

This EM replaces the one published on 12 April 2007 and is being supplied free of charge to all known recipients of the EM

This Explanatory Memorandum refers to the Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007 No 912 (N.I. 6)

POLICING (MISCELLANEOUS PROVISIONS) (NORTHERN IRELAND) ORDER 2007

2007 No. 912 (N.I. 6)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Policing (Miscellaneous Provisions) (Northern Ireland) Order (“the Order”) was made on 21 March 2007.
2. This Explanatory Memorandum has been prepared by the Northern Ireland Office to assist the reader in understanding the Order. It does not form part of the Order.

BACKGROUND AND POLICY OBJECTIVES

3. The Order makes provision for the amendment of existing Northern Ireland policing legislation, principally the Police (Northern Ireland) Act 2000.
4. The Order also updates the designated civilian provisions contained within the Police (Northern Ireland) Act 2003 with the primary aim of bringing designated civilian provisions in Northern Ireland into line with GB, reflecting amendments made by various pieces of legislation, including, inter alia, the Serious Organised Crime and Police Act 2005.

CONSULTATION

5. As part of the development of each policy area, the Northern Ireland Office held extensive discussions with the Police Service of Northern Ireland, the Northern Ireland Policing Board, the Police Ombudsman and other main stakeholders.
6. The Order was the subject of a 7 week public consultation exercise between 4 December 2006 and 22 January 2007. This took into account the fact that some of the provisions within the Order were consulted on separately, for instance, the Northern Ireland Policing Board carried out its own consultation process on the introduction of Police Community Support Officers. The Policing Minister also presented the Order to the Transitional Assembly through its Sub-Group on Policing and Justice on 8 January 2007.

7. The public consultation on the Order resulted in a total of 20 responses being received, with some expressing varying degrees of concern with certain aspects of the proposals. The vast majority of respondents welcomed the proposals. A Summary of Responses to the public consultation can be found on the Departmental website.

MAIN ELEMENTS OF THE ORDER

8. The Order has 13 Articles and 5 Schedules and includes provisions for:-

- (a) providing further opportunities for the Police Service of Northern Ireland to civilianise posts, by way of: extending, in line with GB, the range of powers and duties otherwise available to police officers by way of designation to Investigating Officers, Detention Officers and Escort officers; and introducing two new categories of designated civilian, namely Staff Custody Officers and Police Community Support Officers similar to that which is in force in GB;
- (b) streamlining the police trainee recruitment process to allow the Police Service of Northern Ireland to make provisional police trainee appointments, subject to the satisfactory completion of medical tests and security vetting;
- (c) changing the recruitment procedures for police support staff in line with those proposed for police trainees; and bringing forward regulations providing for the requirement that designated civilians are vetted to the same standard as police trainees;
- (d) reintroducing legislative provisions to enable the Police Service of Northern Ireland to address an acute shortage of constables with specialist skills by way of the recruitment of experienced constables with the required skills from other forces;
- (e) the Police Ombudsman to make application to the DPP to allow for the re-investigation of police officers previously acquitted of a qualifying offence where new evidence has been obtained;
- (f) the police to wholly or partly close or divert roads or prohibit or restrict the exercise of a right of way or the use of a waterway, if considered necessary for the preservation of the peace or the maintenance of public order; and
- (g) the police to examine documents and electronic records in order to establish whether or not they contain evidence that someone has committed or is preparing to commit serious crime.

COMMENTARY ON ARTICLES

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

Articles 3, 4, 5, 6 and 7: Designation of police support staff

10. Articles 3, 4, and 5 extend the range of powers and duties otherwise available to Police Officers by way of designation to Investigating Officers, Detention Officers and Escort Officers.

11. Articles 6 and 7 introduce two further categories of designated civilian, namely Staff Custody Officers and Police Community Support Officers and associated powers.

Article 8: Recruitment of police trainees

12. Article 8 amends the Police (Northern Ireland) Act 2000 relating to the temporary recruitment provisions concerning composition of the police (“50:50 recruitment”). In particular, it changes the police trainee recruitment procedures to allow the medical assessment and security vetting processes to take place after the merit order pool of candidates is established, instead of beforehand.

13. The policy objective is to allow the Chief Constable to make provisional police trainee appointments subject to the satisfactory completion of medical tests and security vetting. Should a candidate fail either part of these processes, the Chief Constable can provisionally appoint the next applicant on the merit order list, from the same community background, to replace the failed candidate. This will obviate the need for a large number of candidates, who will not be offered a police trainee position as they failed to score high enough in merit order, being subjected unnecessarily to the medical assessment and security vetting processes.

Article 9: Recruitment of police support staff

14. Article 9 provides for changes to the recruitment procedures for police support staff in line with those proposed for police trainees, outlined in Article 8. This Article also gives the Secretary of State the power to provide in regulations as to the suitability for appointment of persons who are appointed with a view to their being designated under Section 30 or 30 A of the Police (Northern Ireland) Act 2003.

Article 10: Appointment of constables with special policing skills

15. Article 10 reintroduces Section 23 of the Police (NI) Act 2003 which had lapsed. This provides for the appointment of constables who have a specified policing skill, for instance the recruitment of experienced detective constables from other police forces. In this regard, the Article also allows derogation for these appointments from the normal police trainee recruitment process.

Article 11: Investigation by Police Ombudsman following acquittal

16. Article 11 introduces a new Section 86A to the Criminal Justice Act 2003. It provides for the Police Ombudsman to make application to the DPP to allow for the re-investigation of police officers previously acquitted of a qualifying offence where new evidence has been obtained.

Article 12: Closure of roads, etc

17. Article 12 provides the police with the immediate power to wholly or partly close or divert roads or prohibit or restrict the exercise of a right of way or the use of a waterway, if considered necessary for the preservation of the peace or the maintenance of public order. It also makes it an offence to interfere with works, apparatus or equipment used in connection with the exercise of the power. This power is currently contained within Part VII of the Terrorism Act 2000, which will be repealed in July 2007.

18. It is necessary to continue this power to enable the police to carry out various functions including the effective management of the marching season. It will also help with the management of serious incidents, for example by enabling the police to protect the safety of the public by diverting traffic away from danger.

Article 13: Powers to examine documents or records

19. Article 13 provides police with the power to examine documents and electronic records in order to establish whether or not they contain evidence that someone has committed or is preparing to commit serious crime. Police will be able to take documents and records away for further examination for up to 48 hours (extendable to 96 hours), if that is necessary. This power is also currently contained in Part VII of the Terrorism Act 2000.

20. It is necessary to continue this power because of the increasingly sophisticated nature of serious crime. The evidential value of a document or electronic record may not be immediately apparent and an item cannot be seized as evidence under the Police and Criminal Evidence (Northern Ireland) Order 1989 unless the police officer has reasonable suspicion that it is evidence and its retention is necessary. For example, a document or record may require translation from a foreign language before a police officer can make a judgement about its evidential value. This Article will enable this work to be carried out.

21. This Article also creates appropriate safeguards to protect the rights of the public. As well as the time limit on the retention of documents, items believed to be subject to legal privilege are exempted from examination and a record must be made of any examination.

Schedule 1: Investigating Officers

22. Schedule 1 details amendments to Part 1 of Schedule 2 of the Police (NI) Act 2003 conferring on civilian investigating officers a range of additional powers otherwise only available to police officers. It also provides provision for persons accompanying investigating officers. These provisions replicate additional powers made available to investigating officers in GB.

Schedule 2: Detention Officers

23. Schedule 2 details amendments to Part 2 of Schedule 2 of the Police (NI) Act 2003 conferring on detention officers specific powers in relation to taking impressions of footwear, powers in respect of detained persons, the use of reasonable force in relation to detained persons, and powers in relation to information about intimate search, x-ray and ultrasound. These provisions replicate additional powers made available to detention officers in GB.

Schedule 3: Escort Officers

24. Schedule 3 details amendments to Part 3 of Schedule 2 of the Police (NI) Act 2003 conferring on escort officers additional powers, when they are at a police station, to prevent detainees from escaping from the police station, to ensure that a detainee in their charge remains under control, to provide assistance to police officers and other designated civilian staff and to have the power to use reasonable force to fulfil this duty. Again these provisions replicate additional powers made available to escort officers in GB.

Schedule 4: Staff Custody Officers

25. Schedule 4 details the amendments to the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12) conferring on staff custody officers a range of powers otherwise only available to police officers. It relates to specific powers in respect of detained persons, and powers in relation to information about intimate searches, x-ray and ultrasound.

Schedule 5: Powers and Duties of Community Support Officers

26. Schedule 5 refers to a new Schedule to be inserted as Schedule 2A to the 2003 Act detailing the powers and duties of community support officers. It relates to some of the powers and duties otherwise only available to police officers by way of designation to community support officers:

- (a) powers in relation to issuing fixed penalty notices for certain road traffic offences;
- (b) powers for acquiring name and address for relevant offences;
- (c) powers for acquiring name and address for certain road traffic offences;
- (d) powers to detain a person;
- (e) powers to confiscate alcohol at public processions and from young people;
- (f) powers for the confiscation of tobacco from young people;
- (g) powers for search and seizure of alcohol and tobacco;
- (h) powers to seize and retain controlled drugs;
- (i) powers of entry to save life or prevent serious damage to property;
- (j) power to enter and inspect licensed premises and to investigate licensing offences;
- (k) power to stop vehicles;
- (l) power to direct traffic and place traffic signs;
- (m) power to carry out road checks;
- (n) power to enforce cordoned areas;
- (o) power to stop and search vehicles in authorised areas; and
- (p) power to stop and search for prohibitive fireworks and request and inspect a record of sales of fireworks.

COMMENCEMENT

27. All the provisions of this Order come into operation one month after the day in which the Order is made, with the exception of those provisions set out in Article 1(2).