EXPLANATORY MEMORANDUM TO

THE JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007 (CODE OF PRACTICE) ORDER 2013

2013 No. 1128

1**.** This explanatory memorandum has been prepared by the Northern Ireland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this Order is to make provision for a Code of Practice made in accordance with section 34(1)(a) and (2) of the Justice and Security Act 2007 (the 2007 Act) for the exercise of the powers contained within sections 21 to 28 and 30 of that Act.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This is the first exercise of the power to issue codes of practice under section 34 of the Justice and Security (Northern Ireland) Act 2007. It is being carried out under the urgent procedure outlined in section 36(2) because the Secretary of State believes that, in response to the decision of the Court of Appeal in the judicial review decisions in the case of Canning, Fox and McNulty, it is necessary to have a code of practice in place as a matter of urgency. The code of practice applies to the exercise by the Police Service of Northern Ireland of powers under section 21, section 23, section 24/Schedule 3 and section 26 of the 2007 Act and to the exercise of certain powers under the 2007 Act by the armed forces.

4. Legislative Context

4.1 The 2007 Act provides a range of powers to the PSNI, including stop and question, search for munitions and wireless apparatus and entry of premises. It also gives the police the power to seize items found during searches of people, premises and vehicles. As amended, it reflects the changes to the powers of stop and search for munitions and wireless apparatus in the 2007 Act which were brought into effect by the Protection of Freedoms Act 2012. Schedule 6 to the 2012 Act amended Schedule 3 to the 2007 Act, introducing an authorisation procedure for the exercise by the police of stop and search powers in relation to munitions and wireless transmitters. These powers do not require reasonable suspicion in relation to each individual who is searched, although they do require the authorising officer to have a reasonable suspicion that the safety of any person might be endangered by the use of munitions or wireless apparatus. Schedule 6 also introduced, by way of amendments to Schedule 3 to the 2007 Act, a power to stop and search, whether in public or private, if a constable reasonably suspects that an individual has munitions unlawfully with him or her or wireless apparatus with him or her. Whilst a number of the powers in the 2007 Act are primarily for use by the PSNI, the armed forces also have powers under the 2007 Act which they can use in support of the police.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland.

6. European Convention on Human Rights

The Minister of State (Mike Penning) has made the following statement regarding Human Rights:

"In my view The Justice and Security (Northern Ireland) Act 2007 (Code of Practice) Order 2013 is compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Code of Practice has been developed to provide guidance to the PSNI on the use of these powers, particularly to ensure that the powers are used with regard to proportionality and necessity principles. The Court of Appeal in Northern Ireland on 9 May 2013 ruled in the case of Canning, Fox and McNulty that a Code of Practice was required for the stop and question, and stop and search powers in the 2007 Act to ensure that necessary safeguards were in place. While the judgment relates to the use of the powers under the 2007 Act before amendment by the 2012 Act, it is judged necessary to introduce the Code of Practice without delay. The Northern Ireland Office is therefore making this Order under the urgency procedures in section 36(2) of the 2007 Act so that the Code can come into force without having first been approved in draft. It is anticipated that a resolution approving this Order will be debated within the next 40 days, computed as required in accordance with section 7(1) of the Statutory Instruments Act 1946.

8. Consultation outcome

8.1 A public consultation on the draft Code was carried out for a period of 12 weeks from 13 December 2012 until 6 March 2013. A number of responses were received and considered and some modifications were made which are reflected in the Code of Practice in accordance with section 34(3) of the 2007 Act.

9. Guidance

9.1 The Code of Practice sets out the basic principles for the use of powers by police officers under sections 21, 23, 24 / Schedule 3 and 26 of the Justice and Security Act 2007. Annex C deals with the exercise of powers at sections 21-28 and 30 of the Act by the armed forces.

9.2 The Code governs the way in which the powers are authorised and used. It includes guidance on:

I. The scope of the powers
II. The requirements for making an authorisation for the powers
III. Briefing and tasking of officers

IV. Avoiding discrimination
V. Conduct of officers exercising the powers
VI. Recording and monitoring the use of the powers

10. Impact

10.1 The Order has no impact on business, charities or voluntary bodies.

10.2 The Order has a limited impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Code of Practice provides guidance for the monitoring and supervision of the use of the powers.

13. Contact

Francesca Higgins at the Northern Ireland Office Tel: 028 9052 7954 or 020 7210 0209, or email: Francesca.higgins@nio.x.gsi.gov.uk can answer any queries regarding the instrument.