



ASCENSION

**INFRASTRUCTURE AND PUBLIC UTILITIES**

**REVISED EDITION OF THE LAWS, 2017**

**ROAD SAFETY ORDINANCE, 2010<sup>1</sup>**

*Ordinance A5 of 2010*

*In force 3 May 2010*

*Ordinance amended by Ordinance A3/2019*

*Subsidiary legislation:*

**LION ALCOLMETER AND LION INTOXILYZER (APPROVAL) RULES, 2008**

*Legal Notice A4 of 2008*

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**ROAD SAFETY ORDINANCE, 2010**

**ARRANGEMENT OF SECTIONS**

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AN ORDINANCE to make fresh provision relating to offences concerning the use of motor vehicles by intoxicated persons.

**Short title, commencement and interpretation**

**1. (1)** This Ordinance may be cited as the Road Safety Ordinance, 2010, and comes into force on publication.

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<sup>1</sup> Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 3 July 2019.

- (2) In this Ordinance, unless the context requires otherwise—  
**“approved device”** means either an approved screening device or an approved measuring device;  
**“approved measuring device”** means a device approved as a measuring device under section 5(1);  
**“approved screening device”** means a device approved as a screening device under section 5(1);  
**“prescribed limit”** has the meaning provided in section 6.

## Offences

2. (1) A person who, on any road or other public place, drives or attempts to drive any motor vehicle, having consumed so much alcohol that the proportion of it in his or her breath, blood or urine exceeds the prescribed limit commits an offence.

Penalty: A fine of £2,500 or imprisonment for 18 months, or both.

(2) A person who, on any road or other public place, is in charge of any motor vehicle, having consumed so much alcohol that the proportion of it in his or her breath, blood or urine exceeds the prescribed limit commits an offence.

Penalty: A fine of £2,000 or imprisonment for 12 months, or both.

(3) Without affecting subsection (1), a person who drives or attempts to drive a motor vehicle on a road or other public place, when unfit to drive through drink or drug, commits an offence.

Penalty: A fine of £2,500 or imprisonment for 18 months, or both.

(4) Without affecting subsection (2), a person who is in charge of a motor vehicle on a road or other public place unfit to drive through drink or drugs commits an offence.

Penalty: A fine of £2,000 or imprisonment for 12 months, or both.

(5) A person is deemed for the purposes of this section not to have been in charge of a motor vehicle if the person proves—

(a) that at the material time the circumstances were such that there was no likelihood of the person driving the vehicle while the level of alcohol in his or her body exceeded the prescribed limit; and

(b) that the person had not driven the vehicle on a road or public place between the time of his or her consumption of the alcohol and the material time,

and, in this subsection, **“the material time”** means the time of the alleged offence.

(6) In this section **“unfit to drive through drink or drugs”** means under the influence of drink or drugs to such an extent as to be incapable of having proper control of a motor vehicle.

## Breath tests and other specimens

3.<sup>2</sup> (1) If a police officer has reasonable cause (other than the mere fact that a person has been observed to leave premises in which it is known that alcohol has been consumed by persons in them) to suspect that any person—

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<sup>2</sup> Section 3 amended by Ord. A3 of 2019.

- (a) has committed or is committing an offence under this Ordinance;
- (b) has committed a traffic offence while driving a motor vehicle; or
- (c) was driving or in charge of a motor vehicle at a time when such vehicle was involved in a road traffic accident,

the police officer may require that person to supply a specimen of breath for analysis using an approved screening device.

(2) If an approved screening device is not readily available to a police officer who is entitled to make such a requirement as mentioned in subsection (1), the officer may require the person of whom he or she is entitled to make the requirement to accompany the officer to a police station or other place where an approved screening device or an approved measuring device is available for use.

(3) If the result of an analysis of breath under subsection (1) leads a police officer to suspect that the person who supplied the specimen might be guilty of an offence against this Ordinance, the officer –

- (a) may arrest that person; and
- (b) whether or not the officer arrests that person, may require the person to supply a further 2 specimens of breath for analysis using an approved measuring device.

(4) A police officer who is entitled to require a person to provide a specimen of breath for analysis using an approved screening device may, if an approved measuring device is available for use at the location where that requirement would otherwise be made, instead of making that requirement, require the person to supply 2 specimens of breath for analysis using an approved measuring device.

(5) If it appears to any police officer who is entitled to require any person to supply a specimen of breath for the purposes of this section that, by reason of—

- (a) the inability of the person to comply with such a requirement;
- (b) the unavailability of an approved device or a reliable approved device; or
- (c) any other cause,

it is not practicable to require such a specimen to be provided, the officer may require the person to accompany the officer to a police station or hospital, and there to provide either a specimen of blood or a specimen of urine (the decision as to which type of specimen to require being made by the officer) for analysis.

(6) In this section, the expression “**traffic offence**” means any offence against the Road Traffic Ordinance, 1984 against this Ordinance.

- (7) A specimen of blood must not be taken for the purposes of this section except—
- (a) by or under the direct supervision of a medical officer; or
  - (b) by a nurse who is authorised in writing by the medical officer to take blood.

(8) If it appears to a police officer of the rank of Inspector or above (in this subsection called “**the senior officer**”) that –

- (a) a person whom a police officer has power to require to provide a specimen of breath under subsection (1)(c), arising out of an accident in which injury was caused to any person other than the suspect, is in any building, vehicle or other closed place; and

(b) access to that place cannot be gained by any other means without allowing an opportunity for the ends of justice to be defeated,  
the senior officer may order the use of such force as is reasonably necessary in order to gain access to such closed place, and the use of such force is a lawful use of force.

### **Failure to provide specimen**

- 4. (1)** It is an offence for a person without reasonable cause to fail—
- (a) to supply a specimen of breath, blood or urine which the person has been required to provide under section 3; or
- (b) to accompany a police officer to a police station, hospital, or other place when required so to do under that section 3.

Penalty: A fine of £2,500 or imprisonment for 18 months, or both.

- (2) In this section “**fail**” includes “refuse”.

(3) A person fails to provide a specimen if he or she fails to supply it in a manner and quantity suitable for the purpose for which it is required.

### **Approved devices**

**5. (1)** The Governor may make rules for the purpose of declaring any device to be an approved screening device or an approved measuring device for the purposes of this Ordinance.

(2) No court may entertain any argument relating to the suitability or reliability of any approved device.

(3) A device is sufficiently described, in any rules made under this section, if it is described by a trade or other name by which it is known or marketed.

(4) Rules made under this section may contain provisions regulating the manner in which any approved device is to be operated.

### **Prescribed limit**

**6.** The prescribed limit referred to in section 2 is whichever is appropriate of the following limits, namely—

- (a) 35 microgrammes of alcohol per hundred millilitres of breath;
- (b) 80 milligrammes of alcohol per hundred millilitres of blood; or
- (c) 107 milligrammes of alcohol per hundred millilitres of urine.

### **Evidence**

**7.<sup>3</sup> (1)** In every case of an offence alleged to have been committed against section 2, evidence of the result of any analysis of any specimen of breath, blood or urine taken under section 3 is admissible in evidence, and the court must presume that the proportion of

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<sup>3</sup> Section 7 amended by Ord. A3 of 2019

alcohol in the defendants breath, blood or urine at the time of the alleged offence was not less than the proportion revealed by such analysis:

Provided that the said presumption is not to be made if the court is satisfied (by evidence on oath) that the defendant consumed such an amount of alcohol, after he or she ceased to drive or be in charge of the vehicle, as would be likely to account for the amount by which the result of such analysis exceeded the prescribed limit.

(2) Evidence of the proportion of alcohol in a specimen of breath may be given by the police officer who operated the approved device by which the specimen was analysed or by the production of a certificate of the kind described in subsection (3)(a), but a person must not be convicted unless it is proved—

- (a) that 2 separate specimens of breath were analysed by an approved measuring device; and
- (b) that the lower of the 2 results disclosed a proportion of alcohol in the specimen which exceeded the prescribed limit.

(3) Evidence of the proportion of alcohol or drug in a specimen of breath, blood or urine may, subject to subsections (5) and (6), be given by the production of a document or documents purporting to be whichever of the following is appropriate, that is to say—

- (a) a statement automatically produced by the approved measuring 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 approved analyst as to the proportion of alcohol or any drug found in a specimen of blood or urine identified in the certificate.

(4) Subject to subsections (5) and (6), evidence that a specimen of blood was taken from the accused by a medical officer or nurse may be given by the production of a document purporting to certify that fact and to be signed by the medical officer or nurse.

(5) Subject to subsection (6)—

- (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 (3)(a) is admissible in evidence on behalf of the prosecution pursuant to 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 or her not later than 7 days before the hearing; and
- (b) any other document is so admissible only if a copy of it has been served on the accused not later than 7 days before the hearing.

(6) 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 3 days before the hearing or within any further time the court in special circumstances allows, has served notice on the prosecutor requiring the attendance at the hearing of the person by whom the document purports to be signed.

(7) In this section “**approved analyst**” means a person appointed by the Governor by notice in the *Gazette* to be an approved analyst for the purposes of this section.

### Further provisions as to specimens

**8. (1)** Every specimen of blood or urine provided by a person under this Ordinance must be divided into 2 approximately equal parts, and—

- (a) subject to paragraph (b), only one part of it is to be analysed, and the other part (“**the retained part**”) is to be preserved until the conclusion of all proceedings for any offence in connection with which the specimen was provided;
- (b) the court which tries any alleged offence upon the trial of which the prosecutor relies upon evidence of the result of the analysis of a specimen of blood or urine provided under this Ordinance, may (if it appears to be in the interest of justice so to do) order that the retained part is to be analysed, and adjourn the hearing to enable such analysis to be carried out;
- (c) a court which makes an order under paragraph (b) may order that the analysis be carried out by or under the supervision of such medical officer as the court thinks fit, and a medical officer to whom such an order is addressed must comply with it and send a report of the result of the analysis, as soon as practicable, to the Clerk of the Court.

**(2)** A specimen of urine must be provided within one hour of being required, and after the provision of a previous specimen of urine (such previous specimen being discarded).

### Hospital patients

**9.** If a person is at a hospital as a patient, a police officer must not require that person to provide any specimen of breath, blood or urine for the purposes of this Ordinance unless the medical officer in charge of the patient’s treatment –

- (a) has been notified of the officer’s intention to require the specimen; and
- (b) has confirmed that such a requirement would not be prejudicial to the health or treatment of the patient.

### Power of arrest

**10.** A police officer may arrest without warrant a person whom the officer reasonably suspects of committing an offence against section 2(3), 2(4), or 4(1).

### Punishment of offences

**11. (1)** Subject to subsection (2), on convicting any person for an offence under this Ordinance, the court must (in addition to any other sentence or order) make an order of disqualification (that is, an order of the type described in section 18 of the Road Traffic Ordinance, 1984 a period of at least 12 months: and if the offender has, within the period of 10 years preceding the date of the offence, been previously been convicted for such an offence, the period of disqualification must be at least 3 three years.

**(2)** If, for special reasons established by evidence upon oath in any particular case, the court considers that it would be inappropriate to make such an order as is mentioned in subsection (1), the court may order disqualification for a shorter period than that otherwise required, or refrain from making an order of disqualification: but no fact or circumstances may

be held to be a ‘special reason’ unless such fact or circumstance relates to the commission of the offence, as distinct from a fact or circumstance concerning the offender.

### **Repeals and transitional provisions**

**12. (1)** The legislation listed in the table below is repealed to the extent indicated in the second column:

<u>Legislation</u>	<u>Extent repealed</u>
Road Safety Ordinance, Cap. 24	The whole
Road Traffic Ordinance, Cap. 25	Section 25

**(2)** Notwithstanding the repeal of the Road Safety Ordinance, Cap. 24, the devices and analysts approved under that Ordinance are approved devices and analysts for the purposes of this Ordinance.

**(3)** The repeal of legislation under subsection (1) does not affect the prosecution of offenders for offences under it committed prior to the repeal.

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## **ROAD SAFETY ORDINANCE, 2010**

### **THE LION ALCOLMETER AND LION INTOXILYZER (APPROVAL) RULES, 2008** (Sections 5(1) and 12(2))

#### **Citation**

**1.** These Rules may be cited as the Lion Alcolmeter and Lion Intoxilyzer (Approval) Rules, 2008.

#### **Approved screening device**

The device known and marketed as the “Lion Alcolmeter 500” is an approved screening device for the purposes of the Road Safety Ordinance, 2010.

#### **Approved measuring device**

The device known and marketed as the “Lion Intoxilyzer 8000” is an approved measuring device for the purposes of the Road Safety Ordinance, 2010.

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