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## STATUTORY INSTRUMENTS

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# 1995 No. 2994

## The Road Traffic (Northern Ireland) Order 1995

### PART II

#### Principal Road Safety Provisions

*Motor vehicles: drink and drugs*

#### Interpretation of Articles 14 to 21

13.—(1) The following provisions apply for the interpretation of Articles 14 to 21.

(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.

[<sup>F1</sup>“registered health care professional” means a person (other than a medical practitioner) who is one of the following—

- (a) a nurse registered on the register maintained by the Nursing and Midwifery Council pursuant to paragraph 10 of Schedule 2 to the Nursing and Midwifery Order 2001 by virtue of qualifications in nursing; or
- (b) a registered member of a health care profession which is designated for the purposes of this paragraph by an order made by the Secretary of State.]

[<sup>F1</sup>(2A) In paragraph (2) “health care profession” means any profession mentioned in section 60(2) of the Health Act 1999 other than the profession of practising medicine and the profession of nursing.

(2B) An order under paragraph (2) shall be subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.]

(3) A person does not provide a specimen of breath for a preliminary breath test or for analysis unless the specimen—

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- (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.

[<sup>F1</sup>(4) A person provides a specimen of blood if and only if—

- (a) he consents to the taking of such a specimen from him intravenously; and
- (b) the specimen is so taken from him by a medical practitioner or, if it is taken in a police station, either by a medical practitioner or by a registered health care professional.]

(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.

F1 2005 NI 15

### **Causing death, or grievous bodily injury, by careless driving when under influence of drink or drugs**

14.—(1) If a person causes the death of, or grievous bodily injury to, another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, and—

- (a) he is, at the time when he is driving, unfit to drive through drink or drugs; or
- (b) he has consumed so much alcohol that the proportion of it in his breath, blood or urine at that time exceeds the prescribed limit; or
- (c) he is, within 18 hours after that time, required to provide a specimen in pursuance of Article 18, but without reasonable excuse fails to provide it,

he is guilty of an offence.

(2) For the purposes of this Article a person shall be taken to be unfit to drive at any time when his ability to drive properly is impaired.

(3) Paragraph (1)(b) and (c) shall not apply in relation to a person driving a mechanically propelled vehicle other than a motor vehicle.

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

15.—(1) A person who, when driving or attempting to drive a mechanically propelled vehicle on a road or other public place, is unfit to drive through drink or drugs is guilty of an offence.

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

(3) For the purposes of paragraph (2), a person shall be deemed not to have been in charge of a mechanically propelled 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 purpose 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.

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(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**

16.—(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 exceed the prescribed limit he is guilty of an offence.

(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**

17.—(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 20, 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 20, 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 pursuance of this Article is guilty of an offence.

(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,

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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—

- (a) any provision of this Order, or
- (b) any provision of the Order of 1981 other than an offence under Article 132, 133, 136, or 137 of that Order<sup>[F2]</sup> or]

<sup>[F2]</sup>(c) an offence under any provision of the Offenders Order except Part IV.]

**F2** [1996 NI 10](#)

VALID FROM 15/11/2007

### <sup>[F3]</sup>Preliminary breath test

**17A.**—(1) A preliminary breath test is a procedure whereby the person to whom the test is administered provides a specimen of breath to be used for the purpose of obtaining, by means of a device of a type approved by the Department, an indication whether the proportion of alcohol in the person's breath or blood is likely to exceed the prescribed limit.

(2) A preliminary breath test administered in reliance on Article 17(2) to (4) may be administered only at or near the place where the requirement to co-operate with the test is imposed.

(3) A preliminary breath test administered in reliance on Article 17(5) may be administered—

- (a) at or near the place where the requirement to co-operate with the test is imposed, or
- (b) if the constable who imposes the requirement thinks it expedient, at a police station specified by him.

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

**F3** [Arts. 17 - 17E substituted \(15.11.2007\) for art. 17 by Road Traffic \(Northern Ireland\) Order 2007 \(S.I. 2007/916 \(N.I. 10\)\), arts. 1\(3\), 14; S.R. 2007/454, art. 2, Sch.](#)

VALID FROM 15/11/2007

### <sup>[F4]</sup>Preliminary impairment test

**17B.**—(1) A preliminary impairment test is a procedure whereby the constable administering the test—

- (a) observes the person to whom the test is administered in his performance of tasks specified by the constable, and

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- (b) makes such other observations of the person's physical state as the constable thinks expedient.
- (2) The Secretary of State shall issue (and may from time to time revise) a code of practice about—
  - (a) the kind of task that may be specified for the purpose of a preliminary impairment test,
  - (b) the kind of observation of physical state that may be made in the course of a preliminary impairment test,
  - (c) the manner in which a preliminary impairment test should be administered, and
  - (d) the inferences that may be drawn from observations made in the course of a preliminary impairment test.
- (3) In issuing or revising the code of practice the Secretary of State shall aim to ensure that a preliminary impairment test is designed to indicate—
  - (a) whether a person is unfit to drive, and
  - (b) if he is, whether or not his unfitness is likely to be due to drink or drugs.
- (4) A preliminary impairment test may be administered—
  - (a) at or near the place where the requirement to co-operate with the test is imposed, or
  - (b) if the constable who imposes the requirement thinks it expedient, at a police station specified by him.
- (5) A constable administering a preliminary impairment test shall have regard to the code of practice under this Article.
- (6) A constable may administer a preliminary impairment test only if he is approved for that purpose by the Chief Constable.
- (7) A code of practice under this Article may include provision about—
  - (a) the giving of approval under paragraph (6), and
  - (b) in particular, the kind of training that a constable should have undergone, or the kind of qualification that a constable should possess, before being approved under that paragraph.]

**F4** Arts. 17 - 17E substituted (15.11.2007) for art. 17 by [Road Traffic \(Northern Ireland\) Order 2007 \(S.I. 2007/916 \(N.I. 10\)\)](#), arts. 1(3), **14**; S.R. 2007/454, **art. 2**, Sch.

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

**C1** [Art. 17B](#): functions transferred 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)**

VALID FROM 15/11/2007

**[<sup>F5</sup>Preliminary drug test**

- 17C.—**(1) A preliminary drug test is a procedure by which a specimen of sweat or saliva is—
  - (a) obtained, and

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- (b) used for the purpose of obtaining, by means of a device of a type approved by the Department, an indication whether the person to whom the test is administered has a drug in his body.
- (2) A preliminary drug test may be administered—
  - (a) at or near the place where the requirement to co-operate with the test is imposed, or
  - (b) if the constable who imposes the requirement thinks it expedient, at a police station specified by him.
- (3) For the purposes of paragraph (1)(b) a device shall be treated as of a type approved by the Department where a statement that the Department has approved a device of that type is included in the Belfast Gazette.]

**F5** Arts. 17 - 17E substituted (15.11.2007) for art. 17 by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 14; S.R. 2007/454, art. 2, Sch.

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#### Arrest

- [<sup>F6</sup>17D.—(1) A constable may arrest a person without warrant if as a result of a preliminary breath test the constable reasonably suspects that the proportion of alcohol in the person's breath or blood exceeds the prescribed limit.
- (2) A constable may arrest a person without warrant if—
    - (a) the person fails to co-operate with a preliminary test in pursuance of a requirement imposed under Article 17, and
    - (b) the constable reasonably suspects that the person has alcohol or a drug in his body or is under the influence of a drug.
  - (3) A person may not be arrested under this Article while at a hospital as a patient.]

**F6** Arts. 17 - 17E substituted (15.11.2007) for art. 17 by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 14; S.R. 2007/454, art. 2, Sch.

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#### [<sup>F7</sup>Power of entry

- 17E.** A constable may enter any place (using reasonable force if necessary) for the purpose of—
- (a) imposing a requirement by virtue of Article 17(5) following an accident in a case where the constable reasonably suspects that the accident involved injury of any person, or
  - (b) arresting a person under Article 17D following an accident in a case where the constable reasonably suspects that the accident involved injury of any person.]

**F7** Arts. 17 - 17E substituted (15.11.2007) for art. 17 by Road Traffic (Northern Ireland) Order 2007 (S.I. 2007/916 (N.I. 10)), arts. 1(3), 14; S.R. 2007/454, art. 2, Sch.

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## Provision of specimens for analysis

18.—(1) In the course of an investigation into whether a person has committed an offence under Article 14, 15 or 16 a constable may, subject to the following provisions of this Article and Article 20, require him—

(a) to provide 2 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.

(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

[<sup>F8</sup>(bb) a device of the type mentioned in paragraph (1)(a) has been used in the circumstances described in paragraph (2) but the constable who required the specimens of breath has reasonable cause to believe that the device has not produced a reliable indication of the proportion of alcohol in the breath of the person concerned, or]

(c) the suspected offence is one under Article 14 or 15 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 2 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 [<sup>F9</sup> and, in the case of a specimen of blood, the question who is to be asked to take it shall be decided (subject to paragraph (5A)) by the constable making the requirement].

[<sup>F9</sup>(5A) Where a constable decides for the purposes of paragraph (5) to require the provision of a specimen of blood, there shall be no requirement to provide such a specimen if—

(a) the medical practitioner who is asked to take the specimen is of the opinion that, for medical reasons, it cannot or should not be taken; or

(b) the registered health care professional who is asked to take it is of that opinion and there is no contrary opinion from a medical practitioner;

and, where by virtue of this paragraph there can be no requirement to provide a specimen of blood, the constable may require a specimen of urine instead.]

(6) A specimen or 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.

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(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.

**F8** 1996 c.25  
**F9** 2005 NI 15

### [<sup>F10</sup>Specimens of blood taken from persons incapable of consenting

**18A.**—(1) A constable may make a request to a medical practitioner for him to take a specimen of blood from a person (“the person concerned”) irrespective of whether that person consents if—

- (a) that person is a person from whom the constable would (in the absence of any incapacity of that person and of any objection under Article 20) be entitled under Article 18 to require the provision of a specimen of blood for a laboratory test;
- (b) it appears to that constable that that person has been involved in an accident that constitutes or is comprised in the matter that is under investigation or the circumstances of that matter;
- (c) it appears to that constable that that person is or may be incapable (whether or not he has purported to do so) of giving a valid consent to the taking of a specimen of blood; and
- (d) it appears to that constable that that person's incapacity is attributable to medical reasons.

(2) A request under this Article—

- (a) shall not be made to a medical practitioner who for the time being has any responsibility (apart from the request) for the clinical care of the person concerned; and
- (b) shall not be made to a medical practitioner other than a police medical practitioner unless—
  - (i) it is not reasonably practicable for the request to be made to a police medical practitioner; or
  - (ii) it is not reasonably practicable for such a medical practitioner (assuming him to be willing to do so) to take the specimen.

(3) It shall be lawful for a medical practitioner to whom a request is made under this Article, if he thinks fit—

- (a) to take a specimen of blood from the person concerned irrespective of whether that person consents; and
- (b) to provide the sample to a constable.

(4) If a specimen is taken in pursuance of a request under this Article, the specimen shall not be subjected to a laboratory test unless the person from whom it was taken—

- (a) has been informed that it was taken; and
- (b) has been required by a constable to give his permission for a laboratory test of the specimen; and
- (c) has given his permission.

(5) A constable must, on requiring a person to give his permission for the purposes of this Article for a laboratory test of a specimen, warn that person that a failure to give the permission may render him liable to prosecution.

(6) A person who, without reasonable excuse, fails to give his permission for a laboratory test of a specimen of blood taken from him under this Article is guilty of an offence.



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(7) In this Article “police medical practitioner” means a medical practitioner who is engaged under any agreement to provide medical services for purposes connected with the activities of the police.]

F10 2005 NI 15

### **Choice of specimens of breath**

19.—(1) Subject to paragraph (2), of any 2 specimens of breath provided by any person in pursuance of Article 18, 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 18(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**

20.—(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 for analysis, or to provide a specimen of blood or urine 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.

[<sup>F11</sup>(1A) While a person is at a hospital as a patient, no specimen of blood shall be taken from him under Article 18A and he shall not be required to give his permission for a laboratory test of a specimen taken under that Article unless the medical practitioner in immediate charge of his case—

- (a) has been notified of the proposal to take the specimen or to make the requirement; and
  - (b) has not objected on the ground specified in paragraph (2).
- (2) The ground on which the medical practitioner may object is—
- (a) in a case falling within paragraph (1), that the requirement or the provision of the specimen or (if one is required) the warning required by Article 18(8) would be prejudicial to the proper care and treatment of the patient; and
  - (b) in a case falling within paragraph (1A), that the taking of the specimen, the requirement or the warning required by Article 18A(5) would be so prejudicial.]

F11 2005 NI 15

### **Detention of persons affected by alcohol or a drug**

21.—(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 the person then driving or attempting to drive a mechanically propelled vehicle on a road, he would not be committing an offence under Article 15 or 16.

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(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 mechanically propelled 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.

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