

EXECUTIVE COUNCIL

RESTRICTED

Title of Report: The Road Traffic (Approval of Devices for Breath Testing and Analysis) Order 2009
Paper No: 225/09
Date: 26 November 2009
Report of: Legislative Drafter/Sergeant Tom Whistler, RFIP

1.0 Purpose

The purpose of this report is to seek approval for the Road Traffic (Approval of Devices for Breath Testing and Analysis) Order 2009 to be made by HE the Governor.

2.0 Recommendations

Executive Council is recommended to approve the making of the Order in the form of the draft annexed to this report.

3.0 Summary of Financial Implications

None

4.0 Background

4.1 Sections 23 and 24 of the Road Traffic Ordinance provide that the Governor in Council must approve the devices used for breath testing (the preliminary procedure carried out at the roadside) and breath analysis (the evidential procedure carried out in the police station) in the enforcement of the drink driving law.

4.2 The current position is that two different devices used for breath testing (the Lion S-D2 and the Lion S-L2A) and one device used for breath analysis (the Camic Breath Test) are approved. These approvals were given in 1988 and 1997.

4.3 The Camic Breath Test machine previously used by RFIP was replaced by a Camic Data Master machine in September 1997 but the approval was never updated at the time.

4.4 The status of the Camic Data Master machine was tested by the defence in a prosecution for drink driving brought by RFIP in relation to an incident that took place in March 2007. At the trial (which took place in November 2007), it was held that the Camic Data Master was of a type with the Camic Breath Test and, therefore, covered by the original approval.

4.5 The present position in relation to the Camic Data Master machine is tenable but unsatisfactory. It is considered appropriate to regularise the position by replacing the approval of the Camic Breath Test with an approval of the Camic Data Master actually in use.

4.6 In addition, the military authorities are seeking approval for an additional breath testing device, the Lion SL-400. That device is a more modern breath testing device than the two used by RFIP (and currently used – on loan from RFIP – by the military authorities pending approval of the Lion SL-400) and it is approved for use in the United Kingdom and in other jurisdictions.

4.7 Since the Lion SL-400 is used by military police elsewhere, the military authorities see advantages in being able to use the same device here to avoid the need for additional training of military personnel.

4.8 It is considered appropriate to add the Lion SL-400 to the list of breath testing devices approved for use in the Islands but there is no suggestion that approval should be withdrawn from the older devices that will continue to be used by RFIP.

5.0 The Draft Order

5.1 The draft order would replace the existing approvals with a consolidated and up to date list of the three breath testing devices approved by the Governor in Council in accordance with section 23 of the Road Traffic Ordinance and the type of breath analysis device approved by the Governor in Council in accordance with section 24 of the Road Traffic Ordinance.

5.2 It is recommended that Executive Council approve the making of the order in the form of the draft.

6.0 Financial Implications

6.1 There are no significant financial implications.

6.2 That said, one Lion S-D2 unit is currently on loan from RFIP to the military authorities and this can be returned to RFIP as soon as the Lion SL-400 is approved under the Road Traffic Ordinance.

7.0 Legal Implications

7.1 The position in relation to the use of the Camic Data Master on the basis of the existing approval of the Camic Breath Test is tenable but unsatisfactory. The proposed order would regularise the position.

7.2 The use by the military authorities of the Lion SL-400 would be permitted by the proposed order.

8.0 Human Resources Implications

None

SUBSIDIARY LEGISLATION

ROAD TRAFFIC

The Road Traffic (Approval of Devices for Breath Testing and Analysis) Order [2009]

S. R. & O. No. [] of 20[09]

Made: [] 20[09]

Published: [] 20[09]

Coming into force: on publication

IN EXERCISE of my powers under section 59 of the Road Traffic Ordinance (Title 63.1), I make the following order—

1. Title

This order is the Road Traffic (Approval of Devices for Breath Testing and Analysis) Order [2009].

2. Commencement

This order comes into force on publication in the *Gazette*.

3. Approval of preliminary breath testing devices

The devices listed in Schedule 1 are approved in accordance with the definition of “breath test” in section 2(1) of the Road Traffic Ordinance for use as preliminary breath testing devices for the purposes of section 23.

4. Approval of type of breath analysis device

Devices of the type listed in Schedule 2 are approved in accordance with section 24 of the Road Traffic Ordinance for use as breath analysis devices for the purposes of that section.

5. Revocations

The following orders are revoked—

- (a) the Breath Alcohol Concentration Measurement (Devices Approval) Order 1988 (Title 63.1.2);
- (b) the Breath Alcohol Concentration Measurement (Device Approval) (No. 2) Order 1988 (Title 63.1.3); and
- (c) the Breath Alcohol Concentration Measurement (Device Approval (No 2)) Order 1997 (No. 7 of 1997).

Made [] 2009

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Approved preliminary breath testing devices

1. The device known as the Lion S-D2, as manufactured by (or under licence from) Lion Laboratories Limited or any of its successors and assigns.
2. The device known as the Lion S-L2A , as manufactured by (or under licence from) Lion Laboratories Limited or any of its successors and assigns.
3. The device known as the Lion SL-400, as manufactured by (or under licence from) Lion Laboratories Limited or any of its successors and assigns.

SCHEDULE 2

Approved type of breath analysis device

The type of device known as the Camic Data Master, as manufactured by (or under licence from) Camic (Car and Medical Instrument Company) Limited or any of its successors or assigns.

EXPLANATORY NOTE

(not forming part of the above order)

Under section 23 of the Road Traffic Ordinance, a police officer in uniform can, in certain circumstances, require a person to provide a specimen of breath in order to carry out a breath test to obtain an indication whether the proportion of alcohol in person's breath is likely to exceed the prescribed limit. Breath tests must be carried out using a preliminary breath testing device approved by the Governor in Council.

Under section 24, a police officer can, in the course of an investigation into alleged drink driving offences, require a person to provide two specimens of breath for analysis. This must be done at a police station and breath analysis must be carried out using a breath analysis device of a type approved by the Governor in Council.

By means of this order, the Governor in Council approves preliminary breath testing devices and types of breath analysis devices for use in connection with sections 23 and 24.

This order replaces the orders made previously and establishes an up to date list of the devices approved for breath tests and the type of device approved for breath analysis.