

Breath Test Devices - Lord Advocates Guidelines

LORD ADVOCATE'S GUIDELINES BREATH TEST DEVICES

This guidance takes into account section 7 of the Road Traffic Act 1988 and type approval of breath analysis devices by the Secretary of State at the Home Office on 18 August 2014.

1. Section 7 Road Traffic Act 1988

In terms of section 7 of the Road Traffic Act 1988, as amended ("the Act"), a police officer at a police station may require a suspect to provide a specimen of blood or urine where:

- The police officer making the requirement has reasonable cause to believe that for medical reasons a specimen of breath cannot be provided or should not be required; or
- specimens of breath have not been provided elsewhere and at the time the requirement is made, a breath testing device or a reliable breath testing device is not available at the police station or it is then for any other reason not practicable to use such a device there; or
- a device of the type mentioned in subsection (1)(a) above has been used at the police station or elsewhere but the constable who required the specimens of breath has reason to believe that the device has not produced a reliable indication of the proportion of alcohol in the breath of the person concerned; or
- as a result of the administration of a preliminary drug test, the constable making the requirement has reasonable cause to believe that the person required to provide a specimen of blood or urine has a drug in his body, or
- The suspected offence is one under section 3A or 4 of this Act and the constable 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.

The guidance applies to conduct of analyses using the existing as well as the new devices.

2. Operation of Devices

In relation to operation of the devices, if the device displays any of the following messages:

- breath difference;
- mouth alcohol;
- interfering substance; or
- out of range,

the police officer should require a blood/urine specimen, in terms of authority provided by section 7(3)(bb), unless there is reason to believe that the machine message has been caused by some deliberate act on the

part of the suspect. In the latter case, consideration may be given to charging the suspect with a contravention of section 7(6) of the Act.

3. Operation of Machines

"Specimen Incomplete"/"Breath Invalid"

The Act empowers police officers to require two specimens of breath for analysis.

Where either or both of the specimens is insufficient for analysis, resulting in a "specimen incomplete" or "breath invalid" message, provided the conduct is not deliberate, the police officer should exercise discretion in deciding to offer a further opportunity to provide specimens to the extent only of two specimens that are capable of analysis.

If the conduct is deliberate, consideration may be given to charging the suspect with a contravention of section 7(6) of the Act.

In other cases, where the first specimen is incomplete, no printout will be produced and the constable has the option to repeat the requirement during a fresh cycle of the machine.

If a first satisfactory sample is produced and the second specimen is incomplete, the machine will produce a printout to that effect. The constable may then, in appropriate cases, require a further specimen in a fresh cycle of the machine until he has a total of two specimens of breath that have been satisfactorily analysed. NB In these circumstances, the officer should not run a complete second cycle of the machine, as to do so would involve requiring more than two specimens of breath.

If the procedure results in two printouts and certificates being produced, the officer(s) must sign both, provide copies of both to the suspect and submit both to the Procurator Fiscal with the report.

Readings of less than 27 ug

Two breath specimens should always be obtained, even if the first gives a reading of less than 27 ug. Where the lower reading is less than 27 ug and there is reason to believe that the device has not produced a reliable indication of the breath alcohol level, e.g., where the machine produces one of the new messages or there is a significant breath difference, a blood/urine sample should be sought.

In addition, where significant breath differences are noted, suggesting, e.g., possible mouth alcohol or where there is reason to suspect the presence of an interfering substance, police officers should give consideration to requesting blood/urine in terms of section 7(3)(bb).

Revised November 2014