

EXPLANATORY MEMORANDUM

Draft

The Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007

£3.00

This Explanatory Memorandum refers to the draft Police & Criminal Evidence (Amendment)(Northern Ireland)Order 2007

POLICE & CRIMINAL EVIDENCE (AMENDMENT) (NORTHERN IRELAND) ORDER 2007

EXPLANATORY MEMORANDUM

INTRODUCTION

1. This Explanatory Memorandum has been prepared by the Northern Ireland Office in order to assist the reader in understanding the Order. It does not form part of the Order.

2. The Police & Criminal Evidence (Amendment) (Northern Ireland) Order 2007 is being made under the Northern Ireland Act 2000 and is subject to affirmative resolution.

BACKGROUND AND POLICY OBJECTIVES

3. The Police and Criminal Evidence (Northern Ireland) Order 1989 and its associated Codes of Practice, which largely mirror the Police and Criminal Evidence Act 1984 and associated Codes of Practice in England and Wales, are vital parts of the framework of legislation providing the police with the powers they need to tackle and investigate crime.

4. The last major review of Police and Criminal Evidence (PACE) in Northern Ireland was carried out in 1995/1996. Since then police powers in England & Wales have been extensively revised, mainly as a result of recommendations flowing from a fundamental review of the PACE Act and the accompanying Codes of Practice carried out jointly by the Home Office/Cabinet Office in 2002/2003, and a further Home Office Consultation Paper entitled "Policing – Modernising Police Powers to meet Community Needs" published in August 2004. Many of the proposals in both consultation papers have now been enacted in England & Wales through the Criminal Justice Act 2003 and Serious Organised Crime and Police Act 2005.

5. The draft Order makes provision for the introduction of new police powers and amendments to existing provisions within the Police & Criminal Evidence (Northern Ireland) Order 1989 with the primary aim of bringing the PACE legislation and associated statutory Codes of Practice in Northern Ireland more into line with the provisions currently available to police in England & Wales.

CONSULTATION

6. As part of the development of each policy area, the Northern Ireland Office held extensive discussions with the Police Service of Northern Ireland, and consulted with the Northern Ireland Policing Board, the Police Ombudsman and other main stakeholders.

7. The draft Order was the subject of a 12 week public consultation exercise between 23 March and 14 June 2006. This resulted in a total of nineteen responses with fifteen respondents expressing varying degrees of concern with certain aspects of the proposals. A re-screening of the proposals, incorporating a number of changes to the draft Order to address some of the concerns raised, was the subject of a further 8 weeks public consultation ending on 13 November 2006. Six responses were received to this.

FINANCIAL EFFECTS OF THE ORDER

8. The measures in the Order are not expected to impose any material cost to business, the public or the Exchequer.

HUMAN RIGHTS ISSUES

9. The provisions of the Order are compatible with the Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

10. Equality impact assessment screenings were initially carried out on each of the policy proposals. The screening on each concluded that a full equality impact assessment was not required and there was no significant adverse impact on any of the groups listed in Section 75 of the Northern Ireland Act 1998. However, in response to concerns raised during the initial public consultation, a re-screening and a further period of public consultation were carried out on changes to the draft Order to address some of the specific concerns raised.

SUMMARY OF THE REGULATORY APPRAISAL

11. The proposals are not considered likely to impose a new cost or saving on businesses, charities or the voluntary sector. Therefore, in line with Cabinet Office guidance, a Regulatory Impact Assessment is considered unnecessary.

ELEMENTS OF THE ORDER

12. Many of the provisions within the draft order replicate changes already made to the Police & Criminal Evidence Act 1984 which provides the legislative framework in England & Wales. The draft order includes provisions to:-

(a) redefine the framework of arrest powers so that a police officer can arrest for any offence subject to a necessity test;

(b) increase the range of search warrants for which police can apply;

(c) take fingerprints of a suspect elsewhere other than a police station for the purpose of confirming identity;

(d) take a visual image of an arrested person elsewhere other than a police station;

(e) take footwear impressions with or without the suspect's consent;

(f) stop and search a person or vehicle and seize fireworks whose possession is in contravention of fireworks regulations;

(g) allow the review of detention without charge to be carried out by telephone or video-conferencing facilities;

(h) extend powers to take fingerprints without consent;

(i) lower police authorisation levels for carrying out intimate searches and the taking of intimate and non-intimate samples;

(j) extend the scope for the speculative searches of fingerprints and other samples;

(k) change the definition of an arrested juvenile within PACE from anyone under the age of 17 years to anyone under the age of 18 years.

COMMENTARY ON ARTICLES

13. Comments are not given where the wording is largely self-explanatory.

14. Article 3 provides for the police to stop and search a person or vehicle and seize fireworks in cases where they have reasonable suspicion that possession is in contravention of the current fireworks regulations.

15. Articles 4 & 5 amend the procedural safeguards relating to stop and search powers to require an officer to identify himself by his name in addition to his police number and station. This applies before searching a person or vehicle, placing a notice of search of an unattended vehicle, or making a record of a search.

16. Articles 7 & 8 contain amendments increasing the range of search warrants which can be issued. In addition to the current warrant issued for one specified premises, warrants will also be available for multiple specified premises and for all premises "owned or occupied by" an individual whether or not all addresses are known at the time of the application. It also allows for a warrant to authorise access on more than one occasion.

17. Article 9 builds on existing safeguards and protections and provides for a greater requirement on police to provide specific information when making an application for a search warrant. In addition, the Lay Magistrate must also be satisfied in the first

instance of the need for a particular type of warrant and the applicant is required to justify the need for a warrant to be issued.

18. Article 10 provides that persons who are authorised to accompany police officers in the execution of a search warrant should have the same powers as a constable for the purposes of executing the warrant and the seizure of material, but only if they are accompanied and supervised by police officers. It also extends the lifetime of warrants from one month to three months from application and provides that no premises may be entered or searched for the second or any subsequent times without the written authority of an officer of at least inspector rank.

19. Article 15 abolished the concept of arrestable and serious arrestable offences and replaced it with a power of arrest for all offences based on the concept of necessity. This will require a police officer to consider the necessity for arrest in order to decide whether to affect an arrest. The Article sets out the necessity criteria, and a new Code of Practice on arrest will regulate the exercise of the arrest powers by police officers. This Article also deals with the powers of arrest for people who are not constables and aims to provide greater clarity on the particular circumstances in which a person other than a constable can affect a citizen's arrest.

20. Article 16 provides police with the power to retake fingerprints from a person convicted of, or cautioned for, a recordable offence if the fingerprints taken previously were found to be incomplete or of insufficient quality.

21. Article 18 amends the current definition of an arrested juvenile under PACE from a person under the age of 17 years to a person under the age of 18 years.

22. Article 19 modifies the provisions relating to duties of a custody officer/ review officer to negate the need for a suspect to be present when a written record of the grounds for further detention is being made if he is asleep at the time of review.

23. Article 20 will enable police to carry out the periodic review of a person's detention in police custody over the telephone.

24. Article 23 provides police with the ability to perform certain custody officer functions at a non-designated police station through the use of video-conferencing facilities. It also allows for a review of a person's detention at a police station to be carried out by the use of these facilities.

25. Article 24 removes the current requirement for a person released on police bail to attend at a police station on a date not later than 28 days from the date the person is released.

26. Article 26 has the effect of lowering the authorisation level for the carrying out of intimate searches from a superintendent to an inspector.

27. Article 30 provides police with the power to retake fingerprints from a person if the fingerprints taken previously in the course of the investigation were found to be incomplete or of insufficient quality. A similar power will also apply to a person cautioned if, at the time of the caution, the offence was admitted by the person. A

further amendment extends the existing powers allowing police to take fingerprints without consent at a court or police station for the purposes of confirming a person's identity.

28. Article 31 provides for the taking, retention and use of footwear impressions on the same statutory basis as fingerprints and samples.

29. Article 32 has the effect of lowering the authorisation level for the taking of intimate samples from a superintendent to an inspector.

30. Article 33 lowers the authorisation level for the taking of non- intimate samples without consent from a superintendent to an inspector. It also provides that a device for taking of a skin impression electronically should be approved for this purpose by the Secretary of State.

31. Article 34 provides that fingerprints, footwear impressions and samples taken from a person arrested on suspicion of being involved in a recordable offence or charged with or reported for such an offence should be subject to a speculative search against other databases maintained by other law-enforcement authorities. The Article also provides for a speculative search in other circumstances but only if the person consents in writing.

32. Article 35 amends existing provisions covering destruction of fingerprints and samples to take account of the new powers to take impressions of footwear. There is also an amendment allowing fingerprints and DNA samples from deceased persons or body parts to be checked against databases for identification purposes.

33. Article 36 has the effect of extending the range of circumstances in which a visual image of a person may be taken elsewhere than at a police station with or without their consent. The Article will also allow police to retain moving images for identification purposes.

34. Schedules 1 and 2 make consequential amendments and repeals to a range of legislation, mainly related to the introduction of the new arrest provisions.

COMMENCEMENT

35. The provisions of this Order will come into operation on 1 March 2007 with the exception of Articles 18 and 25(2) which will be commenced on such day or days as the Secretary of State may by order appoint.

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Printed and published in the U.K. by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament
N2939 11/2006

£3·00



Published by TSO (The Stationery Office) and available from:

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www.tsoshop.co.uk

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ISBN 0-337-96732-6

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