
STATUTORY INSTRUMENTS

1991 No. 197

The Road Traffic (Amendment) (Northern Ireland) Order 1991

PART III

DRINKING AND DRIVING

Offences involving drink or drugs

8. In the principal Order—

- (a) Article 141 shall be omitted; and
- (b) for Articles 143 to 152 there shall be substituted the following Articles—

“Driving, or being in charge, when under influence of drink or drugs

143.—(1) A person who, when driving or attempting to drive a motor vehicle on a road or other public place, is unfit to drive through drink or drugs is guilty of an offence under this Order.

(2) Without prejudice to paragraph (1), a person who, when in charge of a motor vehicle which is on a road or other public place, is unfit to drive through drink or drugs is guilty of an offence under this Order.

(3) For the purposes of paragraph (2), a person shall be deemed not to have been in charge of a motor vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving it so long as he remained unfit to drive through drink or drugs.

(4) The court may, in determining whether there was such a likelihood as is mentioned in paragraph (3), disregard any injury to him and any damage to the vehicle.

(5) For the purposes of this Article, a person shall be taken to be unfit to drive if his ability to drive properly is for the time being impaired.

(6) A constable may arrest a person without warrant if he has reasonable cause to suspect that that person is or has been committing an offence under this Article.

(7) For the purpose of arresting a person under the power conferred by paragraph (6), a constable may enter (if need be by force) any place where that person is or where the constable, with reasonable cause, suspects him to be.

Driving or being in charge of a motor vehicle with alcohol concentration above prescribed limit

144.—(1) If a person—

- (a) drives or attempts to drive a motor vehicle on a road or other public place, or
- (b) is in charge of a motor vehicle on a road or other public place,

after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit he is guilty of an offence under this Order.

(2) It is a defence for a person charged with an offence under paragraph (1)(b) to prove that at the time he is alleged to have committed the offence the circumstances were such that there was no likelihood of his driving the vehicle whilst the proportion of alcohol in his breath, blood or urine remained likely to exceed the prescribed limit.

(3) The court may, in determining whether there was such a likelihood as is mentioned in paragraph (2), disregard any injury to him and any damage to the vehicle.

Breath tests

145.—(1) Where a constable in uniform has reasonable cause to suspect—

- (a) that a person driving or attempting to drive or in charge of a motor vehicle on a road or other public place has alcohol in his body or has committed a traffic offence whilst the vehicle was in motion, or
- (b) that a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place with alcohol in his body and that that person still has alcohol in his body, or
- (c) that a person has been driving or attempting to drive or been in charge of a motor vehicle on a road or other public place and has committed a traffic offence whilst the vehicle was in motion,

he may, subject to Article 148, require him to provide a specimen of breath for a preliminary breath test.

(2) If an accident occurs owing to the presence of a motor vehicle on a road or other public place, a constable may, subject to Article 148, require any person who he has reasonable cause to believe was driving or attempting to drive or in charge of the vehicle at the time of the accident to provide a specimen of breath for a preliminary breath test.

(3) A person may be required under paragraph (1) or (2) to provide a specimen either at or in the vicinity of the place where the requirement is made or, if the requirement is made under paragraph (2) and the constable making the requirement thinks fit, at a police station specified by the constable.

(4) A person who, without reasonable excuse, fails to provide a specimen of breath when required to do so in the pursuance of this Article is guilty of an offence under this Order.

(5) A constable may arrest a person without warrant if—

- (a) as a result of a preliminary breath test he has reasonable cause to suspect that the proportion of alcohol in that person's breath or blood exceeds the prescribed limit, or
- (b) that person has failed to provide a specimen of breath for a preliminary breath test when required to do so in pursuance of this Article and the constable has reasonable cause to suspect that he has alcohol in his body,

but a person shall not be arrested by virtue of this paragraph when he is at a hospital as a patient.

(6) A constable may, for the purpose of requiring a person to provide a specimen of breath under paragraph (2) in a case where he has reasonable cause to suspect that the accident involved injury to another person or of arresting him in such a case under paragraph (5), enter (if need be by force) any place where that person is or where the constable, with reasonable cause, suspects him to be.

(7) In this Article “traffic offence” means an offence under any provision of this Order, other than an offence under Article 132, 133, 136 or 137.

Provision of specimens for analysis

146.—(1) In the course of an investigation into whether a person has committed an offence under Article 143 or 144 a constable may, subject to the following provisions of this Article and Article 148, require him—

- (a) to provide two specimens of breath for analysis by means of a device of a type approved by the Head of the Department, or
- (b) to provide a specimen of blood or urine for a laboratory test.

(2) A requirement under paragraph (1)(a) may be made to provide the specimens of breath—

- (a) at or in the vicinity of the place where the requirement is made if facilities for the specimens to be taken are available and it is practicable to take them there; or
- (b) at a police station specified by the constable making the requirement.

(3) A requirement under paragraph (1)(a) may be made only by a constable who is especially authorised by the Chief Constable to make such requirements.

(4) A requirement under paragraph (1)(b) to provide a specimen of blood or urine can only be made at a police station or at a hospital; and it cannot be made at a police station unless—

- (a) the constable making the requirement has reasonable cause to believe that a specimen of breath cannot be provided or should not be required, or
- (b) at the time the requirement is made a device or a reliable device of the type mentioned in paragraph (1)(a) is not available at the police station or it is then for any other reason not practicable to use such a device there, or
- (c) the suspected offence is one under Article 143 and the constable making the requirement has been advised by a medical practitioner that the condition of the person required to provide the specimen might be due to some drug,

but may then be made notwithstanding that the person required to provide the specimen has already provided or been required to provide two specimens of breath.

(5) If the provision of a specimen other than a specimen of breath may be required in pursuance of this Article the question whether it is to be a specimen of blood or a specimen of urine shall be decided by the constable making the requirement, but if a medical practitioner is of the opinion that for medical reasons a specimen of blood cannot or should not be taken the specimen shall be a specimen of urine.

(6) A specimen of urine shall be provided within one hour of the requirement for its provision being made and after the provision of a previous specimen of urine.

(7) A person who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this Article is guilty of an offence under this Order.

(8) A constable must, on requiring any person to provide a specimen in pursuance of this Article, warn him that a failure to provide it may render him liable to prosecution.

(9) For the purposes of paragraph (1)(a) a device shall be treated as of a type approved by the Head of the Department where a statement that the Head of the Department has approved a device of that type is included in the Belfast Gazette.

Choice of specimens of breath

147.—(1) Subject to paragraph (2), of any two specimens of breath provided by any person in pursuance of Article 146 that with the lower proportion of alcohol in the breath shall be used and the other shall be disregarded.

(2) If the specimen with the lower proportion of alcohol contains no more than 50 microgrammes of alcohol in 100 millilitres of breath, the person who provided it may claim that it should be replaced by such specimen as may be required under Article 146(5) and, if he then provides such a specimen, neither specimen of breath shall be used.

(3) The Department may by regulations substitute another proportion of alcohol in the breath for that specified in paragraph (2).

Protection for hospital patients

148.—(1) While a person is at a hospital as a patient he shall not be required to provide a specimen of breath for a preliminary breath test or to provide a specimen for a laboratory test unless the medical practitioner in immediate charge of his case has been notified of the proposal to make the requirement; and—

- (a) if the requirement is then made, it shall be for the provision of a specimen at the hospital, but
- (b) if the medical practitioner objects on the ground specified in paragraph (2), the requirement shall not be made.

(2) The ground on which the medical practitioner may object is that the requirement or the provision of a specimen or, in the case of a specimen of blood or urine, the warning required under Article 146, would be prejudicial to the proper care and treatment of the patient.

Detention of persons affected by alcohol or a drug

149.—(1) Subject to paragraphs (2) and (3), a person required to provide a specimen of breath, blood or urine may afterwards be detained at a police station until it appears to the constable that, were that person then driving or attempting to drive a motor vehicle on a road, he would not be committing an offence under Article 143 or 144.

(2) A person shall not be detained in pursuance of this Article if it appears to a constable that there is no likelihood of his driving or attempting to drive a motor vehicle whilst his ability to drive properly is impaired or whilst the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit.

(3) A constable must consult a medical practitioner on any question arising under this Article whether a person's ability to drive properly is or might be impaired through drugs and must act on the medical practitioner's advice.

Use of specimens in proceedings for an offence under Article 143 or 144

150.—(1) This Article and Article 151 apply in respect of proceedings for an offence under Article 143 or 144.

(2) Evidence of the proportion of alcohol or any drug in a specimen of breath, blood or urine provided by the accused shall, in all cases, be taken into account.

(3) The proportion of alcohol in the accused's blood, breath or urine at the time of the alleged offence shall be taken to have been that in the specimen.

(4) A specimen of blood shall be disregarded unless it was taken from the accused with his consent by a medical practitioner.

(5) Where, at the time a specimen of blood or urine was provided by the accused, he asked to be provided with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen is not admissible on behalf of the prosecution unless—

- (a) the specimen in which the alcohol or drug was found is one of two parts into which the specimen provided by the accused was divided at the time it was provided, and
- (b) the other part was supplied to the accused.

Documentary evidence as to specimens in such proceedings

151.—(1) Evidence of the proportion of alcohol or a drug in a specimen of breath, blood or urine may, subject to paragraphs (3) and (4) and to Article 150(5), be given by the production of a document or documents purporting to be whichever of the following is appropriate, that is to say—

- (a) a statement automatically produced by the device by which the proportion of alcohol in a specimen of breath was measured and a certificate signed by a constable (which may but need not be contained in the same document as the statement) that the statement relates to a specimen provided by the accused at the date and time shown in the statement, and
- (b) a certificate signed by an authorised analyst as to the proportion of alcohol or any drug found in a specimen of blood or urine identified in the certificate.

(2) Subject to paragraphs (3) and (4), evidence that a specimen of blood was taken from the accused with his consent by a medical practitioner may be given by the production of a document purporting to certify that fact and to be signed by that medical practitioner.

(3) Subject to paragraph (4)—

- (a) a document purporting to be such a statement or such a certificate (or both such a statement and such a certificate) as is mentioned in paragraph (1)(a) is admissible in evidence on behalf of the prosecution in pursuance of this Article only if a copy of it either has been handed to the accused when the document was produced or has been served on him not later than seven days before the hearing, and
- (b) any other document is so admissible only if a copy of it has been served on the accused not later than seven days before the hearing.

(4) A document purporting to be a certificate (or so much of a document as purports to be a certificate) is not so admissible if the accused, not later than three days before the hearing or within such further time as the court may in special circumstances allow, has served notice on the prosecutor requiring the attendance at the hearing of the person by whom the document purports to be signed.

(5) A copy of a certificate required by this Article to be served on the accused or a notice required by this Article to be served on the prosecutor may be served personally or sent by registered post or recorded delivery service.

(6) In this Article “authorised analyst” means—

- (a) any person possessing the qualifications prescribed under Article 36 of the Food (Northern Ireland) Order 1989 as qualifying persons for appointment as public analysts; and

- (b) any other person authorised by the Department to make analyses for the purposes of this Article;

and a certificate signed by an authorised analyst for the purposes of paragraph (1)(b) shall also be evidence of his qualification as such.

Obligatory disqualification and endorsement

152.—(1) A person convicted of an offence under—

- (a) Article 143(1);
- (b) Article 144(1)(a); or
- (c) Article 146, being an offence arising from his failure to provide a specimen required to ascertain either his ability to drive or the proportion of alcohol in his breath, blood or urine (as the case may be) at the time he was driving or attempting to drive;

shall be disqualified for holding or obtaining a licence or a provisional licence for a minimum period of 12 months.

(2) Where a person convicted of an offence under any of the provisions mentioned in sub-paragraphs (a) to (c) of paragraph (1) has within the 10 years immediately preceding the commission of the offence been convicted of any such offence, paragraph (1) shall apply in relation to him as if the reference to 12 months were a reference to 3 years.

(3) Where a person is so disqualified under paragraph (1), he shall also be disqualified for holding or obtaining a full licence until he has, at some time after the expiry of the period for which he is disqualified under that paragraph, passed a test of competence to drive.

(4) Without prejudice to any requirement in Article 197(1), where a person is convicted of—

- (a) an offence under Article 143(2), 144(1)(b) or 145; or
- (b) an offence under Article 146, arising in circumstances other than those mentioned in sub-paragraph (c) of paragraph (1);

the court before which he is convicted shall order that particulars of the conviction shall be endorsed on any licence held by him.

Interpretation of Articles 143 to 152

152A.—(1) The following provisions apply for the interpretation of Articles 143 to 152.

(2) In those Articles—

“preliminary breath test” means a test for the purpose of obtaining, by means of a device of a type approved by the Head of the Department, an indication whether the proportion of alcohol in a person’s breath or blood is likely to exceed the prescribed limit,

“drug” includes any intoxicant other than alcohol,

“fail” includes refuse,

“hospital” means an institution which provides medical or surgical treatment for in-patients or out-patients,

“the prescribed limit” means, as the case may require—

- (a) 35 microgrammes of alcohol in 100 millilitres of breath,

- (b) 80 milligrammes of alcohol in 100 millilitres of blood, or
 - (c) 107 milligrammes of alcohol in 100 millilitres of urine,
or such other proportion as may be prescribed by regulations made by the Department.
- (3) A person does not provide a specimen of breath for a preliminary breath test or for analysis unless the specimen—
- (a) is sufficient to enable the test or the analysis to be carried out, and
 - (b) is provided in such a way as to enable the objective of the test or analysis to be satisfactorily achieved.
- (4) A person provides a specimen of blood if and only if he consents to its being taken intravenously by a medical practitioner and it is so taken.
- (5) A device shall be treated as of a type approved by the Head of the Department for the purpose of obtaining a specimen of breath for a preliminary breath test where a statement that the Head of the Department has approved a device of that type for that purpose is published in the Belfast Gazette.”