

# **POLICE (NORTHERN IRELAND) ACT 2003**

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## **EXPLANATORY NOTES**

### **INFORMATION AND INQUIRIES**

#### ***Section 27: Restriction on disclosure of information***

72. This section inserts a new section 74A into the 2000 Act. Section 74A sets out restrictions on the disclosure of information provided by the Chief Constable to the Board, or to the committee constituted by the Board, or to a person appointed under section 60(9) of the 2000 Act to conduct an inquiry. The restrictions apply where the Chief Constable has notified the recipient that the information is of a sensitive nature, as defined in the new section 33A(3), 59(4C) or 60(10A) of the 2000 Act inserted by sections 10, 11 and 22. Subsection (8) of the new section 74A provides that any person disclosing information in contravention of section 74A shall be guilty of an offence and sets out the relevant sanctions.

#### ***Section 28: Special committee of the Board***

73. This section amends paragraph 24 of Schedule 1 to the 2000 Act to provide for the establishment of a special purposes committee to handle sensitive information supplied to it by the Chief Constable under section 59 of the 2000 Act or by a person conducting an inquiry under section 60 of that Act. The amendment requires the committee to be constituted of 7 members of the Board, including one or both of the chairman or the vice-chairman of the Board and, as far as practicable, that it should be representative of the Board.

#### ***Section 29: Disclosure of information and holding of inquiries***

74. This section inserts a new section 76A into the 2000 Act. Section 76A(1) sets out the grounds on which information ought not to be disclosed for the purposes of –
- a decision by the Chief Constable under section 33A of the 2000 Act (as inserted by section 22 of the Act), that information ought not to be disclosed by him to the Board;
  - a reference by the Chief Constable to the Secretary of State under section 59(3) of the 2000 Act (as amended by section 10 of the Act) of a requirement to submit a report to the Board, where the Chief Constable considers that such a report would contain information which ought not to be disclosed; and
  - the obligations imposed by section 66(3) of the 2000 Act (as inserted by section 13(4) of the Act) in relation to information supplied by the Chief Constable or the Board to the Ombudsman for the purposes of an investigation by the Ombudsman under section 60A of the 1998 Act.
75. Section 76A(2) sets out the grounds on which an inquiry ought not to be held for the purposes of a reference by the Chief Constable to the Secretary of State under section 60(3) of the 2000 Act (as amended by section 11 of the Act) of a decision by the Board to cause an inquiry to be held.

76. With two exceptions, the grounds set out in the new section 76A(1) and (2) mirror those previously set out in sections 59(3) and 60(3) of the 2000 Act. The exceptions are:
- The second ground of referral – sections 59(3)(b) and 60(3)(b) of the 2000 Act referred to “information of a sensitive personal nature”. In the new section 76A this ground is altered so as to refer to “sensitive personnel information” (new section 76A(1)) or a “sensitive personnel matter” (new section 76A(2)). (“Personnel information” and “personnel matter” are defined in the new section 76A(3) to (6). These terms cover applicants to, and former members of, the police or other groups (e.g. civilian staff) under the direction and control of the Chief Constable);
  - The fourth ground of referral at sections 59(3)(d) and 60(3)(d) of the 2000 Act (where disclosure would affect the prevention or detection of crime, or apprehension or prosecution of offenders) has been dropped.

## **Part 2: Police Powers**

### **Designation of Civilians**

#### ***Section 30: Police powers for designated police support staff***

77. This section enables the Chief Constable to designate suitably skilled and trained civilians as one or more of the following categories of officer: investigating officer; detention officer; and escort officer. The section enables the Chief Constable to confer on such civilians some of the powers and duties otherwise only available to police officers.
78. *Subsection (1)* enables the Chief Constable to designate a person who is a member of the police support staff as an officer of one or more of the following descriptions: investigating officer; detention officer; and escort officer. *Subsection (2)* prevents a designation being made unless the Chief Constable is satisfied that the person is a suitable person for this purpose, is capable of carrying out the functions for the purpose of which he is to be designated, and has been adequately trained. *Subsection (5)* limits the powers that can be conferred on designated persons to any or all of those specified in the relevant parts of Schedule 1. *Subsection (7)* clarifies that a designation does not authorise or require conduct other than as a member of the police support staff and that a designation may contain restrictions and conditions.
79. *Subsections (8) and (9)* provide that where a power allows for the use of reasonable force when it is exercised by a constable, a person exercising that power under a designation has the same entitlement to use reasonable force; for example when carrying out a search. *Subsection (10)* provides that where a designation includes the power to force entry to premises, the exercise of this power will be limited to occasions when the designated person is under the direct supervision of a police officer and is accompanied by such an officer: the only exception to this requirement is when the purpose of forcing entry is to save life or limb or to prevent serious damage to property.

#### ***Section 31: Police powers for designated contracted-out staff***

80. This section enables the Chief Constable, where a contract has been entered into with the private sector for the provision of services relating to the detention or escort of persons who have been arrested or are otherwise in custody, to designate an employee of the contractor as either a detention officer or an escort officer. *Subsection (3)* prevents a designation being made unless the Chief Constable is satisfied that the person is a suitable person for this purpose, is capable of carrying out the functions for the purpose of which he is designated and that he has been adequately trained. The Chief Constable must also satisfy himself that the contractor is a fit and proper person to supervise the carrying out of the functions of the designated officer. *Subsections (6) and (7)* limit the powers that can be conferred on such contracted-out staff to any or all of those

specified in the relevant parts of Schedule 2. *Subsection (8)* clarifies that a designation does not authorise or require conduct other than as an employee of the contractor and that a designation may contain restrictions and conditions.

81. *Subsections (9) and (10)* provide that where a power allows for the use of reasonable force when it is exercised by a constable, a person exercising that power under a designation has the same entitlement to use reasonable force; for example when carrying out a search. *Subsections (11) and (12)* set out the duration of the designation. Unless the designation is previously withdrawn, its duration is until such time as is specified in the designation, or until the designated person ceases to be an employee of the contractor, or until the contract between the Board and the contractor expires or is terminated. Designations may be subject to renewal at any time.

### ***Schedule 2: Powers exercisable by designated persons***

82. This Schedule relates to the provisions in sections 30 and 31 of the Act, which deal with the exercise of police powers by designated police support staff and contracted-out staff. It sets out in detail the range of powers that can be conferred on designated civilians.

### **Part 1: Investigating Officers**

83. This Part includes a range of powers which may be needed to support the work of civilian investigating officers in specialist areas such as financial and information technology crime. They are mainly linked to entry, search and seizure, and include powers to obtain and exercise search warrants, to seize evidence and to apply to a judge for access to confidential material. Part 1 also covers powers to enter and search premises following arrest. This set of powers is particularly relevant to the work of Scenes of Crime Officers, many of whom are already civilians.
84. *Paragraphs 1 and 2* enable a suitably designated person to apply for and be granted search warrants under section 42 of the Terrorism Act and under Article 10 of the [Police and Criminal Evidence \(Northern Ireland\) Order 1989 \(S.I. 1989/1341 \(N.I. 12\)\)](#) (“the 1989 Order”), and to execute warrants and to seize and retain things for which a search has been authorised under Article 10 of the 1989 Order. The power of seizure is extended to computerised information. Both paragraphs provide that the standard safeguards covering the process of applying for a search warrant, the contents of the warrant and the way in which the warrant should be exercised are extended to warrants issued to designated persons. *Paragraph 2* imposes the same obligations on designated persons in relation to providing records of seizure, providing access to or copies of seized material and retaining seized material as apply to constables. It also gives the same protection from seizure to legally privileged material in relation to seizures by designated persons as applies to seizures by constables.
85. *Paragraph 3* enables a suitably designated person to obtain access to confidential material under Article 11 of the 1989 Order by making an application to a county court judge under Schedule 1 to that Order. It extends the power of seizure conferred by paragraph 10 of Schedule 1 to the 1989 Order to a designated person, enabling him to seize and retain any confidential material for which a search has been authorised under that Schedule. This power of seizure is extended to computerised information. It extends standard protections and obligations under the 1989 Order to material seized by or produced to a designated person under these provisions.
86. *Paragraph 4* enables a suitably designated person to use the powers under Article 20 of the 1989 Order to enter and search any premises occupied or controlled by a person who is under arrest for an arrestable offence and to seize and retain items found on such a search. The designated person may conduct such a search before the arrested person is taken to a police station and without obtaining the authority of an inspector if the presence of the arrested person is necessary for the effective investigation of the offence. Standard protections and obligations under the 1989 Order are extended to

material seized by a designated person under these provisions. Again, the power of seizure is extended to computerised information.

87. *Paragraph 5* enables a suitably designated person, when lawfully on any premises, to exercise the same general powers to seize things as are available to a constable under Article 21 of the 1989 Order. The designated person may also make use of the power to require, in certain circumstances, the production of electronically stored material in a form in which it can be taken away. Once again, standard protections and obligations under the 1989 Order are applied.
88. *Paragraph 6* enables a suitably designated person, to supervise access to, and copying of, any material seized by a constable, where a person has the right to access or to have a copy of that material under the standard safeguards in the 1989 Order. A suitably designated person is also given power to photograph, or have photographed, anything that he has the power to seize.
89. *Paragraph 7* enables a suitably designated person to arrest a detained person for a further offence if it appears to him that the detained person would be liable to arrest for that further offence if released from his initial arrest. Article 5 of the [Criminal Evidence \(Northern Ireland\) Order 1988 \(S.I. 1988/1987 \(N.I. 20\)\)](#) applies where a person is arrested by a designated person to the same extent as it would if the arrest were by a constable.
90. *Paragraph 8* enables a suitably designated person to transfer a detainee to a designated civilian investigating officer. Article 40 of the 1989 Order places on custody officers the duty to ensure that all detainees are treated in accordance with the Order and relevant codes of practice. Article 40(2) of the 1989 Order provides that if a detainee is transferred to the custody of another police officer in accordance with the 1989 Order, then that officer takes on responsibility for compliance with the duty, and the custody officer is relieved from it. *Paragraph 8(4)* provides that when a detainee is transferred to a designated investigating officer, the custody officer's responsibilities are similarly transferred to that designated investigating officer. Article 40(3) – which imposes a duty to report back to a custody officer, when a transferred detainee is returned to him, on compliance with Article 40 and the codes of practice – is also extended to a designated person into whose custody a detainee has been transferred. A designated investigating officer using powers under this paragraph is regarded as having the detainee in his lawful custody, with a duty to prevent his escape and entitlement to use reasonable force to prevent this.
91. *Paragraph 9* enables a suitably designated person to question an arrested person under Articles 5 and 6 of the Criminal Evidence (Northern Ireland) Order 1988 about facts which may be attributable to the person's participation in an offence, for example, the person's presence at a particular place at a relevant time or the presence of potentially incriminating objects such as a mark. A suitably designated person may also warn the suspect about the capacity of a court to draw inferences from a failure to give a satisfactory account in response to questioning.
92. *Paragraph 10* enables a suitably designated person to use extended powers of seizure and retention available to constables under Part 2 of the [Criminal Justice and Police Act 2001 \(c.16\)](#), where those powers supplement powers conferred on designated persons under other paragraphs of Part 1 of the Schedule. In essence this means that where a designated person has been provided with a specific power of seizure, and the exercise of the power on premises would be difficult or impossible due to the sheer bulk or complexity of the material to be searched through, that material can be moved elsewhere for sifting, subject to a range of detailed safeguards.

## **Part 2: Detention officers**

93. This Part covers powers that may be exercised by detention officers at police stations. Many of the powers are connected with the handling of persons in custody – an area

of work in which police support staff are increasingly involved – such as powers to search detained persons, to take fingerprints and certain samples without consent and to take photographs. Providing designated police support staff and contracted-out staff with these and other powers will broaden the scope of the work they can undertake and ensure their work is underpinned by the law.

94. *Paragraph 11* enables a suitably designated detention officer to require persons who have been convicted of a recordable offence, have not been in police detention for the offence and have not had their fingerprints taken in connection with the offence or since the conviction, to attend a police station to have their fingerprints taken. Recordable offences are set out in regulations made under Article 29(4) of the 1989 Order.
95. *Paragraph 12* enables a designated detention officer to carry out non-intimate searches of persons detained at police stations or elsewhere and to seize items found during such searches. Restrictions on the scope of searching and seizure and on the circumstances in which searches can be carried out are applied to designated persons in the same way as to constables.
96. *Paragraph 13* enables a designated detention officer to carry out searches and examinations in order to determine the identity of persons detained at police stations. A designated detention officer may photograph any identifying marks found during such processes.
97. *Paragraph 14* enables a designated detention officer to take fingerprints without consent in the same circumstances that a constable may under the 1989 Order. He can also discharge the duty under the 1989 Order to inform the person concerned that his fingerprints may be the subject of a speculative search against existing records. *Paragraph 15* gives a designated detention officer limited powers to take fingerprints from a person detained under terrorism provisions.
98. *Paragraph 16* enables a designated detention officer to discharge the duty to inform a person from whom an intimate sample is to be taken that the sample may be the subject of a speculative search against existing records.
99. *Paragraph 17* enables a designated detention officer to take non-intimate samples without consent and to inform the person from whom the sample is to be taken of any necessary authorisation by a senior officer and of the grounds for that authorisation. The designated person may also inform the person concerned that a non-intimate sample may be the subject of a speculative search against existing records. *Paragraph 18* enables the designated officer to take a non-intimate sample from a person detained under terrorism provisions.
100. *Paragraph 19* enables a designated detention officer to require certain defined categories of persons who have been charged with or convicted of recordable offences to attend a police station to have a sample taken.
101. *Paragraph 20* enables a designated detention officer to photograph detained persons in the same way that constables may under the 1989 Order and *paragraph 21* enables the designated detention officer to photograph a person detained under terrorism provisions.

### **Part 3: Escort Officers**

102. This Part covers escort powers. It includes powers enabling designated police support staff and contracted-out staff to transport arrested persons to police stations. It also allows designated civilians to escort detained persons from one police station to another or between police stations and other locations specified by the custody officer.
103. *Paragraph 22* enables a suitably designated person to carry out the duty of taking a person arrested by a constable to a police station as soon as practicable. That must be a designated station (i.e. a main station equipped for holding detainees) unless

the person is working in an area not covered by such a station and it appears that it will not be necessary to hold the arrestee for more than six hours. The designated person may delay removal to a police station if the arrestee is required elsewhere for immediate investigative purposes. A designated person using powers under this paragraph is regarded as having the arrestee in lawful custody. He has a duty to prevent the arrestee's escape and is entitled to use reasonable force to prevent this. He also has the power to carry out non-intimate searches of the arrestee and to seize anything found as a result of such a search.

104. *Paragraph 23* enables a suitably designated person, with the authority of the custody officer, to escort detainees between police stations or between police stations and other specified locations. Once again, a designated person using powers under this paragraph is regarded as having the detainee in lawful custody. He has a duty to prevent escape and is entitled to use reasonable force to prevent this. He is also entitled to carry out non-intimate searches. Where the custody officer transfers a detainee to a designated person under these provisions, the designated person becomes responsible for ensuring that the detainee is treated in accordance with the 1989 Order and codes of practice.

#### **Part 4: Interpretation**

105. *Paragraph 24* defines the meaning of certain terms used in Schedule 2.

#### **Section 32 and Schedule 3: Police powers: amendments**

106. *Section 32* gives effect to Schedule 3, which makes amendments consequential on sections 30 and 31.

#### **Section 33: Designations: supplementary**

107. This section makes supplementary provisions relating to designations. *Subsection (2)* requires a designated person to produce his designation on request although *subsection (3)* makes it clear that failure to do so does not render performance or exercise of the designated powers invalid. *Subsection (4)* provides the Chief Constable with powers to modify or withdraw a designation at any time. Under *subsection (5)* if the Chief Constable withdraws the designation of a contracted-out individual he must notify the relevant contractor.

#### **Section 34: Complaints and misconduct**

108. *Section 34* gives the Secretary of State the power to provide in regulations for the handling of complaints and allegations of misconduct against designated civilians, including contracted-out staff, relating to the exercise of their functions as outlined in Schedule 2 to the Act. The regulations may in particular apply any provisions in Part 7 of the 1998 Act (Police Complaints and Disciplinary Proceedings) with appropriate modifications.

#### **Section 35: Liability for unlawful conduct**

109. This section makes provision for the purposes of determining liability for unlawful conduct by a designated civilian in reliance on a designation. In the case of a member of the police support staff, the Chief Constable is to be treated as the employer and accordingly a joint tortfeasor. In the case of contracted-out staff, such conduct is to be treated as conduct in the course of the person's employment by the contractor and so the contractor will be a joint tortfeasor.

#### **Section 36: Notifiable memberships**

110. *Section 36* applies section 51 of the 2000 Act, regarding notifiable memberships, to designated police support staff and contracted-out staff. Under this provision designated civilians are required to inform the Chief Constable of membership of an organisation

*These notes refer to the Police (Northern Ireland) Act  
2003 (c.6) which received Royal Assent on 8 April 2003*

which might reasonably be regarded as affecting their ability to discharge their duties effectively and impartially.

***Section 37: Code of ethics***

111. **Section 37** gives the Secretary of State the power by Order to extend the application of section 52 of the 2000 Act to apply the Code of ethics issued under that section to designated police support staff and contracted-out staff. The Code has provisions relating to integrity, behaviour and the care of people in detention. These are matters that are directly relevant to the duties that will be undertaken by designated civilians.

***Section 38: Assaults on, and obstruction of, designated persons***

112. **Section 38** amends section 66 of the 1998 Act which makes it an offence to assault, resist, obstruct or impede a constable in the execution of his duty, or a person assisting a constable in the execution of his duty. The effect of the amendment is that it becomes an offence to do the same to a designated person, or a person assisting a designated person.

***Section 39: Impersonation etc. of designated persons***

113. **Section 39** amends section 67 of the 1998 Act (which makes it an offence to impersonate a police officer with intent to deceive). The effect of the amendment is that it becomes an offence for a person, with intent to deceive, to impersonate a designated person, to do something designed to suggest falsely that he is a designated person, or to suggest that his powers as a designated person are greater than they actually are.

***Section 40: Designated persons: interpretation***

114. **Section 40** deals with the interpretation of expressions used in sections 30 to 39, relating to designated persons. In particular it provides for expressions used in these sections, which are also used in the 2000 Act, to have the same meanings as when used in the 2000 Act.