
STATUTORY INSTRUMENTS

2005 No. 1965

The Criminal Justice (Northern Ireland) Order 2005

Road traffic

Specimens taken from persons incapable of consenting

19.—(1) After Article 18 of the [Road Traffic \(Northern Ireland\) Order 1995 \(NI 18\)](#) insert—

“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.

(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.”.

(2) In Article 20 of that Order (protection of hospital patients), for paragraph (2) substitute—

“(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.”.

(3) In Article 35(3) of the [Road Traffic Offenders \(Northern Ireland\) Order 1996 \(NI 10\)](#) (disqualification for certain offences where offender has previous conviction) after sub-paragraph (d) insert—

“(e) Article 18A(6) (failing to allow a specimen to be subjected to laboratory test) where that is an offence involving obligatory disqualification;”.

(4) In Part I of Schedule 1 to the [Road Traffic Offenders \(Northern Ireland\) Order 1996 \(NI 10\)](#) (prosecution and punishment of offences under the Road Traffic Orders), after the entry relating to Article 18 of the 1995 Order insert—

Article	Failing	Summarily.	Where	(a) Obligatory	(a) Obligatory	(a) Obligatory
18A(6)	to allow specimen to be subjected to laboratory test.		the test would be for ascertaining ability to drive or	(a) Obligatory	(a) Obligatory	(a) Obligatory
				(b) Discretionary	(b) Discretionary	(b) Discretionary

proportion of alcohol at the time offender was driving or attempting to drive, 6 months or level 5 on the standard scale or both.

(b) In any other case, 3 months or level 4 on the standard scale or both.

(5) In paragraph (2) of Article 18 of the [Road Traffic Offenders \(Northern Ireland\) Order 1996 \(NI 10\)](#) (evidence of blood alcohol level)—

(a) after “provided by” insert “or taken from”; and

(b) after the word “provided”, in the second place where it occurs, insert “or taken”.

(6) In paragraph (3)(a) of that Article (rebutting the assumption in paragraph (2)), after “provided the specimen” there shall be inserted “or had it taken from him”.

(7) In paragraph (4) of that Article (circumstances in which a specimen of blood is to be disregarded), for the words from “unless” to the end there shall be substituted

“unless—

(a) it was taken from the accused with his consent and either—

- (i) in a police station by a medical practitioner or a registered health care professional;
or
 - (ii) elsewhere by a medical practitioner; or
 - (b) it was taken from the accused by a medical practitioner under Article 18A of the Order of 1995 and the accused subsequently gave his permission for a laboratory test of the specimen.”.
- (8) After paragraph (5) of that Article, add—
- “(6) Where a specimen of blood was taken from the accused under Article 18A of the Order of 1995, 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 taken from the accused was divided at the time it was taken; and
 - (b) any request to be supplied with the other part which was made by the accused at the time when he gave his permission for a laboratory test of the specimen was complied with.”.
- (9) In paragraph (1) of Article 19 of the [Road Traffic Offenders \(Northern Ireland\) Order 1996 \(NI 10\)](#) (documentary evidence as to specimens), after “18(5)” insert “and (5A)”.
- (10) In paragraph (2) of that Article (documentary evidence as to consent), after the words “medical practitioner”, in both places where they occur, insert “or a registered health care professional”.