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## STATUTORY INSTRUMENTS

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# 1989 No. 1341

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

### PART V

#### DETENTION

##### *Detention—conditions and duration*

#### **Limitations on police detention**

**35.**—(1) A person arrested for an offence shall not be kept in police detention except in accordance with the provisions of this Part.

(2) Subject to paragraph (3), if at any time a custody officer—

- (a) becomes aware, in relation to any person in police detention, that the grounds for the detention of that person have ceased to apply; and
- (b) is not aware of any other grounds on which the continued detention of that person could be justified under the provisions of this Part,

it shall be the duty of the custody officer, subject to<sup>[F1]</sup> paragraphs (4) and (4A)], to order his immediate release from custody.

(3) No person in police detention shall be released except on the authority of a custody officer at the police station where his detention was authorised or, if it was authorised at more than one station, a custody officer at the station where it was last authorised.

(4) Nothing in this Part requires the release of a person who appears to the custody officer to have been unlawfully at large when he was arrested.

<sup>[F1]</sup>(4A) Nothing in this Part requires the release of a person who was arrested after being taken to a police station from a custodial establishment in pursuance of a direction under section 16 of the Prison Act (Northern Ireland) 1953 and this Part shall have effect in relation to such a person as if references to a person being released (either on bail or without bail) were references to a person being returned to the custody of the governor of the custodial establishment from which he was taken to the police station.]

(5) Subject to paragraph (6), a person whose release is ordered under paragraph (2) shall be released without bail.

(6) Where—

(a) it appears to the custody officer—

- (i) that there is need for further investigation of any matter in connection with which that person was detained at any time during his detention; or
- (ii) that proceedings may be taken against that person in respect of any such matter; and

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- (b) the custody officer considers that, having regard to all the circumstances, that person should be released only on bail,

the custody officer shall so release that person.

(7) For the purposes of this Part a person arrested<sup>[F2]</sup> under Article 17(5) of the Road Traffic (Northern Ireland) Order 1995] is arrested for an offence.

<sup>[F3]</sup>(8) For the purposes of this Part a person who—

- (a) attends a police station to answer to bail granted under Article 32A;
- (b) returns to a police station to answer to bail granted under this Part; or
- (c) is arrested under Article 32D or 47A,

is to be treated as arrested for an offence and that offence is the offence in connection with which he was granted bail under Article 32A or this Part.]

F1 1995 NI 17  
F2 1995 NI 18  
F3 2004 NI 9

### Designated police stations

**36.**—(1) The Chief Constable shall designate the police stations which, subject to<sup>[F4]</sup> Articles 32(3), (5) and (6), 32A(5) and 32D(2)], are to be used for the purpose of detaining arrested persons.

(2) The Chief Constable's duty under paragraph (1) is to designate police stations appearing to him to provide enough accommodation for that purpose.

(3) Without prejudice to section 17(1) and (3) of the Interpretation Act (Northern Ireland) 1954<sup>F5</sup> the Chief Constable—

- (a) may designate a station which was not previously designated; and
- (b) may direct that a designation of a station previously made shall cease to operate.

(4) In this Order “designated police station” means a police station for the time being designated under this Article.

F4 2004 NI 9  
F5 1954 c. 33 (NI)

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

C1 Art. 36 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

### Custody officers at police stations

**37.**—(1) One or more custody officers shall be appointed for each designated police station.

(2) A custody officer for a designated police station shall be appointed—

- (a) by the Chief Constable; or
- (b) by such other police officer as the Chief Constable may direct.

(3) No police officer may be appointed a custody officer unless he is of at least the rank of sergeant.

(4) A police officer of any rank may perform the functions of a custody officer at a designated police station if a custody officer is not readily available to perform them.

(5) Subject to the following provisions of this Article and to Article 40(2), none of the functions of a custody officer in relation to a person shall be performed by an officer who at the time when the function falls to be performed is involved in the investigation of an offence for which that person is in police detention at that time.

(6) Nothing in paragraph (5) is to be taken to prevent a custody officer—

(a) performing any function assigned to custody officers—

(i) by this Order; or

(ii) by a code of practice issued under this Order;

(b) carrying out the duty imposed on custody officers by Article 40;

(c) doing anything in connection with the identification of a suspect; or

[<sup>F6</sup>(d) doing anything under Article 18 or 19 of the Road Traffic (Northern Ireland) Order 1995.]

(7) Where an arrested person is taken to a police station which is not a designated police station, the functions in relation to him which at a designated police station would be the functions of a custody officer shall be performed—

(a) by an officer who is not involved in the investigation of an offence for which he is in police detention, if such an officer is readily available; and

(b) if no such officer is readily available, by the officer who took him to the station or any other officer.

[<sup>F7</sup>(7A) Subject to paragraph (7B), paragraph (7) applies where a person attends a police station which is not a designated station to answer to bail granted under Article 32A as it applies where a person is taken to such a station.

(7B) Where paragraph (7) applies because of paragraph (7A), the reference in paragraph (7)(b) to the officer who took him to the station is to be read as a reference to the officer who granted him bail under Article 32A.]

(8) References to a custody officer in the following provisions of this Order include references to an officer other than a custody officer who is performing the functions of a custody officer by virtue of paragraph (4) or (7).

(9) Where by virtue of paragraph (7) a police officer who took an arrested person to a police station is to perform the functions of a custody officer in relation to him, the officer shall inform an officer who—

(a) is attached to a designated police station; and

(b) is of at least the rank of inspector,

that he is to do so.

(10) The duty imposed by paragraph (9) shall be performed as soon as it is practicable to perform it.

**F6** 1995 NI 18

**F7** 2004 NI 9

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

**C2** Art. 37 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

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## Duties of custody officer before charge

38.—(1) Where—

(a) a person is arrested for an offence—

(i) without a warrant; or

(ii) under a warrant not endorsed for bail,<sup>F8</sup> . . .

*Sub#para. (b) rep. by 1995 NI 17*

the custody officer at each police station where he is detained after his arrest shall determine whether he has before him sufficient evidence to charge that person with the offence for which he was arrested and may detain him at the police station for such period as is necessary to enable him to do so.

(2) If the custody officer determines that he does not have such evidence before him, the person arrested shall be released either on bail or without bail, unless the custody officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him.

(3) If the custody officer has reasonable grounds for so believing, he may authorise the person arrested to be kept in police detention.

(4) Where a custody officer authorises a person who has not been charged to be kept in police detention, he shall, as soon as is practicable, make a written record of the grounds for the detention.

(5) Subject to paragraph (6), the written record shall be made in the presence of the person arrested who shall at that time be informed by the custody officer of the grounds for his detention.

(6) Paragraph (5) shall not apply where the person arrested is, at the time when the written record is made—

(a) incapable of understanding what is said to him;

(b) violent or likely to become violent; or

(c) in urgent need of medical attention.

(7) Subject to Article 42(5), if the custody officer determines that he has before him sufficient evidence to charge the person arrested with the offence for which he was arrested, the person arrested—

(a) shall be charged; or

(b) shall be released without charge, either on bail or without bail.

(8) Where—

(a) a person is released under paragraph (7)(b); and

(b) at the time of his release a decision whether he should be prosecuted for the offence for which he was arrested has not been taken,

it shall be the duty of the custody officer so to inform him.

(9) If the person arrested is not in a fit state to be dealt with under paragraph (7), he may be kept in police detention until he is.

(10) The duty imposed on the custody officer under paragraph (1) shall be carried out by him as soon as practicable after the person arrested arrives at the police station or, in the case of a person arrested at the police station, as soon as practicable after the arrest.

(11) Where an arrested juvenile who was arrested without a warrant is not released under paragraph (2), it shall be the duty of the custody officer—

(a) to inform the arrested juvenile that he has reasonable grounds for believing that his detention is necessary in connection with an offence and to state the offence;

- (b) to take such steps as are practicable to ascertain the identity of a person responsible for the welfare of the arrested juvenile; and
- (c) if—
  - (i) he ascertains the identity of any such person; and
  - (ii) it is practicable to do so,to inform that person, as soon as it is practicable to do so, of the arrest and of the offence alleged to have been committed by the juvenile.

(12) For the purposes of paragraph (11) the persons who may be responsible for the welfare of an arrested juvenile are—

- (a) his parent or guardian; and
- (b) any other person who has for the time being assumed responsibility for his welfare.

(13) If it appears to the custody officer that—

*Sub#para. (a) rep. by 1998 NI 9*

(b) a probation order, as defined in section 1 of the Probation Act (Northern Ireland) 1950<sup>F9</sup>; is in force in respect of an arrested juvenile, the custody officer shall also inform<sup>F10</sup> . . . his probation officer of the arrest and of the offence alleged to have been committed by the juvenile, as soon as it is practicable to do so.

(14) In this Part—

“arrested juvenile” means a person arrested with or without a warrant who appears to be under the age of 17 and is not excluded from this Part by Article 52;

“endorsed for bail” means endorsed with a direction for bail in accordance with Article 129 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>F11</sup>.

- F8** 1995 NI 17
- F9** 1950 c. 7 (NI)
- F10** 1998 NI 9
- F11** 1981 NI 26

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

- C3** Art. 38(1)-(10) 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
- C4** Art. 38(14) 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

**Duties of custody officer after charge**

**39.**—(1) Where a person arrested for an offence otherwise than under a warrant endorsed for bail is charged with an offence, the custody officer shall order his release from police detention, either on bail or without bail, unless—

- (a) if the person arrested is not an arrested juvenile—
  - (i) his name or address cannot be ascertained or the custody officer has reasonable grounds for doubting whether a name or address furnished by him as his name or address is his real name or address;

[<sup>F12</sup>(ia) in the case of a person arrested for an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from committing an offence;]

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(ii) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary<sup>F13</sup> for his own protection or to prevent him from causing physical injury to any other person or from causing loss of or damage to property;<sup>F13</sup>  
or

(iii) the custody officer has reasonable grounds for believing that the person arrested will fail to appear in court to answer to bail or that his detention is necessary to prevent him from interfering with the administration of justice or with the investigation of offences or of a particular offence;<sup>F14</sup>

(b) if he is an arrested juvenile—

(i) any of the requirements of sub#paragraph (a) is satisfied; or

(ii) the custody officer has reasonable grounds for believing that he ought to be detained in his own interests.

[<sup>F12</sup>(1A) In paragraph (1) “imprisonable offence” means an offence for which a person over the age of 21 years is liable, on first conviction, to a term of imprisonment.]

(2) If the release of a person arrested is not required by paragraph (1), the custody officer may authorise him to be kept in police detention.

<sup>F15</sup>(3) Where a custody officer authorises a person who has been charged to be kept in police detention, he shall, as soon as practicable, make a written record of the grounds for the detention.

(4) Subject to paragraph (5), the written record shall be made in the presence of the person charged who shall at that time be informed by the custody officer of the grounds for his detention.

(5) Paragraph (4) shall not apply where the person charged is, at the time when the written record is made—

(a) incapable of understanding what is said to him;

(b) violent or likely to become violent; or

(c) in urgent need of medical attention.

(6) Where a custody officer authorises an arrested juvenile to be kept in police detention under paragraph (1), the custody officer shall, unless he certifies that it is impracticable to do so, make arrangements for the arrested juvenile to be taken to a place of safety and detained there; and it shall be lawful to detain him in pursuance of the arrangements.

(7) A certificate made under paragraph (6) in respect of an arrested juvenile shall be produced to the court before which he is first brought thereafter.

[<sup>F16</sup>(8) In paragraph (6) “place of safety”<sup>F17</sup> means any juvenile justice centre, any hospital or surgery, or any other suitable place, the occupier of which is willing temporarily to receive the arrested juvenile.]

**F12** 1995 NI 17

**F13** prosp. rep. by 2003 NI 13

**F14** prosp. addition by 2003 NI 13

**F15** prosp. insertion by 2003 NI 13

**F16** 1998 NI 9

**F17** prosp. subst. by 2002 c. 26

## Responsibilities in relation to persons detained

**40.**—(1) Subject to paragraphs (2) and (4), it shall be the duty of the custody officer at a police station to ensure—

- (a) that all persons in police detention at that station are treated in accordance with this Order and any code of practice issued under it and relating to the treatment of persons in police detention; and
  - (b) that all matters relating to such persons which are required by this Order or by such codes of practice to be recorded are recorded in the custody records relating to such persons.
- (2) If the custody officer, in accordance with any code of practice issued under this Order, transfers or permits the transfer of a person in police detention—
- (a) to the custody of a police officer investigating an offence for which that person is in police detention; or
  - (b) to the custody of an officer who has charge of that person outside the police station,
- the custody officer shall cease in relation to that person to be subject to the duty imposed on him by paragraph (1)(a); and it shall be the duty of the officer to whom the transfer is made to ensure that he is treated in accordance with the provisions of this Order and of any such codes of practice as are mentioned in paragraph (1).
- (3) If the person detained is subsequently returned to the custody of the custody officer, it shall be the duty of the officer investigating the offence to report to the custody officer as to the manner in which this Article and the codes of practice have been complied with while that person was in his custody.
- (4) If an arrested juvenile is taken to a place of safety in pursuance of arrangements made under Article 39(6), the custody officer shall cease in relation to that person to be subject to the duty imposed on him by paragraph (1).
- (5) Where an arrested juvenile is taken to a place of safety in pursuance of such arrangements, it shall be the duty of the occupier of that place to make available to him such advice and assistance as may be appropriate in the circumstances.
- (6) Where—
- (a) an officer of higher rank than the custody officer gives directions relating to a person in police detention; and
  - (b) the directions are at variance—
    - (i) with any decision made or action taken by the custody officer in the performance of a duty imposed on him under this Part; or
    - (ii) with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty,
- the custody officer shall refer the matter at once to an officer of the rank of superintendent or above who is responsible for the police station for which the custody officer is acting as custody officer.

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

- C5** Art. 40 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
- C6** Art. 40(2)(3) 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

**Review of police detention**

**41.**—(1) Reviews of the detention of each person in police detention in connection with the investigation of an offence shall be carried out periodically in accordance with the following provisions of this Article—

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- (a) in the case of a person who has been arrested and charged, by the custody officer; and
  - (b) in the case of a person who has been arrested but not charged, by an officer of at least the rank of inspector who has not been directly involved in the investigation.
- (2) The officer to whom it falls to carry out a review is referred to in this Article as a “review officer”.
- (3) Subject to paragraph (4)—
- (a) the first review shall be not later than six hours after the detention was first authorised;
  - (b) the second review shall be not later than nine hours after the first;
  - (c) subsequent reviews shall be at intervals of not more than nine hours.
- (4) A review may be postponed—
- (a) if, having regard to all the circumstances prevailing at the latest time for it specified in paragraph (3), it is not practicable to carry out the review at that time;
  - (b) without prejudice to the generality of sub#paragraph (a)—
    - (i) if at that time the person in detention is being questioned by a police officer and the review officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned; or
    - (ii) if at that time no review officer is readily available.
- (5) If a review is postponed under paragraph (4) it shall be carried out as soon as practicable after the latest time specified for it in paragraph (3).
- (6) If a review is carried out after postponement under paragraph (4), the fact that it was so carried out shall not affect any requirement of this Article as to the time at which any subsequent review is to be carried out.
- (7) The review officer shall record the reasons for any postponement of a review in the custody record.
- (8) Subject to paragraph (9), where the person whose detention is under review has not been charged before the time of the review, Article 38(1) to (6) shall have effect in relation to him, but with the substitution—
- (a) of references to the person whose detention is under review for references to the person arrested; and
  - (b) of references to the review officer for references to the custody officer.
- (9) Where a person has been kept in police detention by virtue of Article 38(9), Article 38(1) to (6) shall not have effect in relation to him but it shall be the duty of the review officer to determine whether he is yet in a fit state.
- (10) Where the person whose detention is under review has been charged before the time of the review, Article 39(1) to (6) shall have effect in relation to him, but with the substitution of references to the person whose detention is under review for references to the person arrested.
- (11) Where—
- (a) an officer of higher rank than the review officer gives directions relating to a person in police detention; and
  - (b) the directions are at variance—
    - (i) with any decision made or action taken by the review officer in the performance of a duty imposed on him under this Part; or
    - (ii) with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty,

the review officer shall refer the matter at once to an officer of the rank of superintendent or above who is responsible for the police station for which the review officer is acting as review officer in connection with the detention.

(12) Before determining whether to authorise a person's continued detention the review officer shall give—

- (a) that person (unless he is asleep); or
- (b) any solicitor representing him who is available at the time of the review,

an opportunity to make representations to him about the detention.

(13) Subject to paragraph (14), the person whose detention is under review or his solicitor may make representations under paragraph (12) either orally or in writing.

(14) The review officer may refuse to hear oral representations from the person whose detention is under review if he considers that he is unfit to make such representations by reason of his condition or behaviour.

VALID FROM 01/03/2007

**[<sup>F18</sup>Use of telephone for review under Article 41**

**41A.—**(1) A review under Article 41(1)(b) may be carried out by means of a discussion, conducted on the telephone, with one or more persons at the police station where the arrested person is held.

(2) But paragraph (1) does not apply if—

- (a) the review is of a kind authorised by regulations under Article 46A to be carried out using video conferencing facilities; and
- (b) it is reasonably practicable to carry it out in accordance with those regulations.

(3) Where any review is carried out under this Article by an officer who is not present at the station where the arrested person is held—

- (a) any obligation of that officer to make a record in connection with the carrying out of the review shall have effect as an obligation to cause another officer to make the record;
- (b) any requirement for the record to be made in the presence of the arrested person shall apply to the making of that record by that other officer; and
- (c) the requirements under Article 41(12) and (13) for—
  - (i) the arrested person, or
  - (ii) a solicitor representing him,

to be given any opportunity to make representations (whether in writing or orally) to that officer shall have effect as a requirement for that person, or such a solicitor, to be given an opportunity to make representations in a manner authorised by paragraph (4).

(4) Representations are made in a manner authorised by this paragraph—

- (a) in a case where facilities exist for the immediate transmission of written representations to the officer carrying out the review, if they are made either—
  - (i) orally by telephone to that officer; or
  - (ii) in writing to that officer by means of those facilities; and
- (b) in any other case, if they are made orally by telephone to that officer.

(5) In this Article “video-conferencing facilities” has the same meaning as in Article 46A.]

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**F18** Art. 41A inserted (1.3.2007) by Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/288 (N.I. 2)), arts. 1(2), 20

### Limits on period of detention without charge

**42.**—(1) Subject to the following provisions of this Article and to Articles 43 and 44, a person shall not be kept in police detention for more than 24 hours without being charged.

(2) The time from which the period of detention of a person is to be calculated (in this Order referred to as “the relevant time”)—

- (a) in the case of a person arrested outside Northern Ireland, shall be—
  - (i) the time at which that person arrives at the first police station to which he is taken in Northern Ireland; or
  - (ii) the time 24 hours after the time of that person's entry into Northern Ireland, whichever is the earlier;
- (b) in the case of a person who—
  - (i) attends voluntarily at a police station; or
  - (ii) accompanies a constable to a police station without having been arrested,<sup>[F19]</sup> or
  - <sup>[F19]</sup>(iii) is taken to a police station in pursuance of a direction under section 16 of the Prison Act (Northern Ireland) 1953;

and is arrested at the police station, shall be the time of his arrest;

<sup>[F20]</sup>(ba) in the case of a person who attends a police station to answer to bail granted under Article 32A, the time when he arrives at the police station;

- (c) in any other case, shall be the time at which the person arrested arrives at the first police station to which he is taken after his arrest.

(3) Paragraph (2) shall have effect in relation to a person arrested under Article 33 as if every reference in it to his arrest or his being arrested were a reference to his arrest or his being arrested for the offence for which he was originally arrested.

(4) When a person who is in police detention is removed to hospital because he is in need of medical treatment, any time during which he is being questioned in hospital or on the way there or back by a police officer for the purpose of obtaining evidence relating to an offence shall be included in any period which falls to be calculated for the purposes of this Part, but any other time while he is in hospital or on his way there or back shall not be so included.

(5) Subject to paragraph (6), a person who at the expiry of 24 hours after the relevant time is in police detention and has not been charged shall be released at that time either on bail or without bail.

(6) Paragraph (5) does not apply to a person whose detention for more than 24 hours after the relevant time has been authorised or is otherwise permitted in accordance with Article 43 or 44.

(7) A person released under paragraph (5) shall not be re#arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release<sup>[F21]</sup>;but this paragraph does not prevent an arrest under Article 47A].

**F19** 1995 NI 17

**F20** 2004 NI 9

**F21** 1995 NI 17

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

C7 Art. 42 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](#)

**Authorisation of continued detention**

**43.**—(1) Where a police officer of the rank of superintendent or above who is responsible for the police station at which a person is detained has reasonable grounds for believing that—

(a) the detention of that person without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;

[<sup>F22</sup>(b) an offence for which he is under arrest is an arrestable offence; and]

(c) the investigation is being conducted diligently and expeditiously,

he may authorise the keeping of that person in police detention for a period expiring at or before 36 hours after the relevant time.

(2) Where an officer such as is mentioned in paragraph (1) has authorised the keeping of a person in police detention for a period expiring less than 36 hours after the relevant time, such an officer may authorise the keeping of that person in police detention for a further period expiring not more than 36 hours after that time if the conditions specified in paragraph (1) are still satisfied when he gives the authorisation.

(3) No authorisation under paragraph (1) shall be given in respect of any person—

(a) more than 24 hours after the relevant time; or

(b) before the second review of his detention under Article 41 has been carried out.

(4) Where an officer authorises the keeping of a person in police detention under paragraph (1), it shall be his duty—

(a) to inform that person of the grounds for his continued detention; and

(b) to record the grounds in that person's custody record.

(5) Before determining whether to authorise the keeping of a person in detention under paragraph (1) or (2), an officer shall give—

(a) that person; or

(b) any solicitor representing him who is available at the time when it falls to the officer to determine whether to give the authorisation,

an opportunity to make representations to him about the detention.

(6) Subject to paragraph (7), the person in detention or his solicitor may make representations under paragraph (5) either orally or in writing.

(7) The officer to whom it falls to determine whether to give the authorisation may refuse to hear oral representations from the person in detention if he considers that he is unfit to make such representations by reason of his condition or behaviour.

(8) Where—

(a) an officer authorises the keeping of a person in detention under paragraph (1); and

(b) at the time of the authorisation he has not yet exercised a right conferred on him by Article 57 or 59,

the officer—

(i) shall inform him of that right;

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- (ii) shall decide whether he should be permitted to exercise it;
- (iii) shall record the decision in his custody record; and
- (iv) if the decision is to refuse to permit the exercise of the right, shall also record the grounds for the decision in that record.

(9) Where an officer has authorised the keeping of a person who has not been charged in detention under paragraph (1) or (2), he shall be released from detention, either on bail or without bail, not later than 36 hours after the relevant time, unless—

- (a) he has been charged with an offence; or
- (b) his further detention is authorised or otherwise permitted in accordance with Article 44.

(10) A person released under paragraph (9) shall not be re#arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release<sup>[F23]</sup>; but this paragraph does not prevent an arrest under Article 47A].

**F22** 2004 NI 9

**F23** 1995 NI 17

### **Warrants of further detention**

**44.**—(1) Where, on a complaint made in writing by a constable and substantiated on oath, a magistrates' court is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the complaint relates is justified, it may issue a warrant of further detention authorising the keeping of that person in police detention.

(2) A court may not hear a complaint under paragraph (1) unless the person to whom the complaint relates—

- (a) has been furnished with a copy of the complaint; and
- (b) has been brought before the court for the hearing.

(3) The person to whom the complaint relates shall be entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented—

- (a) the court shall adjourn the hearing to enable him to obtain representation; and
- (b) he may be kept in police detention during the adjournment.

(4) A person's further detention is only justified for the purposes of this Article or Article 45 if—

- (a) his detention without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;
- (b) an offence for which he is under arrest is a serious arrestable offence; and
- (c) the investigation is being conducted diligently and expeditiously.

(5) Subject to paragraph (7), a complaint under paragraph (1) may be made—

- (a) at any time before the expiry of 36 hours after the relevant time; or
- (b) in a case where—

(i) it is not practicable for the magistrates' court to which the complaint will be made to sit at the expiry of 36 hours after the relevant time; but

(ii) the court will sit during the 6 hours following the end of that period, at any time before the expiry of the said 6 hours.

(6) In a case to which paragraph (5)(b) applies—

- (a) the person to whom the complaint relates may be kept in police detention until the complaint is heard; and
  - (b) the custody officer shall make a note in that person's custody record—
    - (i) of the fact that he was kept in police detention for more than 36 hours after the relevant time; and
    - (ii) of the reason why he was so kept.
- (7) If—
- (a) a complaint under paragraph (1) is made after the expiry of 36 hours after the relevant time; and
  - (b) it appears to the magistrates' court that it would have been reasonable for the police to make it before the expiry of that period,
- the court shall dismiss the complaint.
- (8) Where on a complaint under paragraph (1) a magistrates' court is not satisfied that there are reasonable grounds for believing that the further detention of the person to whom the complaint relates is justified, it shall be its duty—
- (a) to refuse to issue a warrant of further detention; or
  - (b) to adjourn the hearing of it until a time not later than 36 hours after the relevant time.
- (9) The person to whom the complaint relates may be kept in police detention during the adjournment.
- (10) A warrant of further detention shall—
- (a) state the time at which it is issued;
  - (b) authorise the keeping in police detention of the person to whom it relates for the period stated in it.
- (11) Subject to paragraph (12), the period stated in a warrant of further detention shall be such period as the magistrates' court thinks fit, having regard to the evidence before it.
- (12) The period shall not be longer than 36 hours.
- (13) A complaint under paragraph (1) shall state—
- (a) the nature of the offence for which the person to whom the complaint relates has been arrested;
  - (b) the general nature of the evidence on which that person was arrested;
  - (c) what inquiries relating to the offence have been made by the police and what further inquiries are proposed by them;
  - (d) the reasons for believing the continued detention of that person to be necessary for the purposes of such further inquiries.
- (14) Where a complaint under paragraph (1) is dismissed, the person to whom the complaint relates shall forthwith be charged or, subject to paragraph (15), released, either on bail or without bail.
- (15) A person need not be released under paragraph (14)—
- (a) before the expiry of 24 hours after the relevant time; or
  - (b) before the expiry of any longer period for which his continued detention is or has been authorised under Article 43.
- (16) Where a complaint under paragraph (1) is dismissed, no further complaint shall be made under that paragraph in respect of the person to whom the dismissal relates, unless supported by evidence which has come to light since the dismissal.

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(17) Where a warrant of further detention is issued, the person to whom it relates shall be released from police detention, either on bail or without bail, upon or before the expiry of the warrant unless he is charged.

(18) A person released under paragraph (17) shall not be re#arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release<sup>F24</sup>; but this paragraph does not prevent an arrest under Article 47A].

(19) A magistrates' court hearing a complaint under this Article shall not sit in open court.

**F24** 1995 NI 17

### Extension of warrants of further detention

**45.**—(1) On a complaint made in writing by a constable and substantiated on oath, a magistrates' court may extend a warrant of further detention issued under Article 44 if it is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the complaint relates is justified.

(2) Subject to paragraph (3), the period for which a warrant of further detention may be extended shall be such period as the court thinks fit, having regard to the evidence before it.

(3) The period shall not—

- (a) be longer than 36 hours; or
- (b) end later than 96 hours after the relevant time.

(4) Where a warrant of further detention has been extended under paragraph (1), or further extended under this paragraph, for a period ending before 96 hours after the relevant time, on a complaint such as is mentioned in that paragraph a magistrates' court may further extend the warrant if it is satisfied as there mentioned; and paragraphs (2) and (3) apply to such further extensions as they apply to extensions under paragraph (1).

(5) A warrant of further detention shall, if extended or further extended under this Article, be endorsed with a note of the period of the extension.

(6) Paragraphs (2), (3), (13) and (19) of Article 44 shall apply to a complaint made under this Article as they apply to a complaint made under that Article.

(7) Where a complaint under this Article is dismissed, the person to whom the complaint relates shall forthwith be charged or, subject to paragraph (8), released, either on bail or without bail.

(8) A person need not be released under paragraph (7) before the expiry of any period for which a warrant of further detention issued in relation to him has been extended or further extended on an earlier complaint made under this Article.

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

- C8** Art. 45 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
- C9** Art. 45 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

### Detention before charge—supplementary

**46.** Any reference in this Part to a period of time or a time of day is to be treated as approximate only.

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

- C10** Art. 46 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

VALID FROM 01/03/2007

**[F<sup>25</sup>Use of video-conferencing facilities for decisions about detention**

**46A.**—(1) Subject to the following provisions of this Article, the Secretary of State may by regulations provide that, in the case of an arrested person who is held in a police station, some or all of the functions mentioned in paragraph (2) may be performed (notwithstanding anything in the preceding provisions of this Part) by an officer who—

- (a) is not present in that police station; but
- (b) has access to the use of video-conferencing facilities that enable him to communicate with persons in that station.

(2) Those functions are—

- (a) the functions in relation to an arrested person taken to, or answering to bail at, a police station that is not a designated police station which, in the case of an arrested person taken to a station that is a designated police station, are functions of a custody officer under Article 38, 39 or 41; and
- (b) the function of carrying out a review under Article 41(1)(b) (review, by an officer of at least the rank of inspector, of the detention of person arrested but not charged).

(3) Regulations under this Article shall specify the use to be made in the performance of the functions mentioned in paragraph (2) of the facilities mentioned in paragraph (1).

(4) Regulations under this Article shall not authorise the performance of any of the functions mentioned in paragraph (2)(a) by such an officer as is mentioned in paragraph (1) unless he is a custody officer for a designated police station.

(5) Where any functions mentioned in paragraph (2) are performed in a manner authorised by regulations under this Article—

- (a) any obligation of the officer performing those functions to make a record in connection with the performance of those functions shall have effect as an obligation to cause another officer to make the record; and
- (b) any requirement for the record to be made in the presence of the arrested person shall apply to the making of that record by that other officer.

(6) Where the functions mentioned in paragraph (2)(b) are performed in a manner authorised by regulations under this Article, the requirements under Article 41(12) and (13) for—

- (a) the arrested person, or
- (b) a solicitor representing him,

to be given any opportunity to make representations (whether in writing or orally) to the person performing those functions shall have effect as a requirement for that person, or such a solicitor, to be given an opportunity to make representations in a manner authorised by paragraph (7).

(7) Representations are made in a manner authorised by this paragraph—

- (a) in a case where facilities exist for the immediate transmission of written representations to the officer performing the functions, if they are made either—

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- (i) orally to that officer by means of the video-conferencing facilities used by him for performing those functions; or
  - (ii) in writing to that officer by means of the facilities available for the immediate transmission of the representations; and
- (b) in any other case if they are made orally to that officer by means of the video-conferencing facilities used by him for performing the functions.
- (8) Regulations under this Article may be made so as to have effect in relation only to the police stations specified or described in the regulations.
- (9) Any reference in this Article to video-conferencing facilities, in relation to any functions, is a reference to any facilities (whether a live television link or other facilities) by means of which the functions may be performed with the officer performing them, the person in relation to whom they are performed and any legal representative of that person all able to both see and to hear each other.]

**F25** Art. 46A inserted (1.3.2007) by [Police and Criminal Evidence \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/288 \(N.I. 2\)\)](#), arts. 1(2), 23

### *Detention—miscellaneous*

#### **Detention after charge**

- 47.—(1) Where a person—
- (a) is charged with an offence; and
  - (b) after being charged—
    - (i) is kept in police detention; or
    - (ii) is detained in a place of safety in pursuance of arrangements made under Article 39,
- he shall be brought before a magistrates' court in accordance with the provisions of this Article.
- (2) If he is to be brought before a magistrates' court for the petty sessions district in which the police station at which he was charged is situated, he shall be brought before such a court as soon as is practicable and in any event not later than the day next following the day on which he is charged with the offence.
- (3) If he is to be brought before a magistrates' court for a petty sessions district other than that in which the police station at which he was charged is situated, he shall be removed to that petty sessions district as soon as is practicable and brought before such a court as soon as is practicable after his arrival in that district and in any event not later than the day next following the day of his arrival in that district.
- <sup>F26</sup>(4) Where the day next following the day on which the person is charged with the offence is Christmas Day, Good Friday or a Sunday, he shall be brought before a magistrates' court on the next following day which is not one of those days.
- (5) Nothing in this Article requires a person who is in hospital to be brought before a court if he is not well enough.

**F26** prosp. subst. by [1995 NI 17](#)

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

**C11** Art. 47 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

[<sup>F27</sup>Power of arrest for failure to answer to police bail

**47A.**—(1) A constable may arrest without a warrant any person who, having been released on bail under this Part subject to a duty to attend at a police station, fails to attend at that police station at the time appointed for him to do so.

(2) A person who is arrested under this Article shall be taken to the police station appointed as the place at which he is to surrender to custody as soon as practicable after the arrest.

(3) For the purposes of—

- (a) Article 32 (subject to the obligation in paragraph (2), and
- (b) Article 33,

an arrest under this Article shall be treated as an arrest for an offence.]

**F27** 1995 NI 17

**Bail after arrest**

**48.**—(1) <sup>F28</sup>A person who is released on bail shall be subject to a duty—

- (a) to appear before a magistrates' court at such time and at such place as the custody officer may appoint; or
- (b) to attend at such police station at such time as the custody officer may appoint.

<sup>F29</sup>(2) The time to be appointed under paragraph (1) shall be either the date of the next petty sessions at the place appointed or a date not later than 28 days from the date on which the person is released.

<sup>F30F28</sup>(3) The custody officer may require a person who is to be released on bail, to enter into a recognisance conditioned upon—

- (a) his subsequent appearance before a magistrates' court in accordance with sub# paragraph (a) of paragraph (1); or
- (b) his subsequent attendance at a police station in accordance with sub#paragraph (b) of that paragraph,

as the case may be.

<sup>F28</sup>(4) A recognisance under paragraph (3) may be taken before the custody officer.

<sup>F28</sup>(5) A person entering into a recognisance to appear before a magistrates' court in accordance with sub#paragraph (a) of paragraph (1) shall be deemed for the purpose of Articles 48 and 49 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>F31</sup> to have been remanded on bail.

(6) Paragraphs (7) to (11) apply to a person who is released on bail<sup>F32</sup> (with or without entering into a recognisance) subject to a duty to attend at a police station in accordance with sub#paragraph (b) of paragraph (1).

(7) The custody officer may give notice in writing to such a person as is mentioned in paragraph (6) that his attendance at the police station is not required.

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(8) Where it appears to the custody officer that such a person is, by reason of illness or other unavoidable cause, unable to appear at the police station at the time appointed, the custody officer may extend the time for such further period as may appear reasonable in the circumstances.

(9) Where a person is detained under Article 38(3), any time during which he was in police detention prior to being granted bail shall be included as part of any period which falls to be calculated under this Part.

(10) Nothing in this Article shall prevent the re#arrest without warrant of such a person as is mentioned in paragraph (6) if new evidence justifying a further arrest has come to light since his release.

(11) Where such a person is re#arrested, the provisions of this Part shall apply to him as they apply to a person arrested for the first time<sup>[F33]</sup>; but this paragraph does not apply to a person who is arrested under Article 47A or has attended a police station in accordance with the grant of bail (and who accordingly is deemed by Article 35(8) to have been arrested for an offence)].

(12) In Article 129 of the Magistrates' Courts (Northern Ireland) Order 1981, for paragraph (2) there shall be substituted the following paragraph—

“(2) Where a warrant has been endorsed for bail under paragraph (1)—

- (a) where the person arrested is to be released on bail on his entering into a recognizance without sureties, it shall not be necessary to take him to a police station, but if he is so taken, he shall be released from custody on his entering into the recognizance; and
- (b) where he is to be released on his entering into a recognizance with sureties, he shall be taken to a police station on his arrest, and the custody officer there shall (subject to his approving any surety tendered in compliance with the endorsement) release him from custody as directed in the endorsement.” .

(13) In this Part “bail” means bail granted in accordance with this Article.

**F28** prosp. subst. by 2003 NI 13

**F29** prosp. insertion by 2005 NI 15

**F30** prosp. insertion by 2003 NI 13

**F31** 1981 NI 26

**F32** prosp. rep. by 2003 NI 13

**F33** 1995 NI 17

VALID FROM 12/03/2007

#### <sup>[F34]</sup>Forfeiture of security

**48A.**—(1) Where a person has given security in pursuance of Article 48(3C), and a magistrates' court is satisfied that he failed to surrender to custody then, unless it appears to the court that he had reasonable cause for his failure, the court may order the forfeiture of the security.

(2) If a court orders the forfeiture of a security under paragraph (1), the court may declare that the forfeiture extends to such amount less than the full value of the security as it thinks fit to order.

(3) An order under paragraph (1) shall, unless previously revoked, take effect at the end of 21 days beginning with the day on which it is made.

(4) A court which has ordered the forfeiture of a security under paragraph (1) may, if satisfied on an application by or on behalf of the person who gave it that he did have reasonable cause for

his failure to surrender to custody, by order remit the forfeiture or declare that it extends to such amount less than the full value of the security as it thinks fit to order.

(5) An application under paragraph (4) may be made before or after the order for forfeiture has taken effect, but shall not be entertained unless the court is satisfied that the prosecution was given reasonable notice of the applicant's intention to make it.]

**F34** Art. 48A inserted (12.3.2007) by [Criminal Justice \(Northern Ireland\) Order 2003 \(S.I. 2003/1247 \(N.I. 13\)\)](#), arts. 1(3), 8(2); [S.R. 2007/56](#), **art. 2**

### Police detention to count towards custodial sentence

**49.**—(1) In subsection (2) of section 26 of the Treatment of Offenders Act (Northern Ireland) 1968<sup>F35</sup> (computation of custodial sentences) for the words from “period”, in the first place where it occurs, to “the offender” there shall be substituted the words “relevant period, but where he”.

(2) The following subsection shall be inserted after that subsection—

“(2A) In subsection (2) “relevant period” means—

- (a) any period during which the offender was in police detention in connection with the offence for which the sentence was passed; or
- (b) any period during which he was in custody—
  - (i) by reason only of having been committed to custody by an order of a court made in connection with any proceedings relating to that sentence or the offence for which it was passed or any proceedings from which those proceedings arose; or
  - (ii) by reason of his having been so committed and having been concurrently detained otherwise than by order of a court.”.

(3) The following subsections shall be added after subsection (5) of that section—

“(6) A person is in police detention for the purposes of this section—

- (a) at any time when he is in police detention for the purposes of the Police and Criminal Evidence (Northern Ireland) Order 1989; and
- (b) at any time when he is detained under section 14 of the Prevention of Terrorism (Temporary Provisions) Act 1989.

(7) No period of police detention shall be taken into account under this section unless it falls after the coming into operation of Article 49 of the Police and Criminal Evidence (Northern Ireland) Order 1989.”.

**F35** 1968 c. 29 (NI)

### Modifications etc. (not altering text)

**C12** Art. 49 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

### Records of detention

**50.**—(1) The Chief Constable shall keep written records showing on an annual basis—

- (a) the number of persons kept in police detention for more than 24 hours and subsequently released without charge;

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- (b) the number of applications for warrants of further detention and the results of the applications; and
- (c) in relation to each warrant of further detention—
  - (i) the period of further detention authorised by it;
  - (ii) the period which the person named in it spent in police detention on its authority; and
  - (iii) whether he was charged or released without charge.

(2) Every annual report under<sup>F36</sup> section 58(1) of the Police (Northern Ireland) Act 2000] shall contain information about the matters mentioned in paragraph (1) in respect of the period to which the report relates.

**F36** 2000 c. 32

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

**C13** Art. 50 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

**C14** Art. 50 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

**Savings**

**51.** Nothing in this Part shall affect—

- (a) the powers conferred on immigration officers by section 4 of and Schedule 2 to the Immigration Act 1971<sup>F37</sup> (administrative provisions as to control on entry etc.);
- <sup>F38</sup>(b) the powers conferred by virtue of section 41 of, or Schedule 7 to, the Terrorism Act 2000 (powers of arrest and detention);]
- (c) any duty of a police officer under—
  - (i) section 129, 190 or 202 of the Army Act 1955<sup>F39</sup> (duties of governors of prisons and others to receive prisoners, deserters, absentees and persons under escort);
  - (ii) section 129, 190 or 202 of the Air Force Act 1955<sup>F40</sup> (duties of governors of prisons and others to receive prisoners, deserters, absentees and persons under escort);
  - (iii) section 107 of the Naval Discipline Act 1957<sup>F41</sup> (duties of governors of civil prisons etc.); or
  - (iv) paragraph 5 of Schedule 5 to the Reserve Forces Act 1980<sup>F42</sup> (duties of governors of civil prisons); or
- (d) any right of a person in police detention to apply for a writ of habeas corpus or other prerogative remedy.

**F37** 1971 c. 77

**F38** 2000 c. 11

**F39** 1955 c. 18

**F40** 1955 c. 19

**F41** 1957 c. 53

**F42** 1980 c. 9

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

**C15** Art. 51(d) 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

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**C16** Art. 51(d) 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

## Children

**52.** This Part does not apply to a child apparently under the age of 14 who is arrested without a warrant for an offence other than homicide and to whom<sup>F43</sup> Articles 7 and 8 of the Criminal Justice (Children) (Northern Ireland) Order 1998 accordingly apply].

**F43** 1998 NI 9

### Modifications etc. (not altering text)

**C17** Art. 52 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

**Status:**

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**Changes to legislation:**

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