
STATUTORY INSTRUMENTS

1989 No. 1341

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

PART VI

QUESTIONING AND TREATMENT OF PERSONS BY POLICE

Interpretation of Part VI

53. In this Part—

“appropriate consent” means—

- (a) in relation to a person who has attained the age of 17 years, the consent of that person;
- (b) in relation to a person who has not attained that age but has attained the age of 14 years, the consent of that person and his parent or guardian; and
- (c) in relation to a person who has not attained the age of 14 years, the consent of his parent or guardian;

“fingerprints” includes palm prints;

“intimate sample” means a sample of blood, semen or any other tissue fluid, urine or pubic hair, or a swab taken from any of a person’s body orifices except his mouth;

“medical practitioner” means a fully registered person within the meaning of the Medical Act 1983(1);

“non-intimate sample” means—

- (a) a sample of hair other than pubic hair;
- (b) a sample taken from a nail or from under a nail;
- (c) a sample of saliva;
- (d) a swab taken from a person’s mouth;
- (e) a swab taken from any other part of a person’s body except a body orifice other than his mouth;
- (f) a footprint or a similar impression of any part of a person’s body other than a part of his hand.

Abolition of certain powers of constables to search persons

54.—(1) Subject to paragraph (2), there shall cease to have effect any statutory provision made before the date of the coming into operation of this Order in so far as it authorises—

- (a) any search by a constable of a person in police detention at a police station; or
- (b) an intimate search of a person by a constable;

and any rule of common law which authorises a search such as is mentioned in sub-paragraph (a) or (b) is abolished.

(2) Nothing in paragraph (1)(a) shall affect section 15(3)(b) of the Northern Ireland (Emergency Provisions) Act 1978⁽²⁾ or section 15(3), (4) or (5) of the Prevention of Terrorism (Temporary Provisions) Act 1989⁽³⁾.

Searches of detained persons

55.—(1) The custody officer at a police station shall ascertain and record or cause to be recorded everything which a person has with him when he is—

- (a) brought to the station after being arrested elsewhere or after being committed to custody by an order or sentence of a court; or
- (b) arrested at the station or detained there under Article 38(3).

(2) In the case of an arrested person the record shall be made as part of his custody record.

(3) Subject to paragraph (4), a custody officer may seize and retain any such thing or cause any such thing to be seized and retained.

(4) Clothes and personal effects may only be seized if the custody officer—

- (a) believes that the person from whom they are seized may use them—
 - (i) to cause physical injury to himself or any other person;
 - (ii) to damage property;
 - (iii) to interfere with evidence; or
 - (iv) to assist him to escape; or
- (b) has reasonable grounds for believing that they may be evidence relating to an offence.

(5) Where anything is seized, the person from whom it is seized shall be told the reason for the seizure unless he is—

- (a) violent or likely to become violent; or
- (b) incapable of understanding what is said to him.

(6) Subject to paragraph (10), a person may be searched if the custody officer considers it necessary to enable him to carry out his duty under paragraph (1) and to the extent that the custody officer considers necessary for that purpose.

(7) A person who is in custody at a police station or is in police detention otherwise than at a police station may at any time be searched in order to ascertain whether he has with him anything which he could use for any of the purposes specified in paragraph (4)(a).

(8) Subject to paragraph (9), a constable may seize and retain, or cause to be seized and retained, anything found on such a search.

(9) A constable may only seize clothes and personal effects in the circumstances specified in paragraph (4).

(10) An intimate search may not be conducted under this Article.

(11) A search under this Article shall be carried out by a constable.

(12) The constable carrying out a search shall be of the same sex as the person searched.

(2) 1983 c. 54

(3) 1978 c. 5

Intimate searches

56.—(1) Subject to the following provisions of this Article, if an officer of at least the rank of superintendent has reasonable grounds for believing—

- (a) that a person who has been arrested and is in police detention may have concealed on him anything which—
 - (i) he could use to cause physical injury to himself or others; and
 - (ii) he might so use while he is in police detention or in the custody of a court; or
- (b) that such a person—
 - (i) may have a Class A drug concealed on him; and
 - (ii) was in possession of it with the appropriate criminal intent before his arrest,

he may authorise an intimate search of that person.

(2) An officer may not authorise an intimate search of a person for anything unless he has reasonable grounds for believing that it cannot be found without his being intimately searched.

(3) An officer may give an authorisation under paragraph (1) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as practicable.

(4) An intimate search which is only a drug offence search shall be by way of examination by a suitably qualified person.

(5) Except as provided by paragraph (4), an intimate search shall be by way of examination by a suitably qualified person unless an officer of at least the rank of superintendent considers that this is not practicable.

(6) An intimate search which is not carried out as mentioned in paragraph (5) shall be carried out by a constable.

(7) A constable may not carry out an intimate search of a person of the opposite sex.

(8) No intimate search may be carried out except—

- (a) at a police station;
- (b) at a hospital;
- (c) at a medical practitioner's surgery; or
- (d) at some other place used for medical purposes.

(9) An intimate search which is only a drug offence search may not be carried out at a police station.

(10) If an intimate search of a person is carried out, the custody record relating to him shall state—

- (a) which parts of his body were searched; and
- (b) why they were searched.

(11) The information required to be recorded by paragraph (10) shall be recorded as soon as practicable after the completion of the search.

(12) The custody officer at a police station may seize and retain anything which is found on an intimate search of a person, or cause any such thing to be seized and retained—

- (a) if he believes that the person from whom it is seized may use it—
 - (i) to cause physical injury to himself or any other person;
 - (ii) to damage property;
 - (iii) to interfere with evidence; or
 - (iv) to assist him to escape; or

(b) if he has reasonable grounds for believing that it may be evidence relating to an offence.

(13) Where anything is seized under this Article, the person from whom it is seized shall be told the reason for the seizure unless he is—

- (a) violent or likely to become violent; or
- (b) incapable of understanding what is said to him.

(14) Every annual report under section 15(1) of the Police Act (Northern Ireland) 1970⁽⁴⁾ shall contain information about searches under this Article which have been carried out during the period to which the report relates.

(15) The information about such searches shall include—

- (a) the total number of searches;
- (b) the number of searches conducted by way of examination by a suitably qualified person;
- (c) the number of searches not so conducted but conducted in the presence of such a person; and
- (d) the result of the searches carried out.

(16) The information shall also include, as separate items—

- (a) the total number of drug offence searches; and
- (b) the result of those searches.

(17) In this Article—

“the appropriate criminal intent” means an intent to commit an offence under—

- (a) section 5(3) of the Misuse of Drugs Act 1971⁽⁵⁾ (possession of controlled drug with intent to supply to another); or
- (b) section 68(2) of the Customs and Excise Management Act 1979⁽⁶⁾ (exportation etc. with intent to evade a prohibition or restriction);

“Class A drug” has the meaning assigned to it by section 2(1)(b) of the Misuse of Drugs Act 1971;

“drug offence search” means an intimate search for a Class A drug which an officer has authorised by virtue of paragraph (1)(b); and

“suitably qualified person” means—

- (a) a medical practitioner; or
- (b) a nurse registered as such under section 10(1) of the Nurses, Midwives and Health Visitors Act 1979⁽⁷⁾.

Right to have someone informed when arrested

57.—(1) Where a person has been arrested and is being held in custody in a police station or other premises, he shall be entitled, if he so requests, to have one friend or relative or other person who is known to him or who is likely to take an interest in his welfare told, as soon as is practicable except to the extent that delay is permitted by this Article, that he has been arrested and is being detained there.

(2) Delay is only permitted—

- (a) in the case of a person who is in police detention for a serious arrestable offence; and

(4) 1989 c. 4
 (5) 1970 c. 9 (N.I.)
 (6) 1971 c. 38
 (7) 1979 c. 2

- (b) if an officer of at least the rank of superintendent authorises it.
- (3) In any case the person in custody must be permitted to exercise the right conferred by paragraph (1) within 36 hours from the relevant time, as defined in Article 42(2).
- (4) An officer may give an authorisation under paragraph (2) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.
- (5) An officer may only authorise delay where he has reasonable grounds for believing that telling the named person of the arrest—
 - (a) will lead to interference with or harm to evidence connected with a serious arrestable offence or interference with or physical injury to other persons; or
 - (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
 - (c) will hinder the recovery of any property obtained as a result of such an offence.
- (6) If a delay is authorised—
 - (a) the detained person shall be told the reason for it; and
 - (b) the reason shall be noted on his custody record.
- (7) The duties imposed by paragraph (6) shall be performed as soon as is practicable.
- (8) The rights conferred by this Article on a person detained at a police station or other premises are exercisable whenever he is transferred from one place to another; and this Article applies to each subsequent occasion on which they are exercisable as it applies to the first such occasion.
- (9) There may be no further delay in permitting the exercise of the right conferred by paragraph (1) once the reason for authorising delay ceases to subsist.
- (10) Nothing in this Article applies to a person arrested or detained under the terrorism provisions.

Additional rights of children and young persons

58. The following subsections shall be substituted for subsection (2) of section 52 of the Children and Young Persons Act (Northern Ireland) 1968~~(8)~~—

“(2) Where a child or young person is in police detention, such steps as are practicable shall be taken to ascertain the identity of a person responsible for his welfare.

(3) If it is practicable to ascertain the identity of a person responsible for the welfare of the child or young person, that person shall be informed, unless it is not practicable to do so—

- (a) that the child or young person has been arrested;
- (b) why he has been arrested; and
- (c) where he is being detained.

(4) Where information falls to be given under subsection (3), it shall be given as soon as it is practicable to do so.

(5) For the purposes of this section the persons who may be responsible for the welfare of a child or young person are—

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

(6) If it is practicable to give a person responsible for the welfare of the child or young person the information required by subsection (3), that person shall be given it as soon as it is practicable to do so.

(7) If it appears that at the time of his arrest a supervision order or a probation order is in force in respect of him, the person responsible for his supervision or his probation officer shall also be informed as described in subsection (3) as soon as it is reasonably practicable to do so.

(8) The reference to a parent or guardian in subsection (5) is—

- (a) in the case of a child or young person in the care of the Department of Health and Social Services, a reference to that Department; and
- (b) in the case of a child or young person in the care of a Health and Social Services Board, that Board.

(9) The rights conferred on a child or young person by subsections (2) to (8) are in addition to his rights under Article 57 of the Police and Criminal Evidence (Northern Ireland) Order 1989.

(10) The reference in subsection (2) to a child or young person who is in police detention includes a reference to a child or young person who has been detained under the terrorism provisions; and in subsection (3) “arrest” includes such detention.

(11) In subsection (10) “the terrorism provisions” has the meaning assigned to it by Article 2(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989.”.

Access to legal advice

59.—(1) A person arrested and held in custody in a police station or other premises shall be entitled, if he so requests, to consult a solicitor privately at any time.

(2) Subject to paragraph (3), a request under paragraph (1) and the time at which it was made shall be recorded in the custody record.

(3) Such a request need not be recorded in the custody record of a person who makes it at a time while he is at a court after being charged with an offence.

(4) If a person makes such a request, he must be permitted to consult a solicitor as soon as is practicable except to the extent that delay is permitted by this Article.

(5) In any case he must be permitted to consult a solicitor within 36 hours from the relevant time, as defined in Article 42(2).

(6) Delay in compliance with a request is only permitted—

- (a) in the case of a person who is in police detention for a serious arrestable offence; and
- (b) if an officer of at least the rank of superintendent authorises it.

(7) An officer may give an authorisation under paragraph (6) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(8) An officer may only authorise delay where he has reasonable grounds for believing that the exercise of the right conferred by paragraph (1) at the time when the person detained desires to exercise it—

- (a) will lead to interference with or harm to evidence connected with a serious arrestable offence or interference with or physical injury to other persons; or
- (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- (c) will hinder the recovery of any property obtained as a result of such an offence.

- (9) If the delay is authorised—
 - (a) the detained person shall be told the reason for it; and
 - (b) the reason shall be noted on his custody record.
- (10) The duties imposed by paragraph (9) shall be performed as soon as practicable.
- (11) There shall be no further delay in permitting the exercise of the right conferred by paragraph (1) once the reason for authorising delay ceases to subsist.
- (12) Nothing in this Article applies to a person arrested or detained under the terrorism provisions.

Tape-recording of interviews

- 60.** Subject to Article 66(12), it shall be the duty of the Secretary of State—
 - (a) to issue a code of practice in connection with the tape-recording of interviews of persons suspected of the commission of criminal offences which are held by police officers at police stations; and
 - (b) to make an order (subject to Article 89) requiring the tape-recording of interviews of persons suspected of the commission of criminal offences, or of such descriptions of criminal offences as may be specified in the order, which are so held, in accordance with the code as it has effect for the time being.

Fingerprinting

- 61.—**(1) Except as provided by this Article no person's fingerprints may be taken without the appropriate consent.
- (2) Consent to the taking of a person's fingerprints must be in writing if it is given at a time when he is at a police station.
- (3) The fingerprints of a person detained at a police station may be taken without the appropriate consent—
 - (a) if an officer of at least the rank of superintendent authorises them to be taken; or
 - (b) if—
 - (i) he has been charged with a recordable offence or informed that he will be reported for such an offence; and
 - (ii) he has not had his fingerprints taken in the course of the investigation of the offence by the police.
- (4) An officer may only give an authorisation under paragraph (3)(a) if he has reasonable grounds—
 - (a) for suspecting the involvement of the person whose fingerprints are to be taken in a criminal offence; and
 - (b) for believing that his fingerprints will tend to confirm or disprove his involvement.
- (5) An officer may give an authorisation under paragraph (3)(a) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.
- (6) Any person's fingerprints may be taken without the appropriate consent if he has been convicted of a recordable offence.
- (7) In a case where by virtue of paragraph (3) or (6) a person's fingerprints are taken without the appropriate consent—
 - (a) he shall be told the reason before his fingerprints are taken; and
 - (b) the reason shall be recorded as soon as is practicable after the fingerprints are taken.

(8) If he is detained at a police station when the fingerprints are taken, the reason for taking them shall be recorded on his custody record.

(9) Nothing in this Article—

- (a) affects any power conferred by paragraph 18(2) of Schedule 2 to the Immigration Act 1971; or
- (b) applies to a person arrested or detained under the terrorism provisions.

Intimate samples

62.—(1) An intimate sample may be taken from a person in police detention only—

- (a) if a police officer of at least the rank of superintendent authorises it to be taken; and
- (b) if the appropriate consent is given.

(2) An officer may only give an authorisation if he has reasonable grounds—

- (a) for suspecting the involvement of the person from whom the sample is to be taken in a serious arrestable offence; and
- (b) for believing that the sample will tend to confirm or disprove his involvement.

(3) An officer may give an authorisation under paragraph (1) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(4) The appropriate consent must be given in writing.

(5) Where—

- (a) an authorisation has been given; and
- (b) it is proposed that an intimate sample shall be taken in pursuance of the authorisation,

an officer shall inform the person from whom the sample is to be taken—

- (i) of the giving of the authorisation; and
- (ii) of the grounds for giving it.

(6) The duty imposed by paragraph (5)(ii) includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(7) If an intimate sample is taken from a person—

- (a) the authorisation by virtue of which it was taken;
- (b) the grounds for giving the authorisation; and
- (c) the fact that the appropriate consent was given,

shall be recorded as soon as is practicable after the sample is taken.

(8) If an intimate sample is taken from a person detained at a police station, the matters required to be recorded by paragraph (7) shall be recorded in his custody record.

(9) An intimate sample, other than a sample of urine, may only be taken from a person by a medical practitioner.

(10) Where the appropriate consent to the taking of an intimate sample from a person was refused without good cause, in any proceedings against that person for an offence—

- (a) the court, in determining—
 - (i) whether to commit that person for trial; or
 - (ii) whether there is a case to answer; and
- (b) the court or jury, in determining whether that person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper; and the refusal may, on the basis of such inferences, be treated as, or as capable of amounting to, corroboration of any evidence against the person in relation to which the refusal is material.

(11) Nothing in this Article affects Articles 141 to 152 of the Road Traffic (Northern Ireland) Order 1981(9).

Other samples

63.—(1) Except as provided by this Article, a non-intimate sample may not be taken from a person without the appropriate consent.

(2) Consent to the taking of a non-intimate sample must be given in writing.

(3) A non-intimate sample may be taken from a person without the appropriate consent if—

(a) he is in police detention; and

(b) an officer of at least the rank of superintendent authorises it to be taken without the appropriate consent.

(4) An officer may only give an authorisation under paragraph (3) if he has reasonable grounds—

(a) for suspecting the involvement of the person from whom the sample is to be taken in a serious arrestable offence; and

(b) for believing that the sample will tend to confirm or disprove his involvement.

(5) An officer may give an authorisation under paragraph (3) orally or in writing but, if he gives it orally, he shall confirm it in writing as soon as is practicable.

(6) Where—

(a) an authorisation has been given; and

(b) it is proposed that a non-intimate sample shall be taken in pursuance of the authorisation, an officer shall inform the person from whom the sample is to be taken—

(i) of the giving of the authorisation; and

(ii) of the grounds for giving it.

(7) The duty imposed by paragraph (6)(ii) includes a duty to state the nature of the offence in which it is suspected that the person from whom the sample is to be taken has been involved.

(8) If a non-intimate sample is taken from a person by virtue of paragraph (3)—

(a) the authorisation by virtue of which it was taken; and

(b) the grounds for giving the authorisation,

shall be recorded as soon as is practicable after the sample is taken.

(9) If a non-intimate sample is taken from a person detained at a police station, the matters required to be recorded by paragraph (8) shall be recorded in his custody record.

Destruction of fingerprints and samples

64.—(1) If—

(a) fingerprints or samples are taken from a person in connection with the investigation of an offence; and

(b) he is cleared of that offence,

they must be destroyed as soon as is practicable after the conclusion of the proceedings.

(2) If—

- (a) fingerprints or samples are taken from a person in connection with such an investigation; and
- (b) it is decided that he shall not be prosecuted for the offence and he has not admitted it and been dealt with by way of being cautioned by a constable,

they must be destroyed as soon as is practicable after that decision is taken.

(3) If—

- (a) fingerprints or samples are taken from a person in connection with the investigation of an offence; and
- (b) that person is not suspected of having committed the offence,

they must be destroyed as soon as they have fulfilled the purpose for which they were taken.

(4) Proceedings which are discontinued are to be treated as concluded for the purposes of this Article.

(5) If fingerprints are destroyed—

- (a) any copies of the fingerprints shall also be destroyed; and
- (b) a person authorised by the Chief Constable to control access to computer data relating to the fingerprints shall make access to the data impossible, as soon as it is practicable to do so.

(6) A person who asks to be allowed to witness the destruction of his fingerprints or copies of them shall have a right to witness it.

(7) If—

- (a) paragraph (5)(b) falls to be complied with; and
- (b) the person to whose fingerprints the data relate asks for a certificate that it has been complied with,

such a certificate shall be issued to him not later than the end of the period of 3 months beginning with the day on which he asks for it by the Chief Constable or a person authorised by him or on his behalf for the purposes of this Article.

(8) Nothing in this Article—

- (a) affects any power conferred by paragraph 18(2) of Schedule 2 to the Immigration Act 1971⁽¹⁰⁾; or
- (b) applies to a person arrested or detained under the terrorism provisions.