

**28/2003**

## **IN THIS ISSUE**

### **1 IMPLEMENTATION OF THE RAILWAYS AND TRANSPORT SAFETY ACT 2003 – AVIATION: ALCOHOL AND DRUGS**

#### **1.1 Introduction**

- 1.1.1 The information in this FODCOM has been developed in conjunction with many parties, including Industry and Union representatives, Department for Transport, the Home Office and the Police.
- 1.1.2 It is consistent with the criteria contained in an allied Police Protocol that has been developed to assist Police officers in the application and enforcement of this new legislation.
- 1.1.3 The overall aim of both documents (FODCOM and Police Protocol) is to secure a consistent approach. This FODCOM will provide a common understanding to those aviation personnel who might in the future encounter the application of the statutory provisions and Police procedures.
- 1.1.4 This material should be read in conjunction with Aeronautical Information Circular 58/2000 “Medication, Alcohol and Flying”, which if not already done so should be made available to cabin crew.
- 1.1.5 It should be noted that whilst this FODCOM is directed towards United Kingdom legislation, other individual states may be more restrictive.

### **2 Legislative Background**

- 2.1 The effect of intoxication, through alcohol or drugs, on aviation personnel has significant safety implications. The Air Navigation Order (ANO), which is the main aviation safety regulatory legislation, provides that no member of an aircraft’s crew, a licensed maintenance engineer or an air traffic control officer shall be under the influence of drink or drugs to such an extent as to impair his/her capacity to so act. The ANO however, does not set a blood alcohol limit nor does it require a person who is suspected of a drink or drugs offence to be subjected to a test.
- 2.2 In 1996, the Government issued a Consultation Paper on alcohol and drug testing for aircraft crew and other safety critical civil aviation personnel, which proposed the introduction of a blood/alcohol limit, together with corresponding Police powers of enforcement. Responses to the consultation were broadly supportive of the Government’s approach. Part 5 of the Railways and Transport Safety Act 2003 (<http://www.legislation.hmso.gov.uk/acts/acts2003/20030020.htm>) represents the first suitable legislative opportunity to take forward these proposals and now brings aviation into line with other transport modes in seeking to tackle alcohol or drug misuse among key personnel through a statutory testing regime. The Police testing and enforcement powers broadly mirror those currently applied on our roads and railways and are based on an officer’s reasonable suspicion that an offence either has been, or is in the process of being committed.
- 2.3 The blood/alcohol limit for aviation personnel is lower than that in shipping or on our roads or railways, but reflects the Joint Aviation Requirements Commercial Air Transportation (JAR-OPS) - adopted by the Joint Aviation Authorities (JAA) in 1996 - which requires that crew members of commercial aircraft should not commence a flight duty period with a blood/alcohol level in excess of 20mg of alcohol per 100ml of blood. The adoption of this limit will go towards the harmonisation of standards across most of Europe.

2.4 Enforcement of the provisions of the Act is the responsibility of the Police and the Crown Prosecution Service.

2.5 There is no provision in the Act for random testing.

### **3 Implementation**

3.1 Implementation of Part 5 of the Act is anticipated in early 2004.

### **4 Summary of Part 5 of the Railways and Transport Safety Act 2003 and Commentary on Enforcement**

4.1 This Part extends to the flight and cabin crew of an aircraft, air traffic controllers and licensed aircraft maintenance engineers in the United Kingdom. It also applies to the crew of an aircraft registered in the United Kingdom wherever it may be in the world. A full Explanatory Note may be found at: <http://www.legislation.hmso.gov.uk/acts/en/03en20-b.htm>.

#### **4.2 Offences - Being Unfit for Duty (Section 92)**

4.2.1 A person commits an offence if:

4.2.2 He/she performs an aviation function at a time when his/her ability to perform the function is impaired because of drink or drugs, or

4.2.3 He/she carries out an activity that is ancillary to an aviation function at a time when his/her ability to perform the function is impaired because of drink or drugs.

4.2.4 In this section "drug" includes any intoxicant other than alcohol.

#### **4.3 Offences – Prescribed Limit (Section 93)**

4.3.1 A person commits an offence if:

4.3.2 He/she performs an aviation function at a time when the proportion of alcohol in his/her breath, blood or urine exceeds the prescribed limit, or

4.3.3 He/she carries out an activity that is ancillary to an aviation function at a time when the proportion of alcohol in his/her breath, blood or urine exceeds the prescribed limit.

#### **4.4 Detailed Limits**

4.4.1 In detail the prescribed limits are:

When:

- *acting as a pilot, cabin crew, flight engineer, flight navigator or flight radio-telephony operator of an aircraft during flight;*
- *attending the flight deck of an aircraft during flight to give or supervise training, to administer a test, to observe a period of practice or to monitor or record the gaining of experience; or*
- *acting as an air traffic controller in pursuance of a licence granted under or by virtue of an enactment (other than a licence granted to a student):*

The prescribed limit of alcohol is:

a. In the case of breath: 9 microgrammes of alcohol in 100 millilitres.

b. In the case of blood: 20 milligrammes of alcohol in 100 millilitres.

c. In the case of urine: 27 milligrammes of alcohol in 100 millilitres.

- *When acting as a licensed aircraft maintenance engineer:*

The prescribed limit of alcohol in respect of the above is:

a. In the case of breath: 35 microgrammes of alcohol in 100 millilitres.

b. In the case of blood: 80 milligrammes of alcohol in 100 millilitres.

c. In the case of urine: 107 milligrammes of alcohol in 100 millilitres.

- 4.4.2 The different limits reflect the fact that although licensed aircraft maintenance engineers perform an equally important role in aviation, they do not necessarily require the same speed of reaction that aircrew or air traffic controllers may need in an emergency situation.

### **4.5 Aviation Functions (Section 94)**

- 4.5.1 This section applies to the offences of being either over the limit or unfit, to people preparing to carry out an aviation function or otherwise holding themselves ready to carry out one of those functions by virtue of being on duty or standby.

- 4.5.2 An activity shall be treated as an ancillary function if it is undertaken by a person commencing a period of duty in respect of the function, and as a requirement of, for the purpose of or in connection with the performance of the function during the period of duty. For example, the pre-flight briefing of the flight and cabin crew and any post-flight activity such as filing reports is considered to be an 'ancillary' function.

## **5 Testing under the Act**

### **5.1 Power to Conduct a Preliminary Test (i.e. a breathalyser test) by a Police Constable in Uniform**

- 5.1.1 Section 96 of the Act provides that the Police have power to require a person to co-operate with a preliminary test where:

(a) a constable in uniform reasonably suspects that the person is over the prescribed limit, or his/her ability to perform his/her aviation function is impaired through either drink or drugs,

(b) a constable in uniform reasonably suspects that the person has been over the prescribed limit or impaired through drink or drugs, and still has alcohol or a drug in his/her body or is still under the influence of a drug,

(c) an aircraft is involved in an accident and a constable reasonably suspects that the person was undertaking an aviation function, or an activity ancillary to an aviation function, in relation to the aircraft at the time of the accident, or

(d) an aircraft is involved in an accident and a constable reasonably suspects that the person has undertaken an aviation function, or an activity ancillary to an aviation function, in relation to the aircraft.

- 5.1.2 A person who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this section commits an offence.

- 5.1.3 A person commits an offence under the Act if he/she performs an aviation function, or an activity that is ancillary to an aviation function, at a time when his/her ability to perform the function is impaired because of alcohol or drugs. This means that a person can be tested at any time after commencing duty, including standby. The Police will determine when to test based on reasonable suspicion that either someone is over the prescribed limit, under the influence of alcohol and drugs, or following an accident.

5.1.4 The Police are empowered to breathalyse and to perform subsequent tests (i.e. blood and urine tests). Police officers have been advised to exercise their powers under the Act as discreetly as circumstances allow and, if possible, in private, particularly where passenger aircraft are concerned. Overtly or insensitively exercising these powers in certain circumstances could have a detrimental effect on passenger perception and confidence, and could have commercial implications and liabilities.

5.1.5 The preliminary drug test is dependant on factors not yet finalised. The CAA will endeavour to provide additional information in due course.

### **5.2 Test Equipment**

5.2.1 The equipment to be used by the Police to screen suspected offenders for the presence of ingested alcohol is that currently used to test motorists in road traffic cases. However, before approval for use in the aviation environment, each type of device type has been subjected to a series of controlled laboratory tests to ensure its continued reliability and accuracy at the new aviation limit over a range of operational temperatures and after repeated use.

5.2.2 The technical specifications for the testing programme required that, for each type of device, the absolute error in indication at the aviation limit would be better than that required when used to screen suspected offenders in road traffic cases.

5.2.3 The results of any screening test will provide an indication of the level of alcohol present in an individual's body. Any criminal proceedings will be based on the results of a subsequent evidential test using different equipment. In practice this will usually take the form of a laboratory analysis of a sample of the suspected offender's blood or urine.

### **5.3 Testing following an Accident**

5.3.1 An accident for these purposes is defined as an unintended event with adverse physical effect. It is unlikely that every accident involving an aircraft will warrant Police exercising any or all of their powers under this Act.

### **5.4 Reasonable Grounds for Suspicion**

5.4.1 Reasonable grounds for suspicion depend upon the circumstances in each case. There must be an objective basis for that suspicion based on facts, information and/or intelligence that are relevant to the likelihood of an offence. Reasonable suspicion cannot be based on generalisations or stereotypical images of certain groups or categories of people more likely to be involved in criminal activity.

5.4.2 Reasonable suspicion can sometimes exist without specific information or intelligence and on the basis of some level of generalisation stemming from the behaviour of a person. Reasonable suspicion should normally be linked to accurate and current intelligence or information. For example, evidence of impairment from witnesses or from the result of a primary test of an employee by an employer could be sufficient.

### **5.5 Procedure in the Event of a Positive Breathalyser Test**

5.5.1 If, as a result of an initial Police breath test, an officer has reasonable cause to suspect that a person has more than the prescribed proportion of alcohol in their body, then they can expect to be arrested and taken to a Police station. There, they will be asked to provide a further specimen of breath, blood or urine for laboratory analysis. In practice, this will usually be a specimen of blood, taken by a Police doctor. Failure to provide a specimen without reasonable excuse is an offence. Where a sample of blood or urine is taken, he/she will be entitled to request a part of the sample for themselves. He/she will be supplied with a booklet of analysts where they can have their specimen privately analysed if they wish.

- 5.5.2 Once a blood sample has been taken he/she will probably be released from the Police station on a condition to return at a later date, by which time the Police part of the sample will have been analysed. If the sample is under the limit he/she will probably be told not to attend. If when he/she attends, the results of the analysis of the sample shows that he/she was over the limit, he/she will be charged with the offence and be given a date to attend court.
- 5.5.3 After giving a specimen, the Police may detain the individual at the Police station until it appears to the officer that there is no likelihood of them carrying out, or attempting to carry out, an aviation function of the kind for which they have provided a sample, whilst still over the prescribed limit or otherwise impaired through alcohol or drugs.

### **6 Advice to Flight Crew and Cabin Crew**

- 6.1 Flight safety demands that flight crew and cabin crew should have no ingested alcohol in his/her body when duty is commenced. The reason for the 20mg level is that all human beings can create small amounts of their own alcohol. This may appear in their blood as an alcohol level, but it will not reach 20mg per 100ml, and anyone who is breath or blood tested to that level will have ingested alcohol in the recent past.
- 6.2 Humans absorb and excrete alcohol at very different rates. These depend on factors such as sex, body weight, tolerance to alcohol, and the presence of food. It is therefore impossible to construct any meaningful chart that an individual can use to predict a future alcohol level after a period of drinking. Flight crew and cabin crew should not commence duty for at least eight hours after taking small amounts of alcohol, and proportionally longer if larger amounts are consumed. It is likely, but cannot be guaranteed, that if a person consumes a maximum of five units of alcohol dispersed over some hours before the eight hour ban, then his or her blood alcohol level will be zero at the end of the ban (half a pint of ordinary strength beer (3-3.5%) contains one unit of alcohol).
- 6.3 Flight crew and cabin crew who are required to take a preliminary test, with a negative result, may decide that it is unsafe for them to operate because of the emotional impact. It is for individual flight crew and cabin crew to determine their fitness to fly in such circumstances regardless of individual operator policy. It would be advisable for flight crew and cabin crew to seek guidance from company management or company representatives.

### **7 Penalties and Enforcement Powers**

#### **7.1 Section 95: Penalties**

- 7.1.1 The penalties set out in section 95 are set at the same level as those currently applying to aircrew and air traffic controllers under Article 122 of the ANO. This section will bring the penalties for licensed maintenance engineers under the influence of alcohol or drugs into line with them.

#### **7.2 Arrest without a Warrant (Section 97)**

- 7.2.1 A constable may arrest a person without a warrant if the constable reasonably suspects that the person is committing an offence under Section 92 (being unfit for duty), or has committed an offence under that Section and is still under the influence of alcohol or drugs.

#### **7.3 Right of Entry (Section 98)**

- 7.3.1 A Police constable in uniform may board an aircraft if he/she reasonably suspects that he/she may wish to exercise a power by virtue of Section 96 (power to administer tests, etc.) or under Section 97 (arrest without a warrant) in respect of a person who is or may be on the aircraft.
- 7.3.2 A Police constable in uniform may enter any place if he/she reasonably suspects that he/she may wish to exercise a power by virtue of Section 96 (Power to administer tests, etc.) or under Section 97 (arrest without a warrant) in respect of a person who is or may be in that place.

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- 7.3.3 For the purpose of boarding an aircraft or entering a place under this Section, a Police constable may use reasonable force or may be accompanied by one or more persons, e.g. airline personnel, additional Police constables, etc. Officers not used to working on airports or in aircraft and not trained to consider the relevant aspects of health and safety may wish to be accompanied by an agent of the airport or the operator as appropriate.

### 8 Disclosure of Information

- 8.1 In exercising their powers under this Act, the Police may acquire information that gives cause for serious concern that a person performing a safety aviation function is unsuited to hold that position of trust. This acquisition may occur even before a sample of blood or urine has been analysed or the person has been charged, for example, where such a person has provided a positive preliminary test.
- 8.2 Such information may be passed to that person's employer or licensing Authority on grounds of public safety or for the prevention or detection of crime. This will only be carried with the authority of an officer of the rank of Assistant Chief of Police or above.
- 8.3 Any disclosure should provide only that information required to determine whether the offender should continue in their present role pending trial.
- 8.4 If authority to disclose is refused, Police should provide for the analysis of samples to be fast-tracked by the Forensic Science Service and for the offender to be charged, if appropriate, at the earliest opportunity.
- 8.5 In reality it is likely that if an individual is tested positive whilst on a duty period this will have an immediate impact on the operation of the aircraft and will quickly come to the attention of the operator's rostering department.

### 9 CAA Protocol in Suspected Alcohol or Drug Misuse

- 9.1 The CAA has a well-defined protocol when it is informed that a medical certificate holder (flight crew or air traffic controller) may be misusing alcohol or drugs. This would be activated if a pilot had failed a breathalyser test whilst performing an aviation function. The person is medically assessed, including blood testing, and a decision made whether there is alcohol or drug dependency that could be a risk to flight safety. If that is so, the pilot's medical certificate will be temporarily suspended. He/she will then be invited to take part in a treatment and rehabilitation schedule. If that is successful, the pilot will be returned to flying with the requirement to provide regular reports and to attend for follow-up assessments. Abstinence is required. The CAA has found that approximately 85% of professional pilots with such problems can be returned to flying under this regime.

### 10 Further Information or Clarification

- 10.1 For further information or clarification in the first instance contact should be made with Captain M A Vivian, Deputy Head Flight Operations Department or Mr N Butcher, Head of the Cabin Safety Office on the following:

Captain M A Vivian	Tel: 01293 573470	Mr N Butcher	Tel: 01293 573341
	Fax: 01293 573770		Fax: 01293 573991

**Captain D J Chapman**  
**Head Flight Operations Department**  
**22 December 2003**

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