



# Justice and Security (Northern Ireland) Act 2007

## 2007 CHAPTER 6

*Powers: supplementary*

### **33 Exercise of powers**

- (1) This section applies for the purposes of sections 21 to 30.
- (2) A power conferred on a person—
  - (a) is additional to powers which he has at common law or by virtue of any other enactment, and
  - (b) shall not be taken to affect those powers or Her Majesty's prerogative.
- (3) A constable or member of Her Majesty's forces may if necessary use reasonable force for the purpose of exercising a power conferred on him.
- (4) Where anything is seized it may (unless the contrary intention appears) be retained for so long as is necessary in all the circumstances.
- (5) A power to search premises conferred by virtue of this Act shall be taken to include power to search a container.
- (6) A member of Her Majesty's forces exercising a power when he is not in uniform shall, if requested to do so by a person at or about the time of exercising the power, produce to that person documentary evidence that he is a member of Her Majesty's forces.

### **34 Code of practice**

- (1) The Secretary of State may make codes of practice in connection with—
  - (a) the exercise by police officers of a power conferred by this Act, and
  - (b) the seizure and retention of property found by police officers when exercising powers of search conferred by this Act.

- (2) The Secretary of State may make codes of practice in connection with the exercise by members of Her Majesty's forces of a power conferred by this Act.
- (3) Where the Secretary of State proposes to issue a code of practice he shall—
  - (a) publish a draft,
  - (b) consider any representations made to him about the draft, and
  - (c) if he thinks it appropriate, modify the draft in the light of any representations made to him.
- (4) The Secretary of State shall lay a draft of the code before Parliament.
- (5) When the Secretary of State has laid a draft code before Parliament he may bring it into operation by order made by statutory instrument.
- (6) The Secretary of State may revise the whole or any part of a code of practice issued by him and issue the code as revised; and subsections (3) to (5) shall apply to such a revised code as they apply to an original code.
- (7) In this section "police officer" means a member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve.

### **35 Code: effect**

- (1) A failure by a police officer to comply with a provision of a code shall not of itself make him liable to criminal or civil proceedings.
- (2) A failure by a member of Her Majesty's forces to comply with a provision of a code shall not of itself make him liable to any criminal or civil proceedings other than—
  - (a) proceedings under any provision of the Army Act 1955 (c. 18) or the Air Force Act 1955 (c. 19) other than section 70 (civil offences), and
  - (b) proceedings under any provision of the Naval Discipline Act 1957 (c. 53) other than section 42 (civil offences).
- (3) A code—
  - (a) shall be admissible in evidence in criminal or civil proceedings, and
  - (b) shall be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.
- (4) In this section—

"criminal proceedings" includes proceedings in Northern Ireland before a court-martial constituted under the Army Act 1955 (c. 18), the Air Force Act 1955 (c. 19) or the Naval Discipline Act 1957 (c. 53) and proceedings in Northern Ireland before the Courts-Martial Appeal Court, and

"police officer" means a member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve.

### **36 Code: procedure for order**

- (1) An order under section 34(5) shall not be made, subject to subsection (2), unless a draft has been laid before and approved by resolution of each House of Parliament.
- (2) An order may be made without a draft having been approved if the Secretary of State is of the opinion that it is necessary by reason of urgency; and the order—

- (a) shall contain a declaration of the Secretary of State's opinion, and
  - (b) shall cease to have effect at the end of the period of 40 days beginning with the day on which the Secretary of State makes the order, unless a resolution approving the order is passed by each House during that period.
- (3) For the purposes of subsection (2)—
- (a) a code of practice or revised code to which an order relates shall cease to have effect together with the order,
  - (b) an order's ceasing to have effect shall be without prejudice to anything previously done or to the making of a new order (or the issue of a new code), and
  - (c) the period of 40 days shall be computed in accordance with section 7(1) of the Statutory Instruments Act 1946 (c. 36).

### **37 Records**

The Chief Constable of the Police Service of Northern Ireland shall make arrangements for securing that a record is made of each exercise by a constable of a power under sections 21 to 26 in so far as—

- (a) it is reasonably practicable to do so, and
- (b) a record is not required to be made under another enactment.

### **38 Compensation**

Schedule 4 (which provides for compensation to be paid for certain action taken under sections 21 to 32) shall have effect.

### **39 Prosecution**

- (1) This section applies to an offence under sections 21 to 32, except for an offence under paragraph 12 of Schedule 4.
- (2) Proceedings for an offence to which this section applies shall not be instituted without the consent of the Director of Public Prosecutions for Northern Ireland.
- (3) But if it appears to the Director of Public Prosecutions for Northern Ireland that an offence to which this section applies has been committed for a purpose wholly or partly connected with the affairs of a country other than the United Kingdom, his consent for the purposes of this section may be given only with the permission of the Advocate General for Northern Ireland.
- (4) In relation to any time before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26), the reference in subsection (3) to the Advocate General for Northern Ireland is to be read as a reference to the Attorney General for Northern Ireland.

### **40 Review**

- (1) The Secretary of State shall appoint a person ("the reviewer") to review—
  - (a) the operation of sections 21 to 32, and
  - (b) the procedures adopted by the General Officer Commanding Northern Ireland ("GOC") for receiving, investigating and responding to complaints.

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- (2) The reviewer shall conduct a review as soon as is reasonably practicable after—
  - (a) 31st July 2008, and
  - (b) each subsequent 31st July.
- (3) The reviewer shall comply with any request of the Secretary of State to include in a review specified matters (which need not relate to the matters specified in subsection (1)(a) and (b)).
- (4) The reviewer shall send the Secretary of State a report of each review.
- (5) The Secretary of State shall lay a copy of each report before Parliament.
- (6) The reviewer—
  - (a) shall receive and investigate any representations about the procedures mentioned in subsection (1)(b),
  - (b) may investigate the operation of those procedures in relation to a particular complaint or class of complaints,
  - (c) may require GOC to review a particular case or class of cases in which the reviewer considers that any of those procedures have operated inadequately, and
  - (d) may make recommendations to GOC about inadequacies in those procedures, including inadequacies in the way in which they operate in relation to a particular complaint or class of complaints.
- (7) GOC shall—
  - (a) provide such information,
  - (b) disclose such documents, and
  - (c) provide such assistance,as the Independent Assessor may reasonably require for the purpose of the performance of his functions.
- (8) The Secretary of State may pay expenses and allowances to the reviewer, out of money provided by Parliament.

#### **41 Duration**

- (1) The Secretary of State may by order repeal sections 21 to 40.
- (2) An order—
  - (a) may make provision generally or only for specified purposes,
  - (b) may make different provision for different purposes,
  - (c) may include incidental, consequential or transitional provision or savings,
  - (d) shall be made by statutory instrument, and
  - (e) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

#### **42 Interpretation**

In sections 21 to 38 (and Schedules 3 and 4)—  
“act” or “action” includes omission,  
“dwelling” means—

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- (a) a building or part of a building used as a dwelling, and
- (b) a vehicle which is habitually stationary and which is used as a dwelling,  
“premises” includes any place and in particular includes—
  - (a) a vehicle,
  - (b) an offshore installation within the meaning given in section 44 of the Petroleum Act 1998 (c. 17), and
  - (c) a tent or moveable structure,“property” includes property wherever situated and whether real or personal, and things in action and other intangible or incorporeal property,  
“public place” means a place to which members of the public have or are permitted to have access, whether or not for payment,  
“road” has the same meaning as in the Road Traffic Regulation (Northern Ireland) Order 1997 (S.I. 1997/276 (N.I. 2)), and includes part of a road, and  
“vehicle” includes an aircraft, hovercraft, train or vessel.