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STATUTORY INSTRUMENTS

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**1998 No. 2839**

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

**Title and commencement**

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**

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**

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**

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**

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.

(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.

### *Treatment of offenders*

#### **Sex offender orders**

6.—(1) If it appears to the Chief Constable that the following conditions are fulfilled with respect to any person in Northern Ireland, namely—

- (a) that the person is a sex offender; and

- (b) that the person has acted, since the relevant date, in such a way as to give reasonable cause to believe that an order under this Article is necessary to protect the public from serious harm from him,

the Chief Constable may apply for an order under this Article to be made in respect of the person.

(2) Such an application shall be made by way of complaint under Part VIII of the Magistrates' Courts (Northern Ireland) Order 1981 to a court of summary jurisdiction for the petty sessions district which includes any place where it is alleged that the defendant acted in such a way as is mentioned in paragraph (1)(b).

(3) If, on such an application, it is proved that the conditions mentioned in paragraph (1) are fulfilled, the court may make an order under this Article (a "sex offender order") which prohibits the defendant from doing anything described in the order.

(4) The prohibitions that may be imposed by a sex offender order are those necessary for the purpose of protecting the public from serious harm from the defendant.

(5) A sex offender order shall have effect for a period (not less than 5 years) specified in the order or until further order; and while such an order has effect, Part I of the Sex Offenders Act 1997 shall have effect as if—

- (a) the defendant were subject to the notification requirements of that Part; and
- (b) in relation to the defendant, the relevant date (within the meaning of that Part) were the date of service of the order.

(6) Subject to paragraph (7), the applicant or the defendant may apply for the variation or discharge of the sex offender order by a further order.

(7) Except with the consent of both parties, no sex offender order shall be discharged before the end of the period of 5 years beginning with the date of service of the order.

(8) If without reasonable excuse a person does anything which he is prohibited from doing by a sex offender order, he shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.

(9) Where a person is convicted of an offence under paragraph (8), it shall not be open to the court by or before which he is so convicted to make an order under paragraph (1)(b) (conditional discharge) of Article 4 of the Criminal Justice (Northern Ireland) Order 1996 in respect of the offence.

### **Sex offender orders: supplemental**

7.—(1) In Article 6 and this Article "sex offender" means a person who—

- (a) has been convicted of a sexual offence to which Part I of the Sex Offenders Act 1997 applies;
- (b) has been found not guilty of such an offence by reason of insanity, or found to be under a disability and to have done the act charged against him in respect of such an offence;
- (c) has been cautioned by a constable, in Northern Ireland or England and Wales, in respect of such an offence which, at the time when the caution was given, he had admitted; or
- (d) has been punished under the law in force in a country or territory outside the United Kingdom for an act which—
  - (i) constituted an offence under that law; and
  - (ii) would have constituted a sexual offence to which that Part applies if it had been done in any part of the United Kingdom.

- (2) In paragraph (1) of Article 6 “the relevant date”, in relation to a sex offender, means—
- (a) the date or, as the case may be, the latest date on which he has been convicted, found, cautioned or punished as mentioned in paragraph (1); or
  - (b) if later, the date of the coming into operation of that Article.

(3) Subsections (2) and (3) of section 6 of the Sex Offenders Act 1997 apply for the construction of references in paragraphs (1) and (2) as they apply for the construction of references in Part I of that Act.

(4) An act punishable under the law in force in any country or territory outside the United Kingdom constitutes an offence under that law for the purposes of paragraph (1), however it is described in that law.

(5) Subject to paragraph (6), the condition in paragraph (1)(d)(i) shall be taken to be satisfied unless, not later than magistrates' court rules may provide, the defendant serves on the applicant a notice—

- (a) stating that, on the facts as alleged with respect to the act in question, the condition is not in his opinion satisfied;
- (b) showing his grounds for that opinion; and
- (c) requiring the applicant to show that it is satisfied.

(6) The court, if it thinks fit, may permit the defendant to require the applicant to show that the condition is satisfied without the prior service of a notice under paragraph (5).

(7) Any order of the county court made on an appeal under Article 143 of the Magistrates' Courts (Northern Ireland) Order 1981 (appeals in other cases) against the making of a sex offender order (other than one directing that an application be re-heard by a court of summary jurisdiction) shall, for the purposes of Article 6(6), be treated as if it were an order of the court from which the appeal was brought and not an order of the county court.

### **Drug treatment and testing orders**

**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**

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 subparagraph (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**

- 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.

(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**

**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.

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**Status:** *This is the original version (as it was originally made).*

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*A.K. Galloway*  
Clerk of the Privy Council