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STATUTORY INSTRUMENTS

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**1998 No. 2839 (N.I. 20)**

**The Criminal Justice (Northern Ireland) Order 1998**

- - - - - 17th November 1998

**Modifications etc. (not altering text)**

- C1** Order: transfer of functions from Secretary of State to Department of Justice (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 4(1)(2), [Sch. 1](#) (with arts. 28-31); [S.I. 2010/977](#), [art. 1\(2\)](#)

**Title and commencement** **N.I.**

- 1.—(1) This Order may be cited as the Criminal Justice (Northern Ireland) Order 1998.
- (2) Subject to paragraph (3), this Order shall come into operation on the expiration of 14 days from the day on which it is made.
- (3) Articles 4 to 11 shall come into operation on such day or days as the Secretary of State may by order appoint.

**Interpretation** **N.I.**

- 2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

- (2) In this Order—

- “drug treatment and testing order” means an order made by a court under Article 8(2);
- “responsible officer”, in relation to a drug treatment and testing order, means a probation officer;
- “sex offender order” means an order under Article 6(3);
- “statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;
- “the testing requirement” means the testing required under a drug treatment and testing order;
- “the treatment and testing period” means such period of not less than 6 months nor more than 3 years as may be specified in a drug treatment and testing order;
- “the treatment provider” means the person specified under Article 9(1);
- “the treatment requirement” means the treatment required under a drug treatment and testing order.

- (3) In this Order expressions which are also used in Part II of the Criminal Justice (Northern Ireland) Order 1996 have the same meanings as in that Part.

*Criminal law*

**Abolition of rebuttable presumption that a child is doli incapax** **N.I.**

3. The rebuttable presumption of criminal law that a child age 10 or over is incapable of committing an offence is hereby abolished.

*Criminal procedure*

**Remands by youth courts** **N.I.**

4. After Article 30 of the Criminal Justice (Children) (Northern Ireland) Order 1998 there shall be inserted—

**“Power of youth courts in relation to remands**

**30A.** A youth court shall not be required to adjourn any proceedings for an offence at any stage by reason only of the fact—

- (a) that the court commits the accused for trial for another offence; or
- (b) that the accused is charged with another offence.”.

**Use of live television links at hearings for the purposes of remand** **N.I.**

5.—(1) In any proceedings for an offence, a court may, after hearing representations from the parties, direct that the accused shall be treated as being present in the court for any particular hearing before the start of the trial (other than a hearing at which the court may commit the accused for trial) if, during that hearing—

- (a) he is held in custody in a prison or other institution; and
- (b) whether by means of a live television link or otherwise, he is able to see and hear the court and to be seen and heard by it.

(2) A court shall not give a direction under paragraph (1) unless—

- (a) it has been notified by the Secretary of State that facilities are available for enabling persons held in custody in the institution in which the accused is or is to be so held to see and hear the court and to be seen and heard by it; and
- (b) the notice has not been withdrawn.

(3) If in a case where it has power to do so a magistrates' court decides not to give a direction under paragraph (1), it shall give its reasons for not doing so.

[<sup>F1</sup>(3A) Subject to paragraph (3B), if it appears to the court—

- (a) that the accused is not able to see and hear the court and to be seen and heard by it; and
- (b) that this cannot be immediately corrected,

the court shall adjourn the hearing.

(3B) The court may proceed with the hearing if it is satisfied that it is not reasonably practicable to bring the accused to court before he ceases to be held in custody.

(3C) If the court proceeds with the hearing under paragraph (3B) it shall not remand the accused in custody for a period exceeding eight days commencing on the day following that on which it remands him.]

- (4) In this Article “the start of the trial”
- (a) in the case of a trial on indictment, has the meaning given by section 39(3) of the Criminal Procedure and Investigations Act 1996; and
  - (b) in the case of a summary trial, shall be taken to occur—
    - (i) when the court begins to hear evidence for the prosecution at the trial or to consider whether to exercise its power under Article 44(4) of the Mental Health (Northern Ireland) Order 1986 (power to make hospital order without convicting the accused), or
    - (ii) if the court accepts a plea of guilty without proceeding as mentioned in head (i), when that plea is accepted.

**F1** 2003 NI 13

### *Treatment of offenders*

*Art. 6 rep. by 2003 c. 42*

*Art. 6A rep. by 2003 c. 42*

*Art. 6B rep. by 2003 c. 42*

*Art. 7 rep. by 2003 c. 42*

### **Drug treatment and testing orders** **N.I.**

**8.—**(1) This Article applies where a person aged 17 or over is convicted of an offence other than one for which the sentence is fixed by law.

(2) Subject to the provisions of this Article, the court by or before which the offender is convicted may make an order (a “drug treatment and testing order”) which—

- (a) has effect for a period specified in the order of not less than 6 months nor more than 3 years (“the treatment and testing period”); and
- (b) includes the requirements and provisions mentioned in Article 9.

(3) A drug treatment and testing order shall be a community order for the purposes of Part II of the Criminal Justice (Northern Ireland) Order 1996; and the provisions of that Part, which include provisions with respect to restrictions on imposing, and procedural requirements for, community sentences (Articles 8 and 9), shall apply accordingly.

(4) The court shall not make a drug treatment and testing order in respect of the offender unless it is satisfied—

- (a) that he is dependent on or has a propensity to misuse drugs; and
- (b) that his dependency or propensity is such as requires and may be susceptible to treatment.

(5) For the purpose of ascertaining for the purposes of paragraph (4) whether the offender has any drug in his body, the court may by order require him to provide samples of such description as it may specify; but the court shall not make such an order unless the offender expresses his willingness to comply with its requirements.

(6) The Secretary of State may by order amend paragraph (2) by substituting a different period for the minimum or maximum period for the time being specified in that paragraph.

(7) An order under paragraph (6) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

**Requirements and provisions to be included in orders** **N.I.**

9.—(1) A drug treatment and testing order shall include a requirement ( “the treatment requirement”) that the offender shall submit, during the whole of the treatment and testing period, to treatment by or under the direction of a specified person having the necessary qualifications or experience ( “the treatment provider”) with a view to the reduction or elimination of the offender's dependency on or propensity to misuse drugs.

(2) The required treatment for any particular period shall be—

- (a) treatment (whether as an in-patient or an out-patient) at such hospital as may be specified in the order, being a hospital within the meaning of the Health and Personal Social Services (Northern Ireland) Order 1972 approved by the Department of Health and Social Services for the purposes of this paragraph; or
- (b) treatment at such intervals, as may be so specified;

but the nature of the treatment shall not be specified in the order except as mentioned in sub-paragraph (a) or (b).

(3) A court shall not make a drug treatment and testing order unless it is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as an in-patient).

(4) A drug treatment and testing order shall include a requirement ( “the testing requirement”) that, for the purpose of ascertaining whether he has any drug in his body during the treatment and testing period, the offender shall provide during that period, at such times or in such circumstances as may (subject to the provisions of the order) be determined by the treatment provider, samples of such description as may be so determined.

(5) The testing requirement shall specify for each month the minimum number of occasions on which samples are to be provided.

(6) A drug treatment and testing order shall include a provision specifying the petty sessions district in which it appears to the court making the order that the offender resides or will reside.

(7) A drug treatment and testing order shall—

- (a) provide that, for the treatment and testing period, the offender shall be under the supervision of a responsible officer, that is to say, a probation officer;
- (b) require the offender to keep in touch with the responsible officer in accordance with such instructions as he may from time to time be given by that officer, and to notify him of any change of address; and
- (c) provide that the results of the tests carried out on the samples provided by the offender in pursuance of the testing requirement shall be communicated to the responsible officer.

(8) Supervision by the responsible officer shall be carried out to such extent only as may be necessary for the purpose of enabling him—

- (a) to report on the offender's progress to the court responsible for the order;
- (b) to report to that court any failure by the offender to comply with the requirements of the order; and
- (c) to determine whether the circumstances are such that he should apply to that court for the revocation or amendment of the order.

(9) In this Article and Articles 10 and 11, references to the court responsible for a drug treatment and testing order are references to—

- (a) the court by which the order is made; or
- (b) where another court is specified in the order in accordance with paragraph (10), that court.

(10) Where the district specified in a drug treatment and testing order made by a court of summary jurisdiction is not the petty sessions district for which the court acts, the court may, if it thinks fit, include in the order provision specifying for the purposes of paragraph (9) a court of summary jurisdiction which acts for that district.

### Periodic reviews **N.I.**

**10.**—(1) A drug treatment and testing order shall—

- (a) provide for the order to be reviewed periodically at intervals of not less than one month;
- (b) provide for each review of the order to be made, subject to paragraph (6), at a hearing held for the purpose by the court responsible for the order (a “review hearing”);
- (c) require the offender to attend each review hearing;
- (d) provide for the responsible officer to make to the court, before each review, a report in writing on the offender's progress under the order; and
- (e) provide for each such report to include the test results communicated to the responsible officer under Article 9(7)(c) and the views of the treatment provider as to the treatment and testing of the offender.

(2) At a review hearing the court, after considering the responsible officer's report, may amend any requirement or provision of the order.

(3) The court—

- (a) shall not amend the treatment or testing requirement unless the offender expresses his willingness to comply with the requirement as amended;
- (b) shall not amend any provision of the order so as to reduce the treatment and testing period below the minimum specified in Article 8(2), or to increase it above the maximum so specified; and
- (c) except with the consent of the offender, shall not amend any requirement or provision of the order while an appeal against the order is pending.

(4) If the offender fails to express his willingness to comply with the treatment or testing requirement as proposed to be amended by the court, the court may—

- (a) revoke the order; and
- (b) deal with him, for the offence in respect of which the order was made, in any manner in which it could deal with him if he had just been convicted by the court of the offence.

(5) In dealing with the offender under paragraph (4)(b), the court—

- (a) shall take into account the extent to which the offender has complied with the requirements of the order; and
- (b) may impose a custodial sentence notwithstanding anything in Article 19(2) of the Criminal Justice (Northern Ireland) Order 1996.

(6) If at a review hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the order is satisfactory, the court may so amend the order as to provide for each subsequent review to be made by the court without a hearing.

(7) If at a review without a hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the order is no longer satisfactory, the court may require the offender to attend a hearing of the court at a specified time and place.

(8) At that hearing the court, after considering that report, may—

- (a) exercise the powers conferred by this Article as if the hearing were a review hearing; and
- (b) so amend the order as to provide for each subsequent review to be made at a review hearing.

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*Status: Point in time view as at 01/01/2006.*

*Changes to legislation: There are currently no known outstanding effects for the The Criminal Justice (Northern Ireland) Order 1998. (See end of Document for details)*

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(9) In this Article any reference to the court, in relation to a review without a hearing, shall be construed—

- (a) in the case of the Crown Court, as a reference to a judge of the court;
- (b) in the case of a court of summary jurisdiction, as a reference to a resident magistrate acting for the petty sessions district for which the court acts.

#### **Supplementary provisions as to orders** **N.I.**

**11.**—(1) Before making a drug treatment and testing order, a court shall explain to the offender in ordinary language—

- (a) the effect of the order and of the requirements proposed to be included in it;
- (b) the consequences which may follow (under Schedule 2 to the Criminal Justice (Northern Ireland) Order 1996) if he fails to comply with any of those requirements;
- (c) that the order may be reviewed (under that Schedule) on the application either of the offender or of the responsible officer; and
- (d) that the order will be periodically reviewed at intervals as provided for in the order (by virtue of Article 10);

and the court shall not make the order unless the offender expresses his willingness to comply with its requirements.

(2) Where, in the case of a drug treatment and testing order made by a court of summary jurisdiction, another court is responsible for the order, the court making the order shall forthwith send copies of the order to the other court.

(3) Where a drug treatment and testing order is made or amended under Article 10(2), the court responsible for the order shall forthwith or, in a case falling within paragraph (2), as soon as reasonably practicable give copies of the order, or the order as amended, to a probation officer and he shall give a copy—

- (a) to the offender;
- (b) to the treatment provider; and
- (c) to the responsible officer.

(4) Where a drug treatment and testing order has been made on an appeal brought from a court of summary jurisdiction, or from the Crown Court, or from the Court of Appeal, for the purposes of Articles 9 and 10 it shall be deemed to have been made by a court of summary jurisdiction or, as the case may require, the Crown Court.

(5) Schedule 2 to the Criminal Justice (Northern Ireland) Order 1996 (enforcement etc. of community orders) shall have effect subject to the amendments specified in Part I of the Schedule being amendments for applying that Schedule to drug treatment and testing orders.

(6) The amendments and repeals of the Criminal Justice (Northern Ireland) Order 1996 specified in Part II of the Schedule shall have effect, being amendments and repeals consequential upon the provisions of Articles 8 to 11.

SCHEDULE **N.I.**

Article 11(5).

THE CRIMINAL JUSTICE (NORTHERN IRELAND) ORDER 1996

PART I **N.I.**

ENFORCEMENT ETC. OF DRUG TREATMENT AND TESTING ORDERS

*Preliminary*

1. Schedule 2 to the Criminal Justice (Northern Ireland) Order 1996 (enforcement etc. of community orders) shall be amended as follows.

*Meaning of “relevant order” etc.*

2.—(1) In paragraph 1 (preliminary)—

- (a) at the beginning insert “ (1) ” and after “a probation order,” insert “a drug treatment and testing order,”;
- (b) at the end insert the following sub-paragraphs—

“(2) In this Schedule, references to the court responsible for a drug treatment and testing order shall be construed in accordance with Article 9 of the Criminal Justice (Northern Ireland) Order 1998.

(3) Where a drug treatment and testing order has been made on an appeal brought from a court of summary jurisdiction, or from the Crown Court, or from the Court of Appeal, for the purposes of this Schedule it shall be deemed to have been made by a court of summary jurisdiction or, as the case may require, the Crown Court.” .

*Breach of requirements of order*

3. In paragraph 2(2) (issue of summons or warrant), for “before a court of summary jurisdiction acting for the petty sessions district concerned” substitute—

- “(a) except where the relevant order is a drug treatment and testing order, before a court of summary jurisdiction acting for the petty sessions district concerned;
- (b) in the excepted case, before the court responsible for the order.” .

4. In paragraph 4(1) (powers of Crown Court), after “Where” insert “under paragraph 2 or”.

5. In paragraph 5(2) (exclusions), for “is required by a probation order to submit to treatment for his mental condition, or his dependency on drugs or alcohol,” substitute—

- “(a) is required by a probation order to submit to treatment for his mental condition, or his dependency on or propensity to misuse drugs or alcohol; or
- (b) is required by a drug treatment and testing order to submit to treatment for his dependency on or propensity to misuse drugs,” .

*Revocation of order*

6. In paragraph 7 (revocation of order by a court of summary jurisdiction)—

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- (a) in sub-paragraph (1) after “the petty sessions district concerned” insert “or, where the relevant order is a drug treatment and testing order for which a court of summary jurisdiction is responsible, to that court”;
  - (b) in sub-paragraph (3)—
    - (i) after “a probation order” insert “or drug treatment and testing order”; and
    - (ii) after “supervision” insert “or, as the case may be, treatment”.
7. In paragraph 8 (revocation of order by Crown Court)—
- (a) after sub-paragraph (1) insert the following sub-paragraph—

“(1A) This paragraph also applies where—

    - (a) a drug treatment and testing order made by the Crown Court is in force in respect of an offender; and
    - (b) the offender or the responsible officer applies to the Crown Court for the order to be revoked or for the offender to be dealt with in some other manner for the offence in respect of which the order was made.” ;
  - (b) in sub-paragraph (3)—
    - (i) after “a probation order” insert “or drug treatment and testing order”; and
    - (ii) after “supervision” insert “or, as the case may be, treatment”.
8. For paragraph 9(1)(a) (revocation of order following custodial sentence), substitute—
- “(a) an offender in respect of whom a relevant order is in force is convicted of an offence.—
    - (i) by a court of summary jurisdiction other than a court acting for the petty sessions district concerned; or
    - (ii) where the relevant order is a drug treatment and testing order, by a court of summary jurisdiction which is not responsible for the order; and” .

*Amendment of order*

9. In paragraph 12(1) (amendment by reason of change of residence), after “a relevant order” insert “(other than a drug treatment and testing order)”.

10. After paragraph 14 insert the following paragraph—

*“Amendment of drug treatment and testing order*

**14A.**—(1) Without prejudice to the provisions of Article 10(2), (7) and (9) of the Criminal Justice (Northern Ireland) Order 1998, the court responsible for a drug treatment and testing order may by order—

- (a) vary or cancel any of the requirements or provisions of the order on an application by the responsible officer under sub-paragraph (2) or (3)(a) or (b); or
  - (b) amend the order on an application by that officer under sub-paragraph (3)(c).
- (2) Where the treatment provider is of the opinion that the treatment or testing requirement of the order should be varied or cancelled—
- (a) he shall make a report in writing to that effect to the responsible officer; and
  - (b) that officer shall apply to the court for the variation or cancellation of the requirement.



**Status:** Point in time view as at 01/01/2006.

**Changes to legislation:** There are currently no known outstanding effects for the The Criminal Justice (Northern Ireland) Order 1998. (See end of Document for details)

- (3) Where the responsible officer is of the opinion—
- (a) that the treatment or testing requirement of the order should be so varied as to specify a different treatment provider;
  - (b) that any other requirement of the order, or a provision of the order, should be varied or cancelled; or
  - (c) that the order should be so amended as to provide for each subsequent review under Article 10 of the Criminal Justice (Northern Ireland) Order 1998 to be made without a hearing instead of at a review hearing, or vice versa,

he shall apply to the court for the variation or cancellation of the requirement or provision or the amendment of the order.

- (4) The court—
- (a) shall not amend the treatment or testing requirement unless the offender expresses his willingness to comply with the requirement as amended; and
  - (b) shall not amend any provision of the order so as to reduce the treatment and testing period below the minimum specified in Article 9(2) of the Criminal Justice (Northern Ireland) Order 1998 or to increase it above the maximum so specified.

(5) If the offender fails to express his willingness to comply with the treatment or testing requirement as proposed to be amended by the court, the court may—

- (a) revoke the order; and
- (b) deal with him for the offence in respect of which the order was made, in any manner in which it could deal with him if he had just been convicted by the court of the offence.

(6) In dealing with the offender under sub-paragraph (5)(b), the court—

- (a) shall take into account the extent to which the offender has complied with the requirements of the order; and
- (b) may impose a custodial sentence notwithstanding anything in Article 19(2) of this Order.

(7) In this paragraph—

“review hearing” has the same meaning as in Article 10 of the Criminal Justice (Northern Ireland) Order 1998;

“the treatment requirement” and “the testing requirement” have the same meanings as in Article 2(2) of that Order.”.

**11.** In paragraph 16 (order not to be amended pending appeal), after “paragraph 13 or 15” insert “or, except with the consent of the offender, under paragraph 14A”.

**12.** In paragraph 18 (notification of amended order)—

- (a) in sub-paragraph (1) after “a relevant order” insert “(other than a drug treatment and testing order)”;
- (b) after sub-paragraph (1) insert the following sub-paragraph—
  - “(1A) On the making under this Part of this Schedule of an order amending a drug treatment and testing order, the clerk to the court shall forthwith give copies of the amending order to the responsible officer.” ;
- (c) in sub-paragraph (2) after “sub-paragraph (1)” insert “or (1A)”.

*Part II—Consequential Amendments and repeals*

**Status:**

Point in time view as at 01/01/2006.

**Changes to legislation:**

There are currently no known outstanding effects for the The Criminal Justice (Northern Ireland) Order 1998.