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## STATUTORY INSTRUMENTS

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# 2007 No. 916

## The Road Traffic (Northern Ireland) Order 2007

### PART II N.I.

#### OFFENCES AND ENFORCEMENT

##### *Increase in penalty points*

#### Offences concerning the wearing of seat belts N.I.

3. In Part I of Schedule 1 to the Offenders Order (prosecution and punishment of offences)–

- (a) for columns (5) to (7) of the entry relating to offences under Article 23 of the Order of 1995 (driving or riding in a motor vehicle in contravention of regulations requiring the wearing of seat belts) substitute–

“Discretionary.	Obligatory.	(a) 3 if committed by driving a motor vehicle in contravention of regulations requiring wearing of seat belts.
		(b) 2 if committed by riding in a motor vehicle in contravention of regulations requiring wearing of seat belts.”;

- (b) for columns (5) to (7) of the entry relating to offences under Article 24(2) of the Order of 1995 (driving motor vehicle with child in front not wearing seat belt) substitute–

“Discretionary.	Obligatory.	3”;
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- (c) for columns (5) to (7) of the entry relating to offences under Article 24(5) of the Order of 1995 (driving motor vehicle with child in rear not wearing seat belt) substitute–

“Discretionary.	Obligatory.	3”;
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### Commencement Information

- II** Art. 3 partly in operation; art. 3 not in operation at date of making see art. 1(3); art. 3(a) in operation for certain purposes at 27.6.2007 and art. 3(b)(c) in operation at 27.6.2007 by S.R. 2007/302, art. 2, Sch.

### Failure to give information for purposes of identification to police **N.I.**

4. In Part I of Schedule 1 to the Offenders Order (prosecution and punishment of offences) in column (7) of the entry relating to Article 177 of the Order of 1981 (failure of driver or owner to give information for purposes of identification to police) for “3” substitute “ 6 ”.

### Contravention of temporary speed restriction **N.I.**

5.—(1) In Part I of Schedule 1 to the Offenders Order (prosecution and punishment of offences) for columns (5) to (7) of the entry relating to Article 7 of the Road Traffic Regulation (Northern Ireland) Order 1997 (NI 2) (temporary traffic regulation) substitute—

“Discretionary if committed by contravening temporary speed restriction under Article 7(3)(b).	Obligatory if committed as described in column (5).	3-6 if as described in column (5)”,
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(2) In Article 23 of the Offenders Order (speeding offences etc: admissibility of certain evidence) before paragraph (2)(a) insert—

- “(az) an offence under Article 7 of the Road Traffic Regulation (Northern Ireland) Order 1997 consisting in the contravention of a temporary speed restriction under paragraph (3) (b) of that Article;”.

### Breach of requirements as to control of vehicle, mobile telephones etc. **N.I.**

6.—(1) After Article 56 of the Order of 1995 insert—

#### “Breach of requirements as to control of vehicle, mobile telephones etc.

**56A.** A person who contravenes a construction and use requirement—

- (a) as to not driving a motor vehicle in a position which does not give proper control or a full view of the road and traffic ahead, or not causing or permitting the driving of a motor vehicle by another person in such a position, or
- (b) as to not driving or supervising the driving of a motor vehicle while using a hand-held mobile telephone or other hand-held interactive communication device, or not causing or permitting the driving of a motor vehicle by another person using such a telephone or other device,

is guilty of an offence.”.

(2) In Article 58(a) of that Order (breach of other construction and use requirements) after “56(a)” insert “, 56A ”.

(3) In Part I of Schedule 1 to the Offenders Order (prosecution and punishment of offences) after the entry relating to offences under Article 56 of the Order of 1995 insert—

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“Article 56A	Breach of requirements as to control of vehicle, mobile telephones etc.	Summarily.	(a) Level 4 on the standard scale if committed in respect of a goods vehicle or a vehicle adapted to carry more than 8 passengers.	Discretionary.	Obligatory.	3”.
			(b) Level 3 on the standard scale in any other case.			

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*Increase in other penalties*

**Increase in penalty for careless, and inconsiderate, driving** **N.I.**

7. In Part I of Schedule 1 to the Offenders Order (prosecution and punishment of offences) in the entry relating to offences under Article 12 of the Order of 1995 (careless, and inconsiderate, driving) in column (4) for “level 4” substitute “ level 5 ”.

**Increase in penalty where child not wearing seat belt in rear** **N.I.**

8. In Part I of Schedule 1 to the Offenders Order (prosecution and punishment of offences) in the entry relating to offences under Article 24(5) of the Order of 1995 (driving motor vehicle with child in rear not wearing seat belt) in column (4) for “level 1” substitute “ level 2 ”.

**Disqualification for using vehicle in dangerous condition** **N.I.**

9.—(1) In Article 35 of the Offenders Order (disqualification for certain offences) after paragraph (4) insert—

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“(4A) Where a person convicted of an offence under Article 54 of the Order of 1995 (using vehicle in dangerous condition etc.) has within the 3 years immediately preceding the commission of the offence been convicted of any such offence, paragraph (1) shall apply in relation to him as if the reference to 12 months were a reference to 6 months.”.

(2) In Part I of Schedule 1 to the Offenders Order (prosecution and punishment of offences) in the entry relating to Article 54 of the Order of 1995 (using vehicle in dangerous condition etc.) in column (5) for “Discretionary.” substitute—

- “(a) Obligatory if committed within 3 years of a previous conviction of the offender under Article 54.
- (b) Discretionary in any other case.”

PROSPECTIVE

*Attendance on courses*

**Reduced penalty points for attendance on course** **N.I.**

10.—(1) The Offenders Order is amended as follows.

(2) In Article 31 (penalty points to be taken into account on conviction) after paragraph (2) insert—

“(3) Paragraph (1)(b) has effect subject to Article 32A.”.

(3) After Article 32 insert—

**“Reduced penalty points for attendance on course**

**32A.—**(1) This Article applies where—

- (a) a person is convicted of a specified offence by or before a court,
- (b) penalty points are to be attributed to the offence and the court does not order him to be disqualified, and
- (c) at least 7 but no more than 11 penalty points are to be taken into account on the occasion of the conviction.

(2) In this Article “specified offence” means—

- (a) an offence under Article 20(4) of the Roads (Northern Ireland) Order 1993 (use of special road contrary to regulations),
- (b) an offence under Article 12 of the Order of 1995 (careless, and inconsiderate, driving),
- (c) an offence under Article 50 of the Order of 1995 (contravention of traffic signs),
- (d) an offence under Article 43(1) of the Road Traffic Regulation (Northern Ireland) Order 1997 (contravening speed limit), or
- (e) an offence under Article 7 of the Road Traffic Regulation (Northern Ireland) Order 1997 committed by contravening a temporary speed restriction under paragraph (3) (b) of that Article.

(3) The Department may by order amend paragraph (2) by making additions to or deletions from the list of offences for the time being set out there.

(4) Where this Article applies, the court may make an order that 3 of the penalty points attributed to the offence (or all of them if 3 or fewer are so attributed) shall not be taken into account under Article 31(1)(b) on the occasion of any conviction of an offence after the end of the period of 12 months beginning with the date of the order if, by the relevant date, the offender completes an approved course specified in the order.

(5) In paragraph (4)–

“an approved course” means a course approved by the Department for the purposes of this Article in relation to the description of offence of which the offender is convicted; and

“the relevant date” means such date, no later than 10 months after the day on which the order is made, as is specified in the order.

(6) A court shall not make an order under this Article in the case of an offender convicted of an offence if–

(a) the offender has, during the period of 3 years ending with the date on which the offence was committed, committed a specified offence and successfully completed an approved course pursuant to an order made under this Article or Article 36 on conviction of that offence, or

(b) the offence was committed during his probationary period.

(7) A court shall not make an order under this Article in the case of an offender unless–

(a) it is satisfied that a place on the course specified in the order will be available for the offender,

(b) the offender appears to the court to be of or over the age of 17,

(c) the court has informed the offender (orally or in writing and in ordinary language) of the effect of the order and of the amount of the fees which he is required to pay for the course and when he must pay them, and

(d) the offender agrees that the order should be made.

### **Certificates of completion of courses**

**32B.**—(1) An offender shall only be regarded for the purposes of Article 32A as having completed a course satisfactorily if a certificate that he has done so is received by the proper officer of the supervising court.

(2) A course provider shall give a certificate under paragraph (1) to the offender not later than 14 days after the date specified in the order as the latest date for the completion of the course unless the offender–

(a) fails to make due payment of fees for the course,

(b) fails to attend the course in accordance with the course provider's reasonable instructions, or

(c) fails to comply with any other reasonable requirement of the course provider.

(3) The certificate under paragraph (1) is to be given by the course provider and shall be in such form, and contain such particulars, as may be prescribed by, or determined in accordance with, regulations made by the Department.

(4) Where a course provider decides not to give the certificate under paragraph (1) to the offender, he shall give written notice of the decision to the offender as soon as possible, and in any event not later than 14 days after the date specified in the order as the latest date for completion of the course.

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(5) An offender to whom a notice is given under paragraph (4) may, within such period as may be prescribed by rules of court, apply to the supervising court, <sup>F1</sup>... for a declaration that the course provider's decision not to give a certificate under paragraph (1) was contrary to paragraph (2).

(6) If the court grants an application under paragraph (5), Article 32A shall have effect as if the certificate had been duly received by the proper officer of the supervising court.

(7) If 14 days after the date specified in the order as the latest date for completion of the course the course provider has given neither a certificate under paragraph (1) nor a notice under paragraph (4), the offender may, within such period as may be prescribed by rules of court, apply to the supervising court, <sup>F2</sup>... for a declaration that the course provider is in default.

(8) If the court grants an application under paragraph (7), Article 32A shall have effect as if the certificate had been duly received by the proper officer of the supervising court.

(9) A notice under paragraph (4) shall specify the ground on which it is given; and the Department may by regulations make provision as to the form of notices under that paragraph and as to the circumstances in which they are to be treated as given.

(10) Where the proper officer of a court receives a certificate under paragraph (1), or a court grants an application under paragraph (5) or (7), the proper officer or court (as the case may be) must send notice of that fact to the Department; and the notice must be sent in such manner and to such address, and must contain such particulars as the Department may determine.

### **Approval of courses**

**32C.**—(1) If an application is made to the Department for the approval of a course for the purposes of Article 32A, the Department must decide whether to grant or refuse the application.

(2) In reaching that decision, the Department must have regard to—

- (a) the nature of the course, and
- (b) whether the course provider is an appropriate person to provide the course and administer its provision efficiently and effectively,

and may take into account any recommendations made by any persons appointed to consider the application.

(3) A course may be approved subject to conditions specified by the Department.

(4) An approval of a course is for the period specified by the Department (which must not exceed 7 years), subject to withdrawal of approval.

(5) Regulations made by the Department may make provision in relation to the approval of courses and may, in particular, include provision—

- (a) in relation to the making of applications for approval,
- (b) for the payment in respect of applications for approval, or in connection with approvals, of fees of a prescribed amount,
- (c) specifying the maximum fees that a person may be required to pay for a course and by when they are to be paid,
- (d) for the monitoring of courses and course providers,
- (e) in relation to withdrawing approval,

- (f) for an appeal to lie to a court of summary jurisdiction against a refusal of an application for approval, the imposition of conditions on the grant of such an application or the withdrawal of approval, and,
- (g) authorising the Department to make available (with or without charge) information about courses and course providers.

### **Courses in Great Britain**

**32D.**—(1) The Department may enter into arrangements with persons in Great Britain who provide courses which are approved courses within the meaning of section 30A(5) of the Road Traffic Offenders Act 1988 for the purpose of treating those courses as approved courses within the meaning of Articles 32A to 32E and in this Article such courses in respect of which such arrangements have been entered into shall be known as “recognised courses”.

(2) Such arrangements may include provision for any matters for which provision is made in Articles 32A to 32E in relation to approved courses.

(3) A court—

- (a) may treat recognised courses as approved courses for the purposes of Article 32A,
- (b) may treat any certificates received from course providers of recognised courses as certificates received from course providers of approved courses for the purposes of Article 32B,
- (c) may treat a notice of such course provider not to give a certificate as a notice within the meaning of Article 32B(4) for the purposes of Article 32B(5), (6) and (10), provided that, the offender may only appeal to the supervising court,
- (d) may treat a failure to give such a notice and a failure to give such a certificate in the same way as it would treat such a failure under Article 32B(7) for the purposes of Article 32B(7), (8) and (10), provided that, the offender may only appeal to the supervising court.

(4) Where a court has made an order in respect of a person under Article 32A, that person may apply to the court to vary the order by substituting a recognised course for the course specified in the order, and if the court grants that application, it shall vary the order accordingly.

(5) The power to prescribe periods by rules of court under Article 32B(5) and (7) shall include power to prescribe periods for the purposes of paragraph (2)(c) and (d) of this Article.

(6) The Department may by regulations make such further provision in respect of recognised courses as it considers necessary or expedient.

### **Provisions supplementary to Articles 32A to 32D**

**32E.**—(1) The Department may issue guidance to course providers, or to any category of course provider, as to the conduct of courses approved for the purposes of Article 32; and—

- (a) course providers shall have regard to any guidance given to them under this paragraph, and
- (b) in determining for the purposes of Article 32B whether any instructions or requirements of a course provider were reasonable, a court shall have regard to any guidance given to him under this paragraph.

(2) The Department may by regulations make provision—

- (a) amending Article 32A(1)(c) by substituting for the lower number of penalty points for the time being specified there a different number of penalty points, or

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(b) amending Article 32A(6)(a) by substituting for the period for the time being specified there a different period.

(3) In Articles 32A to 32C and this Article—

“course provider”, in relation to a course, means the person by whom it is, or is to be, provided;

“probationary period” has the meaning given in Article 2 of the Road Traffic (New Drivers) (Northern Ireland) Order 1998;

“proper officer” means—

(a) in relation to a magistrates' court, the clerk of petty sessions <sup>F3</sup>..., and

(b) otherwise, the chief clerk;

<sup>F4</sup> ...

“rules of court” means—

(a) in relation to an application to a magistrates' court, magistrates' court rules, and

(b) in relation to an application to the Crown Court, Crown Court rules;

“supervising court”, in relation to an order under Article 32A means—

(a) if the Crown Court made the order, the Crown Court, and

(b) otherwise a magistrates' court <sup>F5</sup>....

(4) Orders or regulations made by the Department under Article 32A to 32D or this Article may include such incidental or supplementary provision as appears to the Department to be necessary or expedient.

(5) Orders made under Article 32A(3) and regulations made under this Article shall be subject to affirmative resolution.

(6) Regulations made under Article 32B, 32C or 32D shall be subject to negative resolution.”.

#### Textual Amendments

- F1** Words in art. 10(3) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 132(1), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)
- F2** Words in art. 10(3) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 132(2), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)
- F3** Words in art. 10(3) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 132(3)(a), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)
- F4** Words in art. 10(3) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 132(3)(b), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)
- F5** Words in art. 10(3) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 132(3)(c), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

#### Reduced disqualification period for attendance on course **N.I.**

11.—(1) For Articles 36 to 39 of the Offenders Order (reduced disqualification period for attendance on course) substitute—

“**Reduced disqualification period for attendance on course**

36.—(1) This Article applies where—



- (a) a person is convicted of a relevant drink offence or a specified offence by or before a court, and
  - (b) the court makes an order under Article 35 disqualifying him for a period of not less than 12 months.
- (2) In this Article “relevant drink offence” means–
- (a) an offence under sub-paragraph (a) of paragraph (1) of Article 14 of the Order of 1995 (causing death by careless driving when unfit to drive through drink) committed when unfit to drive through drink,
  - (b) an offence under sub-paragraph (b) of that paragraph (causing death by careless driving with excess alcohol),
  - (c) an offence under sub-paragraph (c) of that paragraph (failing to provide a specimen) where the specimen is required in connection with drink or consumption of alcohol,
  - (d) an offence under Article 15 of that Order (driving or being in charge when under influence of drink) committed by reason of unfitness through drink,
  - (e) an offence under Article 16(1) of that Order (driving or being in charge with excess alcohol),
  - (f) an offence under Article 18(7) of that Order (failing to provide a specimen) committed in the course of an investigation into an offence within any of the preceding sub-paragraphs, and
  - (g) an offence under Article 18A(6) of that Order (failing to allow a specimen to be subjected to a laboratory test) in the course of an investigation into an offence within any of the preceding sub-paragraphs.
- (3) In this Article “specified offence” means–
- (a) an offence under Article 20(4) of the Roads (Northern Ireland) Order 1993 (use of special road contrary to regulations),
  - (b) an offence under Article 12 of the Order of 1995 (careless, and inconsiderate, driving),
  - (c) an offence under Article 50 of the Order of 1995 (contravention of traffic signs),
  - (d) an offence under Article 43(1) of the Road Traffic Regulation (Northern Ireland) Order 1997 (contravening speed limit), or
  - (e) an offence under Article 7 of the Road Traffic Regulation (Northern Ireland) Order 1997 committed by contravening a temporary speed restriction under paragraph (3) (b) of that Article.
- (4) The Department may by order amend paragraph (3) by making additions to or deletions from the list of offences for the time being set out there.
- (5) Where this Article applies, the court may make an order that the period of disqualification imposed under Article 35 (“the unreduced period”) shall be reduced if, by the relevant date, the offender satisfactorily completes an approved course specified in the order.
- (6) In paragraph (5)–
- “an approved course” means a course approved by the Department for the purposes of this Article in relation to the description of offence of which the offender is convicted, and
  - “the relevant date” means such date, at least 2 months before the last day of the period of disqualification as reduced by the order, as is specified in the order.
- (7) The reduction made in a period of disqualification by an order under this Article is a period specified in the order of–

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- (a) not less than 3 months, and
  - (b) not more than one quarter of the unreduced period,
- (and accordingly, where the unreduced period is 12 months, the reduced period is 9 months).

(8) A court shall not make an order under this Article in the case of an offender convicted of a specified offence if—

- (a) the offender has, during the period of 3 years ending with the date on which the offence was committed, committed a specified offence and successfully completed an approved course pursuant to an order made under this Article or Article 32A on conviction of that offence, or
- (b) the specified offence was committed during his probationary period.

(9) A court shall not make an order under this Article in the case of an offender unless—

- (a) it is satisfied that a place on the course specified in the order will be available for the offender,
- (b) the offender appears to the court to be of or over the age of 17,
- (c) the court has informed the offender (orally or in writing and in ordinary language) of the effect of the order and of the amount of the fees which he is required to pay for the course and when he must pay them, and
- (d) the offender agrees that the order should be made.

#### **Certificates of completion of courses**

**37.—**(1) An offender shall only be regarded for the purposes of Article 36 as having completed a course satisfactorily if a certificate that he has done so is received by the proper officer of the supervising court before the end of the unreduced period.

(2) If the certificate under paragraph (1) is so received before the end of the unreduced period but after the end of the period which would (apart from this paragraph) be the reduced period, the reduced period is to be taken to end with the day on which the certificate is so received.

(3) The certificate under paragraph (1) is to be given by the course provider and shall be in such form, and contain such particulars, as may be prescribed by, or determined in accordance with, regulations made by the Department.

(4) A course provider shall give a certificate under paragraph (1) to the offender not later than 14 days after the date specified in the order as the latest date for the completion of the course unless the offender—

- (a) fails to make due payment of fees for the course,
- (b) fails to attend the course in accordance with the course provider's reasonable instructions, or
- (c) fails to comply with any other reasonable requirement of the course provider.

(5) Where a course provider decides not to give a certificate under paragraph (1) to the offender, he shall give written notice of the decision to the offender as soon as possible, and in any event not later than 14 days after the date specified in the order as the latest date for completion of the course.

(6) An offender to whom a notice is given under paragraph (5) may, within such period as may be prescribed by rules of court, apply to the supervising court, <sup>F6</sup>... for a declaration that the course provider's decision not to give a certificate under paragraph (1) was contrary to paragraph (4).

(7) If the court grants an application under paragraph (6), Article 36 shall have effect as if the certificate had been duly received by the proper officer of the supervising court.

(8) If 14 days after the date specified in the order as the latest date for completion of the course the course provider has given neither a certificate under paragraph (1) nor a notice under paragraph (5), the offender may, within such period as may be prescribed by rules of court, apply to the supervising court, <sup>F7</sup>... for a declaration that the course provider is in default.

(9) If the court grants an application under paragraph (8), Article 36 shall have effect as if the certificate had been duly received by the proper officer of the supervising court.

(10) A notice under paragraph (5) shall specify the ground on which it is given; and the Department may by regulations make provision as to the form of notices under that paragraph and as to the circumstances in which they are to be treated as given.

(11) Where the proper officer of a court receives a certificate under paragraph (1), or a court grants an application under paragraph (6) or (8), the proper officer or court (as the case may be) must send notice of that fact to the Department; and the notice must be sent in such manner and to such address, and must contain such particulars, as the Department may determine.

### **Approval of courses**

**37A.**—(1) If an application is made to the Department for the approval of a course for the purposes of Article 36, the Department must decide whether to grant or refuse the application.

(2) In reaching that decision, the Department must have regard to—

- (a) the nature of the course, and
- (b) whether the course provider is an appropriate person to provide the course and administer its provision efficiently and effectively,

and may take into account any recommendations made by any persons appointed to consider the application.

(3) A course may be approved subject to conditions specified by the Department.

(4) An approval of a course is for the period specified by the Department (which must not exceed 7 years), subject to withdrawal of approval.

(5) Regulations made by the Department may make provision in relation to the approval of courses and may, in particular, include provision—

- (a) in relation to the making of applications for approval,
- (b) for the payment in respect of applications for approval, or in connection with approvals, of fees of a prescribed amount,
- (c) specifying the maximum fees that a person may be required to pay for a course and by when they are to be paid,
- (d) for the monitoring of courses and course providers,
- (e) in relation to withdrawing approval,
- (f) for an appeal to lie to a court of summary jurisdiction against a refusal of an application for approval, the imposition of conditions on the grant of such an application or the withdrawal of approval, and,
- (g) authorising the Department to make available (with or without charge) information about courses and course providers.

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### **Courses in Great Britain**

**37B.**—(1) The Department may enter into arrangements with persons in Great Britain who provide courses which are approved courses within the meaning of section 34A(6) of the Road Traffic Offenders Act 1988 for the purpose of treating those courses as approved courses within the meaning of Articles 36 to 38 and in this Article such courses in respect of which such arrangements have been entered into shall be known as “recognised courses”.

(2) Such arrangements may include provision for any matters for which provision is made in Articles 36 to 38 in relation to approved courses.

(3) A court—

- (a) may treat recognised courses as approved courses for the purposes of Article 36,
- (b) may treat any certificates received from course providers of recognised courses as certificates received from course providers of approved courses for the purposes of Article 37,
- (c) may treat a notice of such course provider not to give a certificate as a notice within the meaning of Article 37(5) for the purposes of Article 37(6), (7) and (11), provided that, the offender may only appeal to the supervising court,
- (d) may treat a failure to give such a notice and a failure to give such a certificate in the same way as it would treat such a failure under Article 37(8) for the purposes of Article 37(8), (9) and (11), provided that, the offender may only appeal to the supervising court.

(4) Where a court has made an order in respect of a person under Article 36, that person may apply to the court to vary the order by substituting a recognised course for the course specified in the order, and if the court grants that application, it shall vary the order accordingly.

(5) The power to prescribe periods by rules of court under Article 37(6) and (8) shall include power to prescribe periods for the purposes of paragraph (2)(c) and (d) of this Article.

(6) The Department may by regulations make such further provision in respect of recognised courses as it considers necessary or expedient.

### **Provisions supplementary to Articles 36 to 37B**

**38.**—(1) The Department may issue guidance to course providers, or to any category of course provider, as to the conduct of courses approved for the purposes of Article 36; and—

- (a) course providers shall have regard to any guidance given to them under this paragraph, and
- (b) in determining for the purposes of Article 37 whether any instructions or requirements of a course provider were reasonable, a court shall have regard to any guidance given to him under this paragraph.

(2) The Department may by regulations make provision—

- (a) amending Article 36(1)(b) by substituting for the period for the time being specified there a different period,
- (b) amending Article 36(7) by substituting for the period for the time being specified there a different period, or by substituting for the fraction of the unreduced period for the time being specified there a different fraction of that period, (or by doing both), or
- (c) amending Article 36(8)(a) by substituting for the period for the time being specified there a different period.

(3) In Articles 36 to 37B and this Article—

“course provider”, in relation to a course, means the person by whom it is, or is to be, provided;

“probationary period” has the meaning given in Article 2 of the Road Traffic (New Drivers) (Northern Ireland) Order 1998;

“proper officer” means—

(a) in relation to a magistrates' court, the clerk of petty sessions <sup>F8</sup> ..., and

(b) otherwise, the chief clerk;

<sup>F9</sup> ...

“rules of court” means—

(a) in relation to an application to a magistrates' court, magistrates' court rules, and

(b) in relation to an application to the Crown Court, Crown Court rules;

“supervising court”, in relation to an order under Article 36 means—

(a) if the Crown Court made the order, the Crown Court, and

(b) otherwise a magistrates' court <sup>F10</sup> ....

(4) Orders or regulations made by the Department under Article 36 to 37B or this Article may include such incidental or supplementary provision as appears to the Department to be necessary or expedient.

(5) Orders made under Article 36(4) and regulations made under this Article shall be subject to affirmative resolution.

(6) Regulations made under Article 37, 37A or 37B shall be subject to negative resolution.”.

(2) Paragraph (1) shall not apply in respect of proceedings commenced before it comes into operation.

#### Textual Amendments

**F6** Words in art. 11(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 132(4), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

**F7** Words in art. 11(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 132(5), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

**F8** Words in art. 11(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 132(6)(a), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

**F9** Words in art. 11(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 132(6)(b), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

**F10** Words in art. 11(1) repealed (31.10.2016) by Justice Act (Northern Ireland) 2015 (c. 9), s. 106(2), Sch. 1 para. 132(6)(c), **Sch. 9 Pt. 1** (with Sch. 8 para. 1); S.R. 2016/387, art. 2(k)(m) (with art. 3)

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VALID FROM 23/04/2012

### *Deposits and prohibition on driving*

#### **Financial penalty deposits** **N.I.**

12.—(1) In the Offenders Order, after Part IV insert—

#### **“PART IVA** **N.I.**

#### **FINANCIAL PENALTY DEPOSITS**

##### **Interpretation of this Part**

91A. In this Part—

- “the appropriate amount” has the meaning given by Article 91C(2);
- “the appropriate refund” has the meaning given by Article 91D(10);
- “financial penalty deposit requirement” has the meaning given by Article 91C(1);
- “fixed penalty notice” has the meaning given by Article 58;
- “fixed penalty offence” has the meaning given by Article 57;
- “the prosecution period” has the meaning given by Article 91D(6);
- “the relevant period” has the meaning given by Article 91C(3);
- “the suspended enforcement period” is to be construed in accordance with Article 58(3); and
- “vehicle examiner” means an examiner appointed under Article 74 of the Order of 1995.

##### **Power to impose financial penalty deposit requirement**

91B.—(1) A constable or vehicle examiner may impose a financial penalty deposit requirement on a person on any occasion if the conditions in this Article are satisfied.

- (2) The constable or vehicle examiner must have reason to believe—
  - (a) that the person is committing or has on that occasion committed an offence relating to a motor vehicle; and
  - (b) that the person, the offence and the circumstances in which the offence is committed are of a description specified in an order made by the Department.
- (3) The person must be—
  - (a) given written notification that it appears likely that proceedings will be brought against him in respect of the offence; or
  - (b) (if the offence is a fixed penalty offence) either given such notification or given a fixed penalty notice in respect of the offence.
- (4) The person must fail to provide a satisfactory address; and for this purpose “a satisfactory address” is an address in the United Kingdom at which the constable or vehicle examiner considers it likely that it would be possible to find the person whenever necessary to do so in connection with the proceedings or fixed penalty notice.

- (5) The person who is to impose the financial penalty deposit requirement—
  - (a) if a constable, must be in uniform; and
  - (b) if a vehicle examiner, must produce his authority.

#### **Financial penalty deposit requirement**

**91C.**—(1) For the purposes of this Part a financial penalty deposit requirement is a requirement to make a payment of the appropriate amount to the Department—

- (a) in a manner specified in an order made by it; and
- (b) either immediately or within the relevant period.

(2) In this Part “the appropriate amount”, in relation to an offence and a person, is an amount specified in relation to the offence in an order made by the Department; and different amounts may be so specified by reference to whether the person is given notification that it appears likely that proceedings will be brought against him or given a fixed penalty notice.

(3) In this Part “the relevant period” means—

- (a) if the person was given a fixed penalty notice and proceedings are not brought in respect of the offence by virtue of this Order before the end of the suspended enforcement period, the suspended enforcement period; and
- (b) otherwise, the period ending with the person being charged with the offence.

#### **Making of payment in compliance with requirement**

**91D.**—(1) This Article applies where a person on whom a financial penalty deposit requirement is imposed in respect of an offence makes a payment of the appropriate amount in accordance with Article 91C(1) (and any order made under it).

(2) On payment by the person of the appropriate amount the person by whom the payment is received must issue him with a written receipt for the payment specifying the effect of the following provisions of this Article.

(3) In a case where—

- (a) a fixed penalty notice relating to the offence has been given to the person;
- (b) the person does not give notice requesting a hearing in respect of the offence before the end of the relevant period in the manner specified in the fixed penalty notice; and
- (c) proceedings are not brought in respect of the offence by virtue of this Order;

paragraph (4) applies.

(4) Where this paragraph applies, the Department must—

- (a) apply so much of the payment as does not exceed the amount of the fixed penalty in or towards payment of the fixed penalty; and
- (b) take the appropriate steps to make any appropriate refund to the person.

(5) In any other case—

- (a) if the person is informed that he is not to be prosecuted for the offence, is acquitted of the offence or is convicted but not fined in respect of it, or the prosecution period comes to an end without a prosecution having been commenced against him in respect of it, paragraph (7) applies; and

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(b) if a fine is imposed on the person in respect of the offence (otherwise than as a result of a conviction obtained on a prosecution commenced after the end of the prosecution period), paragraph (8) applies.

(6) In this Part, “the prosecution period” means the period of 12 months beginning with the imposition of the financial penalty deposit requirement or, if shorter, any period after which no prosecution may be commenced in respect of the offence.

(7) Where this paragraph applies, the Department must take the appropriate steps to make the appropriate refund to the person.

(8) Where this paragraph applies, the Department must—

(a) apply so much of the payment as does not exceed the amount of the fine in or towards payment of the fine; and

(b) take the appropriate steps to make any appropriate refund to the person.

(9) Where the Department is required by this Article to take the appropriate steps to make an appropriate refund, it must take such steps to trace the person and to make the refund to him, by such means, as are specified in an order made by the Department.

(10) In this Part “the appropriate refund”, in any case, is a refund of—

(a) where paragraph (4) applies, so much of the payment as exceeds the amount of the fixed penalty;

(b) where paragraph (7) applies, the amount of the payment; and

(c) where paragraph (8) applies, so much of the amount of the payment as exceeds the amount of the fine;

together with interest calculated in accordance with provision made by order made by the Department of Finance and Personnel.

#### **Prohibition on driving on failure to make payment**

**91E.**—(1) This Article applies where a person on whom a financial penalty deposit requirement is imposed does not make an immediate payment of the appropriate amount in accordance with Article 91C(1) (and any order made under it).

(2) The constable or vehicle examiner by whom the requirement was imposed may prohibit the driving on a road of any vehicle of which the person was in charge at the time of the offence by giving to the person notice in writing of the prohibition.

(3) The prohibition—

(a) shall come into force as soon as the notice is given; and

(b) shall continue in force until the happening of whichever of the events in paragraph (4) occurs first.

(4) Those events are—

(a) the person making a payment of the appropriate amount in accordance with Article 91C(1) (and any order made under it) at any time during the relevant period;

(b) (where a fixed penalty notice was given to the person in respect of the offence) payment of the fixed penalty;

(c) the person being convicted or acquitted of the offence;

(d) the person being informed that he is not to be prosecuted for the offence; and

(e) the coming to an end of the prosecution period.



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(5) A constable or vehicle examiner may by direction in writing require the person to remove the vehicle to which the prohibition relates (and, if it is a motor vehicle drawing a trailer, also to remove the trailer) to such place and subject to such conditions as are specified in the direction; and the prohibition does not apply to the removal of the vehicle (or trailer) in accordance with the direction.

(6) A person who—

- (a) drives a vehicle in contravention of a prohibition under this Article;
- (b) causes or permits a vehicle to be driven in contravention of such a prohibition; or
- (c) fails to comply within a reasonable time with a direction under paragraph (5),

is guilty of an offence.

(7) The Department may by order provide for exceptions from paragraph (6).

(8) Where a constable in uniform has reasonable grounds for suspecting that an offence under paragraph (6) has been committed or attempted, or is being committed or attempted, he may arrest the relevant person without warrant.

(9) In this Article “the relevant person” means any person whom the constable has reasonable grounds to suspect of having committed or having attempted to commit the offence or of being in the course of committing or attempting to commit it.

**Orders about financial penalty deposits**

**91F.**—(1) Before making an order under any provision of this Part, the Department or the Department of Finance and Personnel (as the case may be) shall consult with such representative organisations as it thinks fit.

(2) An order under any provision of this Part shall be subject to negative resolution.”.

(2) In Part I of Schedule 1 to the Offenders Order (prosecution and punishment of offences) after the entry relating to offences under Article 72 of that Order insert—

“Article 91E(6)	Driving, etc. vehicle in contravention of prohibition for failure to pay financial penalty deposit, etc.	Summarily.	Level 5 on the standard scale.”.
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**Prohibition on driving: immobilisation, removal and disposal of vehicles** **N.I.**

**13.** Schedule 1 makes provision about—

- (a) the immobilisation of vehicles the driving of which has been prohibited under—
  - (i) Article 84 of the Order of 1981 (foreign vehicles);
  - (ii) Article 77 or 79 of the Order of 1995 (unfit or overloaded vehicles); or
  - (iii) Article 91E of the Offenders Order (failure to make payment of financial penalty deposit); and
- (b) the removal and disposal of such vehicles.

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### Testing for drink and drugs

#### Testing for drink and drugs **N.I.**

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.

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(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.”.

## Period of endorsement for failure to allow specimen to be tested **N.I.**

15. In Article 50(6) of the Offenders Order (effect of endorsement: period for which effective), after sub-paragraph (b) insert

“or

(c) under Article 18A(6) of that Order (failing to allow a specimen to be subjected to laboratory test),”.

### *Powers of enforcement*

VALID FROM 13/12/2010

## Giving of fixed penalty notices by vehicle examiners **N.I.**

16. Schedule 2 (which makes provision for the giving of fixed penalty notices by vehicle examiners and connected matters) shall have effect.

## Extension of powers of vehicle examiners **N.I.**

17.—(1) For Article 180A of the Order of 1981 substitute—

### “Powers of vehicle examiners

**180A.** An examiner appointed under Article 74 of the Order of 1995 may, on production if required of his authority, exercise all such powers as are exercisable by a constable under—

- (a) Article 177(1)(a) and (c); and
- (b) Article 180.”

(2) In Article 75(2) of the Order of 1995 (powers of authorised examiners for purpose of testing vehicles) before paragraph (a) insert—

“(za) may, if he is a person appointed as an examiner under Article 74, and without prejudice to Article 180(1) of the Order of 1981 (power of constable in uniform to require vehicle to stop), require the vehicle to stop;”.

## Power of arrest in relation to failure to stop a vehicle **N.I.**

18.—(1) After Article 180(1) of the Order of 1981 (failure to stop for constable in uniform) insert—

“(1A) A constable in uniform may arrest a person without warrant if he has reasonable cause to believe that the person has committed an offence under paragraph (1).”.

(2) In Article 19(1) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12) (power of entry to effect arrest for certain offences) after sub-paragraph (cb) insert—

“(cc) of arresting a person for an offence under Article 180(1) of the Road Traffic (Northern Ireland) Order 1981;”.

(3) This Article has no effect in relation to offences committed before it comes into operation.

### Commencement Information

**12** Art. 18 partly in operation; art. 18 not in operation at date of making see art. 1(3); art. 18(1)(3) in operation at 15.11.2007 by S.R. 2007/454, art. 2, Sch.

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## Production of certain documents **N.I.**

19.—(1) Article 180 of the Order of 1981 (enforcement powers of constable) is amended as follows.

(2) In paragraph (2)–

- (a) after “certificate of insurance” insert “ or certificate of security ”;
- (b) in sub-paragraph (b) the words “or other public place” shall cease to have effect; and
- (c) after sub-paragraph (b) insert–

“(ba) in the case of a certificate of insurance or certificate of security, test certificate or goods vehicle test certificate, whom he reasonably suspects to have been involved in an accident in a public place; or”.

(3) In paragraph (4) after “certificate of insurance”, in both places where it occurs, insert “ or certificate of security ”.

(4) After paragraph (8) insert–

“(9) In this Article “certificate of insurance” and “certificate of security” include any document issued under regulations made by the Department under Article 103 which prescribe the evidence which may be produced in lieu of a certificate of insurance or a certificate of security.”.

## Seizure of licences **N.I.**

20. In Article 180 of the Order of 1981 (enforcement powers of constable) after paragraph (3B) insert–

“(3C) If–

- (a) a person is required to deliver his licence and its counterpart to the Department under section 64 of the Crime (International Co-operation) Act 2003 (c. 32) or the Department has–
  - (i) revoked a licence under Article 9, 10 or 15, or
  - (ii) revoked or suspended a large goods vehicle driver's licence or a passenger-carrying vehicle driver's licence under Article 73, or
  - (iii) served notice requiring the delivery of a licence to it in pursuance of Article 15C, 19G or 73A, and
- (b) the holder of the licence fails to deliver it and its counterpart to the Department in pursuance of Article 9, 10, 15, 15C, 19G, 73A or 75 or section 64 of the Crime (International Co-operation) Act 2003 (as the case may be),

a constable may require him to produce the licence and its counterpart, and upon their being produced may seize them and deliver them to the Department.”.

VALID FROM 09/06/2008

### *Miscellaneous*

## Power to seize etc. vehicles driven without insurance **N.I.**

21. After [F11 Article 180A] of the Order of 1981 insert–

#### **“Power to seize vehicles driven without insurance**

[<sup>F12</sup>**180B**].—(1) Paragraph (4) applies if any of the following conditions is satisfied.

(2) The first condition is that—

- (a) a constable in uniform requires, under Article 180(2), a person to produce evidence that a motor vehicle is not or was not being driven in contravention of Article 90;
- (b) the person fails to produce such evidence; and
- (c) the constable has reasonable grounds for believing that the vehicle is or was being so driven.

(3) The second condition is that—

- (a) a constable in uniform requires, under Article 180(1), a person driving a motor vehicle to stop the vehicle;
- (b) the person fails to stop the vehicle, or to stop the vehicle long enough, for the constable to make such lawful enquiries as he considers appropriate; and
- (c) the constable has reasonable grounds for believing that the vehicle is or was being driven in contravention of Article 90.

(4) Where this paragraph applies, the constable may—

- (a) seize the vehicle in accordance with paragraphs (5) and (6) and remove it;
- (b) enter, for the purpose of exercising a power falling with sub-paragraph (a), any premises (other than a private dwelling house) on which he has reasonable grounds for believing the vehicle to be;
- (c) use reasonable force, if necessary, in the exercise of any power conferred by sub-paragraph (a) or (b).

(5) Before seizing the motor vehicle, the constable must warn the person by whom it appears that the vehicle is or was being driven in contravention of Article 90 that he will seize it if the person does not provide him immediately with evidence that the vehicle is not or was not being driven in contravention of that Article.

But the constable is not required to give him such a warning if the circumstances make it impracticable for him to do so.

(6) If the constable is unable to seize the vehicle immediately because the person driving the vehicle has failed to stop as requested or has driven off, he may seize it at any time within the period of 24 hours beginning with the time at which the condition in question is first satisfied.

(7) The powers conferred on a constable by this Article are exercisable only at a time when regulations under [<sup>F13</sup>Article 180C] are in operation.

(8) In this Article—

- (a) a reference to a motor vehicle does not include an invalid carriage;
- (b) a reference to evidence that a motor vehicle is not or was not being driven in contravention of Article 90 is a reference to a document or other evidence within Article 103(1)(b);
- (c) “private dwelling house” does not include any garage or other structure occupied with the dwelling house, or any land appurtenant to the dwelling house.

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### Retention etc. of vehicles seized under <sup>F14</sup>Article 180B]

<sup>F15</sup>180C].—(1) The Secretary of State may by regulations make provision as to—

- (a) the removal and retention of motor vehicles seized under <sup>F16</sup>Article 180B]; and
- (b) the release or disposal of such motor vehicles.

(2) Regulations under paragraph (1) may, in particular, make provision—

- (a) for the giving of notice of seizure of a motor vehicle under <sup>F16</sup>Article 180B] to a person who is the registered keeper, the owner or the driver of that vehicle;
- (b) for the procedure by which a person who claims to be the registered keeper or the owner of a motor vehicle seized under <sup>F16</sup>Article 180B] may seek to have it released;
- (c) for requiring the payment, by the registered keeper, owner or driver of the vehicle, of fees, charges or costs in relation to the removal and retention of such a motor vehicle and to any application for its release;
- (d) as to the circumstances in which a motor vehicle seized under <sup>F16</sup>Article 180B] may be disposed of;
- (e) as to the destination—
  - (i) of any fees, charges or costs payable in accordance with the regulations;
  - (ii) of the proceeds (if any) arising from the disposal of a motor vehicle seized under <sup>F16</sup>Article 180B].

(3) Regulations under paragraph (1) must provide that a person who would otherwise be liable to pay any fee, charge or cost under the regulations is not liable to pay it if—

- (a) he was not driving the motor vehicle at the time in question, and
- (b) he did not know that the vehicle was being driven at that time, had not consented to its being driven and could not, by the taking of reasonable steps, have prevented it from being driven.

(4) Regulations under this Article 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 (c. 36) shall apply accordingly.

(5) In this Article registered keeper”, in relation to a motor vehicle, means the person in whose name the vehicle is registered under the Vehicle Excise and Registration Act 1994.”.

#### Textual Amendments

- F11** Words in art. 21 substituted (4.6.2008) by Road Traffic (2007 Order) (Commencement No. 4 and Amendment) Order (Northern Ireland) 2008 (S.R. 2008/244), art. 3(2)
- F12** Words in art. 21 renumbered (4.6.2008) by virtue of Road Traffic (2007 Order) (Commencement No. 4 and Amendment) Order (Northern Ireland) 2008 (S.R. 2008/244), art. 3(3)
- F13** Words in art. 21 substituted (4.6.2008) by Road Traffic (2007 Order) (Commencement No. 4 and Amendment) Order (Northern Ireland) 2008 (S.R. 2008/244), art. 3(3)
- F14** Words in art. 21 substituted (4.6.2008) by Road Traffic (2007 Order) (Commencement No. 4 and Amendment) Order (Northern Ireland) 2008 (S.R. 2008/244), art. 3(4)
- F15** Words in art. 21 renumbered (4.6.2008) by virtue of Road Traffic (2007 Order) (Commencement No. 4 and Amendment) Order (Northern Ireland) 2008 (S.R. 2008/244), art. 3(5)



**F16** Words in art. 21 substituted (4.6.2008) by Road Traffic (2007 Order) (Commencement No. 4 and Amendment) Order (Northern Ireland) 2008 (S.R. 2008/244), art. 3(5)

VALID FROM 12/09/2011

### *Graduated fixed penalties*

#### **Graduated fixed penalties** **N.I.**

**22.** Article 59 of the Offenders Order (amount of fixed penalty) shall be renumbered as paragraph (1) of that Article and after that paragraph insert—

“(2) Any order made under paragraph (1) in relation to an offence may make provision for the fixed penalty for the offence to be different depending on the circumstances, including (in particular)—

- (a) the nature of the contravention constituting the offence;
- (b) how serious it is;
- (c) the area, or sort of place, where it takes place; and
- (d) whether the offender appears to have committed any offence or offences of a description specified in the order during a period so specified.”

#### **Graduated fixed penalty points** **N.I.**

**23.—(1)** Article 30 of the Offenders Order (penalty points to be attributed to an offence) is amended as follows.

(2) For paragraph (3) substitute—

“(3) For the purposes of Articles 63(5) and 82(4), the number of penalty points to be attributed to an offence is—

- (a) where a range of numbers is shown in the last column of Part I or Part II of Schedule 1 in relation to an offence, the lowest number in the range, or
- (b) where a range of numbers followed by the words “or appropriate penalty points (graduated fixed penalty)” is shown there in relation to the offence, the appropriate number of penalty points for the offence.

(3A) For the purposes of paragraph (3)(b) the appropriate number of penalty points for an offence is such number of penalty points as the Department may by order prescribe.

(3B) An order made under paragraph (3A) in relation to an offence may make provision for the appropriate number of penalty points for the offence to be different depending on the circumstances, including (in particular)—

- (a) the nature of the contravention constituting the offence;
- (b) how serious it is;
- (c) the area, or sort of place, where it takes place; and
- (d) whether the offender appears to have committed any offence or offences of a description specified in the order during a period so specified.”

(3) After paragraph (7)(a) insert—

“(ab) add or delete the words “or appropriate penalty points (graduated fixed penalty)” in relation to an offence in the last column of Part I or Part II of Schedule 1,”.

**Status:** Point in time view as at 15/11/2007. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** The Road Traffic (Northern Ireland) Order 2007, PART II is up to date with all changes known to be in force on or before 21 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(4) After paragraph (7) insert—

“(7A) Before making an order under paragraph (3A) the Department must consult with such representative organisations as it thinks fit.”.

(5) In paragraph (8) for “paragraph (7)” substitute “ this Article ”.

PROSPECTIVE

#### **Graduated fixed penalty points for speeding offences** **N.I.**

**24.** In Schedule 1 to the Offenders Order (prosecution and punishment of offences)—

- (a) in Part I, in column (7), for the entry relating to Article 7 of the Road Traffic Regulation (Northern Ireland) Order 1997 (NI 2) (temporary traffic regulation) substitute “ 2-6 or appropriate penalty points (graduated fixed penalty) if as described in column 5. ”;
- (b) in Part I, in column (7), for the entry relating to Article 43 of the Road Traffic Regulation (Northern Ireland) Order 1997 (contravening speed limit) substitute “ 2-6 or appropriate penalty points (graduated fixed penalty) if as described in column 5. ”;
- (c) in Part II, in column (4), for the entry relating to Article 20 of the Roads (Northern Ireland) Order 1993 (NI 15) (restriction on use of special roads) substitute “ 2-6 or appropriate penalty points (graduated fixed penalty) if committed in respect of a speed restriction, 3 in any other case. ”.

#### *Miscellaneous*

PROSPECTIVE

#### **Offence of keeping vehicle which does not meet insurance requirements** **N.I.**

**25.—**(1) In the Order of 1981, after Article 91 insert—

##### **“Offence of keeping vehicle which does not meet insurance requirements**

**91A.—**(1) If a motor vehicle registered under the Vehicle Excise and Registration Act 1994 does not meet the insurance requirements, the person in whose name the vehicle is registered is guilty of an offence.

(2) For the purposes of this Article a vehicle meets the insurance requirements if—

- (a) it is covered by a such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Part, and
- (b) either of the following conditions is satisfied.

(3) The first condition is that the policy or security, or the certificate of insurance or security which relates to it, identifies the vehicle by its registration mark as a vehicle which is covered by the policy or security.

(4) The second condition is that the vehicle is covered by the policy or security because—

- (a) the policy or security covers any vehicle, or any vehicle of a particular description, the owner of which is a person named in the policy or security or in the certificate of insurance or security which relates to it, and

(b) the vehicle is owned by that person.

(5) For the purposes of this Article a vehicle is covered by a policy of insurance or security if the policy of insurance or security is in force in relation to the use of the vehicle.

#### **Exceptions to Article 91A offence**

**91B.**—(1) A person (“the registered keeper”) in whose name a vehicle which does not meet the insurance requirements is registered at any particular time (“the relevant time”) does not commit an offence under Article 91A at that time if any of the following conditions are satisfied.

(2) The first condition is that at the relevant time the vehicle is owned as described in paragraph (2) or (2A) of Article 90 (whether or not at the relevant time it is being driven as described in that provision).

(3) The second condition is that the registered keeper—

- (a) is not at the relevant time the person keeping the vehicle, and
- (b) if previously he was the person keeping the vehicle, he has by the relevant time complied with any requirements under paragraph (6)(a) that he is required to have complied with by the relevant or any earlier time.

(4) The third condition is that—

- (a) the registered keeper is at the relevant time the person keeping the vehicle,
- (b) at the relevant time the vehicle is not used on a road or other public place, and
- (c) the registered keeper has by the relevant time complied with any requirements under paragraph (6)(a) that he is required to have complied with by the relevant or any earlier time.

(5) The fourth condition is that—

- (a) the vehicle has been stolen before the relevant time,
- (b) the vehicle has not been recovered by the relevant time, and
- (c) any requirements under paragraph (6)(b) that, in connection with the theft, are required to have been complied with by the relevant or any earlier time have been complied with by the relevant time.

(6) Regulations may make provision—

- (a) for the purposes of paragraph (3)(b) and (4)(c), requiring a person in whose name a vehicle is registered to furnish such particulars and make such declarations as may be prescribed, and to do so at such times and in such manner as may be prescribed, and
- (b) for the purposes of paragraph (5)(c), as to the persons to whom, the times at which and the manner in which the theft of a vehicle is to be notified.

(7) Regulations may make provision amending this Article for the purpose of providing for further exceptions to Article 91A (or varying or revoking any such further exceptions).

(8) A person accused of an offence under Article 91A is not entitled to the benefit of an exception conferred by or under this Article unless evidence is adduced that is sufficient to raise an issue with respect to that exception; but where evidence is so adduced it is for the prosecution to prove beyond reasonable doubt that the exception does not apply.

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### **Fixed penalty notices**

**91C.**—(1) Where on any occasion the Department has reason to believe that a person has committed an offence under Article 91A, the Department may give the person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty to the Department.

(2) Where a person is given a notice under this Article in respect of an offence under Article 91A—

- (a) no proceedings may be instituted for that offence before the end of the period of 21 days following the date of the notice, and
- (b) he may not be convicted of that offence if he pays the fixed penalty before the end of that period.

(3) A notice under this Article must give such particulars of the circumstances alleged to constitute the offence as are necessary for giving reasonable information of the offence.

(4) A notice under this Article must also state—

- (a) the period during which, by virtue of paragraph (2), proceedings will not be taken for the offence,
- (b) the amount of the fixed penalty, and
- (c) the person to whom and the address at which the fixed penalty may be paid.

(5) Without prejudice to payment by any other method, payment of the fixed penalty may be made by pre-paying and posting a letter containing the amount of the penalty to the person mentioned in paragraph (4)(c) at the address so mentioned.

(6) Where a letter is sent in accordance with paragraph (5) payment is to be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(7) Regulations may make provision as to any matter incidental to the operation of this Article, and in particular—

- (a) as to the form of a notice under this Article,
- (b) as to the information to be provided in such a notice by virtue of this Article, and
- (c) as to any further information to be provided in a such notice.

(8) The fixed penalty payable under this Article is, subject to paragraph (9), £100.

(9) Regulations may substitute a different amount for the amount for the time being specified in paragraph (8).

(10) Regulations may make provision for treating a fixed penalty payable under this Article as having been paid if a lesser amount is paid before the end of a prescribed period.

(11) In any proceedings a certificate which—

- (a) purports to be signed on behalf of the Department, and
- (b) states that payment of a fixed penalty was or was not received by a date specified in the certificate,

is evidence of the facts stated.

### **Article 91A offence: supplementary**

**91D.**—(1) Schedule 2A makes provision about the immobilisation of vehicles as regards which it appears that an offence under Article 91A is being committed and about their removal and disposal.

(2) A person authorised by the Department for the purposes of this paragraph may on behalf of the Department conduct and appear in any proceedings by or against the Department in any court of summary jurisdiction in connection with the enforcement of an offence under Article 91A or under regulations made under Article 103 by virtue of Schedule 2A.”.

(2) In the Order of 1981, after Article 102 insert–

**“Disclosure of information**

**102A.**—(1) Regulations may make provision for an in connection with requiring MIIC to make information available to any prescribed person for the purposes of the exercise of any of that person's functions in connection with the enforcement of an offence under this Part or under regulations made under Article 103.

(2) In this Article–

“information” means information held in any form;

“MIIC” means the Motor Insurers' Information Centre (a company limited by guarantee and incorporated under the Companies Act 1985 (c. 6) on 8th December 1998).”.

(3) After Schedule 2 to the Order of 1981 insert the Schedule 2A set out in Schedule 3 to this Order.

(4) In Article 92(a) of the Offenders Order (penalty for breach of regulations under Order of 1981) for “of that Order” substitute “ or under Article 103 of that Order by virtue of Schedule 2A ”.

(5) Part 1 of Schedule 1 to the Offenders Order (prosecution and punishment of offences) is amended as follows.

(6) After the entry relating to Article 90 of the Order of 1981 insert–

“Article 91A	Keeping vehicle which does not meet insurance requirements.	Summarily.	Level 3 on the standard scale.”.
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(7) After the entry relating to Article 97 of the Order of 1981 insert–

“Regulations under Article 103 made by virtue of paragraph 2(1) of Schedule 2A.	Contravention of provision of regulations (which is declared by regulations to be an offence) prohibiting removal of or interference with immobilisation notice.	Summarily.	Level 2 on the standard scale.
Regulations under Article 103 made by virtue of paragraph 2(2) of Schedule 2A.	Contravention of provision of regulations (which is declared by regulations to be an offence) prohibiting removal or attempted removal of immobilisation device	Summarily.	Level 3 on the standard scale.
Regulations under Article 103 made by	Contravention of provision of regulations	Summarily.	Level 3 on the standard scale.

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virtue of paragraph 2(3) of Schedule 2A.	(which is declared by regulations to be an offence) about display of disabled person's badge.			
Regulations under Article 103 made by virtue of paragraph 2(4) of Schedule 2A.	Contravention of provision of regulations (which is declared by regulations to be an offence) prohibiting making of false or misleading declaration to secure release of vehicle from immobilisation device.	(a) Summarily. (b) On indictment	(a) The statutory maximum. (b) 2 years or a fine or both	
Regulations under Article 103 made by virtue of paragraph 4 of Schedule 2A.	Contravention of provision of regulations (which is declared by regulations to be an offence) prohibiting making of false or misleading declaration to secure possession of vehicle in person's custody.	(a) Summarily. (b) On indictment.	(a) The statutory maximum. (b) 2 years or a fine or both.”	

**Seat belts: delivery drivers** **N.I.**

26. For Article 23(2)(c)(i) of the Order of 1995 (seat belts: exceptions: delivery drivers) substitute—

“(i) the driver of, or a passenger in, a motor vehicle constructed or adapted for carrying goods, while on a journey which does not exceed the prescribed distance and which is undertaken for the purpose of delivering or collecting any thing,”.

**Disqualification until test passed** **N.I.**

27.—(1) Article 41 of the Offenders Order (duty of court to order disqualification until test is passed) is amended as follows.

(2) In paragraph (3) (order to be made in case of person disqualified in circumstances, or for period, prescribed by order) for “in such circumstances or for such period” substitute “ for such period, in such circumstances or for such period and in such circumstances ”.

(3) In paragraph (5) (interpretation) for the definition of “appropriate driving test” substitute—  
““appropriate driving test” means—

- (a) in such circumstances as the Department may by order prescribe, an extended driving test, and
- (b) otherwise, a test of competence to drive which is not an extended driving test.”.

(4) In paragraph (8) (disqualification to expire on production in accordance with regulations under Article 5(3) of the Order of 1981 of evidence of having passed test) for “under Article 5(3) of the Order of 1981” substitute “ made by the Department ”.

(5) In paragraph (9) (disqualification to expire by reason of passing of test only in relation to vehicles of such classes as are prescribed by such regulations) for “under that Article” substitute “made by the Department”.

(6) In paragraph (13) (procedure for making orders or regulations under that Article) after “subject to affirmative resolution” insert “and all other regulations under this Article shall be subject to negative resolution”.

(7) Omit paragraph (14) (no order to be made under paragraph (3) after end of 2004 unless one previously made).

#### **Notice of prosecution for certain offences** **N.I.**

**28.** In Article 5 of the Offenders Order (requirement of warning etc. of prosecutions for certain offences) after paragraph (1) insert—

“(1A) Section 24 of the Interpretation Act (Northern Ireland) 1954 (service of documents) shall apply in relation to the service of notices required to be served by this Article as if in subsection (1) of that section the word “registering” were omitted.”.

#### **False statements, forgery and power of seizure in connection with certain documents** **N.I.**

**29.**—(1) Article 174 of the Order of 1981 (false statements in connection with forgery of, and fraudulent use of, documents; issue of false insurance certificate and powers of seizure) is amended as follows.

(2) In paragraph (1)(a) for “application for any licence or a goods vehicle certificate under the Road Traffic Orders” substitute—

“application for—

- (i) any licence under the Road Traffic Orders;
- (ii) a goods vehicle test certificate under the Road Traffic Orders;
- (iii) an international road haulage permit;
- (iv) the entry or retention of a name in the register of driving instructors maintained under Part V of the Order of 2007;
- (v) a document evidencing the successful completion of training provided in accordance with regulations under Article 64 of the Order of 2007;
- (vi) any certificate under Article 65 of the Order of 2007.”.

(3) After paragraph (1)(d) insert—

“(e) knowingly produces false evidence for the purposes of regulations under Article 72 of the Order of 1995 or knowingly makes a false statement in a declaration required to be made by those regulations;

(f) intentionally makes a false entry in any record required to be made or kept by regulations under Article 82 of the Order of 1995, or with intent to deceive, makes use of any such entry which he knows to be false.”.

(4) For paragraph (2) substitute—

“(2) A person who, with intent to deceive—

- (a) forges, alters or uses a document or other thing listed in paragraph (2A); or
- (b) lends to, or allows to be used by, any other person a document or other thing listed in paragraph (2A); or
- (c) makes or has in his possession any document or other thing so closely resembling a document or other thing listed in paragraph (2A) as to be calculated to deceive,

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is guilty of an offence.

- (2A) The documents or other things referred to in paragraph (2) are—
- (a) any licence under the Road Traffic Orders or, in the case of a licence to drive, any counterpart of such a licence;
  - (b) any counterpart of a Great Britain licence or Community licence;
  - (c) any international road haulage permit;
  - (d) any document which, in pursuance of Article 5(3) of this Order, is issued as evidence of the result of a test of competence to drive;
  - (e) any certificate provided for by regulations under Article 13(3A) of this Order relating to the completion of a training course for motor cyclists;
  - (f) any certificate of conformity or Department's approval certificate within the meaning of Part IV of this Order;
  - (g) any certificate of insurance or certificate of security under Article 92 or 93 of this Order;
  - (h) any certificate required as a condition of any exception prescribed under Article 23 of the Order of 1995;
  - (i) any test certificate, goods vehicle test certificate, plating certificate or certificate of temporary exemption within the meaning of Part III of the Order of 1995;
  - (j) any seal required by regulations made under Article 55 of the Order of 1995 with respect to speed limiters;
  - (k) any plate containing particulars required to be marked on a vehicle by regulations made under Article 55 of the Order of 1995;
  - (l) any certificate evidencing the examination of a motor vehicle modified to be propelled using fuel stored under pressure under regulations made under Article 55 of the Order of 1995;
  - (m) any document evidencing the appointment of an examiner under Article 74 of the Order of 1995;
  - (n) any notice removing a prohibition under Article 77 (power to prohibit driving of unfit vehicles) or Article 79 (power to prohibit driving of overloaded vehicles) of the Order of 1995;
  - (o) any records required to be kept by virtue of Article 82 of the Order of 1995;
  - (p) a certificate of the kind referred to in Article 32B(1) (reduced penalty points for attendance on course) or Article 37(1) (reduced disqualification period for attendance on course) of the Offenders Order;
  - (q) any document produced as evidence of the passing of an appropriate driving test within the meaning of Article 41 of the Offenders Order;
  - (r) any document evidencing the passing of an examination (or part of an examination) required by regulations under Article 62 or the successful completion of training provided in accordance with regulations under Article 64 of the Order of 2007;
  - (s) any certificate under Article 65 of the Order of 2007;
  - (t) any certificate or other item prescribed under Article 70(1)(a) of the Order of 2007;



(u) any document produced as evidence of insurance in pursuance of Regulation 6 of the European Communities (Motor Vehicles: Compulsory Insurance) (Northern Ireland) Regulations 1973.

(2B) In paragraph (2A), “Community licence”, “counterpart” and “Great Britain licence” have the same meanings as in Part II.”.

(5) In paragraph (3)–

(a) for the words from the beginning to “is a document” substitute– “If–

(a) a constable or examiner appointed under Article 74 of the Order of 1995 has reasonable cause to believe that a document or other thing produced to him under this Order by the driver of a motor vehicle;

(b) a constable or examiner appointed under Article 74 of the Order of 1995 has reasonable cause to believe that any plate containing particulars required to be marked on a vehicle by regulations made under Article 55 of the Order of 1995;

(c) a constable or any person authorised in writing by the Department under Article 72 of the Order of 2007 has reasonable cause to believe that a certificate or other item produced to him under Article 72 of that Order by the driver of a motor vehicle,

is a document or other thing ”,

(b) after “document”, in each place where it occurs, insert “ or other thing ”.

(6) After that paragraph insert–

“(3A) For the purposes of paragraph (3) the power to seize includes a power to detach from a vehicle.”.

**Status:**

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