
STATUTORY INSTRUMENTS

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.

Status: This version of this cross heading contains provisions that are prospective.

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(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.”.

PROSPECTIVE

Alcohol ignition interlocks

60.—(1) In the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10), after Article 38 insert—

“Reduced disqualification period: alcohol ignition interlock programme orders

38A.—(1) This Article applies where—

- (a) a person is convicted of a relevant drink offence by or before a court,
- (b) he has committed another relevant drink offence at any time during the period of 10 years ending with the date of the conviction

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- (c) the court makes an order under Article 35 but does not make an order under Article 36, and
 - (d) the period stated by the court as that for which, apart from this Article, he would be disqualified (“the unreduced period”) is not less than 2 years.
- (2) In this Article “relevant drink offence” means—
- (a) an offence under sub-paragraph (a) of paragraph (1) of Article 14 of the Order of 1995 (causing death or grievous bodily injury by careless driving when unfit to drive through drink) committed when unfit to drive through drink,
 - (b) an offence under sub-paragraph (b) of that paragraph (causing death by careless driving with excess alcohol),
 - (c) an offence under sub-paragraph (c) of that paragraph (failing to provide a specimen) where the specimen is required in connection with drink or consumption of alcohol,
 - (d) an offence under Article 15 of that Order (driving or being in charge when under influence of drink) committed by reason of unfitness through drink,
 - (e) an offence under Article 16(1) of that Order (driving or being in charge with excess alcohol),
 - (f) an offence under Article 18(7) of that Order (failing to provide a specimen) committed in the course of an investigation into an offence within any of the preceding sub-paragraphs, or
 - (g) an offence under Article 18A(6) of that Order (failing to allow a specimen to be subjected to a laboratory test) in the course of an investigation into an offence within any of the preceding sub-paragraphs.
- (3) Where this Article applies, the court may specify a lesser period of disqualification (“the reduced period”) if it also makes an order (an “alcohol ignition interlock programme order”) requiring the offender to comply with the alcohol ignition interlock conditions.
- (4) The difference between the unreduced period and the reduced period shall be a period specified in the order of—
- (a) not less than 12 months, and
 - (b) not more than one half of the unreduced period.
- (5) If the offender contravenes the alcohol ignition interlock conditions, a further order under Article 35 disqualifying him for the rest of the unreduced period is to be treated as having been made by the court immediately before the contravention.
- (6) “The alcohol ignition interlock conditions” are that the offender—
- (a) must participate fully in an approved alcohol ignition interlock programme specified in the order during such part of the unreduced period as is so specified, and
 - (b) during the part of that period following the reduced period, must not drive a motor vehicle unless it is fitted with an alcohol ignition interlock in good working order and must not drive a motor vehicle which is so fitted when not using the alcohol ignition interlock properly.
- (7) A court shall not make an alcohol ignition interlock programme order in the case of an offender unless—
- (a) the court is satisfied that a place on the approved alcohol ignition interlock programme specified in the order will be available for the offender,
 - (b) the offender appears to the court to be of or over the age of 17,

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- (c) the court has informed the offender (orally or in writing and in ordinary language) of the effect of the order and the amount of the fees which he is required to pay for the programme and when he must pay them, and
- (d) the offender has agreed that the order should be made.

(8) For the purposes of this Article an “approved alcohol ignition interlock programme” is a programme approved by the Department and involving the provision of an alcohol ignition interlock for use by the offender, training in its use and other education and counselling relating to the consumption of alcohol and driving.

(9) For the purposes of this Article “alcohol ignition interlock” means a device—

- (a) of a type approved by the Department, and
- (b) designed to be fitted to a motor vehicle with the purpose of preventing the driving of the vehicle by a person who does not, both before starting driving the vehicle and at regular intervals while driving it, provide specimens of breath in which the proportion of alcohol is likely not to exceed the limit specified in paragraph (10).

(10) That limit is 9 microgrammes of alcohol in 100 millilitres of breath or such other proportion of alcohol to breath as the Department may by regulations prescribe.

(11) For the purposes of this Article an offender uses an alcohol ignition interlock properly if (and only if) he is complying with all the instructions given to him about its use as part of the approved alcohol ignition interlock programme.

(12) Where an alcohol ignition interlock is fitted to a motor vehicle as part of an approved alcohol ignition interlock programme relating to an offender, a person commits an offence if—

- (a) he interferes with the alcohol ignition interlock with intent to cause it not to function or not to function properly, or
- (b) he is a person other than the offender and provides or attempts to provide a specimen of breath for the purposes of the alcohol ignition interlock with intent to enable the driving (or continued driving) of the vehicle by the offender

Certificates of failing fully to participate

38B.—(1) An offender shall be regarded for the purposes of Article 38A as not fully participating in an approved alcohol ignition interlock programme if (and only if) a certificate that that is so is received by the proper officer of the supervising court.

(2) A certificate under paragraph (1) may be given if (and only if) the offender has failed—

- (a) to make due payment of fees for the programme,
- (b) to attend for training, education or counselling forming part of the programme in accordance with the programme provider's reasonable instructions,
- (c) to attend at a place specified by the programme provider for the monitoring and maintenance of the alcohol ignition interlock, at a time specified by the programme provider or a person with whom the programme provider has made arrangements for its monitoring and maintenance, or
- (d) to comply with any other reasonable requirement of the programme provider.

(3) A certificate under paragraph (1) is to be given by the programme provider and shall be in such form, and contain such particulars, as may be prescribed by, or determined in accordance with, regulations made by the Department.

(4) Where a programme provider decides to give a certificate under paragraph (1), he shall give written notice of the decision to the offender as soon as possible.

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(5) An offender to whom a notice is given under paragraph (4) may, within such period as may be prescribed by rules of court, apply to the supervising court^{F1}..., for a declaration that the programme provider has given the certificate under paragraph (1) in contravention of paragraph (2).

(6) If the court grants the application, Article 38A shall have effect as if the certificate had not been duly received by the proper officer of the supervising court.

(7) A notice under paragraph (4) shall specify the ground on which it is given; and the Department may by regulations make provision as to the form of notices under that paragraph and as to the circumstances in which they are to be treated as given.

(8) Where the proper officer of a court receives a certificate under paragraph (1), or a court grants an application under paragraph (5), the proper officer or court must send notice of that fact to the Department; and the notice must be sent in such manner and to such address, and must contain such particulars, as the Department may determine

Approval of programmes

38C.—(1) If an application is made to the Department for the approval of a programme for the purposes of Article 38A, the Department must decide whether to grant or refuse the application.

(2) In reaching that decision the Department must have regard to—

- (a) the nature of the programme, and
- (b) whether the programme provider is an appropriate person to provide the programme and administer its provision efficiently and effectively,

and may take into account any recommendations made by any persons appointed to consider the application.

(3) A programme may be approved subject to conditions specified by the Department.

(4) An approval of a programme is for the period specified by the Department (which must not exceed 7 years), subject to withdrawal of approval.

(5) Regulations made by the Department may make provision in relation to the approval of programmes and may, in particular, include provision—

- (a) in relation to the making of applications for approval,
- (b) for the payment in respect of applications for approval, or of approvals, (or of both) of fees of such amounts as are prescribed by the regulations,
- (c) specifying the maximum fees that a person may be required to pay for a programme and by when they are to be paid,
- (d) for the monitoring of programmes and programme providers,
- (e) in relation to withdrawing approval,
- (f) for an appeal to lie to a court of summary jurisdiction against a refusal of an application for approval, the imposition of conditions on the grant of such an application or the withdrawal of approval, and
- (g) authorising the Department to make available (with or without charge) information about programmes and programme providers.

Programmes in Great Britain

38D.—(1) The Department may enter into arrangements with persons in Great Britain who provide programmes which are approved programmes within the meaning of section 34D(8)

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of the Road Traffic Offenders Act 1988 for the purpose of treating those programmes as approved programmes within the meaning of Articles 38A to 38E of this Order, and in this Article such programmes in respect of which such arrangements have been entered into are referred to as “recognised programmes”

(2) Such arrangements may include provision for any matters for which provision is made in Articles 38A to 38E in relation to approved programmes.

(3) A court—

- (a) may treat recognised programmes as approved programmes for the purposes of Article 38A,
- (b) may treat any certificates received from programme providers of recognised programmes as certificates received from programme providers of approved programmes for the purposes of Article 38B.

(4) Where a court has made an order in respect of a person under Article 38A, that person may apply to the court to vary the order by substituting a recognised programme for the programme specified in the order, and if the court grants that application, it shall vary the order accordingly.

(5) The Department may by regulations make such further provision in respect of recognised programmes as it considers necessary or expedient

Provisions supplementary to Articles 38A to 38D

38E.—(1) The Department may issue guidance to programme providers, or to any category of programme provider, as to the conduct of programmes approved for the purposes of Article 38A; and—

- (a) programme providers shall have regard to any guidance given to them under this paragraph, and
- (b) in determining for the purposes of Article 38B whether any instructions or requirements of a programme provider were reasonable, a court shall have regard to any guidance given to him under this paragraph.

(2) The Department may by regulations make provision—

- (a) amending Article 38A(1)(b) by substituting for the period for the time being specified there a different period,
- (b) amending Article 38A(1)(d) by substituting for the period for the time being specified there a different period, or
- (c) amending Article 38A(4) by substituting for the period for the time being specified there a different period, or by substituting for the fraction of the unreduced period for the time being specified there a different fraction of that period, (or by doing both).

(3) In Articles 38A to 38D and this Article—

“contravention” includes failure to comply;

“programme provider”, in relation to an alcohol ignition interlock programme, means the person by whom it is, or is to be, provided;

“proper officer” means—

- (a) in relation to a magistrates' court, the clerk of petty sessions ^{F2}..., an
- (b) otherwise, the chief clerk;

^{F3}
...

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“rules of court” means—

- (a) in relation to an application to a magistrates' court, magistrates' court rules; and
- (b) in relation to an application to the Crown Court, Crown Court rules;

“supervising court”, in relation to an alcohol ignition interlock programme order, means—

- (a) if the Crown Court made the order, the Crown Court; and
- (b) otherwise a magistrates' court ^{F4}....

(4) Regulations under Article 38A, 38B, 38C or 38D or this Article may include such incidental or supplementary provision as appears to the Department to be necessary or expedient.

(5) Regulations under Article 38A, 38B, 38C or 38D shall be subject to negative resolution.

(6) No regulations shall be made under this Article unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”.

(2) In the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10), after Article 46 insert—

“Suspension of certificate pending determination of applications under Article 38B

46A.—(1) Where a person in respect of whom a certificate is given under paragraph (1) of Article 38B makes an application to a court under paragraph (5) of that Article, the court may suspend the effect of the certificate pending the determination of the application.

(2) Where a court exercises its power under paragraph (1) it must send notice of the suspension to the Department.

(3) The notice must be sent in such manner, and to such address and must contain such particulars, as the Department may determine.”.

(3) In Part 1 of Schedule 1 to that Order (prosecution and punishment of offences under the Road Traffic Orders), after the entry relating to Article 29 of that Order insert—

“Article 38A(12)	Interference, etc with alcohol ignition interlock.	Summarily	Level 4 on the standard scale if the motor vehicle to which the alcohol ignition interlock is fitted is a goods vehicle or a vehicle adapted to carry more than eight passengers. Level 3 on the standard scale in any other case.”.
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Textual Amendments

- F1** Words in art. 60(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 136(1), Sch. 9 Pt. 1 (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3) (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 60(1))

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- F2** Words in art. 60(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 136(2)(a), Sch. 9 Pt. 1 (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3) (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 60(1))
- F3** Words in art. 60(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 136(2)(b), Sch. 9 Pt. 1 (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3) (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 60(1))
- F4** Words in art. 60(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 136(2)(c), Sch. 9 Pt. 1 (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3) (but this amendment cannot take effect until the commencement of S.I. 2008/1216, art. 60(1))

PROSPECTIVE

Experimental period for Article 60

61.—(1) Subject as follows, no order shall be made under Article 38A of the Road Traffic Offenders (Northern Ireland) Order 1995 (NI 18) (inserted by Article 60) after—

- (a) the end of 2012; or
- (b) such later time as may be specified in an order made by the Department.

(2) But at any time before the restriction imposed by paragraph (1) has taken effect, the Department may by order provide that it shall not do so.

(3) In this Article “the experimental period” means the period beginning when Article 60 comes into operation and ending—

- (a) when the restriction imposed by paragraph (1) takes effect; or
- (b) if the Department makes an order under paragraph (2), on a date specified in the order.

(4) During the experimental period—

- (a) no order shall be made under Article 38A by virtue of a person's conviction under Article 14 of the Road Traffic (Northern Ireland) Order 1995 (NI 10); and
- (b) no order shall be made under Article 38A except by a magistrates' court^{F5}... which is for the time being designated for the purposes of this Article.

(5) In relation to orders made under Article 38A during the experimental period, Article 38B(5) shall have effect with the omission of the references to the relevant local court.

(6) The power to designate a [^{F6}magistrates' court] for the purposes of this Article is exercisable by order made by the Lord Chancellor after consultation with the Lord Chief Justice, and includes power to revoke a designation previously made.

(7) An order under paragraph (6) must specify the period for which [^{F7}a court] is designated, and may—

- (a) specify different periods for different [^{F7}courts] ; and
- (b) extend or shorten any period previously specified.

(8) The power to make an order under paragraph (1) is not exercisable after the end of 2012, and no more than one order may be made under that paragraph.

(9) No order shall be made under paragraph (1) or (2) unless a draft of it has been laid before, and approved by a resolution of, the Assembly

(10) [^{F8}.....]

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Textual Amendments

- F5** Words in art. 61(4)(b) repealed (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\), s. 106\(2\), Sch. 1 para. 136\(3\)\(a\), Sch. 9 Pt. 1](#) (with [Sch. 8 para. 1](#)); [S.R. 2016/387, art. 2\(k\)\(m\)](#) (with [art. 3](#)) (but this amendment cannot take effect until the commencement of [S.I. 2008/1216, art. 61](#))
- F6** Words in art. 61(6) substituted (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\), s. 106\(2\), Sch. 1 para. 136\(3\)\(b\)](#) (with [Sch. 8 para. 1](#)); [S.R. 2016/387, art. 2\(k\)](#) (with [art. 3](#)) (but this amendment cannot take effect until the commencement of [S.I. 2008/1216, art. 61](#))
- F7** Words in art. 61(7) substituted (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\), s. 106\(2\), Sch. 1 para. 136\(3\)\(c\)](#) (with [Sch. 8 para. 1](#)); [S.R. 2016/387, art. 2\(k\)](#) (with [art. 3](#)) (but this amendment cannot take effect until the commencement of [S.I. 2008/1216, art. 61](#))
- F8** Art. 61(10) omitted (12.4.2010) by virtue of [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\), arts. 1\(2\), 15\(5\), Sch. 18 para. 167](#) (with [arts. 28-31](#)); [S.I. 2010/977, art. 1\(2\)](#) (but this amendment cannot take effect until the commencement of [S.I. 2008/1216, art. 61](#))

Modifications etc. (not altering text)

- C1** Art. 61(6): functions of Lord Chancellor transferred 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\(2\), 15\(1\), Sch. 17 para. 56](#) (with [arts. 15\(6\), 28-31](#)); [S.I. 2010/977, art. 1\(2\)](#)

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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\(2\)](#)