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## STATUTORY INSTRUMENTS

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# 1989 No. 1341

## The Police and Criminal Evidence (Northern Ireland) Order 1989

### PART VI

#### QUESTIONING AND TREATMENT OF PERSONS BY POLICE

##### Other samples

**63.**—(1) Except as provided by this Article, a non-intimate sample may not be taken from a person without the appropriate consent.

(2) Consent to the taking of a non-intimate sample must be given in writing.

[<sup>F1</sup>(2A) A non-intimate sample may be taken from a person without the appropriate consent if—

- (a) he is in police detention in consequence of his arrest for a recordable offence; and
- (b) either he has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by the police, or he has had such a sample taken but it proved insufficient.]

(3) A non-intimate sample may be taken from a person without the appropriate consent if—

- (a) he<sup>F1</sup> . . . [<sup>F2</sup> is being held in custody by the police on the authority of a court]; and
- (b) an officer of at least the rank of [<sup>F3</sup>inspector] authorises it to be taken without the appropriate consent.

[<sup>F4</sup>(3A) A non-intimate sample may be taken from a person<sup>F1</sup> (whether or not he is in police detention or held in custody by the police on the authority of a court)] without the appropriate consent if—

- (a) he has been charged with a recordable offence or informed that he will be reported for such an offence; and
- (b) either he has not had a non-intimate sample taken from him in the course of the investigation of the offence by the police or he has had a non-intimate sample taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(3B) A non-intimate sample may be taken from a person without the appropriate consent if he has been convicted of a recordable offence.]

(4) An officer may only give an authorisation under paragraph (3) if he has reasonable grounds—

- (a) for suspecting the involvement of the person from whom the sample is to be taken in a [<sup>F4</sup> recordable offence]; and
- (b) for believing that the sample will tend to confirm or disprove his involvement.

(5) An officer may give an authorisation under paragraph (3) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

**Status:** Point in time view as at 20/12/2023.

**Changes to legislation:** The Police and Criminal Evidence (Northern Ireland) Order 1989, Section 63 is up to date with all changes known to be in force on or before 21 July 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)

[<sup>F5</sup>(5A) An officer shall not give an authorisation under paragraph (3) for the taking from any person of a non-intimate sample consisting of a skin impression if—

- (a) a skin impression of the same part of the body has already been taken from that person in the course of the investigation of the offence; and
- (b) the impression previously taken is not one that has proved insufficient.]

(6) Where—

- (a) an authorisation has been given; and
- (b) it is proposed that a non-intimate sample shall be taken in pursuance of the authorisation,

an officer shall inform the person from whom the sample is to be taken—

- (i) of the giving of the authorisation; and
- (ii) of the grounds for giving it.

(7) The duty imposed by paragraph (6)(ii) includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(8) If a non-intimate sample is taken from a person by virtue of paragraph (3)—

- (a) the authorisation by virtue of which it was taken; and
- (b) the grounds for giving the authorisation,

shall be recorded as soon as is practicable after the sample is taken.

[<sup>F4</sup>(8A) In a case where by virtue of [<sup>F1</sup> paragraph (2A), (3A)] or (3B) a sample is taken from a person without the appropriate consent—

- (a) he shall be told the reason before the sample is taken; and
- (b) the reason shall be recorded as soon as practicable after the sample is taken.

(8B) If a non-intimate sample is taken from a person at a police station, whether with or without the appropriate consent—

- (a) before the sample is taken, an officer shall inform him that it may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded as soon as practicable after the sample has been taken.]

(9) If a non-intimate sample is taken from a person detained at a police station, the matters required to be recorded by paragraph (8) [<sup>F4</sup>, (8A) or (8B)] shall be recorded in his custody record.

[<sup>F6</sup>(9A) The power to take a non-intimate sample from a person without the appropriate consent is exercisable by a constable.]

[<sup>F4</sup>(10) Paragraph (3B) shall not apply to persons convicted before the date on which that paragraph comes into operation.]

(10A) <sup>F7</sup>.....

[<sup>F8</sup>(11) Nothing in this Article applies to a person arrested or detained under the terrorism provisions [<sup>F9</sup> or under section 27 of the National Security Act 2023,] [<sup>F10</sup> or detained under Part 1 of Schedule 3 to the Counter-Terrorism and Border Security Act 2019]]

[<sup>F11</sup>(12) Nothing in this Article applies to a person arrested under an extradition arrest power.]

**F1** 2004 NI 9  
**F2** 1991 NI 16  
**F3** Word in art. 63(3)(b) substituted (1.3.2007) by [Police and Criminal Evidence \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/288 \(N.I. 2\)\)](#), arts. 1(2), **33(2)**

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- F4** 1995 NI 17
- F5** Art. 63(5A) inserted (1.3.2007) by Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/288 (N.I. 2)), arts. 1(2), **33(3)**
- F6** 2003 c. 6
- F7** Art. 63(10A) repealed (12.1.2010) by Policing and Crime Act 2009 (c. 26), ss. 112(1)(2), 116(6), Sch. 7 para. 128(3), **Sch. 8 Pt. 13**
- F8** 2000 c. 11
- F9** Words in art. 63(11) inserted (20.12.2023) by National Security Act 2023 (c. 32), s. 100(1), **Sch. 18 para. 5(7)** (with s. 97); S.I. 2023/1272, reg. 2(f)
- F10** Words in art. 63(11) inserted (13.8.2020) by Counter-Terrorism and Border Security Act 2019 (c. 3), s. 27(2)(d), **Sch. 4 para. 20(8)**; S.I. 2020/792, reg. 2(i)
- F11** 2003 c. 41

**Modifications etc. (not altering text)**

- C1** Art. 63 applied (with modifications) (1.12.2007) by Police and Criminal Evidence (Application to Revenue and Customs) Order (Northern Ireland) 2007 (S.R. 2007/464), arts. 3-15, **Sch. 1**, Sch. 2
- C2** Art. 63 applied (with modifications) (18.5.2009) by Police and Criminal Evidence (Application to the Police Ombudsman) Order (Northern Ireland) 2009 (S.R. 2009/142), art. 3, **Sch. 1**, Sch. 2

**Status:**

Point in time view as at 20/12/2023.

**Changes to legislation:**

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