

THE ROAD TRAFFIC (NORTHERN IRELAND) ORDER 2007

(S.I. 2007/916 (N.I. 10))

1. Notwithstanding that the Road Traffic (Northern Ireland) Order 2007 was made on 21st March 2007, to date, less than half of its provisions have come into operation.
2. There have been four commencement orders with operational dates as follows:-

27th June 2007 - S.R. 2007 No.302 (C.19)

Article 5	Contravention of temporary speed restriction
Article 6	Breach of requirements as to control of vehicle, mobile telephones etc.
Article 7	Increase in penalty for careless, and inconsiderate, driving
Article 8	Increase in penalty where child not wearing seat belt in rear
Article 9	Disqualification for using vehicle in dangerous condition
Article 17	Extension of powers of vehicle examiners
Article 26	Seat belts; delivery drivers
Article 28	Notice of prosecution for certain offences
Article 43	Testing of vehicles
Article 82	Departments' functions as to road safety
Article 83	Regulations prohibiting the grant of excise licences unless evidence of insurance or security
Article 84	Alteration of penalties
Article 85	Power to make consequential provisions

15th November 2007 - S.R. 2007 No.454 (C.30)

Article 14	Testing for drink and drugs
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Article 15	Period of endorsement for failing to allow specimen to be tested
Article 18(1) and (3)	Power of arrest in relation to failure to stop a vehicle
Article 19	Production of certain documents
Article 20	Seizure of licences
Article 27	Disqualification until test passed
Article 29	False statements etc.
Article 30	Driving otherwise than in accordance with a licence
Article 31	Power to remove requirement to apply for licence after passing of test
Article 32	Removal of two year period from passing of test in which to apply for licence
Article 33	Physical fitness
Article 34	Payment of fee for confirmation of person's entitlement to drive
Article 35	Exchangeable driving licences
Article 37	Applying for or obtaining a driving licence, or driving, while disqualified
Article 41	Display of test certificates
Article 42	Vehicles modified to run on fuel stored under pressure
Article 44	Tests of competence to drive
Article 79	Removal of requirement for Department of Finance and Personnel to approve certain matters relating to charging of fees by Department

26th May 2008 - S.R. 2008 No.223 (C.9)

Article 81	Provision of information and insurance
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9th June 2008 - S.R. 2008 No.244 (C.13)

GENERAL POLICY BACKGROUND

3. The Explanatory Memorandum to the 2007 Order sets out that the Order will update existing road traffic legislation to bring it into line with current legislation in G.B. as well as introduce new road traffic measures in the areas of road safety, driver and vehicle licensing.
4. In particular the 2007 Order addresses important road safety issues such as drink and drug driving, speeding, non-wearing of seat belts, uninsured driving and driving standards.
5. It contributes also to the enforcement of road traffic law by increasing the powers available to the police and vehicle examiners as well as changes to the driver licensing system and the provision relating to driving instructors.

INCREASE IN PENALTY POINTS AND PENALTIES**(i) Seat belts**

6. Article 3 of the 2007 Order amends Schedule 1 to the Road Traffic Offenders (Northern Ireland) Order 1996 (“*the Offenders Order*”) to introduce a discretionary disqualification and obligatory 3 points for the offence of driving a motor vehicle or driving a vehicle with a child in the front or rear not wearing a seat belt contrary to Article 24(2) of the Road Traffic (Northern Ireland) Order 1995.
[Note that if “riding” in a motor vehicle as opposed to “driving” the appropriate number of penalty points is 2].
7. Previously, the maximum penalty for the offence of driving with a child in the rear not wearing a seat belt contrary to Article 24(5) of the 1995 Order was a fine not exceeding level 1 on the standard scale (currently £200). This has been increased by Article 8 of the 2007 Order to a fine not exceeding level 2 on the standard scale (currently £500), which is the same as all other seat belt offences.

8. Article 26 of the 2007 Order amends Article 23(2)(c)(i) of the 1995 Order in regard to the exception to wearing a seat belt which applies to delivery drivers. Currently Article 23(2)(c)(i) of the 1995 Order provides that there shall be an exception for –
“the users of vehicles constructed or adapted for the delivery of goods or mail to consumers or addressees as the case may be, while engaged in making local rounds of deliveries”.
9. As amended by the 2007 Order, this exception applies to –
“the driver, 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 purposes of delivering or collecting anything”.
10. The effect of the amendment is to change from ‘users’ to ‘driver or passengers’; from ‘delivering’ to ‘carrying’, from ‘local rounds’ to ‘prescribed distances’, and that the exception is for collecting goods as well as delivering them. The prescribed distance is currently 50 metres (S.R. 2008 No. 29).
[NOTE - The exceptions if reversing or if holding a medical certificate remain.]

(ii) Failure to give information

11. Article 4 of the 2007 Order increased from 3 to 6 the obligatory penalty points on summary conviction for the failure of a driver or owner to give information for purposes of identification to the police, contrary to Article 177 of the Road Traffic (Northern Ireland) Order 1981 (“the 1981 Order”).
[Note – the discretionary power to disqualify and the obligatory points only apply to offences under Article 177(1)(b) and (c) (i.e. failure by owner or other relevant person) and not to an offence under Article 177(1)(a) (i.e. failure by driver)].

(iii) Contravention of temporary speed restriction

12. Article 5 of the 2007 Order amends Schedule 1 to the Offenders Order to introduce a discretionary disqualification and obligatory points ranging from 3 – 6 for an offence of contravening a temporary speed limit. The maximum fine remains unchanged at level 3 on the standard scale (currently £1,000).

(iv) Breach of requirements as to control of vehicle, mobile telephones etc

13. Article 6 of the 2007 Order inserts a new Article 56A into the 1995 Order which creates an offence of –
- driving, or permitting the driving of, a motor vehicle in a position which does not give proper control or a full view of the road and traffic ahead; or
 - driving or supervising the driving of a motor vehicle while using a hand-held mobile telephone or other hand-held interactive communication device, or causing or permitting the driving of a motor vehicle by another person using such a telephone or other device.
14. The maximum penalty for any offence contrary to Article 56A of the 1995 Order is a fine not exceeding level 3 on the standard scale (£1,000) [or level 4 (£2,500) if committed in respect of a goods vehicle or a vehicle adapted to carry more than eight passengers] and an obligatory 3 penalty points in any case.

INCREASE IN PENALTIES

15. Article 7 of the 2007 Order increases the maximum penalty for the offence of careless and inconsiderate driving from Level 4 on the standard scale (£2500.00) to Level 5 (£5000.00).
16. Article 9 of the 2007 Order inserts a new Article 35(4A) into the Offenders Order which makes disqualification obligatory for a second conviction of using a vehicle in a dangerous condition contrary to Article 54 of the 1995 Order, where the subsequent offence was committed within three years from the date of conviction for the previous offence. The period of disqualification is not less than six months unless the court for special reasons thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified.

17. Article 9 of the 2007 Order also amends Schedule 1 to the Offenders Order to introduce a discretionary disqualification for any other offence using a vehicle in a dangerous condition, contrary to Article 54 of the 1995 Order.

DRIVING UNDER INFLUENCE OF ALCOHOL OR DRUGS

18. Article 14 of the 2007 Order and Article 59 of the Criminal Justice (Northern Ireland) Order 2008 (“the 2008 Order”) amend Articles 17 and 18 of the 1995 Order in relation to the provision of preliminary tests, powers of arrest and the provision of blood/urine/breath specimens.

19. The previous Article 17 is replaced completely and the essential changes are as follows:-

- (a) Whereas previously a constable could require only a preliminary breath test he may now additionally require a driver to undergo a preliminary impairment test and a preliminary drug test.
- (b) The requirement is not restricted to one test but can be for ‘any one or more preliminary tests’.
- (c) A constable who reasonably suspects an offence under the Article does not have to be in uniform
- (d) The constable who requires a person to co-operate with a preliminary test does not have to be in uniform.
- (e) A constable who administers a preliminary test must be in uniform.
- (f) A constable who requires the preliminary test does not have to be the constable who administers it.
- (g) Previously, a constable could only require a preliminary test if he suspects the person driving, attempting to drive or in charge of a motor vehicle has alcohol in his body. He may do so now if he suspects reasonably that a person has a drug in his body or is under the influence of a drug.
- (h) Additionally he may require a preliminary test if a person HAS BEEN driving and the constable suspects that the person STILL has alcohol or a drug in his body or is STILL under the influence of a drug.

20. New Article 17A of the 1995 Order deals with preliminary breath tests. Points to note are as follows:-

- (a) The definition of a 'preliminary breath test' in Article 17A(1) rephrases the previous definition and now provides that "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".

[NB - Watch out for a defendant asking the Prosecution for proof that the type has been approved by the Department. KING –V- LUCAS (1993) N.I. 316 held that a court can take judicial notice that a device habitually used is approved except where there has been a very recent change in the law. As this new provision has been in operation since 15th April 2007, it is unlikely that a court would require the matter to be formally proved].

- (b) The breath test is to be administered 'only at or near the place where the requirement to co-operate with the test is imposed' as opposed to previously 'at or in the vicinity'. *[This is unlikely to make any practical difference].*

21. New Article 17B of the 1995 Order now empowers a constable to administer a preliminary impairment test which is defined as a procedure whereby the constable administering the test observes a person in his performance of tasks specified by the constable and makes such other observations of the person's physical state as the constable thinks expedient.

22. Only an approved constable can administer such a test and he must have regard to the code of practice issued by the Secretary of State. The object of a preliminary impairment test is to indicate whether a person is unfit to drive and, if he is, whether or not his unfitness is likely to be due to drink or drugs.

23. New Article 17C of the 1995 Order introduces the preliminary drug test which is defined as a procedure by which a specimen of sweat or saliva is obtained by a device approved by the Department and indicates whether the person has a drug in his body. Unlike the preliminary breath test it may be administered in all circumstances at or near the place where the requirement is imposed or, if expedient, at a police station.

[Note – to date no such device has been approved by the Department.

Research into these devices is continuing in Great Britain].

24. New Article 17D replicates Article 17(5) of the 1995 Order in regard to the power of arrest where a person fails a preliminary breath test or fails to co-operate with the test but in addition to alcohol now includes a reference to a constable suspecting that a person has a drug in his body or is under the influence of a drug.

(Note, there is no power of arrest under this Article if a person fails the preliminary impairment or drug test. The power of arrest would arise under PACE Art 26(5)(e)).

25. Article 17D has been further amended by Article 59 of the 2008 Order. There were two problems with the 2007 Order version of Article 17D.

- Firstly, if a person co-operated with the breath test and passed it, but the constable believed he passed it only because the device was defective, there was no power to arrest him.
- Secondly, if the constable wished a person to provide specimens for analysis at the roadside where the preliminary breath test was administered, there was no power to detain him pending the arrival of the approved device.

These problems are resolved by new Articles 17D(1A) and 17D(2A), as inserted by the 2008 Order.

26. New Article 17E provides the police with the power of entry into premises for the purpose of arresting a person suspected of involvement in an accident. The important distinction from Article 17(6) of the 1995 Order is the replacement of the word ‘any’ instead of ‘another’ person. This means that the constable has a power to enter a place if only the driver was injured as opposed to someone else, passenger or driver of another vehicle being injured.
27. Article 59 of the 2008 Order amends Article 18 of the 1995 Order in that it now permits specimens of breath for analysis to be taken at a hospital in addition to a police station or at the roadside.
- New Article 18(2A) essentially defines “a relevant breath test” as the preliminary breath test.
 - New Article 18(2B) is important as it defines that the power to require specimens of breath for analysis at the roadside is operable only either if the constable making it is in uniform or the requirement to co-operate with a preliminary breath test has followed upon an accident.
 - Under the original Article 18(2) of the 1995 Order a constable could only require specimens of breath for analysis if the facilities for taking the specimens were actually there. Article 18(2C) permits him to remain at the roadside until the facility arrives and he can impose the requirement for the specimen of breath for analysis.
 - New Article 18(2D) provides that, where a requirement for a specimen of breath for analysis has been made at the roadside or hospital, it can subsequently be made at a police station only if the appropriate device was not available or it was not practicable to use it or it was defective.
 - Article 18(4) is amended slightly to allow for blood or urine to be taken at a police station where a breath test has not been provided elsewhere.
 - Article 19(2A) of the 1995 Order deals with the situation where a person has given a specimen of breath for analysis at the roadside and the reading is lower than 50 mg of alcohol in 100 millilitres of breath. This will permit the constable to arrest the person if he has not already been arrested under Article 17D(1) or 17(1A).

(If he has been co-operative and not arrested then he would have to be arrested to enable the constable to take him to the police station).

- Article 20(1) of the 1995 Order is amended to provide the same protection as previously for hospital patients who are required to provide specimens of breath for analysis under Article 18.
- Article 21 of the 1995 Order permits a constable to detain a person who has provided a specimen of breath, blood or urine at a police station if the constable believes he is still unfit to drive. The amended Article 21 now permits a constable in such circumstances to arrest a person who has provided a specimen of breath for analysis at the roadside, take him to the police station and detain him there.
- Finally, Article 21(2A) prevents the arrest and removal of a patient from a hospital if it would be prejudicial to his proper care and treatment as a patient.

28. Article 15 of the 2007 Order amends Article 50(6) of the Offenders Order by adding the offence of failing to allow a specimen to be tested in a laboratory to those offences that remain Endorsable on a person's driving licence for 11 years.

POWERS OF ENFORCEMENT

29. Article 7(4) of the 1995 Order gave the Department of Environment power to appoint relevant examiners. Article 17 of the 2007 Order gives such examiners the authority to exercise the powers of a police constable under Article 177(1)(a) and (c) of the 1981 Order (*(a) to enquire of the driver and (c) any other person information as to the driver and owner of the vehicle*) and Article 180 of the 1981 Order (*the power to require a person driving a motor vehicle or pedal cycle on a road or public place to stop*).
30. Articles 18 – 20 of the 2007 Order amend Article 180 of the 1981 Order.
- new Article 180(1A) empowers the police to arrest a person for failure to stop a vehicle when requested.

- Article 19 extends the power of the police to require the production of test certificates and insurance certificates in respect of accidents to include accidents in a public place.
- Article 20 enables the police to seize a driving licence that has been revoked by the Department.

POWER TO SEIZE VEHICLES

31. New Article 180C of the 1981 Order (as inserted by Article 21 of the 2007 Order) empowers the police to seize and remove a vehicle –

- where a person fails to produce evidence of insurance upon being required to do so and the constable has reasonable grounds for believing that the vehicle is uninsured; or
- if the driver fails to stop, or stop long enough, to enable enquiries in regard to his insurance and the constable has reasonable grounds to believe that it is uninsured.

[Note that whilst a constable under Article 180(2) can require the actual certificate of insurance, this would not be necessary to prevent seizure if e.g. the driver had a letter from his insurance broker or was able to ring the broker in the presence of the constable.]

32. The constable may enter premises (other than a private dwelling house) where he believes the vehicle to be and, if necessary, may use reasonable force to seize it. A private dwelling house does not include a garage, and, for the purposes of this article, a motor vehicle does not include an invalid carriage.

33. The constable must warn the driver that he will seize the vehicle if the insurance is not produced, but he does not have to warn if it is impracticable to do so e.g. the person drives off. However, if the person does drive off, the constable must seize it within 24 hours.

34. Regulations are to be made in regard to the retention and release of the vehicle, notification to the registered owner and payment of fees, charges or costs. These are not payable by a person if he can show that he was not driving

the motor vehicle at the time in question, and he did not know that the vehicle was being driven at that time, had not consented to it being driven and could not have taken reasonable steps to prevent it from being driven.

MISCELLANEOUS

35. Article 27 of the 2007 Order amends Article 41 of the Offenders Order to give the Department power to prescribe the nature of the appropriate driving test to be taken following a period of disqualification.
36. Article 29 of the 2007 Order amends Article 174 of the 1981 Order to extend the offence of forgery and making false statements to additional documents and enables the police or a vehicle examiner to seize designated documents.

DRIVER LICENSING

37. Articles 30 – 35 of the 2007 Order make amendments to driver licensing provisions. Most of these are minor, but of particular note is Article 33 which amends Articles 9 and 11 of the 1981 Order, and inserts a new Article 11A to create three new offences relating to the physical fitness of drivers and the failure of a person to declare whether he is suffering or has at any time suffered from any relevant disability or any prospective disability.
38. It is interesting to remind oneself of the definition in Article 9(2) of the 1981 Order of “disability” which includes –
“disease and the persistent misuse of drugs or alcohol, whether or not such misuse amounts to dependency”.
39. Article 35 of the 2007 Order amends the existing arrangement under Article 19D of the 1981 Order that allows the Department to designate a country or territory that is not an EEA state for the purposes of exchangeable driving offences. It remains an anomaly whereby licence holders from certain countries may exchange their driving licences in G.B. but not in N.I.
40. Article 37 of the 2007 Order inserts a new Article 168A into the 1981 Order which amalgamates the offences of applying for or obtaining a licence while

disqualified and driving a vehicle while disqualified. The old Articles 166 – 168 are repealed.

[As you know the PPS are only now issuing or amending charges to 168A some eighteen months after it became operational].

41. Article 41 of the 2007 Order inserts a new Article 63A into the 1995 Order to create the offence of failure to display a valid vehicle test certificate.
42. Article 81 of the 2007 Order allows the Department to make regulations requiring the MIIC (Motor Insurers Information Centre) to make available ‘relevant vehicle information’ to the PSNI. This is defined as ‘information relating to vehicles the use of which has been (but no longer is) insured under a policy of insurance’.
43. Article 82 of the 2007 Order introduces a new Article 52A to the 1995 Order which places a positive duty on the Department for Regional Development to prepare and carry out a programme of measures designed to improve road safety. This will involve the Department in carrying out studies into accidents and, in constructing new roads, to take appropriate measures to reduce the possibilities of accidents when the roads come into use.
44. Article 83 of the 2007 Order provides for regulations to be made prohibiting the grant of excise licences until evidence is provided of a valid certificate of insurance.
45. Finally, Article 84 of the 2007 Order confirms that any penalties which have been altered only apply to offences committed after they were altered.