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STATUTORY INSTRUMENTS

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**2007 No. 916**

**The Road Traffic (Northern Ireland) Order 2007**

**PART II**

**OFFENCES AND ENFORCEMENT**

*Testing for drink and drugs*

**Testing for drink and drugs**

14. For Article 17 of the Order of 1995 (breath tests) substitute—

**“Power to administer preliminary tests**

17.—(1) If any of paragraphs (2) to (5) applies a constable may require a person to co-operate with any one or more preliminary tests administered to the person by that constable or another constable.

- (2) This paragraph applies if a constable reasonably suspects that the person—
  - (a) is driving, is attempting to drive or is in charge of a motor vehicle on a road or other public place, and
  - (b) has alcohol or a drug in his body or is under the influence of a drug.
- (3) This paragraph applies if a constable reasonably suspects that the person—
  - (a) has been driving, attempting to drive or in charge of a motor vehicle on a road or other public place while having alcohol or a drug in his body or while unfit to drive because of a drug, and
  - (b) still has alcohol or a drug in his body or is still under the influence of a drug.
- (4) This paragraph applies if a constable reasonably suspects that the person—
  - (a) is or has been driving, attempting to drive or in charge of a motor vehicle on a road or other public place, and
  - (b) has committed a traffic offence while the vehicle was in motion.
- (5) This paragraph applies if—
  - (a) an accident occurs owing to the presence of a motor vehicle on a road or other public place, and
  - (b) a constable reasonably believes that the person was driving, attempting to drive or in charge of the vehicle at the time of the accident.
- (6) A person commits an offence if without reasonable excuse he fails to co-operate with a preliminary test in pursuance of a requirement imposed under this Article.
- (7) A constable may administer a preliminary test by virtue of any of paragraphs (2) to (4) only if he is in uniform.

- (8) In this Article—
- (a) a reference to a preliminary test is to any of the tests described in Articles 17A to 17C, and
  - (b) “traffic offence” means an offence under—
    - (i) any provision of the Order of 1981 other than an offence under Article 132, 133, 136 or 137 of that Order, or
    - (ii) any provision of this Order, or
    - (iii) any provision of the Offenders Order except Part IV, or
    - (iv) any provision of the [Road Traffic Regulation \(Northern Ireland\) Order 1997 \(NI 2\)](#).

### **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.

### **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
- (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.

#### **Preliminary drug test**

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

#### **Arrest**

- 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.

**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.”.