

Seychelles

Road Transport Act

Road Transport (Sober Driving) Regulations

Statutory Instrument 109 of 1995

Legislation as at 1 August 2016

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Road Transport (Sober Driving) Regulations

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Road Transport (Sober Driving) Regulations

Statutory Instrument 109 of 1995

Commenced on 1 March 1996

[This is the version of this document at 1 August 2016.]

[SI 109 of 1995]

1. Citation

These Regulations may be cited as the Road Transport (Sober Driving) Regulations.

2. Interpretation

In these Regulations—

“**analysis**” means an analysis by an authorised analyst for the purposes of ascertaining the proportion of alcohol or drug in a person’s blood or urine;

“**authorised analyst**” means a person appointed by the Minister for the purpose of making a blood or urine analysis under these Regulations;

“**breathalyser**” means a device approved by the Minister for the purpose of carrying out a breath test;

“**breath test**” means a test under these Regulations by means of a breathalyser for the purpose of ascertaining the proportion of alcohol in a person’s breath;

“**prescribed limit**” means, in relation to the proportion of alcohol in the breath, blood or urine of a person, the limit specified in the Schedule;

“**traffic offence**” means an offence under the Road Transport Act.

3. Driving with alcohol concentration above the prescribed limit

- (1) A person whose breath, blood or urine contains a proportion of alcohol which exceeds the prescribed limit is unfit to drive or be in charge of a motor vehicle and shall not drive or be in charge of a motor vehicle on a road.
- (2) A person shall not be treated as being in charge of a motor vehicle for the purposes of subregulation (1) if the person proves that at the material time the circumstances were such that there was no likelihood of the person driving the motor vehicle so long as there was any probability of the person having alcohol in the person’s breath, blood or urine in a proportion which exceeds the prescribed limit.
- (3) In determining the likelihood of a person driving a motor vehicle for the purposes of subregulation (2) the court shall, where the person is injured or the vehicle is damaged, disregard the fact that the person is injured or the vehicle is damaged.

4. Breath test

- (1) Subject to this regulation, a police officer may—
 - (a) where the police officer has reasonable ground to suspect that a person driving or in charge of a motor vehicle—
 - (i) has alcohol in the person's blood; or
 - (ii) has committed a traffic offence while the vehicle was in motion;
 - (b) where an accident has occurred on a road owing to the presence of a motor vehicle,require the person referred to in paragraph (a) or who was driving or in charge of the vehicle referred to in paragraph (b) to take a breath test.
- (2) For the purposes of subsection (1), where in a case falling under subsection (1)(b) there were more than one person in a vehicle at the time of the accident and a police officer is unable to identify the person who was driving or was in charge of the vehicle at the time, the police officer may require all the persons who were present in the vehicle at the time to take a breath test.
- (3) A person shall not, without reasonable excuse, refuse to take a breath test when required to do so under subregulation (1) or subregulation (2).
- (4) A person shall be treated as having refused to give a breath test if the person fails, without reasonable excuse, to provide, or follow the instruction of a police officer with regard to the manner of providing, a specimen of breath for a breath test.
- (5) A police officer shall not require a person who is a patient at a hospital to take a breath test without first notifying the medical practitioner in charge of the person at the hospital or if a medical practitioner objects to the taking of the test on medical ground.
- (6) A police officer shall not require a person to take a breath test where the police officer is aware or has reasonable ground for believing that the person has consumed alcohol at any time during the preceding 20 minutes.
- (7) A police officer shall—
 - (a) ensure that the breathalyser is in working order;
 - (b) in the presence of the person who is to take a breath test, remove from its sealed container and fit on to the breathalyser a clean mouth-piece,before requiring a person to take a breath test.
- (8) A person required to take a breath test shall provide two specimens of breath and of the two specimens the specimen with the lower proportion of alcohol in the breath shall be used for the purpose of these Regulations and the other specimen shall be disregarded.

5. Blood or urine test

- (1) Subject to this regulation, a police officer may, in any of the circumstances under these Regulations where a police officer may require a person to take a breath test—
 - (a) and the police officer is not in possession of a breathalyser or the breathalyser is defective or the police officer is unable to comply with regulation 4(7) or it is otherwise impracticable to use a breathalyser;
 - (b) and the person who is required to take a breath test refuses or is unable to do so; or

- (c) but is prevented from so doing by virtue of regulation 4(5) or (6),
require the person to give, within the time and at the station or hospital specified by the police officer, a specimen of blood or urine for analysis.
- (2) A police officer shall not require a person to give a specimen of blood or urine after the person has taken a breath test—
 - (a) unless it is found, while the person is taking the breath test or immediately thereafter, that the breathalyser is defective; or
 - (b) solely because the breath test reveals that the proportion of alcohol in the breath of the person does not exceed the prescribed limit,and the result of the analysis of a blood or urine specimen taken in contravention of this sub-regulation shall not be admissible in evidence under these Regulations.
- (3) A specimen of blood shall not be taken from a person unless the person consents to the specimen being taken.
- (4) A person shall not, without reasonable excuse, refuse to give a specimen of blood or urine under subregulation (1) and for the purposes of this subregulation, a refusal on the ground of religion shall not constitute a reasonable excuse.
- (5) A police officer shall not require a person who is a patient at a hospital to provide a specimen of blood or urine without first notifying the medical practitioner in charge of the person at the hospital or if the medical practitioner objects to the provision of the specimen of blood or urine on medical ground.
- (6) Where a medical practitioner is of the opinion that for medical reason a person cannot or should not provide a specimen of blood, the person shall not be required to provide a specimen of blood.
- (7) A specimen of blood required for analysis under these Regulations shall be taken by a medical practitioner.
- (8) A police officer requesting a specimen of blood or urine under this regulation shall offer to give, in a suitable container, to the person giving the specimen a part of the specimen unless the specimen is insufficient for an analysis or it is impracticable to divide it.

6. Police officer to warn of failure to take breath test or give specimen of blood or urine

A police officer shall, when requiring a person to take a breath test or give a specimen of blood or urine under these Regulations, warn the person of the consequences of failing to take the test or give a specimen of blood or urine under these Regulations.

7. Evidence

- (1) Where a person has taken a breath test, a print out produced by the breathalyser indicating the proportion of alcohol in the breath of the person shall, after the police officer shall have—
 - (a) entered therein the time and date on which the print out was produced; and
 - (b) signed the print out,be admissible in evidence in a proceeding for a traffic offence and shall be *prima facie* evidence—
 - (c) of all matters, including the signature of the police officer, contained in the print out;
 - (d) that, at the material time, the breathalyser was in working order and the police officer had complied with regulation 4(7); and
 - (e) that the proportion of alcohol in the breath of the person to whom the print out relates was, at the time of the commission of the offence, as specified in the print out.

- (2) A certificate purporting to be signed by an authorised analyst relating to the presence or proportion of alcohol or drug in a specimen of blood or urine taken under these Regulations shall be admissible in evidence in a proceeding for a traffic offence and be *prima facie* evidence—
 - (a) of all matters, including the signature of the analyst, contained in the certificate; and
 - (b) that the proportion of alcohol or drug in the blood or urine of the person to whom the certificate relates was, at the time of the commission of the offence, as specified in the certificate.
- (3) A document signed by the medical officer who took a specimen of blood from a person for the purposes of these Regulations and stating that the specimen of blood was taken from the person with the person's consent shall be *prima facie* evidence of the fact stated in the document and of the signature of the medical officer.
- (4) A police officer shall—
 - (a) in the case of a breath test, as soon after complying with subregulation (1)(a) and (b);
 - (b) in the case of a certificate under subregulation (2), at least three days before the beginning of the proceeding during which the certificate will be produced in evidence,give to the person to whom the print out or certificate relates a copy of the print out or certificate.

8. Arrest without warrant

- (1) A police officer may—
 - (a) where a person has refused to take a breath test under regulation 4;
 - (b) where a person has refused to give a specimen of blood or urine under regulation 5;
 - (c) where a person has taken a breath test or given a specimen of blood or urine and it is found that the proportion of alcohol in the person's breath or of alcohol or drug in the person's blood or urine exceeds the prescribed limit,arrest the person without a warrant and take any other reasonable step to prevent the person from driving or taking charge of a vehicle on the road while the police officer has reasonable ground to suspect the proportion of alcohol in the person's breath or of alcohol or drug in the person's blood or urine continues to be in excess of the prescribed limit.
- (2) A police officer may, where the police officer would have been empowered under regulation 4 to require a person to take a breath test or under regulation 5 to give a specimen of blood or urine but has been unable to do so because the person has escaped or taken other evasive action and the breath test has not been taken or specimen of blood or urine has not been given and the police officer has reasonable ground to suspect that the proportion of alcohol in the breath or of alcohol in the blood or urine of the person is in excess of the prescribed limit, arrest the person without a warrant.

9. Offences

- (1) A person who—
 - (a) contravenes regulation 3(1), 4(3) or regulation 5(4);
 - (b) in order to avoid the taking of a breath test or giving of a specimen of blood or urine, escapes or takes any other evasive action;
 - (c) obstructs a police officer or medical practitioner in the performance of the police officer's or medical practitioner's functions under these Regulations,is guilty of an offence and liable on conviction to the penalty under section 24(2) of the Act.

- (2) Subject to the Licences Act, where a person has been convicted of an offence under subregulation (1)(a) or (b), the court shall, on the conviction of the person of another offence under subregulation (1)(a) or (b) within six months of being convicted of the first-mentioned offence, unless for special reasons it thinks fit to order otherwise, suspend the driving licence of the person and disqualify the person from obtaining a driving licence for a period of not less than 12 months.

Schedule (Regulation 2)

Prescribed limit of alcohol

The limit of the proportion of alcohol is—

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