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## STATUTORY INSTRUMENTS

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# 2008 No. 1216

## The Criminal Justice (Northern Ireland) Order 2008

### PART 4

#### ROAD TRAFFIC OFFENCES

*Drink-driving, etc.*

#### **Power to require specimens of breath at roadside or at hospital**

**59.**—(1) The Road Traffic (Northern Ireland) Order 1995 (NI 18) is amended as follows.

(2) After Article 17D(1) (preliminary tests for drink and drugs: arrest) insert—

“(1A) The fact that specimens of breath have been provided under Article 18 by the person concerned does not prevent paragraph (1) having effect if the constable who imposed on him the requirement to provide the specimens has reasonable cause to believe that the device used to analyse the specimens has not produced a reliable indication of the proportion of alcohol in the breath of the person.”.

(3) After Article 17D(2) insert—

“(2A) A person arrested under this Article may, instead of being taken to a police station, be detained at or near the place where the preliminary test was, or would have been, administered, with a view to imposing on him there a requirement under Article 18.”.

(4) In Article 18 (provision of specimens for analysis) for paragraph (2) substitute—

“(2) A requirement under this Article to provide specimens of breath can only be made—

- (a) at a police station,
- (b) at a hospital, or
- (c) at or near a place where a relevant breath test has been administered to the person concerned or would have been so administered but for his failure to co-operate with it.

(2A) For the purposes of this Article “a relevant breath test” is a procedure involving the provision by the person concerned of a specimen of breath to be used for the purpose of obtaining an indication whether the proportion of alcohol in his breath or blood is likely to exceed the prescribed limit.

(2B) A requirement under this Article to provide specimens of breath may not be made at or near a place mentioned in paragraph (2)(c) unless the constable making it—

- (a) is in uniform, or
- (b) has imposed a requirement on the person concerned to cooperate with a relevant breath test in circumstances in which Article 17(5) applies.

(2C) Where a constable has imposed a requirement on the person concerned to cooperate with a relevant breath test at any place, he is entitled to remain at or near that place in order to impose on him there a requirement under this Article.

(2D) If a requirement under paragraph (1)(a) has been made at a place other than at a police station, such a requirement may subsequently be made at a police station if (but only if)

- (a) a device or a reliable device of the type mentioned in paragraph (1)(a) was not available at that place or it was for any other reason not practicable to use such a device there, or
- (b) the constable who made the previous requirement has reasonable cause to believe that the device used there has not produced a reliable indication of the proportion of alcohol in the breath of the person concerned.”.

(5) In Article 18(4) (circumstances in which requirement to provide a specimen of blood or urine may be made) in sub-paragraph (b) (breath-testing device not available etc.) insert at the beginning “specimens of breath have not been provided elsewhere and ”.

(6) In Article 19 (choice of specimens of breath) after paragraph (2) insert—

“(2A) If the person who makes a claim under paragraph (2) was required to provide specimens of breath under Article 18 at or near a place mentioned in paragraph (2)(c) of that Article, a constable may arrest him without warrant.”.

(7) In Article 20(1) (protection for hospital patients) for “for a laboratory test” substitute “ under Article 18 ”.

(8) In Article 21(1) (detention of persons affected by alcohol or a drug) —

- (a) for “until it appears to the constable” substitute “ (or, if the specimen was provided otherwise than at a police station, arrested and taken to and detained at a police station) if a constable has reasonable grounds for believing ”, and
- (b) for “not be committing” substitute “ commit ”.

(9) In Article 21(2) (grounds for detention) for “A person shall not be detained in pursuance of this Article if it appears to a” substitute “ Paragraph (1) does not apply to the person if it ought reasonably to appear to the ”.

(10) After Article 21(2) insert—

“(2A) A person who is at a hospital as a patient shall not be arrested and taken from there to a police station in pursuance of this Article if it would be prejudicial to his proper care and treatment as a patient.”.

**Changes to legislation:**

The Criminal Justice (Northern Ireland) Order 2008, Section 59 is up to date with all changes known to be in force on or before 28 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch. 2 Pt. 1 para. 31A renumbered as 31(B) by [2022 c. 19 \(N.I.\) Sch. 4 para. 3\(a\)](#)
- art. 19(1A) inserted by [2015 c. 9 \(N.I.\) s. 82](#)
- art. 45(1A) inserted by [2011 c. 24 \(N.I.\) s. 58\(2\)](#)