the influence of drink or drugs) or Article 28 (driving or being in charge of a motor vehicle while exceeding the permitted limit of alcohol concentration). Again, the existing offence of failing without reasonable excuse to provide a specimen of blood can already be treated as a prior offence for those purposes.

*Regulation 6* also contains a similar amendment. It treats the new offence under Article 30B as an earlier offence for the purposes of mandatory minimum periods of disqualification on convictions under Article 30 (failing without reasonable excuse to provide a breath or blood specimen).

*Regulation 7* inserts new Articles 30A and 30B into the Law.

New Article 30A specifies the 4 conditions that must be met before the police officer may ask the medical practitioner to take the specimen of blood. They are as follows –

- (a) the circumstances must be such that the police officer could require the person to provide the specimen if he or she were capable of consenting;
- (b) it must appear to the police officer that the person has been involved in an accident to which the investigation relates;
- (c) it must also appear to the police officer that the person is or may be incapable of giving consent; and
- (d) it must also appear to the police officer that the person's incapacity to consent is attributable to medical reasons.

The request must be made to a police medical practitioner, unless that is not reasonably practicable. In any event, it may not be made to a medical practitioner who is already taking care of the person.

If these conditions are met, and the medical practitioner who is asked to take the specimen of blood is willing to do so, he or she may take it without the person's consent and give it to the police officer.

New Article 30B provides that where a police officer is given a specimen of blood under new Article 30A, it may only be tested in a laboratory if –

- (a) the person from whom the sample was taken has been told that it was taken;
- (b) the person has been required by a police officer to give permission for its testing; and
- (c) the person has given that permission.

When requiring a person to give permission, the police officer must warn him or her that a failure to do so may make the motorist liable to prosecution.

Failure without reasonable excuse to give permission would be an offence. As explained above, the penalty and disqualification provisions are the same as those to which a person who is capable of consenting to the taking of a blood specimen is

liable for failing without reasonable excuse to provide a specimen under Article 30 of the Law.

*Regulation 8* amends Article 32 of the Law. The amendment applies when the person whose blood is to be taken under the new Article 30A is a hospital patient. The specimen cannot be taken, and the patient cannot be required to give permission to a laboratory test after recovering, unless the medical practitioner immediately in charge of his or her case is told and has no objection.

The medical practitioner may object on the ground that the taking of the specimen, or the requirement to give subsequent permission for a test or the warning that must be given when making that requirement, would be prejudicial to the patient's proper care and treatment.

These limitations are in addition to the conditions that apply under new Articles 30A and 30B.

*Regulation 9* contains consequential amendments to Article 33 of the Law. In particular, at the time when a person from whom a blood specimen has been taken is required to give permission for a laboratory test, he or she is entitled to a sample of the blood.

*Regulation 10* contains a consequential amendment. Article 35 of the Law provides for the re-testing of a driver after the expiration of a period of disqualification. This Regulation applies it to disqualifications imposed on convictions under the new offence in Article 30B. (Article 35 already applies in respect of the existing offence of failing to provide a specimen of blood.)

*Regulation 11* is also a consequential amendment. It adds the new offence of failing to give permission for a laboratory test to those offences for which a person may be convicted in the alternative on a charge of careless driving causing death while under the influence drink or drugs. (Failing to provide a specimen of blood is already a possible alternative offence under the Law.)

*Regulation 12* amends Schedule 1 to the Law. The effect is to provide that a person who is convicted of failing without reasonable excuse to give permission for a laboratory test is liable to endorsement of his or her driving licence, and to disqualification in the discretion of the court for longer than the mandatory minimum period.

This Regulation also amends Schedule 3 to the Law, to include the new offence of failing to permit a laboratory test as one for which a Connétable or Centenier does not have power to impose a summary fine.

It also makes other amendments to maintain consistency between the consequences of committing the existing offence of failing to provide a specimen of blood and the new offence of failing to give permission for a laboratory test of a blood specimen.

*Regulation 13* provides for the citation and commencement of the Regulations. They would come into force 7 days after they are made.





Jersey

## **DRAFT ROAD TRAFFIC (No. 59) (JERSEY) REGULATIONS 200-**

### **Arrangement**

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#### **Regulation**

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Jersey

## **DRAFT ROAD TRAFFIC (No. 59) (JERSEY) REGULATIONS 200-**

*Made* [date to be inserted]

*Coming into force* [date to be inserted]

**THE STATES**, in pursuance of Order in Council of 26th December 1851<sup>1</sup> and Article 92 of the Road Traffic (Jersey) Law 1956<sup>2</sup>, have made the following Regulations –

### **1 Interpretation**

In these Regulations, “the Law” means the Road Traffic (Jersey) Law 1956<sup>3</sup>.

### **2 Article 1 of Road Traffic (Jersey) Law 1956 amended**

In Article 1(1) of the Law, in the definition “motoring offence”, for the words “Article 29(4) or 30(7)” there shall be substituted the words “Article 29(4), 30(7) or 30B(4)”.

### **3 Article 26 amended**

(1) In Article 26(1) of the Law –

- (a) in sub-paragraph (b), the word “or” shall be deleted in the third place in which it occurs;
- (b) in sub-paragraph (c), for the word “it,” there shall be substituted the words “it; or”;
- (c) after sub-paragraph (c) there shall be added the following new sub-paragraph –

“(d) the person is required by a police officer to give permission for a laboratory test of a specimen of blood taken from the person under Article 30A, but without reasonable excuse fails to do so.”.

(2) In Article 26(6) of the Law, for the words “Article 27, 28 or 30” there shall be substituted the words “Article 27, 28, 30 or 30B”.

**4 Article 27 amended**

In Article 27(6) of the Law, for the words “Article 26, 28 or 30” there shall be substituted the words “Article 26, 28, 30 or 30B”.

**5 Article 28 amended**

In Article 28(3) of the Law, for the words “Article 26, 27 or 30” there shall be substituted the words “Article 26, 27, 30 or 30B”.

**6 Article 30 amended**

In Article 30(9) of the Law, for the words “Article 26, 27 or 28” there shall be substituted the words “Article 26, 27, 28 or 30B”.

**7 New Articles 30A and 30B inserted**

After Article 30 of the Law there shall be inserted the following Articles –

**“30A Specimens of blood from persons who cannot consent**

- (1) A police officer may ask a registered medical practitioner to take a specimen of blood from a person, whether or not that person consents, if the conditions in paragraph (2) are fulfilled.
- (2) The conditions are –
  - (a) that the person concerned is one from whom the police officer may under Article 30 (in the absence of any incapacity of that person and of any objection under Article 32) require the provision of a specimen of blood for a laboratory test;
  - (b) that it appears to that police officer that the person has been involved in an accident that constitutes or is comprised in the matter that is under investigation or the circumstances of that matter;
  - (c) that it also appears to that police officer that the person is or may be incapable of giving consent to the taking of a specimen of blood; and
  - (d) that it also appears to that police officer that the person’s incapacity is attributable to medical reasons.
- (3) A request under paragraph (1) shall not be made to a registered medical practitioner who for the time being has any responsibility for the clinical care of the person concerned (other than the responsibility that would arise in respect of the taking of the specimen of blood).
- (4) A request under paragraph (1) shall not be made to a registered medical practitioner other than a police medical practitioner, unless –

- (a) it is not reasonably practicable for the request to be made to a police medical practitioner; or
  - (b) it is not reasonably practicable for a police medical practitioner who is willing to do so to take the specimen of blood.
- (5) It shall be lawful for a registered medical practitioner to whom a request is made under paragraph (1), if he or she thinks fit to do so –
- (a) to take a specimen of blood from the person concerned, whether or not that person consents; and
  - (b) to provide the sample to a police officer.
- (6) In this Article –
- (a) ‘the person concerned’ means the person from whom a police officer under paragraph (1) asks a registered medical practitioner to take a specimen of blood;
  - (b) ‘police medical practitioner’ means a registered medical practitioner who is engaged under any agreement to provide medical services for purposes connected with the activities of the Honorary Police or the States of Jersey Police Force; and
  - (c) it is immaterial for the purposes of the condition in paragraph (2)(c) that the person concerned has or has not purported to give consent to the taking of a specimen of blood.

### **30B Testing of blood taken under Article 30A**

- (1) If a specimen of blood is taken under Article 30A, it shall not be subjected to a laboratory test unless the conditions in paragraph (2) of this Article are fulfilled.
- (2) The conditions are –
- (a) that the person from whom the specimen of blood was taken has been informed that it was taken;
  - (b) that he or she has been required by a police officer to give permission for a laboratory test of the specimen; and
  - (c) that he or she has given permission.
- (3) A police officer shall, on requiring a person to give his or her permission for the purposes of this Article for a laboratory test of a specimen of blood, warn that person that a failure to give the permission may render the person liable to prosecution.
- (4) A person who, without reasonable excuse, fails to give his or her permission for a laboratory test of a specimen of blood that has been taken from the person under Article 30A shall be guilty of an offence and liable to a fine not exceeding £2000 or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.

- (5) A person convicted of an offence under paragraph (4) shall, unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, in the case of a first offence, be disqualified for a period of 12 months and in the case of a second or subsequent offence committed within 10 years of the last such offence, for a period of 3 years, for holding or obtaining a licence.
- (6) In paragraph (5), ‘offence’ means an offence under this Article or under Article 26, 27, 28 or 30.”.

## 8 Article 32 amended

- (1) In Article 32(1) of the Law, after the words “he or she shall not be required” there shall be inserted the words “under Article 30”.
- (2) In Article 32 of the Law, after paragraph (2) there shall be added the following paragraphs –
  - “(3) While a person is at a hospital as a patient, no specimen of blood shall be taken from the person under Article 30A, and he or she shall not be required to give permission for a laboratory test of a specimen taken under that Article, unless –
    - (a) the registered medical practitioner in immediate charge of the person’s case has been notified of the proposal to take the specimen or to make the requirement; and
    - (b) the medical practitioner has not objected on the ground specified in paragraph (4).
  - (4) The ground on which the registered medical practitioner may object is that the taking of the specimen, the requirement to give permission or the warning required under Article 30B(3) would be prejudicial to the proper care and treatment of the patient.”.

## 9 Article 33 amended

- (1) In Article 33 of the Law –
  - (a) in paragraph (2), after the words “blood or urine provided by” there shall be inserted the words “or taken from”;
  - (b) in paragraph (2), after the words “the specimen was not provided” there shall be inserted the words “or taken”;
  - (c) in paragraph (3)(a), after the words “before providing the specimen” there shall be inserted the words “or having it taken,”;
  - (d) in paragraph (4), after the words “registered medical practitioner” there shall be added the following words –
    - “, or it was taken from the accused by a registered medical practitioner under Article 30A and the accused subsequently gave his or her permission for a laboratory test of the specimen”.
- (2) After Article 33(5) of the Law there shall be added the following paragraph –

“(6) Where a specimen of blood was taken from the accused under Article 30A, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the prosecution unless –

- (a) the specimen in which the alcohol or drug was found is one of 2 parts into which the specimen taken from the accused was divided at the time it was taken; and
- (b) any request to be supplied with the other part that was made by the accused at the time when he or she gave permission for a laboratory test of the specimen was complied with.”.

#### **10 Article 35 amended**

In Article 35(1) of the Law, for the words “27, 28 or 30” there shall be substituted the words “27, 28, 30 or 30B”.

#### **11 Article 36 amended**

In Article 36(1), in the Table, in relation to the offence in the first column “causing death by careless driving when under the influence of drink or drugs (Article 26)”, there shall be added in the corresponding entry in the second column, after the provision “failing to provide a specimen for analysis or laboratory test (Article 30)”, the following provision –

“failing to give permission for a laboratory test of a specimen (Article 30B)”.

#### **12 Schedules 1 and 3 amended**

- (1) Schedule 1 to the Law shall be amended by inserting, under the sub-heading “C. OFFENCES AGAINST THE ROAD TRAFFIC (JERSEY) LAW 1956.”, after the entry relating to Article 30(7), the following entry –

“Article 30B(4) (failing to give permission for laboratory test of specimen of blood);”.

- (2) Schedule 3 to the Law shall be amended –

- (a) in the entry relating to Article 21, by inserting after the figures “30” the figures “, 30B”;
- (b) in the entry relating to Article 25, by inserting after the figures “30” the figures “, 30B”;
- (c) by inserting, after the entry relating to Article 30(7), the following entry –

“Article 30B(4) – failing to give permission for a laboratory test of specimen of blood”.

**13 Citation and commencement**

- (1) These Regulations may be cited as the Road Traffic (No. 59) (Jersey) Regulations 200-.
- (2) These Regulations shall come into force on the seventh day after they are made.

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- <sup>1</sup> *chapter 23.350*
  - <sup>2</sup> *chapter 25.550*
  - <sup>3</sup> *chapter 25.550*