

Operation TALLA
Coronavirus(COVID-19)
Drink/Drive Procedure

During the time that Operation TALLA is in force it has been decided that the Road Side Screening devices and the Intoxilyzer device for breath analysis are not available for use. This is a lawful and entirely reasonable decision and the Road traffic (Jersey) Law 1956 (RT(J)L) makes provision for such an eventuality.

The use of the screening devices and the Intoxilyzer device are covered under different articles in the law.

Roadside Screening

The screening device only provides an indication that a person may be over the prescribed limit for alcohol. This is necessary because there can be a significant difference between someone who is showing signs of alcoholic intoxication and someone who has a concentration of alcohol in their body above the prescribed limit but not showing significant signs of impairment. The use of the screening device is covered under Article 29 of the RT(J)L and for the time being can be considered to be unenforceable.

Provision of specimens for analysis

Article 30 of the RT(J)L provides for the provision of specimens for analysis in the course of an investigation of an offence under Articles 26,27 or 28 of the RT(J)L to provide a specimen of breath, blood or urine for a laboratory test.

Article 30(3)(b) provides for a situation whereby it is not possible to require a specimen of breath for analysis.

Practical meaning of this situation

With the roadside screening device unavailable it will not be possible to enact any of the powers under Article 29 of the RT(J)L. This means that unless there are clear signs that a person is intoxicated through alcohol they cannot be arrested on suspicion of driving or being in charge of a motor vehicle whilst over the prescribed limit by virtue of a roadside screening test.

However the offences of driving whilst over the prescribed limit (Art 28 RT(J)L) and driving whilst unfit through drink or drugs (Art 27 RT(J)L) are still enforceable and suspects can still be arrested for these offences.

In cases whereby a driver is suspected of being under the influence of alcohol they could be arrested, without a screening breath test, either on suspicion of being over the prescribed limit or driving whilst unfit through alcohol. Without a screening test available it is necessary to apply a subjective test based on observation and experience. Police officers are acknowledged to have relevant experience regarding drunkenness. If a driver is showing

signs of intoxication due to alcohol there will be sufficient suspicion to suspect they would be over the prescribed limit of alcohol. Such an arrest would need more than admissions to have consumed alcohol and the smell of intoxicants on the breath. There would need to be additional classic symptoms such as slurred speech, unsteadiness and difficulty in focusing the eyes. These are all signs of impairment but it is more straightforward to establish a prescribed limit offence than it is an impairment offence.

A driver displaying classic signs of alcoholic intoxication could be arrested on suspicion of either driving over the prescribed limit or driving whilst impaired through drink or drugs. However, in custody, if the suspicion was based on alcohol intoxication alone the simplest procedure would be to revert to a prescribed limit offence and invoke the station procedure. This will mean that, with the non-availability of the Intoxilyzer device, an alternate of blood or urine could be required. The evidence then being obtained through analysis at a later date.

If the procedure for impairment were to be followed it would require an FME examination and if the FME was of the opinion that the condition found was due to alcohol only there would be no power to take blood for analysis. The suspect should be charged based on the evidence at hand. This would include any evidence of impaired driving, police observations of the suspect and the FME opinion. A specimen of blood could only be required if the FME was of the opinion that the condition observed was due to some drug alone or a combination of a drug and alcohol.

If the suspicion is that the observed demeanour of the suspect is due to drugs alone or a combination of drugs and alcohol then the full impairment procedure is more appropriate. If the suspicion is that the demeanour is due entirely or substantially due to alcohol the prescribed limit procedure involving an alternate specimen of blood and urine should be followed.

Recommended procedure during operation TALLA

If a person is suspected of having driven or been in charge of a motor vehicle whilst over the prescribed limit under the relevant article of the RT(J)L they can be arrested for that offence without a screening test having been carried out if there are clear signs of alcoholic intoxication. On detention the station procedure can be invoked in situations whereby breath specimens for analysis cannot be obtained.

If blood is required to be taken the FME will be called to take the specimen but will not be asked to offer any opinion as to the condition of the suspect. This is procedure is in lieu of the Intoxilyzer procedure.

In cases whereby the suspicion is that the observed intoxication is due to some drug or a combination of alcohol and drugs the impairment procedure should be followed in full. In

the impairment procedure there is no power to obtain a blood specimen unless the observed condition is caused by some drug or a combination of drugs and alcohol.

Station procedure

When a suspect is presented in custody having been arrested on suspicion of being over the prescribed limit or being unfit through alcohol alone the Station Procedure should be followed as below. The detention should be authorised for the investigation of an offence of excess alcohol and not impairment. For the purposes of obtaining evidence through analysis.

The procedure should then commence on Form CJU 24A

A1 Fill out as usual and next to SCREENING TEST write 'Unavailable'

A2 – as normal

A3 – Note the demeanour observed, any signs of alcoholic intoxication including where noted; smell of intoxicants on the breath, slurred speech, unsteadiness, inability to focus correctly, etc.

A4 – as normal

A5 – as normal

A6 – Tick the relevant boxes for motor vehicle - whilst over the prescribed limit

A7 – as normal

A8- Mark the availability of the device as NO and give the reason as Coronavirus (COVID-19)

Now go to forms CJU 24B

B1- as normal

B2 – follow (a) to B3

B3 – (b) If no refusal go to B4 – If refusal follow B5 onward

B4 – Requirement will be for blood unless there is a valid reason not to

B12 – as normal

B13 – as normal

B20 – as normal – Specimen taken release pending analysis

Return to CJU 24A

A19 – as normal

A22 – as normal

If urine was required to be taken as an alternate then follow the appropriate path as per the forms and release pending analysis.

Note

Only follow the impairment procedure if the observed condition is not believed to be substantially due to alcohol. It is more challenging to establish an impairment case than an excess alcohol case. If there are the usual clear signs of alcoholic intoxication the blood alcohol level will almost certainly be above the prescribed limit and there will be sufficient evidence to arrest and follow the prescribed limit investigation.

The lack of the ability to screen test suspects or drivers involved in collisions or committing traffic offences will result in some drivers evading detection of prescribed limit offences. That will be unavoidable during this period.



Case Director

26th March 2020