

# PRISON (AMENDMENT) (NORTHERN IRELAND) ORDER 2004

S.I. 2004 704

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## EXPLANATORY MEMORANDUM

1. The Prison (Amendment)(Northern Ireland) Order 2004 (“the Order”) was made on 10 March 2004.
2. The Explanatory Memorandum has been prepared by the Northern Ireland Prison Service to assist the reader in understanding the Order. It is not a comprehensive description of the Order and where an Article or paragraph does not seem to require any further explanation or comment, none is given. The Explanatory Memorandum does not form part of the Order.

### PURPOSE

3. The principal purpose of the Order is to provide the Northern Ireland Prison Service with enabling powers for mandatory drug and alcohol testing of prisoners as part of its comprehensive strategy aimed at reducing drugs misuse in prisons. The Order also contains a declaratory provision in relation to the temporary detention of persons - committed to prison by the Courts - in police custody in circumstances where admittance to prison is impracticable and deals with certain other miscellaneous matters, detailed below, which require the amendment or repeal of existing provisions in the Prison Act (Northern Ireland) 1953.

### THE MAIN PROVISIONS OF THE ORDER

#### *Title, Commencement and Interpretation*

**Articles 1 & 2** provide for the title, commencement and interpretation of the Order.

#### *Membership of board of visitors for prison*

**Article 3** removes the statutory requirement, from section 10(4) of the Prison Act (Northern Ireland) 1953, for the Board of Visitors at each prison to include at least two Justices of the Peace amongst their number as it is no longer operationally necessary and is inconsistent with equality obligations.

#### *Detention in the custody of a constable where admission to prison not practicable*

**Article 4** creates a new section in the Prison Act (NI) 1953 affirming the lawful temporary detention in police custody of persons committed to prison by the courts in circumstances where it is not practicable to immediately admit them to prison. The article also provides that police may return such persons, held in their custody, to court where required to do so.

#### *Testing prisoners for alcohol and drugs*

**Articles 5 & 6** create new sections in the Prison Act (Northern Ireland) 1953 providing enabling powers for mandatory alcohol testing and drugs testing of prisoners, which is a development objective of the Northern Ireland Prison Service’s drugs strategy. The Articles provide that, in circumstances where the Secretary of State has authorised the commencement of mandatory alcohol or drugs testing of prisoners, any designated person - appointed under section 2 (2) of that Act – and authorised by the Governor to do so, may require a prisoner to provide a sample of urine

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for testing. The Articles also provide that any other non-intimate sample material may be required for the purposes of testing either instead of, or in addition to, a sample of urine.

***Repeal of section 40 of the Prison Act (NI) 1953***

**Article 7** repeals a provision which provided that unconvicted prisoners can be permitted to receive pre-prepared foodstuffs purchased by others and provided for their consumption in prison. This removes the opportunity for illicit substances to be secreted in such goods. The repeal will not affect prisoners' ability to purchase foodstuffs through authorised channels in the prison.

**COMPARISONS WITH GREAT BRITAIN**

4. Enabling powers for the mandatory drug and alcohol testing of prisoners were taken in England & Wales and Scotland in 1994 (drug testing) and 1997 (alcohol testing). Their introduction in Northern Ireland will provide the Northern Ireland Prison Service with the same powers as its counterparts in Great Britain and will facilitate the implementation of mandatory testing - a future development objective of the Northern Ireland Prison Service's drugs strategy - at an appropriate juncture. The detailed operational requirements relating to mandatory testing will be provided for in Prison Rules at the appropriate time.
5. The declaratory provision on the lawful temporary detention of prisoners in police custody replicates similar provisions in force in England & Wales since 1980.

**COMMENCEMENT**

6. The Order comes into effect on 10 May 2004.