

**FIRST SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 3264 of 17th January, 2002**

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I ASSENT,

PETER SPELLER,

ACTING GOVERNOR.

9th January, 2001.



**GIBRALTAR**

**No. 2 of 2002**

**AN ACT** to amend the Traffic Act.

**ENACTED** by the Legislature of Gibraltar.

**Citation.**

1. This Act may be cited as the Traffic Act (Amendment) Act 2001.

**Amendments to the Traffic Act.**

2. The Traffic Act shall be amended by inserting after Part II the following Part—

**“PART IIA**

**DRINKING AND DRIVING**

**Driving, or being in charge, when under influence of drink or drugs.**

47A.(1) A person who is unfit to drive through drink or drugs when driving or attempting to drive a motor vehicle on a public place, is guilty of an offence and punishable on summary conviction by a fine at level 5 on the standard scale or a term of imprisonment for 6 months or to both.

(2) Without prejudice to subsection (1), a person who is unfit to drive through drink or drugs when in charge of a motor vehicle which is on a public place, is guilty of an offence and punishable on summary conviction by a fine at level 4 on the standard scale or a term of imprisonment for 3 months or to both.

(3) A person shall be deemed not to have been in charge of a motor vehicle for the purposes of subsection (2) if he proves that, at the material time, there was no likelihood of his driving it so long as he remained unfit to drive through drink or drugs.

(4) The court may, in determining whether there was such a likelihood as is mentioned in subsection (3), disregard any injury to him and any damage to the vehicle.

(5) For the purposes of this section, a person shall be taken to be unfit to drive if his ability to drive properly is for the time being impaired.

(6) A police officer may arrest a person without warrant if he has reasonable cause to suspect that that person is or has been committing an offence under this section.

(7) A police officer may enter (if need be by force) any place where a person is or where the police officer, with reasonable cause, suspects him to be for the purpose of arresting that person under subsection (6).

(8) Where on a person's trial for an offence under subsection (1) the court finds him not guilty of the offence specifically charged in the indictment, the court may find him guilty of an offence under subsection (2).

**Driving or being in charge of a motor vehicle with alcohol concentration above prescribed limit.**

47B.(1) If a person—

- (a) drives or attempts to drive a motor vehicle on a public place, or
- (b) is in charge of a motor vehicle on a public place,

after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit he is guilty of an offence and shall be punishable on summary conviction—

- (i) in the case of an offence contrary to paragraph (a) above, to a fine at level 5 on the standard scale, or to 6 months imprisonment or to both; and
- (ii) in the case of an offence contrary to paragraph (b) above, to a fine at level 4 on the standard scale, or to 3 months imprisonment or to both.

(2) It is a defence for a person charged with an offence under subsection (1)(b) to prove that at the time he is alleged to have committed the offence there was no likelihood of his driving the vehicle whilst the proportion of alcohol in his breath, blood or urine remained likely to exceed the prescribed limit.

(3) The court may, in determining whether there was such a likelihood as is mentioned in subsection (2), disregard any injury to him and any damage to the vehicle.

(4) Where on a person's trial for an offence under subsection (1)(a), the court finds him not guilty of the offence specifically charged in the indictment, they may find him guilty of an offence under subsection (1)(b).

**Arrests on suspicion of having alcohol in the body.**

47C.(1) Where a police officer has reasonable cause to suspect that a person has committed an offence contrary to section 47B(1)(a) or (b) he may, subject to section 47F, arrest that person without warrant.

(2) A police officer may, for the purpose of arresting a person under subsection (1), enter (if need be by force) any place where that person is or where the police officer, with reasonable cause, suspects him to be.

(3) In determining whether a police officer's cause to suspect the commission of an offence contrary to subsection (1) was reasonable, regard shall be had in particular to the following matters—

- (a) whether the person was driving or attempting to drive a motor vehicle in a manner falling below what would have been expected of a competent and careful driver. This might include circumstances where a person was driving or attempting to drive notwithstanding that it would have been obvious to a careful and competent driver that driving in that particular manner (or, indeed, driving at all given the volume of alcohol consumed) would pose a risk to life or property by his sense of judgement being impaired;
- (b) whether the person was driving or attempting to drive in a manner causing obvious or serious inconvenience to other road users or to pedestrians;
- (c) whether the person was driving or attempting to drive in a manner leading a reasonable observer to believe that the driver was not in proper control of the motor vehicle. This might include, for example, unexplained or excessive swerving or braking, inappropriate speed in relation to prevailing road conditions or ignoring traffic signs or signals;
- (d) whether the person's demeanour behind the steering column of a stationary or moving motor vehicle or whilst the person is en route to the vehicle suggests that he was under the influence of alcohol.

**Provision of specimens for analysis following arrest.**

47D.(1) Subject to the provisions of this section and section 47F, where a police officer is investigating whether a person has committed an offence contrary to sections 47A or 47B and has arrested that person on suspicion of such an offence he may require that person to attend at a police station or hospital in Gibraltar-

- (a) to provide two specimens of breath for analysis by means of a device of a type approved by the Minister, or
- (b) to provide a specimen of blood or urine for a laboratory test.

(2) A requirement under subsection (1)(b) may be made only by a police officer of at least the rank of sergeant and cannot be made unless-

- (a) the police officer has reasonable cause to believe that a specimen of breath cannot be provided or should not be required, or
- (b) at the time the requirement is made a device or a reliable device of the type mentioned in subsection (1)(a)-
  - (i) is not available at the hospital or police station, or
  - (ii) is not in good working order or has been used on a previous occasion by the police officer and he has reasonable cause to believe will not produce a reliable indication of the proportion of alcohol in the breath of the person concerned, or
  - (iii) it is for any other reason not practicable to use such a device there, or
- (c) the suspected offence is one under section 47A and the police officer making the requirement has been advised by a medical practitioner that the condition of the person required to provide the specimen might be due to some drug,

but may then be made notwithstanding that the person required to provide the specimen has already provided or been required to provide two specimens of breath.

(3) If the provision of a specimen of blood or of urine may be required under this section the question whether it is to be a specimen of blood or a specimen of urine shall be decided by a police officer of at least the rank of sergeant, but if a medical practitioner is of the opinion that for medical reasons a specimen of blood cannot or should not be taken the specimen shall be a specimen of urine.

(4) A specimen of urine shall be provided within one hour of the requirement for its provision being made and after the provision of a previous specimen of urine.

(5) A person who, without reasonable excuse, fails to provide a specimen when required to do so under this section is guilty of an offence and punishable on summary conviction to a fine at level 5 on the standard scale or to imprisonment for 6 months or to both.

(6) A police officer shall warn any person required to provide a specimen under this section that a failure to provide the specimen may render him liable to prosecution.

(7) For the purposes of subsection (1)(a), a device shall be treated as of a type approved by the Minister where a statement to the effect is published in the Gazette.

**Choice of specimens of breath.**

47E.(1) Subject to subsection (2), where a person provides two specimens of breath pursuant to section 47D, that with the lower proportion of alcohol in the breath shall be used for the purposes of an investigation into an offence having been committed contrary to this Part and the other specimen shall be disregarded.

(2) If the specimen with the lower proportion of alcohol contains no more than 50 microgrammes of alcohol in 100 millilitres of breath, the person who provided it may claim that it should be replaced by a specimen of blood or of urine under section 47D(4) and, if he then provides such a specimen, neither specimen of breath shall be used.

(3) The Minister may by regulations substitute another proportion of alcohol in the breath for that specified in subsection (2).

**Protection for hospital patients.**

47F.(1) While a person is at a hospital as a patient he shall not be required to provide a specimen of breath for a preliminary breath test or to provide a specimen for a laboratory test unless the medical practitioner in immediate charge of his case has been notified of the proposal to make the requirement; and—

- (a) if the requirement is then made, it shall be for the provision of a specimen at the hospital, but
- (b) if the medical practitioner objects on the ground specified in subsection (2), the requirement shall not be made.

(2) The ground on which the medical practitioner may object is that the requirement or the provision of a specimen or, in the case of a specimen of blood or urine, the warning required under section 47D, would be prejudicial to the proper care and treatment of the patient.

**Detention of persons affected by alcohol or a drug.**

47G.(1) Subject to subsections (2) and (3), a person required to provide a specimen of breath, blood or urine may afterwards be detained at a police station until it appears to the police officer that, were that person then driving or attempting to drive a motor vehicle on a road, he would not be committing an offence under sections 47A or 47B.

(2) A person shall not be detained in pursuance of this section if it appears to a police officer that there is no likelihood of his driving or attempting to drive a motor vehicle whilst his ability to drive properly is impaired or whilst the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit.

(3) A police officer shall consult a medical practitioner on any question arising under this section whether a person's ability to drive properly is or might be impaired through drugs or alcohol and must act on the medical practitioner's advice.

**Use of specimens in proceedings for an offence under sections 47A or 47B.**

47H.(1) This section and section 47J apply in respect of proceedings for an offence under sections 47A or 47B.

(2) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by the accused shall, in all cases (including cases where the specimen was not provided in connection with the alleged offence), be taken into account by the court and subject to subsection (3) below, it shall be assumed that the proportion of alcohol in the accused's breath, blood or urine at the time of the alleged offence was not less than in the specimen.

(3) The assumption in subsection (2) shall not be made if the accused proves that the proportion of alcohol in his breath, blood or urine would have not exceeded the prescribed limit, or, if it is alleged that he was unfit to drive through drink, would have otherwise not been such as to impair his ability to drive properly but for the fact that he consumed alcohol before he provided the specimen and—

- (a) in relation to an offence under section 47B, after the time of the alleged offence, or
- (b) otherwise, after he ceased to drive, attempt to drive or be in charge of a vehicle on a road or other public place.

(4) A specimen of blood shall be disregarded unless it was taken from the accused with his consent by a medical practitioner.

(5) Where, at the time a specimen of blood or urine was provided to a police officer by the accused, he asked to be provided with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen provided to the police officer is not admissible on behalf of the prosecution unless—

- (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the accused was divided at the time it was provided, and
- (b) the other part was supplied to the accused.

**Documentary evidence as to specimens in such proceedings.**

47J.(1) Subject to subsections (3) and (4) and to section 47H(5), evidence of the proportion of alcohol or a drug in a specimen of breath, blood or urine may be given by the production of a document conforming to one of the following descriptions, that is to say—

- (a) a statement automatically produced by the device by which the proportion of alcohol in a specimen of breath was measured and a certificate signed by a police officer (which may but need not be contained in the same document as the statement) that the statement relates to a specimen provided by the accused at the date and time shown in the statement; or
- (b) a certificate signed by an authorised analyst as to the proportion of alcohol or any drug found in a specimen of blood or urine identified in the certificate.

(2) Subject to subsections (3) and (4), evidence that a specimen of blood was taken from the accused with his consent by a medical practitioner may be given by the production of a document purporting to certify that fact and signed by that medical practitioner.

(3) Subject to subsection (4) below—

- (a) a document purporting to be such a statement or such a certificate (or both such a statement and such a certificate) as is mentioned in subsection (1)(a) is admissible in evidence on behalf of the prosecution in pursuance of this section only if a copy of it either has been handed to the accused when the document was produced or has been served on him not later than seven days before the hearing in court, and
- (b) any other document is so admissible only if a copy of it has been served on the accused not later than seven days before the hearing in court.

(4) A document purporting to be a certificate (or so much of a document as purports to be a certificate) is not so admissible if the accused, not later than three days before the hearing in court or within such further time as the court may in special circumstances allow, has served notice on the prosecutor requiring the attendance at the hearing of the person by whom the document purports to be signed.

(5) A copy of a certificate required by this section to be served on the accused or a notice required by this section to be served on the prosecutor may be served personally or sent by registered post.

**Discretionary disqualification.**

47K.(1) This section shall apply where a person is convicted of an offence contrary to section 47A, section 47B, or section 47D(5).

(2) Where the conviction is for the first time, a court may, taking all reasonable circumstances into account, disqualify the person from holding or obtaining a driving licence for such period as the court may see fit.

(3) In the case of a subsequent conviction in any period of 6 years, the court shall disqualify the person from holding or obtaining a driving licence for such period as the court may see fit.

**Protection of officers in relation to the arrest of persons suspected of being over the prescribed limit.**

47L.(1) Where, in any proceedings for an offence under this Part, the defendant is acquitted the court may, if it sees fit, certify that, in the courts view, there were reasonable grounds for the arrest of the accused.

(2) Where any proceedings, whether civil or criminal, are brought against any police officer on account of the arrest of any person, and judgment is given for the plaintiff or prosecutor, then if either—

- (a) a certificate relating to the arrest has been granted under subsection (1) above; or
- (b) the court is satisfied that there were reasonable grounds for arresting the accused,

the plaintiff or prosecutor shall not be entitled to recover any damages or costs and the defendant shall not be liable to any punishment.

(3) Any certificate under subsection (1) above may be proved by the production of either the original certificate or a certified copy thereof purporting to be signed by an officer of the court by which it is granted.

**Interpretation of Part.**

47M.(1) The following provisions apply for the interpretation of this Part—

"authorised analyst" means any person authorised by the Commissioner of Police to make analyses for the purposes of this section; and a certificate signed by an authorised analyst for the purposes of section 47J(1)(b) shall be evidence of his qualification as such.

"drug " includes any intoxicant other than alcohol;

"fail " includes refuse,

"hospital" means an institution which provides medical or surgical treatment for in-patients or out-patients,

"Minister" means the Minister with responsibility for transport;

"the prescribed limit" means, as the case may require—

- (a) 35 microgrammes of alcohol in 100 millilitres of breath;
- (b) 80 milligrammes of alcohol in 100 millilitres of blood; or
- (c) 107 milligrammes of alcohol in 100 millilitres of urine,

or such other proportion as may be prescribed by regulations made by Minister.

(2) A person does not provide a specimen of breath for a breath test or for analysis unless the specimen—

- (a) is sufficient to enable the test or the analysis to be carried out; and
- (b) is provided in such a way as to enable the objective of the test or analysis to be satisfactorily achieved.

(3) A person provides a specimen of blood if and only if he consents to its being taken intravenously by a medical practitioner and it is so taken."

**Repeals.**

3. Sections 34 and 35 of the Traffic Act are repealed.

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Passed by the Gibraltar House of Assembly on the 20th day of December, 2001.

Dennis J. Reyes

Clerk to the Assembly.