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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—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.

[<sup>F1</sup>(2) He shall be brought before a magistrates' court as soon as is practicable and in any event not later than the day next following the day on which he is charged.]

[<sup>F1</sup>(3) Where the day next following the day on which he is charged with the offence is Christmas Day, Good Friday or a Sunday, he shall be brought before a magistrates' court not later than 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.

**F1** Art. 47(2)(3) substituted for art. 47(2)-(4) (31.10.2016) by [Justice Act \(Northern Ireland\) 2015 \(c. 9\)](#), s. 106(2), [Sch. 1 para. 97\(2\)](#) (with [Sch. 8 para. 1](#)); [S.R. 2016/387](#), art. 2(k) (with art. 3)

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

**C1** 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>F2</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.

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(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.]

**F2** 1995 NI 17

### Bail after arrest

**48.**—(1) [<sup>F3</sup>The duty of a person who is released on bail under this Part to surrender to custody under Article 4 of the Criminal Justice (Northern Ireland) Order 2003 consists of] 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>F4</sup>(1A) A person released on bail and subject to a duty to appear before a magistrates' court in accordance with paragraph (1)(a) shall be deemed for the purpose of Articles 48 and 49 of the Magistrates' Courts (Northern Ireland) Order 1981 to have been remanded on bail.]

(2) The time to be appointed under [<sup>F5</sup>sub-paragraph (a) of] 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>F6</sup>(2A) The custody officer shall make a record of the time and place appointed under paragraph (1)(a) or (b) and if the person released on bail so requests, the custody officer shall cause a copy of the record to be given to that person as soon as practicable after the record is made.]

[<sup>F7</sup>(3) No recognisance for his surrender to custody shall be taken from him.

(3A) Except as provided by this Article—

- (a) no security for his surrender to custody shall be taken from him;
- (b) he shall not be required to provide a surety or sureties for his surrender to custody; and
- (c) no other requirement shall be imposed on him as a condition of bail.

(3B) He may be required, before release on bail, to provide a surety or sureties to secure his surrender to custody.

(3C) He may be required, before release on bail, to give security for his surrender to custody; and the security may be given by him or on his behalf.

(3D) He may be required to comply, before release on bail under [<sup>F8</sup>Article 38(2) or (7)(b) or Article 39(1)] or later, with such requirements as appear to the custody officer to be necessary to secure that—

- (a) he surrenders to custody;
- (b) he does not commit an offence while on bail; and
- (c) he does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

(3E) Where a custody officer has granted bail he or another custody officer serving at the same police station may, at the request of the person to whom it is granted, vary the conditions of bail; and in doing so may impose conditions or more onerous conditions.

(3F) Where a custody officer grants bail to a person no conditions shall be imposed under paragraph (3B), (3C), (3D) or (3E) unless it appears to the custody officer that it is necessary to do so for the purpose of preventing that person from—

- (a) failing to surrender to custody;
- (b) committing an offence while on bail; or
- (c) interfering with witnesses or otherwise obstructing the course of justice, whether in relation to himself or any other person.

(3G) Paragraph (3F) also applies on any request to a custody officer under paragraph (3E) to vary the conditions of bail.

(3H) Where a custody officer varies any conditions of bail or imposes conditions under paragraph (3B), (3C), (3D) or (3E), he shall make a record of the decision and shall, at the request of the person to whom bail was granted, cause a copy of the record to be given to that person as soon as practicable after the record is made.]

[<sup>F9</sup>(4) A magistrates' court may, on an application by or on behalf of a person released on bail under Article 38(2) or (7)(b), vary the conditions of bail.

(5) A person who has been released on bail under Article 38(2) or (7)(b) may be arrested without warrant by a constable if the constable—

- (a) has reasonable grounds for believing that the person is likely to break any of the conditions of his bail; or
- (b) has reasonable grounds suspecting that the person has broken any of those conditions.

(5A) A person arrested under paragraph (5) must be taken to a police station (which may be the station where the conditions of bail were set or varied or any other police station) as soon as practicable after the arrest.]

(6) Paragraphs (7) to (11) apply to a person who is released on bail<sup>F10</sup>. . . 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.

(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>F11</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

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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.

- F3** Words in art. 48(1) substituted (12.3.2007) by Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13)), arts. 1(3), 8(1)(a); S.R. 2007/56, **art. 2**
- F4** Art. 48(1A) inserted (12.3.2007) by Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965 (N.I. 15)), arts. 1(2)(c), 21(2); S.R. 2007/55, **art. 2**
- F5** Words in art. 48(2) inserted (1.3.2007) by Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/288 (N.I. 2)), arts. 1(2), **24**
- F6** Art. 48(2A) inserted (12.3.2007) by Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13)), arts. 1(3), 8(1)(b); S.R. 2007/56, **art. 2**
- F7** Art. 48(3)-(3H) substituted (12.3.2007) for art. 48(3)-(5) by Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13)), arts. 1(3), 8(1)(c); S.R. 2007/56, **art. 2**
- F8** Words in art. 48(3D) substituted (8.12.2008) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), **87(2)**; S.R. 2008/472, **art. 2(1)**, Sch. Pt. I
- F9** Art. 48(4)(5)(5A) inserted (8.12.2008) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), **87(3)**; S.R. 2008/472, **art. 2(1)**, Sch. Pt. I
- F10** Words in art. 48(6) repealed (12.3.2007) by Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13)), arts. 1(3), 8(1)(d), 36(2), Sch. 2; S.R. 2007/56, **art. 2**
- F11** 1995 NI 17

## [<sup>F12</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.]

- F12** 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>F13</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.”.

**F13** 1968 c. 29 (NI)

### Modifications etc. (not altering text)

**C2** 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;
- (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>F14</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.

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**F14** 2000 c. 32

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

- C3** 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
- C4** 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>F15</sup> (administrative provisions as to control on entry etc.);
- [<sup>F16</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) <sup>F17</sup> .....
- (d) any right of a person in police detention to apply for a writ of habeas corpus or other prerogative remedy.

**F15** 1971 c. 77

**F16** 2000 c. 11

**F17** Art. 51(c) repealed (28.3.2009 for certain purposes otherwise 31.10.2009) by [Armed Forces Act 2006 \(c. 52\)](#), ss. 378(2), 383(2), **Sch. 17**; S.I. 2009/812, **art. 3(a)(b)** (with transitional provisions in S.I. 2009/1059); S.I. 2009/1167, **art. 4**

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

- C5** 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
- C6** 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>F18</sup> Articles 7 and 8 of the Criminal Justice (Children) (Northern Ireland) Order 1998 accordingly apply].

**F18** 1998 NI 9

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

- C7** 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

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