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STATUTORY INSTRUMENTS

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**1989 No. 1341 (N.I. 12)**

The Police and Criminal Evidence  
(Northern Ireland) Order 1989 <sup>F1</sup>

- - - - - 2nd August 1989

**F1** mod. by 2005 c. 2

**Modifications etc. (not altering text)**

- C1** Order extended by [Police \(Northern Ireland\) Act 2003 \(c. 6\), Sch. 4 para. 23A](#) (as inserted (prosp.) by [Policing \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2007 \(S.I. 2007/912 \(N.I. 6\)\)](#), arts. 1(2), 6(2), [Sch. 4 para. 5](#))
- C2** Order power to apply (with modifications) conferred (21.7.2009) by [Borders, Citizenship and Immigration Act 2009 \(c. 11\), ss. 23, 58\(1\)](#) (with saving in s. 36(4))
- C3** Order: functions of Secretary of State transferred to Department of Justice (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 4(1)(2), [Sch. 1](#) (with arts. 28-31); S.I. 2010/977, [art. 1\(2\)](#)
- C4** Order: functions of Lord Chancellor transferred to Department of Justice (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 15(1), [Sch. 17 para. 41](#) (with arts. 15(6), 28-31); S.I. 2010/977, [art. 1\(2\)](#)

PART I

INTRODUCTORY

**Title and commencement**

1.—(1) This Order may be cited as the Police and Criminal Evidence (Northern Ireland) Order 1989.

(2) This Article and Articles 2, 29(4), 60(a), 65, 66 and 89 shall come into operation on the expiration of one month from the day on which the Order is made.

(3) The other provisions of this Order shall come into operation on such day or days as the Secretary of State may by order appoint<sup>F2</sup>.

(4) An order under paragraph (3) may make such transitional provision as appears to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into operation.

**F2** partly exercised by SR 1989/404, SR 1989/441

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## General interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>F3</sup> shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“arrestable offence” has the meaning assigned to it by Article 26;

“designated police station” has the meaning assigned to it by Article 36;

“document”<sup>F4</sup> means anything in which information of any description is recorded];

<sup>F5</sup>“intimate search” means a search which consists of the physical examination of a person's body orifices;

“items subject to legal privilege” has the meaning assigned to it by Article 12;

<sup>F6</sup>“parent or guardian” means—

*Sub#para. (a) rep. by 1995 NI 2*

(b) in the case of a child<sup>F7</sup> . . . in the care of a Health and Social Services Board<sup>F8</sup> or Health and Social Services trust], that Board<sup>F8</sup> or Health and Social Services trust];

*Definitions rep. by 2000 c. 32*

“premises” has the meaning assigned to it by Article 25;

“recordable offence” means any offence to which regulations under Article 29 apply;

<sup>F6</sup>“serious arrestable offence” has the meaning assigned to it by Article 87;

“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954<sup>F9</sup>;

[<sup>F10</sup>“the terrorism provisions” means section 41 of the Terrorism Act 2000, and any provision of Schedule 7 to that Act conferring a power of detention;]

[<sup>F10</sup>“terrorism” has the meaning given in section 1 of that Act.]

“vessel” includes any ship, boat, raft or other apparatus constructed or adapted for floating on water.

<sup>F6</sup>(3) Subject to paragraph (4), a person is in police detention for the purposes of this Order if—

(a) he has been taken to a police station after being arrested for an offence or after being arrested under<sup>F11</sup> section 41 of the Terrorism Act 2000]; or

(b) he is arrested at a police station after attending voluntarily at the station or accompanying a constable to it,<sup>F12</sup> or]

[<sup>F12</sup>(c) he is arrested at a police station after being taken to the station in pursuance of a direction under section 16 of the Prison Act (Northern Ireland) 1953,]

and is detained there or is detained elsewhere in the charge of a constable.

(4) A person—

(a) who is at a court after being charged; or

(b) who has been taken from a custodial establishment and held in police custody pending his appearance at a court,

is not in police detention for those purposes.

[<sup>F13</sup>(4A) Where a person is in another's lawful custody by virtue of paragraph 8, 22(1) or 23(2) of Schedule 2 to the Police (Northern Ireland) Act 2003, he shall be treated as being in police detention for the purposes of this Order.]

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[<sup>F14</sup>(5) In this Order “custodial establishment” includes a prison, a young offenders centre, a juvenile justice centre<sup>F6</sup> and a remand centre.]

|            |                                |
|------------|--------------------------------|
| <b>F3</b>  | 1954 c. 33 (NI)                |
| <b>F4</b>  | 1997 NI 21                     |
| <b>F5</b>  | prosp. rep. by 1995 NI 17      |
| <b>F6</b>  | prosp. insertion by 2002 c. 26 |
| <b>F7</b>  | rep. by 1998 NI 9              |
| <b>F8</b>  | 1995 NI 2                      |
| <b>F9</b>  | 1954 c. 33 (NI)                |
| <b>F10</b> | 2000 c. 11                     |
| <b>F11</b> | 2000 c. 11                     |
| <b>F12</b> | 1995 NI 17                     |
| <b>F13</b> | 2003 c. 6                      |
| <b>F14</b> | 1998 NI 9                      |

## PART II

### POWERS TO STOP AND SEARCH

#### Power of constable to stop and search persons, vehicles etc.

3.—(1) A constable may exercise any power conferred by this Article—

- (a) in any place to which at the time when he proposes to exercise the power the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission; or
- (b) in any other place to which people have ready access at the time when he proposes to exercise the power but which is not a dwelling.

(2) Subject to paragraphs (3) to (5), a constable—

(a) may search—

- (i) any person or vehicle;
- (ii) anything which is in or on a vehicle,

for stolen or prohibited articles or any article to which paragraph (9) applies; and

(b) may detain a person or vehicle for the purpose of such a search.

(3) This Article does not give a constable power to search a person or vehicle or anything in or on a vehicle unless he has reasonable grounds for suspecting that he will find stolen or prohibited articles or any article to which paragraph (9) applies.

(4) If a person is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a constable may not search him in the exercise of the power conferred by this Article unless the constable has reasonable grounds for believing—

- (a) that he does not reside in the dwelling; and
- (b) that he is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(5) If a vehicle is in a garden or yard occupied with and used for the purposes of a dwelling or on other land so occupied and used, a constable may not search the vehicle or anything in or on it in the exercise of the power conferred by this Article unless he has reasonable grounds for believing—

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- (a) that the person in charge of the vehicle does not reside in the dwelling; and
  - (b) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.
- (6) If in the course of such a search a constable discovers an article which he has reasonable grounds for suspecting to be a stolen or prohibited article or an article to which paragraph (9) applies, he may seize it.
- (7) An article is prohibited for the purposes of this Part if it is—
- (a) an offensive weapon; or
  - (b) an article—
    - (i) made or adapted for use in the course of or in connection with an offence to which this sub#paragraph applies; or
    - (ii) intended by the person having it with him for such use by him or by some other person.
- (8) The offences to which sub#paragraph (b) of paragraph (7) applies are—
- (a) burglary;
  - (b) theft;
  - (c) offences under section 12(2) of the Theft Act (Northern Ireland) 1969<sup>F15</sup> (taking of vehicles and other conveyances without authority);
  - <sup>F16</sup>(d) fraud (contrary to section 1 of the Fraud Act 2006).]
  - (e) offences under Article 172 of the Road Traffic (Northern Ireland) Order 1981<sup>F17</sup> (taking of motor vehicle, etc. without owner's consent or authority)<sup>F18</sup>;and]
  - <sup>F18</sup>(f) offences under Article 3 of the Criminal Damage (Northern Ireland) Order 1977 (NI 4) (destroying or damaging property).]
- (9) This paragraph applies to any article in relation to which a person has committed, or is committing or is going to commit an offence under section 139 of the Criminal Justice Act 1988<sup>F19</sup> (offence of having article with blade or point in public place).
- (10) In this Part “offensive weapon” means any article—
- (a) made or adapted for use for causing injury to persons; or
  - (b) intended by the person having it with him for such use by him or by some other person.

**F15** 1969 c. 16 (NI)

**F16** Art. 3(8)(d) substituted (15.1.2007) by Fraud Act 2006 (c. 35), ss. 14(1), 15(1), **Sch. 1 para. 23**; S.I. 2006/3200, **art. 2**

**F17** 1981 NI 1

**F18** 2004 NI 9

**F19** 1988 c. 33

**Modifications etc. (not altering text)**

**C5** Art. 3(7)(b) modified (15.1.2007) by Fraud Act 2006 (c. 35), **ss. 8, 15(1)**; S.I. 2006/3200, **art. 2**

**Provisions relating to search under Article 3 and other powers**

- 4.—(1) A constable who detains a person or vehicle in the exercise—
- (a) of the power conferred by Article 3; or
  - (b) of any other power—

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- (i) to search a person without first arresting him; or
  - (ii) to search a vehicle without making an arrest,
- need not conduct a search if it appears to him subsequently—
- (i) that no search is required; or
  - (ii) that a search is impracticable.
- (2) If a constable contemplates a search, other than a search of an unattended vehicle, in the exercise—
- (a) of the power conferred by Article 3; or
  - (b) of any other power, except a power conferred by any of the provisions referred to in paragraph (3)—
- (i) to search a person without first arresting him; or
  - (ii) to search a vehicle without making an arrest,
- it shall be his duty, subject to paragraph (5), to take reasonable steps before he commences the search to bring to the attention of the appropriate person—
- (i) if the constable is not in uniform, documentary evidence that he is a constable; and
  - (ii) whether he is in uniform or not, the matters specified in paragraph (4);
- and the constable shall not commence the search until he has performed that duty.
- (3) The provisions referred to for the purposes of paragraph (2)(b) are—
- (a) Article 8,
  - [<sup>F20</sup>(b) sections 85, 95 and 116 of and Schedule 10 to the Terrorism Act 2000, and]
  - (c) section 27(2) of the Aviation Security Act 1982<sup>F21</sup>.
- (4) The matters referred to in paragraph (2)(ii) are—
- (a) the constable's police number and the name of the police station to which he is attached;
  - (b) the object of the proposed search;
  - (c) the constable's grounds for proposing to make it; and
  - (d) the effect of Article 5(7) or (8), as may be appropriate.
- (5) A constable need not bring the effect of Article 5(7) or (8) to the attention of the appropriate person if it appears to the constable that it will not be practicable to make the record in Article 5(1).
- (6) In this Article “the appropriate person” means—
- (a) if the constable proposes to search a person, that person; and
  - (b) if he proposes to search a vehicle, or anything in or on a vehicle, the person in charge of the vehicle.
- (7) On completing a search of an unattended vehicle or anything in or on such a vehicle in the exercise of any such power as is mentioned in paragraph (2), other than a search under any of the provisions mentioned in paragraph (3), a constable shall leave a notice—
- (a) stating that the vehicle has been searched by the police;
  - (b) giving his police number and the name of the police station to which he is attached;
  - (c) stating that an application for compensation for any damage caused by the search may be made to that police station; and
  - (d) stating the date on which the search was carried out and the effect of Article 5(8).
- (8) The constable shall leave the notice inside the vehicle unless it is not reasonably practicable to do so without damaging the vehicle.

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(9) The time for which a person or vehicle may be detained for the purposes of such a search is such time as is reasonably required to permit a search to be carried out either at the place where the person or vehicle was first detained or nearby.

(10) Neither the power conferred by Article 3 nor any other power to detain and search a person without first arresting him or to detain and search a vehicle without making an arrest is to be construed—

- (a) as authorising a constable to require a person to remove any of his clothing in public other than an outer coat, jacket, headgear or gloves; or
- (b) as authorising a constable not in uniform to stop a vehicle.

(11) This Article and Article 3 apply to vessels, aircraft and hovercraft as they apply to vehicles.

**F20** 2000 c. 11

**F21** 1982 c. 36

### **Duty to make records concerning searches**

5.—(1) Where a constable has carried out a search in the exercise of any such power as is mentioned in Article 4(2), other than a search under a power conferred by any of the provisions mentioned in Article 4(3), he shall make a record of it in writing unless it is not practicable to do so.

(2) If—

- (a) a constable is required by paragraph (1) to make a record of a search; but
- (b) it is not practicable to make the record on the spot,

he shall make it as soon as practicable after the completion of the search.

(3) The record of a search of a person shall include a note of his name, if the constable knows it, but a constable may not detain a person to find out his name.

(4) If a constable does not know the name of a person whom he has searched, the record of the search shall include a note otherwise describing that person.

(5) The record of a search of a vehicle shall include a note describing the vehicle.

(6) The record of a search of a person or a vehicle—

- (a) shall state—
  - (i) the object of the search;
  - (ii) the grounds for making it;
  - (iii) the date and time when it was made;
  - (iv) the place where it was made;
  - (v) whether anything, and if so what, was found;
  - (vi) whether any, and if so what, injury to a person or damage to property appears to the constable to have resulted from the search; and
- (b) shall identify by reference to his police number the constable making it.

(7) If a constable who conducted a search of a person made a record of it, the person who was searched shall be entitled to a copy of the record if he asks for one before the end of the period specified in paragraph (9).

(8) If—

- (a) the owner of a vehicle which has been searched or the person who was in charge of the vehicle at the time when it was searched asks for a copy of the record of the search before the end of the period specified in paragraph (9); and

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(b) the constable who conducted the search made a record of it, the person who made the request shall be entitled to a copy.

(9) The period mentioned in paragraphs (7) and (8) is the period of 12 months beginning with the date on which the search was made.

(10) The requirements imposed by this Article with regard to records of searches of vehicles shall apply also to records of searches of vessels, aircraft and hovercraft.

### Road checks

6.—(1) This Article shall have effect in relation to the conduct of road checks by police officers for the purpose of ascertaining whether a vehicle is carrying—

- (a) a person who has committed an offence other than a road traffic offence or a<sup>F22</sup> vehicle] excise offence;
- (b) a person who is a witness to such an offence;
- (c) a person intending to commit such an offence; or
- (d) a person who is unlawfully at large.

(2) For the purposes of this Article a road check consists of the exercise in a locality of the power conferred by Article 180(1) of the Road Traffic (Northern Ireland) Order 1981<sup>F23</sup> in such a way as to stop during the period for which its exercise in that way in that locality continues all vehicles or vehicles selected by any criterion.

(3) Subject to paragraph (5), there may only be such a road check if a police officer of the rank of superintendent or above authorises it in writing.

(4) An officer may only authorise a road check under paragraph (3)—

- (a) for the purpose specified in paragraph (1)(a), if he has reasonable grounds—
  - (i) for believing that the offence is a serious arrestable offence; and
  - (ii) for suspecting that the person is, or is about to be, in the locality in which vehicles would be stopped if the road check were authorised;
- (b) for the purpose specified in paragraph (1)(b), if he has reasonable grounds for believing that the offence is a serious arrestable offence;
- (c) for the purpose specified in paragraph (1)(c), if he has reasonable grounds—
  - (i) for believing that the offence would be a serious arrestable offence; and
  - (ii) for suspecting that the person is, or is about to be, in the locality in which vehicles would be stopped if the road check were authorised;
- (d) for the purpose specified in paragraph (1)(d), if he has reasonable grounds for suspecting that the person is, or is about to be, in that locality.

(5) An officer below the rank of superintendent may authorise such a road check if it appears to him that it is required as a matter of urgency for one of the purposes specified in paragraph (1).

(6) If an authorisation is given under paragraph (5), it shall be the duty of the officer who gives it—

- (a) to make a written record of the time at which he gives it; and
- (b) to cause an officer of the rank of superintendent or above to be informed that it has been given.

(7) The duties imposed by paragraph (6) shall be performed as soon as it is practicable to do so.

(8) An officer to whom a report is made under paragraph (6) may, in writing, authorise the road check to continue.

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(9) If such an officer considers that the road check should not continue, he shall record in writing—

- (a) the fact that it took place; and
- (b) the purpose for which it took place.

(10) An officer giving an authorisation under this Article shall specify the locality in which vehicles are to be stopped.

(11) An officer giving an authorisation under this Article, other than an authorisation under paragraph (5)—

- (a) shall specify a period, not exceeding seven days, during which the road check may continue; and
- (b) may direct that the road check—
  - (i) shall be continuous; or
  - (ii) shall be conducted at specified times, during that period.

(12) If it appears to an officer of the rank of superintendent or above that a road check ought to continue beyond the period for which it has been authorised he may, from time to time, in writing specify a further period, not exceeding seven days, during which it may continue.

(13) Every written authorisation shall specify—

- (a) the name of the officer giving it;
- (b) the purpose of the road check; and
- (c) the locality in which vehicles are to be stopped.

(14) The duties to specify the purposes of a road check imposed by paragraphs (9) and (13) include duties to specify any relevant serious arrestable offence.

(15) Where a vehicle is stopped in a road check, the person in charge of the vehicle at the time when it is stopped shall be entitled to obtain a written statement of the purpose of the road check if he applies for such a statement not later than the end of the period of twelve months from the day on which the vehicle was stopped.

(16) Nothing in this Article affects the exercise by police officers of any power to stop vehicles for purposes other than those specified in paragraph (1).

**F22** 1994 c. 22

**F23** 1981 NI 1

## Reports of recorded searches and of road checks

7.—(1) Every annual report under<sup>F24</sup> section 58(1) of the Police (Northern Ireland) Act 2000] shall contain information—

- (a) about searches recorded under Article 5 which have been carried out during the period to which it relates; and
- (b) about road checks authorised during that period under Article 6.

(2) The information about searches shall not include information about specific searches but shall include—

- (a) the total numbers of searches in each month during the period to which the report relates—
  - (i) for stolen articles;



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- (ii) for offensive weapons or articles to which Article 3(9) applies; and
- (iii) for other prohibited articles;
- (b) the total number of persons arrested in each such month in consequence of searches of each of the descriptions specified in sub#paragraph (a)(i) to (iii).
- (3) The information about road checks shall include information—
  - (a) about the reason for authorising each road check; and
  - (b) about the result of each of them.

**F24** 2000 c. 32

**Modifications etc. (not altering text)**

**C6** Art. 7 applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

**Statutory undertakers etc.**

8.—(1) A constable employed by statutory undertakers may stop, detain and search any vehicle before it leaves a goods area included in the premises of the statutory undertakers.

(2) In this Article “goods area” means any area used wholly or mainly for the storage or handling of goods.

**Part II—supplementary**

9.—(1) Section 19 of the Pedlars Act 1871<sup>F25</sup> shall cease to have effect.

(2) There shall also cease to have effect so much of any provision contained in an Act passed before the coming into operation of this Part, other than—

- (a) a provision contained in any public general Act; or
- (b) a provision relating to statutory undertakers,

as confers on a constable a power to search for stolen or unlawfully obtained goods.

(3) In this Part “statutory undertakers” means persons authorised by any enactment to carry on any<sup>F26</sup> . . . , dock or harbour undertaking<sup>F27</sup> or an airport operator (within the meaning of the Airports (Northern Ireland) Order 1994) authorised under Article 19 of that Order].

**F25** 1871 c. 96

**F26** 1994 NI 1

**F27** 1994 NI 1

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## PART III

### POWERS OF ENTRY, SEARCH AND SEIZURE

#### *Search warrants*

#### **Power of justice of the peace to authorise entry and search of premises**

**10.**—(1) If on an application made by a constable a justice of the peace is satisfied that there are reasonable grounds for believing—

- (a) that a serious arrestable offence has been committed; and
- (b) that there is material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence; and
- (c) that the material is likely to be relevant evidence; and
- (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and
- (e) that any of the conditions specified in paragraph (3) applies,

he may issue a warrant authorising a constable to enter and search the premises.

(2) A constable may seize and retain anything for which a search has been authorised under paragraph (1).

(3) The conditions mentioned in paragraph (1)(e) are—

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;
- (c) that entry to the premises will not be granted unless a warrant is produced;
- (d) that the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.

(4) In this Order “relevant evidence”, in relation to an offence, means anything that would be admissible in evidence at a trial for the offence.

(5) The power to issue a warrant conferred by this Article is in addition to any such power otherwise conferred.

[<sup>F28</sup>(6) This Article applies in relation to a relevant offence (as defined in section 28D(4) of the Immigration Act 1971) as it applies in relation to a serious arrestable offence.]

**F28** 1999 c. 33

#### **Special provisions as to access**

**11.**—(1) A constable may obtain access to excluded material or special procedure material for the purposes of a criminal investigation by making an application under Schedule 1 and in accordance with that Schedule.

(2) Subject to paragraph (3), any statutory provision passed or made before the making of this Order under which a search of premises for the purposes of a criminal investigation could be

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authorised by the issue of a warrant to a constable shall cease to have effect so far as it relates to the authorisation of searches—

- (a) for items subject to legal privilege; or
- (b) for excluded material; or
- (c) for special procedure material consisting of documents or records other than documents.

(3) Nothing in this Article or in Schedule 1 shall affect the powers conferred by<sup>F29</sup> sections 37 and 38 of, and Schedules 5 and 6 to, the Terrorism Act 2000].

**F29** 2000 c. 11

**Modifications etc. (not altering text)**

- C7** Art. 11(1)(2) applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, **Sch. 1**, Sch. 2
- C8** Art. 11(1)(2) applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

**Meaning of “items subject to legal privilege”**

**12.**—(1) Subject to paragraph (2), in this Order “items subject to legal privilege” means—

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made—
  - (i) in connection with the giving of legal advice; or
  - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them.

(2) Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.

**Modifications etc. (not altering text)**

- C9** Art. 12 applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

**Meaning of “excluded material”**

**13.**—(1) Subject to the following provisions of this Article, in this Order “excluded material” means—

- (a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence;
- (b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence;

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- (c) journalistic material which a person holds in confidence and which consists—
  - (i) of documents; or
  - (ii) of records other than documents.
- (2) A person holds material other than journalistic material in confidence for the purposes of this Article if he holds it subject—
  - (a) to an express or implied undertaking to hold it in confidence; or
  - (b) to a restriction on disclosure or an obligation of secrecy contained in any statutory provision, including a statutory provision passed or made after the making of this Order.
- (3) A person holds journalistic material in confidence for the purposes of this Article if—
  - (a) he holds it subject to such an undertaking, restriction or obligation; and
  - (b) it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

**Modifications etc. (not altering text)**

**C10** Art. 13 applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

**Meaning of “personal records”**

**14.** In this Part “personal records” means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating—

- (a) to his physical or mental health;
- (b) to spiritual counselling or assistance given or to be given to him; or
- (c) to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who—
  - (i) by reason of his office or occupation has responsibilities for his personal welfare; or
  - (ii) by reason of an order of a court has responsibilities for his supervision.

**Modifications etc. (not altering text)**

**C11** Art. 14 applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

**Meaning of “journalistic material”**

**15.—(1)** Subject to paragraph (2), in this Order “journalistic material” means material acquired or created for the purposes of journalism.

(2) Material is only journalistic material for the purposes of this Order if it is in the possession of a person who acquired or created it for the purposes of journalism.

(3) A person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

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**Modifications etc. (not altering text)**

**C12** [Art. 15](#) applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

**Meaning of “special procedure material”**

**16.—(1)** In this Order “special procedure material” means—

- (a) material to which paragraph (2) applies; and
- (b) journalistic material, other than excluded material.

(2) Subject to the following provisions of this Article, this paragraph applies to material, other than items subject to legal privilege and excluded material, in the possession of a person who—

- (a) acquired or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office; and
- (b) holds it subject—
  - (i) to an express or implied undertaking to hold it in confidence; or
  - (ii) to a restriction or obligation such as is mentioned in Article 13(2)(b).

(3) Where material is acquired—

- (a) by an employee from his employer and in the course of his employment; or
- (b) by a company from an associated company,

it is only special procedure material if it was special procedure material immediately before the acquisition.

(4) Where material is created by an employee in the course of his employment, it is only special procedure material if it would have been special procedure material had his employer created it.

(5) Where material is created by a company on behalf of an associated company, it is only special procedure material if it would have been special procedure material had the associated company created it.

(6) A company is to be treated as another's associated company for the purposes of this Article if it would be so treated under section 416 of the Income and Corporation Taxes Act 1988<sup>F30</sup>.

**F30** [1988 c. 1](#)

**Modifications etc. (not altering text)**

**C13** [Art. 16](#) applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

**Search warrants—safeguards**

**17.—(1)** This Article and Article 18 have effect in relation to the issue to constables under any statutory provision, including a statutory provision passed or made after the making of this Order, of warrants to enter and search premises; and an entry on or search of premises under a warrant is unlawful unless the warrant complies with this Article and is executed in accordance with Article 18.

(2) Where a constable applies for any such warrant, it shall be his duty—

- (a) to state—
  - (i) the ground on which he makes the application; and

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- (ii) the statutory provision under which the warrant would be issued;
  - (b) to specify the premises which it is desired to enter and search; and
  - (c) to identify, so far as is practicable, the articles or persons to be sought.
- (3) An application for such a warrant shall be supported by a complaint in writing and substantiated on oath.
- (4) The constable shall answer any question that the justice of the peace or judge hearing the application asks him.
- (5) A warrant shall authorise an entry on one occasion only.
- (6) A warrant—
- (a) shall specify—
    - (i) the name of the person who applies for it;
    - (ii) the date on which it is issued;
    - (iii) the statutory provision under which it is issued; and
    - (iv) the premises to be searched; and
  - (b) shall identify, so far as is practicable, the articles or persons to be sought.
- (7) Two copies shall be made of a warrant.
- (8) The copies shall be clearly certified as copies by the justice of the peace or judge who issues the warrant.

### **Execution of warrants**

- 18.**—(1) A warrant to enter and search premises may be executed by any constable.
- (2) Such a warrant may authorise persons to accompany any constable who is executing it.
- (3) Entry and search under a warrant must be within one month from the date of its issue.
- (4) Entry and search under a warrant must be at a reasonable hour unless it appears to the constable executing it that the purpose of a search may be frustrated on an entry at a reasonable hour.
- (5) Where the occupier of premises which are to be entered and searched is present at the time when a constable seeks to execute a warrant to enter and search them, the constable—
- (a) shall identify himself to the occupier and, if not in uniform, shall produce to him documentary evidence that he is a constable;
  - (b) shall produce the warrant to him; and
  - (c) shall supply him with a certified copy of it.
- (6) Where—
- (a) the occupier of such premises is not present at the time when a constable seeks to execute such a warrant; but
  - (b) some other person who appears to the constable to be in charge of the premises is present, paragraph (5) shall have effect as if any reference to the occupier were a reference to that other person.
- (7) If there is no person present who appears to the constable to be in charge of the premises, he shall leave or affix a copy of the warrant in a prominent place on the premises.
- (8) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.
- (9) A constable executing a warrant shall make an endorsement on it stating—

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- (a) whether the articles or persons sought were found; and
  - (b) whether any articles were seized, other than articles which were sought.
- (10) A warrant which—
- (a) has been executed; or
  - (b) has not been executed within the time authorised for its execution,

shall be returned to the clerk of petty sessions for the petty sessions district in which the premises are situated.

(11) A warrant which is returned under paragraph (10) shall be retained for 12 months from its return.

(12) If during the period for which a warrant is to be retained the occupier of the premises to which it relates asks to inspect it, he shall be allowed to do so.

#### *Entry and search without search warrant*

#### **Entry for purpose of arrest etc.**

**19.**—(1) Subject to the following provisions of this Article, and without prejudice to any other statutory provision, a constable may enter and search any premises for the purpose—

- (a) of executing—
  - (i) a warrant of arrest issued in connection with or arising out of criminal proceedings; or
  - (ii) a warrant of commitment issued under Article 92 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>F31</sup>;
- (b) of arresting a person for an arrestable offence;
- (c) of arresting a person for an offence under Article 9 or 21 of the Public Order (Northern Ireland) Order 1987<sup>F32</sup>;
- <sup>F33</sup>(ca) of recapturing a person who is, or is deemed for any purpose to be, unlawfully at large while liable to be detained in a prison, young offenders centre,<sup>F34</sup> juvenile justice centre or in any other place in pursuance of Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998];
- (cb) of arresting a person in pursuance of section 49(1) of the Prison Act 1952 or section 40(1) of the Prisons (Scotland) Act 1989;]
- (d) of recapturing a person who is unlawfully at large and whom he is pursuing; or
- (e) of saving life or limb or preventing serious damage to property.

(2) Except for the purpose specified in paragraph (1)(e), the powers of entry and search conferred by this Article—

- (a) are only exercisable if the constable has reasonable grounds for believing that the person whom he is seeking is on the premises; and
- (b) are limited, in relation to premises consisting of two or more separate dwellings, to powers to enter and search—
  - (i) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other such dwelling; and
  - (ii) any such dwelling in which the constable has reasonable grounds for believing that the person whom he is seeking may be.

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(3) The power of search conferred by this Article is only a power to search to the extent that is reasonably required for the purpose for which the power of entry is exercised.

(4) Subject to paragraph (5), all the rules of common law under which a constable has power to enter premises without a warrant are hereby abolished.

(5) Nothing in paragraph (4) affects any power of entry to deal with or prevent a breach of the peace.

**F31** 1981 NI 26  
**F32** 1987 NI 7  
**F33** 1995 NI 17  
**F34** 1998 NI 9

### Entry and search after arrest

**20.**—(1) Subject to the following provisions of this Article, a constable may enter and search any premises occupied or controlled by a person who is under arrest for an arrestable offence, if he has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that relates—

- (a) to that offence; or
- (b) to some other arrestable offence which is connected with or similar to that offence.

(2) A constable may seize and retain anything for which he may search under paragraph (1).

(3) The power to search conferred by paragraph (1) is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence.

(4) Subject to paragraph (5), the powers conferred by this Article may not be exercised unless an officer of the rank of inspector or above has authorised them in writing.

[<sup>F35</sup>(5) A constable may conduct a search under paragraph (1)—

- (a) before the person is taken to a police station or released on bail under Article 32A; and
- (b) without obtaining an authorisation under paragraph (4),

if the condition in paragraph (5A) is satisfied.

(5A) The condition is that the presence of the person at a place (other than a police station) is necessary for the effective investigation of the offence.]

(6) If a constable conducts a search by virtue of paragraph (5), he shall inform an officer of the rank of inspector or above that he has made the search as soon as practicable after he has made it.

(7) An officer who—

- (a) authorises a search; or
- (b) is informed of a search under paragraph (6),

shall make a record in writing—

- (i) of the grounds for the search; and
- (ii) of the nature of the evidence that was sought.

(8) If the person who was in occupation or control of the premises at the time of the search is in police detention at the time the record is to be made, the officer shall make the record as part of his custody record.

(9) In the application of this Article to a member of a constabulary not maintained by the Police Authority, references to an officer of the rank of inspector or above shall be construed as references to a member of that constabulary whose rank is above that of constable.



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F35 2004 NI 9

*Seizure etc.*

**General power of seizure etc.**

21.—(1) The powers conferred by paragraphs (2), (3) and (4) are exercisable by a constable who is lawfully on any premises.

(2) The constable may seize anything which is on the premises if he has reasonable grounds for believing—

- (a) that it has been obtained in consequence of the commission of an offence; and
- (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) The constable may seize anything which is on the premises if he has reasonable grounds for believing—

- (a) that it is evidence in relation to an offence which he is investigating or any other offence; and
- (b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, damaged, altered or destroyed.

(4) The constable may require any information which is<sup>F36</sup> stored in any electronic form] and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible<sup>F37</sup> or from which it can readily be produced in a visible and legible form] if he has reasonable grounds for believing—

- (a) that—
  - (i) it is evidence in relation to an offence which he is investigating or any other offence; or
  - (ii) it has been obtained in consequence of the commission of an offence; and
- (b) that it is necessary to do so in order to prevent it being concealed, lost, tampered with or destroyed.

(5) The powers conferred by this Article are in addition to any power otherwise conferred.

(6) No power of seizure conferred on a constable under any statutory provision (including a statutory provision passed or made after the making of this Order) is to be taken to authorise the seizure of an item which the constable exercising the power has reasonable grounds for believing to be subject to legal privilege.

F36 2001 c. 16

F37 2001 c. 16

**Modifications etc. (not altering text)**

C14 Art. 21 applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, **Sch. 1**, Sch. 2

C15 Art. 21 applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

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## Extension of powers of seizure to computerised information

**22.**—(1) Every power of seizure which is conferred by a statutory provision to which this Article applies on a constable who has entered premises in the exercise of a power conferred by a statutory provision shall be construed as including a power to require any information<sup>F38</sup> stored in any electronic form] and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible<sup>F39</sup> or from which it can readily be produced in a visible and legible form].

(2) This Article applies—

- (a) to any statutory provision passed or made before the making of this Order;
- (b) to Articles 10 and 20;
- (c) to paragraph 10 of Schedule 1; and
- (d) to any statutory provision passed or made after the making of this Order.

**F38** 2001 c. 16

**F39** 2001 c. 16

### Modifications etc. (not altering text)

**C16** Art. 22 applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, **Sch. 1**, Sch. 2

**C17** Art. 22 applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

## Access and copying

**23.**—(1) A constable who seizes anything in the exercise of a power conferred by any statutory provision, including a statutory provision passed or made after the making of this Order, shall, if so requested by a person showing himself—

- (a) to be the occupier of premises on which it was seized; or
- (b) to have had custody or control of it immediately before the seizure,

provide that person with a record of what he seized.

(2) The constable shall provide the record within a reasonable time from the making of the request for it.

(3) Subject to paragraph (8), if a request for permission to be granted access to anything which—

- (a) has been seized by a constable; and
- (b) is retained by the police for the purpose of investigating an offence,

is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of a constable.

(4) Subject to paragraph (8), if a request for a photograph or copy of any such thing is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the officer shall—

- (a) allow the person who made the request access to it under the supervision of a constable for the purpose of photographing or copying it; or
- (b) photograph or copy it, or cause it to be photographed or copied.

(5) A constable may also photograph or copy, or have photographed or copied, anything which he has power to seize, without a request being made under paragraph (4).

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(6) Where anything is photographed or copied under paragraph (4)(b), the photograph or copy shall be supplied to the person who made the request.

(7) The photograph or copy shall be so supplied within a reasonable time from the making of the request.

(8) There is no duty under this Article to grant access to, or to supply a photograph or copy of, anything if the officer in charge of the investigation for the purposes of which it was seized has reasonable grounds for believing that to do so would prejudice—

- (a) that investigation;
- (b) the investigation of an offence other than the offence for the purposes of investigating which the thing was seized; or
- (c) any criminal proceedings which may be brought as a result of—
  - (i) the investigation of which he is in charge; or
  - (ii) any such investigation as is mentioned in sub#paragraph (b).

## Retention

**24.**—(1) Subject to paragraph (4), anything which has been seized by a constable or taken away by a constable following a requirement made by virtue of Article 21 or 22 may be retained so long as is necessary in all the circumstances.

(2) Without prejudice to the generality of paragraph (1)—

- (a) anything seized for the purposes of a criminal investigation may be retained, except as provided by paragraph (4)—
  - (i) for use as evidence at a trial for an offence; or
  - (ii) for forensic examination or for investigation in connection with an offence; and
- (b) anything may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

(3) Nothing seized on the ground that it may be used—

- (a) to cause physical injury to any person;
- (b) to damage property;
- (c) to interfere with evidence; or
- (d) to assist in escape from police detention or lawful custody,

may be retained when the person from whom it was seized is no longer in police detention or the custody of a court or is in the custody of a court but has been released on bail.

(4) Nothing may be retained for either of the purposes mentioned in paragraph (2)(a) if a photograph or copy would be sufficient for that purpose.

(5) Nothing in this Article affects any power of a court to make an order under<sup>[F40]</sup> section 31 of the Police (Northern Ireland) Act 1998]

[<sup>F41</sup>(6) This Article also applies to anything retained by the police under section 28H(5) of the Immigration Act 1971.]

**F40** 1998 c. 32

**F41** 1999 c. 33

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## Supplementary

### Meaning of “premises” etc.

**25.** In this Order—  
“premises” includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation; and
- (c) any tent or movable structure; and

“offshore installation” has the meaning given to it by section 1 of the Mineral Workings (Offshore Installations) Act 1971<sup>F42</sup>.

**F42** 1971 c. 61

#### Modifications etc. (not altering text)

**C18** Art. 25 applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

## PART IV

### ARREST

#### Arrest without warrant for arrestable offences

<sup>F43</sup>**26.**—(1) The powers of summary arrest conferred by the following paragraphs shall apply—

- (a) to offences for which the sentence is fixed by law;
- (b) to offences for which a person of 21 years of age or over (not previously convicted) may be sentenced to imprisonment for a term of five years (or might be so sentenced but for the restrictions imposed by Article 46(4) of the Magistrates' Courts (Northern Ireland) Order 1981<sup>F44</sup>); and
- (c) to the offences to which paragraph (2) applies,

and in this Order “arrestable offence” means any such offence.

(2) <sup>F45</sup> <sup>F46</sup>The offences to which this paragraph applies are—

- (a) offences for which a person may be arrested under the customs and excise Acts, as defined in section 1(1) of the Customs and Excise Management Act 1979<sup>F47</sup>;
- (b) offences under the Official Secrets Act 1920<sup>F48</sup> that are not arrestable offences by virtue of the term of imprisonment for which a person may be sentenced in respect of them;
- (c) offences under any provision of the Official Secrets Act 1989, except section 8(1), (4) or (5);
- (d) offences under section 2 of the Criminal Law Amendment Act 1885<sup>F49</sup> (procuration); and
- (e) offences under Article 172 of the Road Traffic (Northern Ireland) Order 1981<sup>F50</sup> (taking motor vehicle or other conveyance without authority etc.) or under section 12(2) (taking of vehicles and other conveyances without authority) or section 24(1) (going equipped for stealing, etc.) of the Theft Act (Northern Ireland) 1969<sup>F51</sup>.

- [<sup>F52</sup>(ee) offences under Article 167(1) of the Road Traffic (Northern Ireland) Order 1981 (driving while disqualified);]
- [<sup>F53</sup>(f) an offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978 (indecent photographs and pseudo-photographs of children).]
- Sub-para. (g) subst. by 1998 NI 6*
- [<sup>F54</sup>(h) an offence under Article 4 of the Protection from Harassment (Northern Ireland) Order 1997 (harassment);
  - (i) an offence under Article 25 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998 (contravention of non-molestation orders etc.)]]
- [<sup>F55</sup>(iza) an offence under Article 18(3) of the Public Order (Northern Ireland) Order 1987 (riotous behaviour in public place);]
- [<sup>F56</sup>(ia) an offence under Article 23A(7) of the Public Order (Northern Ireland) Order 1987 (S.I. 1987/463 (N.I. 7)) (failing to comply to requirement to remove disguise).]
- (j) <sup>F57</sup> .....
- [<sup>F56</sup>(j) an offence under section 21C(1) or 21D(1) of the Aviation Security Act 1982 (unauthorised presence in restricted zone or on aircraft);
- (k) an offence under section 39(1) of the Civil Aviation Act 1982 (trespass on aerodrome).]
- [<sup>F58</sup>(l) an offence of contravening a provision of an Order in Council under section 60 of that Act (air navigation order) where the offence relates to—
  - (i) a provision which prohibits specified behaviour by a person in an aircraft towards or in relation to a member of the crew, or
  - (ii) a provision which prohibits a person from being drunk in an aircraft, in so far as it applies to passengers.]]
- [<sup>F59</sup>(m) an offence under section 5(2) of the Misuse of Drugs Act 1971 (c. 38) (having possession of a controlled drug) in respect of cannabis or cannabis resin (within the meaning of that Act).]
- [<sup>F60</sup>(n) an offence under Article 61(1) of the Firearms (Northern Ireland) Order 2004 (NI 3) (carrying a firearm in a public place) in respect of an air gun or imitation firearm.]
- [<sup>F61</sup>(n) an offence under section 42 of the Offences against the Person Act 1861 (c. 100) (common assault etc).]
- [<sup>F62</sup>(o) an offence under section 9(3) of the Prevention of Terrorism Act 2005.]
- [<sup>F63</sup>(p) an offence under any of the following provisions of the Sexual Offences Act 2003—
  - (i) section 66 (exposure);
  - (ii) section 67 (voyeurism);
  - (iii) section 69 (intercourse with an animal);
  - (iv) section 70 (sexual penetration of a corpse);
  - (v) section 71 (sexual activity in public lavatory).]]
- [<sup>F64</sup>(q) an offence under—
  - (i) section 25(5) of the Identity Cards Act 2006 (possession of false document etc.);
  - (ii) section 27 of that Act (disclosure of information on National Identity Register); or
  - (iii) section 28 of that Act (providing false information).]]
- [<sup>F65</sup>(r) offences under section 21(1), 27(1) or 31(1) of the London Olympic Games and Paralympic Games Act 2006 (unauthorised advertising, trading and ticket sales).]

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[<sup>F66</sup>(r) an offence under—

- (i) section 35 of the Wireless Telegraphy Act 2006 (unauthorised use etc of wireless telegraphy station or apparatus) to which section 35(2) applies;
- (ii) section 36 of that Act (keeping wireless telegraphy station or apparatus available for unauthorised use) to which section 36(2) applies;
- (iii) section 37 of that Act (allowing premises to be used for unlawful broadcasting);
- (iv) section 38 of that Act (facilitating unauthorised broadcasting);
- (v) section 47 of that Act (misleading messages);
- (vi) section 68 of that Act (deliberate interference).]

(3) Without prejudice to Article 4 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983<sup>F67</sup>, the powers of summary arrest conferred by the following paragraphs shall also apply to the offences of—

- (a) conspiring to commit any of the offences mentioned in paragraph (2);
- (b) attempting to commit any such offence;
- (c) inciting, aiding, abetting, counselling or procuring the commission of any such offence;

and such offences are also arrestable offences for the purposes of this Order.

(4) Any person may arrest without a warrant—

- (a) anyone who is in the act of committing an arrestable offence;
- (b) anyone whom he has reasonable grounds for suspecting to be committing such an offence.

(5) Where an arrestable offence has been committed, any person may arrest without a warrant—

- (a) anyone who is guilty of the offence;
- (b) anyone whom he has reasonable grounds for suspecting to be guilty of it.

(6) Where a constable has reasonable grounds for suspecting that an arrestable offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds for suspecting to be guilty of the offence.

(7) A constable may arrest without a warrant—

- (a) anyone who is about to commit an arrestable offence;
- (b) anyone whom he has reasonable grounds for suspecting to be about to commit an arrestable offence.

**F43** mod. by SI 1999/2821; 3133

**F44** 1981 NI 26

**F45** mod. by SI 2005/253

**F46** mod. by SI 2005/3432

**F47** 1979 c. 2

**F48** 1920 c. 75

**F49** 1885 c. 69

**F50** 1981 NI 1

**F51** 1969 c. 16 (NI)

**F52** 2004 c. 4

**F53** 1994 c. 33

**F54** 1998 NI 6

**F55** 2003 NI 13

**F56** 2001 c. 24

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- F57** Art. 26(2)(j) relating to s. 14(1) of the Wireless Telegraphy Act 1949 repealed (8.2.2007) by Wireless Telegraphy Act 2006 (c. 36), ss. 123, 125(2), 126(2), Sch. 7 para. 8, **Sch. 9 Pt. 2** (with Sch. 8 Pt. 1)
- F58** 2003 c. 19
- F59** 2003 NI 18
- F60** 2005 NI 16
- F61** 2004 c. 28
- F62** 2005 c. 2
- F63** 2005 NI 15
- F64** Art. 26(2)(q) inserted (7.6.2006 for certain purposes, otherwise 20.10.2009) by Identity Cards Act 2006 (c. 15), **ss. 30(4), 44(3)**; S.I. 2006/1439, **art. 2(c)**; S.I. 2009/2565, **art. 2(7)(x)**
- F65** Art. 26(2)(r) added (30.3.2006) by virtue of London Olympic Games and Paralympic Games Act 2006 (c. 12), **ss. 38(i), 39, 40(1)(h)**
- F66** Art. 26(2)(r) inserted (8.2.2007) by Wireless Telegraphy Act 2006 (c. 36), ss. 123, 126(2), **Sch. 7 para. 8**
- F67** 1983 NI 13

#### Modifications etc. (not altering text)

- C19** Art. 26 applied (9.6.2006) by S.I. 2006/1454, **art. 13(7)**  
 Art. 26 applied (16.11.2006) by S.I. 2006/2952, **art. 14(7)** (with art. 18)  
 Art. 26 applied (16.11.2006) by S.I. 2006/2958, **art. 13(7)** (with art. 17)
- C20** Art. 26 applied (with modifications) (12.10.2006) by S.I. 2006/2657, **art. 14(7)** (with arts. 18, 19)
- C21** Art. 26 applied (9.2.2007) by Iran (Financial Sanctions) Order 2007 (S.I. 2007/281), **art. 13(7)** (with art. 17)

VALID FROM 01/03/2007

#### [<sup>F68</sup> Arrest without warrant: other persons

**26A.—(1)** A person other than a constable may arrest without a warrant—

- (a) anyone who is in the act of committing an indictable offence;
- (b) anyone whom he has reasonable grounds for suspecting to be committing an indictable offence.

(2) Where an indictable offence has been committed, a person other than a constable may arrest without a warrant—

- (a) anyone who is guilty of the offence;
- (b) anyone whom he has reasonable grounds for suspecting to be guilty of it.

(3) But the power of summary arrest conferred by paragraph (1) or (2) is exercisable only if—

- (a) the person making the arrest has reasonable grounds for believing that for any of the reasons mentioned in paragraph (4) it is necessary to arrest the person in question; and
- (b) it appears to the person making the arrest that it is not reasonably practicable for a constable to make it instead.

(4) The reasons are to prevent the person in question—

- (a) causing physical injury to himself or any other person;
- (b) suffering physical injury;
- (c) causing loss of or damage to property; or
- (d) making off before a constable can assume responsibility for him.]



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**F68** Arts. 26, 26A substituted (1.3.2007) for art. 26 by [Police and Criminal Evidence \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/288 \(N.I. 2\)\)](#), arts. 1(2), **15(1)** (with art. 15(3))

### General arrest conditions

27.—(1) Where a constable has reasonable grounds for suspecting that any offence which is not an arrestable offence has been committed or attempted, or is being committed or attempted, he may arrest the relevant person if it appears to him that service of a summons is impracticable or inappropriate because any of the general arrest conditions is satisfied.

(2) In this Article “the relevant person” means any person whom the constable has reasonable grounds to suspect of having committed or having attempted to commit the offence or of being in the course of committing or attempting to commit it.

(3) The general arrest conditions are—

- (a) that the name of the relevant person is unknown to, and cannot be readily ascertained by, the constable;
- (b) that the constable has reasonable grounds for doubting whether a name furnished by the relevant person as his name is his real name;
- (c) that—
  - (i) the relevant person has failed to furnish a satisfactory address for service; or
  - (ii) the constable has reasonable grounds for doubting whether an address furnished by the relevant person is a satisfactory address for service;
- (d) that the constable has reasonable grounds for believing that arrest is necessary to prevent the relevant person—
  - (i) causing physical injury to himself or any other person;
  - (ii) suffering physical injury;
  - (iii) causing loss of or damage to property;
  - (iv) committing an offence against public decency; or
  - (v) causing an unlawful obstruction on a road (within the meaning of Article 2(2) of the Road Traffic (Northern Ireland) Order 1981<sup>F69</sup>);
- (e) that the constable has reasonable grounds for believing that arrest is necessary to protect a child or other vulnerable person from the relevant person.

(4) For the purposes of paragraph (3) an address is a satisfactory address for service if it appears to the constable—

- (a) that the relevant person will be at it for a sufficiently long period for it to be possible to serve him with a summons; or
- (b) that some other person specified by the relevant person will accept service of a summons for the relevant person at it.

(5) Nothing in paragraph (3)(d) authorises the arrest of a person under head (iv) of that sub# paragraph except where members of the public going about their normal business cannot reasonably be expected to avoid the person to be arrested.

(6) This Article shall not prejudice any power of arrest conferred apart from this Article.

**F69** 1981 NI 1



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### **Repeal of statutory powers of arrest without warrant or order**

**28.**—(1) Subject to paragraph (2), so much of any statutory provision passed or made before the making of this Order as enables a constable by virtue of his office as such—

- (a) to arrest a person for an offence without a warrant; or
- (b) to arrest a person otherwise than for an offence without a warrant or an order of a court,

shall cease to have effect.

(2) Nothing in paragraph (1) shall affect the statutory provisions specified in Schedule 2.

### **Fingerprinting of certain offenders**

**29.**—(1) If a person—

- (a) has been convicted of a recordable offence;
- (b) has not at any time been in police detention for the offence; and
- (c) has not had his fingerprints taken—
  - (i) in the course of the investigation of the offence by the police; or
  - (ii) since the conviction,

any constable may at any time not later than one month after the date of the conviction require him to attend a police station in order that his fingerprints may be taken.

(2) A requirement under paragraph (1)—

- (a) shall give the person a period of at least 7 days within which he must so attend; and
- (b) may direct him to so attend at a specified time of day or between specified times of day.

(3) Any constable may arrest without warrant a person who has failed to comply with a requirement under paragraph (1).

(4) Subject to Article 89, the Secretary of State may by regulations make provision for recording in police records convictions for such offences as are specified in the regulations.

### **Information to be given on arrest**

**30.**—(1) Subject to paragraph (5), where a person is arrested, otherwise than by being informed that he is under arrest, the arrest is not lawful unless the person arrested is informed that he is under arrest as soon as is practicable after his arrest.

(2) Where a person is arrested by a constable, paragraph (1) applies regardless of whether the fact of the arrest is obvious.

(3) Subject to paragraph (5) and without prejudice to<sup>F70</sup> section 83(2) of the Terrorism Act 2000], no arrest is lawful unless the person arrested is informed of the ground for the arrest at the time of, or as soon as is practicable after, the arrest.

(4) Where a person is arrested by a constable, paragraph (3) applies regardless of whether the ground for the arrest is obvious.

(5) Nothing in this Article is to be taken to require a person to be informed—

- (a) that he is under arrest; or
- (b) of the ground for the arrest,

if it was not reasonably practicable for him to be so informed by reason of his having escaped from arrest before the information could be given.

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#### **Modifications etc. (not altering text)**

- C22** Art. 30 applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, **Sch. 1**, Sch. 2
- C23** Art. 30 applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

#### **Voluntary attendance at police station etc.**

**31.**—<sup>[F71(1)]</sup> Where for the purpose of assisting with an investigation a person attends voluntarily at a police station or at any other place where a constable is present or accompanies a constable to a police station or any such other place without having been arrested—

- (a) he shall be entitled to leave at will unless he is placed under arrest;
- (b) he shall be informed at once that he is under arrest if a decision is taken by a constable to prevent him from leaving at will.

<sup>[F72(2)]</sup> Where—

- (a) a person is taken to a police station in pursuance of a direction under section 16 of the Prison Act (Northern Ireland) 1953; and
- (b) while he is there it appears to a constable that he is liable to arrest for an offence,

he shall be arrested for that offence.]

**F71** 1995 NI 17

**F72** 1995 NI 17

#### **Modifications etc. (not altering text)**

- C24** Art. 31 applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, **Sch. 1**, Sch. 2
- C25** Art. 31 applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

#### **Arrest elsewhere than at police station**

**32.**—<sup>[F73(1)]</sup> Paragraph (1A) shall apply where a person is, at any place other than a police station—

- (a) arrested by a constable for an offence; or
- (b) taken into custody by a constable after being arrested for an offence by a person other than a constable.

(1A) The person must be taken by a constable to a police station as soon as practicable after the arrest.

(1B) Paragraph (1A) has effect subject to paragraph (10) and Article 32A.]

(2) Subject to paragraphs (3) and (6), the police station to which an arrested person is taken under<sup>[F73]</sup> paragraph (1A)] shall be a designated police station.

(3) A constable to whom this paragraph applies may take an arrested person to any police station unless it appears to the constable that it may be necessary to keep the arrested person in police detention for more than six hours.

(4) Paragraph (3) applies—

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- (a) to a constable who is working in a locality covered by a police station which is not a designated police station; and
  - (b) to a constable belonging to a constabulary not maintained by the<sup>F74</sup> Policing Board].
- (5) Any constable may take an arrested person to any police station if—
- (a) either of the following conditions is satisfied—
    - (i) the constable has arrested him without the assistance of any other constable and no other constable is available to assist him;
    - (ii) the constable has taken him into custody from a person other than a constable without the assistance of any other constable and no other constable is available to assist him; and
  - (b) it appears to the constable that he will be unable to take the arrested person to a designated police station without the arrested person injuring himself, the constable or some other person.
- (6) Any constable may take an arrested person to any police station if it appears to the constable that he will be unable to take the arrested person to a designated police station without exposing the arrested person or himself to an unacceptable risk of injury.
- (7) If the first police station to which an arrested person is taken after his arrest is not a designated police station, he shall be taken to a designated police station not more than six hours after his arrival at the first police station unless—
- (a) he is released previously; or
  - (b) the arrest was made by a police officer and the continued detention at the first police station is authorised by an officer not below the rank of superintendent.
- (8) For the purposes of paragraph (7)(b) such an officer may authorise the continued detention of a person at the first police station to which the person is taken only if that officer is satisfied on reasonable grounds that it would expose the person, and those accompanying him, to an unacceptable risk of injury if he were to be taken from the first police station.
- (9) Where the continued detention of a person at the first police station is authorised under paragraph (8), the police officer who gave the authorisation shall—
- (a) as soon as practicable thereafter, make a record of—
    - (i) the time at which the authorisation was given, and
    - (ii) the reasons for giving it; and
  - (b) revoke that authorisation as soon as he is satisfied that the reasons for giving it no longer apply.
- <sup>F73</sup>(10) A person arrested by a constable at any place other than a police station must be released without bail if the condition in paragraph (10A) is satisfied.
- (10A) The condition is that, at any time before the person arrested reaches a police station, a constable is satisfied that there are no grounds for keeping him under arrest or releasing him on bail under Article 32A.]
- (11) A constable who releases a person under paragraph (10) shall record the fact that he has done so.
- (12) The constable shall make the record as soon as is practicable after the release.
- <sup>F73</sup>(13) Nothing in paragraph (1A) or in Article 32A prevents a constable delaying taking a person to a police station or releasing him on bail if the condition in paragraph (13A) is satisfied.
- (13A) The condition is that the presence of the person at a place (other than a police station) is necessary in order to carry out such investigations as it is reasonable to carry out immediately.

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(14) Where there is any such delay the reasons for the delay must be recorded when the person first arrives at a police station or (as the case may be) is released on bail.]

(15) Nothing in<sup>[F73]</sup> paragraph (1A) or Article 32A] shall be taken to affect—

(a) paragraph 16(3) or 18(1) of Schedule 2 to the Immigration Act 1971<sup>F75</sup>; or

<sup>[F76]</sup>(b) any provision of the Terrorism Act 2000.]

(16) Nothing in paragraph (13) shall be taken to affect paragraph 18(3) of Schedule 2 to the Immigration Act 1971.

**F73** 2004 NI 9

**F74** 2000 c. 32

**F75** 1971 c. 77

**F76** 2000 c. 11

#### **Modifications etc. (not altering text)**

**C26** Art. 32(1)-(4)(a) applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, **Sch. 1**, Sch. 2

**C27** Art. 32(1)-(14) applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

**C28** Art. 32(5)-(14) applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, **Sch. 1**, Sch. 2

#### **[<sup>F77</sup>Bail elsewhere than at police station**

**32A.**—(1) A constable may release on bail a person who is arrested or taken into custody in the circumstances mentioned in Article 32(1).

(2) A person may be released on bail under paragraph (1) at any time before he arrives at a police station.

(3) A person released on bail under paragraph (1) must be required to attend a police station.

(4) No other requirement may be imposed on the person as a condition of bail.

(5) The police station which the person is required to attend may be any police station.]

**F77** 2004 NI 9

#### **Bail under Article 32A: notices**

**32B.**—(1) Where a constable grants bail to a person under Article 32A, he must give that person a notice in writing before he is released.

(2) The notice must state—

(a) the offence for which he was arrested; and

(b) the ground on which he was arrested.

(3) The notice must inform him that he is required to attend a police station.

(4) It may also specify the police station which he is required to attend and the time when he is required to attend.

(5) If the notice does not include the information mentioned in paragraph (4), the person must subsequently be given a further notice in writing which contains that information.

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(6) The person may be required to attend a different police station from that specified in the notice under paragraph (1) or (5) or to attend at a different time.

(7) He must be given notice in writing of such change as is mentioned in paragraph (6) but more than one such notice may be given to him.

#### **Bail under Article 32A: supplemental**

**32C.**—(1) A person who has been required to attend a police station is not required to do so if he is given notice in writing that his attendance is no longer required.

(2) If a person is required to attend a police station which is not a designated police station he must be—

- (a) released; or
- (b) taken to a designated police station,

not more than six hours after his arrival.

(3) Nothing in Part II of the Criminal Justice (Northern Ireland) Order 2003 (NI 13) (bail in criminal proceedings) applies in relation to bail under Article 32A.

(4) Nothing in Article 32A or 32B or in this Article prevents the re-arrest without a warrant of a person released on bail under Article 32A if new evidence justifying a further arrest has come to light since his release.

#### **Failure to answer to bail under Article 32A**

**32D.**—(1) A constable may arrest without warrant a person who—

- (a) has been released on bail under Article 32A subject to a requirement to attend a specified police station; but
- (b) fails to attend the police station at the specified time.

(2) A person arrested under paragraph (1) must be taken to a police station (which may be the specified police station or any other police station) as soon as practicable after the arrest.

(3) In paragraph (1), “specified” means specified in a notice under paragraph (1) or (5) of Article 32B or, if notice of change has been given under paragraph (7) of that Article, in that notice.

(4) For the purposes of—

- (a) Article 32 (subject to the obligation in paragraph (2)); and
- (b) Article 33,

an arrest under this Article is to be treated as an arrest for an offence.

#### **Arrest for further offence**

**33.** Where—

- (a) a person—
  - (i) has been arrested for an offence; and
  - (ii) is at a police station in consequence of that arrest; and
- (b) it appears to a constable that, if he were released from that arrest, he would be liable to arrest for some other offence,

he shall be arrested for that other offence.

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#### **Modifications etc. (not altering text)**

- C29** Art. 33 applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, **Sch. 1**, Sch. 2
- C30** Art. 33 applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

#### **Search upon arrest**

**34.**—(1) A constable may search an arrested person, in any case where the person to be searched has been arrested at a place other than a police station, if the constable has reasonable grounds for believing that the arrested person may present a danger to himself or others.

(2) Subject to paragraphs (3) to (5), a constable shall also have power in any such case—

(a) to search the arrested person for anything—

(i) which he might use to assist him to escape from lawful custody; or

(ii) which might be evidence relating to an offence; and

(b) to enter and search any premises in which he was when arrested or immediately before he was arrested for evidence relating to the offence for which he has been arrested.

(3) The power to search conferred by paragraph (2) is only a power to search to the extent that is reasonably required for the purpose of discovering any such thing or any such evidence.

(4) The powers conferred by this Article to search a person are not to be construed as authorising a constable to require a person to remove any of his clothing in public other than an outer coat, jacket, headgear or gloves<sup>[F78]</sup> but they do authorise a search of a person's mouth].

(5) A constable may not search a person in the exercise of the power conferred by sub# paragraph (a) of paragraph (2) unless he has reasonable grounds for believing that the person to be searched may have concealed on him anything for which a search is permitted under that sub# paragraph.

(6) A constable may not search premises in the exercise of the power conferred by sub# paragraph (b) of paragraph (2) unless he has reasonable grounds for believing that there is evidence for which a search is permitted under that paragraph on the premises.

(7) In so far as the power of search conferred by sub#paragraph (b) of paragraph (2) relates to premises consisting of two or more separate dwellings, it is limited to a power to search—

(a) any dwelling in which the arrest took place or in which the person arrested was immediately before his arrest; and

(b) any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwellings comprised in the premises.

(8) A constable searching a person in the exercise of the power conferred by paragraph (1) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to any other person.

(9) A constable searching a person in the exercise of the power conferred by sub#paragraph (a) of paragraph (2) may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing—

(a) that he might use it to assist him to escape from lawful custody; or

(b) that it is evidence of an offence or has been obtained in consequence of the commission of an offence.

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(10) Nothing in this Article shall be taken to affect the powers conferred by<sup>F79</sup> section 43 of the Terrorism Act 2000].

**F78** 1995 NI 17

**F79** 2000 c. 11

## PART V DETENTION

### *Detention—conditions and duration*

#### **Limitations on police detention**

**35.**—(1) A person arrested for an offence shall not be kept in police detention except in accordance with the provisions of this Part.

(2) Subject to paragraph (3), if at any time a custody officer—

- (a) becomes aware, in relation to any person in police detention, that the grounds for the detention of that person have ceased to apply; and
- (b) is not aware of any other grounds on which the continued detention of that person could be justified under the provisions of this Part,

it shall be the duty of the custody officer, subject to<sup>F80</sup> paragraphs (4) and (4A)], to order his immediate release from custody.

(3) No person in police detention shall be released except on the authority of a custody officer at the police station where his detention was authorised or, if it was authorised at more than one station, a custody officer at the station where it was last authorised.

(4) Nothing in this Part requires the release of a person who appears to the custody officer to have been unlawfully at large when he was arrested.

<sup>F80</sup>(4A) Nothing in this Part requires the release of a person who was arrested after being taken to a police station from a custodial establishment in pursuance of a direction under section 16 of the Prison Act (Northern Ireland) 1953 and this Part shall have effect in relation to such a person as if references to a person being released (either on bail or without bail) were references to a person being returned to the custody of the governor of the custodial establishment from which he was taken to the police station.]

(5) Subject to paragraph (6), a person whose release is ordered under paragraph (2) shall be released without bail.

(6) Where—

- (a) it appears to the custody officer—
  - (i) that there is need for further investigation of any matter in connection with which that person was detained at any time during his detention; or
  - (ii) that proceedings may be taken against that person in respect of any such matter; and
- (b) the custody officer considers that, having regard to all the circumstances, that person should be released only on bail,

the custody officer shall so release that person.

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(7) For the purposes of this Part a person arrested<sup>[F81]</sup> under Article 17(5) of the Road Traffic (Northern Ireland) Order 1995] is arrested for an offence.

<sup>[F82]</sup>(8) For the purposes of this Part a person who—

- (a) attends a police station to answer to bail granted under Article 32A;
- (b) returns to a police station to answer to bail granted under this Part; or
- (c) is arrested under Article 32D or 47A,

is to be treated as arrested for an offence and that offence is the offence in connection with which he was granted bail under Article 32A or this Part.]

**F80** 1995 NI 17  
**F81** 1995 NI 18  
**F82** 2004 NI 9

### Designated police stations

**36.**—(1) The Chief Constable shall designate the police stations which, subject to<sup>[F83]</sup> Articles 32(3), (5) and (6), 32A(5) and 32D(2)], are to be used for the purpose of detaining arrested persons.

(2) The Chief Constable's duty under paragraph (1) is to designate police stations appearing to him to provide enough accommodation for that purpose.

(3) Without prejudice to section 17(1) and (3) of the Interpretation Act (Northern Ireland) 1954<sup>F84</sup> the Chief Constable—

- (a) may designate a station which was not previously designated; and
- (b) may direct that a designation of a station previously made shall cease to operate.

(4) In this Order “designated police station” means a police station for the time being designated under this Article.

**F83** 2004 NI 9  
**F84** 1954 c. 33 (NI)

#### Modifications etc. (not altering text)

**C31** Art. 36 applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, **Sch. 1**, Sch. 2

### Custody officers at police stations

**37.**—(1) One or more custody officers shall be appointed for each designated police station.

(2) A custody officer for a designated police station shall be appointed—

- (a) by the Chief Constable; or
- (b) by such other police officer as the Chief Constable may direct.

(3) No police officer may be appointed a custody officer unless he is of at least the rank of sergeant.

(4) A police officer of any rank may perform the functions of a custody officer at a designated police station if a custody officer is not readily available to perform them.



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(5) Subject to the following provisions of this Article and to Article 40(2), none of the functions of a custody officer in relation to a person shall be performed by an officer who at the time when the function falls to be performed is involved in the investigation of an offence for which that person is in police detention at that time.

(6) Nothing in paragraph (5) is to be taken to prevent a custody officer—

(a) performing any function assigned to custody officers—

(i) by this Order; or

(ii) by a code of practice issued under this Order;

(b) carrying out the duty imposed on custody officers by Article 40;

(c) doing anything in connection with the identification of a suspect; or

[<sup>F85</sup>(d) doing anything under Article 18 or 19 of the Road Traffic (Northern Ireland) Order 1995.]

(7) Where an arrested person is taken to a police station which is not a designated police station, the functions in relation to him which at a designated police station would be the functions of a custody officer shall be performed—

(a) by an officer who is not involved in the investigation of an offence for which he is in police detention, if such an officer is readily available; and

(b) if no such officer is readily available, by the officer who took him to the station or any other officer.

[<sup>F86</sup>(7A) Subject to paragraph (7B), paragraph (7) applies where a person attends a police station which is not a designated station to answer to bail granted under Article 32A as it applies where a person is taken to such a station.

(7B) Where paragraph (7) applies because of paragraph (7A), the reference in paragraph (7)(b) to the officer who took him to the station is to be read as a reference to the officer who granted him bail under Article 32A.]

(8) References to a custody officer in the following provisions of this Order include references to an officer other than a custody officer who is performing the functions of a custody officer by virtue of paragraph (4) or (7).

(9) Where by virtue of paragraph (7) a police officer who took an arrested person to a police station is to perform the functions of a custody officer in relation to him, the officer shall inform an officer who—

(a) is attached to a designated police station; and

(b) is of at least the rank of inspector,

that he is to do so.

(10) The duty imposed by paragraph (9) shall be performed as soon as it is practicable to perform it.

**F85** 1995 NI 18

**F86** 2004 NI 9

**Modifications etc. (not altering text)**

**C32** Art. 37 applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, **Sch. 1**, Sch. 2

**Duties of custody officer before charge**

**38.**—(1) Where—

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- (a) a person is arrested for an offence—
  - (i) without a warrant; or
  - (ii) under a warrant not endorsed for bail,<sup>F87</sup> . . .

*Sub#para. (b) rep. by 1995 NI 17*

the custody officer at each police station where he is detained after his arrest shall determine whether he has before him sufficient evidence to charge that person with the offence for which he was arrested and may detain him at the police station for such period as is necessary to enable him to do so.

(2) If the custody officer determines that he does not have such evidence before him, the person arrested shall be released either on bail or without bail, unless the custody officer has reasonable grounds for believing that his detention without being charged is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him.

(3) If the custody officer has reasonable grounds for so believing, he may authorise the person arrested to be kept in police detention.

(4) Where a custody officer authorises a person who has not been charged to be kept in police detention, he shall, as soon as is practicable, make a written record of the grounds for the detention.

(5) Subject to paragraph (6), the written record shall be made in the presence of the person arrested who shall at that time be informed by the custody officer of the grounds for his detention.

(6) Paragraph (5) shall not apply where the person arrested is, at the time when the written record is made—

- (a) incapable of understanding what is said to him;
- (b) violent or likely to become violent; or
- (c) in urgent need of medical attention.

(7) Subject to Article 42(5), if the custody officer determines that he has before him sufficient evidence to charge the person arrested with the offence for which he was arrested, the person arrested—

- (a) shall be charged; or
- (b) shall be released without charge, either on bail or without bail.

(8) Where—

- (a) a person is released under paragraph (7)(b); and
- (b) at the time of his release a decision whether he should be prosecuted for the offence for which he was arrested has not been taken,

it shall be the duty of the custody officer so to inform him.

(9) If the person arrested is not in a fit state to be dealt with under paragraph (7), he may be kept in police detention until he is.

(10) The duty imposed on the custody officer under paragraph (1) shall be carried out by him as soon as practicable after the person arrested arrives at the police station or, in the case of a person arrested at the police station, as soon as practicable after the arrest.

(11) Where an arrested juvenile who was arrested without a warrant is not released under paragraph (2), it shall be the duty of the custody officer—

- (a) to inform the arrested juvenile that he has reasonable grounds for believing that his detention is necessary in connection with an offence and to state the offence;
- (b) to take such steps as are practicable to ascertain the identity of a person responsible for the welfare of the arrested juvenile; and

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(c) if—

- (i) he ascertains the identity of any such person; and
- (ii) it is practicable to do so,

to inform that person, as soon as it is practicable to do so, of the arrest and of the offence alleged to have been committed by the juvenile.

(12) For the purposes of paragraph (11) the persons who may be responsible for the welfare of an arrested juvenile are—

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

(13) If it appears to the custody officer that—

*Sub#para. (a) rep. by 1998 NI 9*

(b) a probation order, as defined in section 1 of the Probation Act (Northern Ireland) 1950<sup>F88</sup>, is in force in respect of an arrested juvenile, the custody officer shall also inform<sup>F89</sup> . . . his probation officer of the arrest and of the offence alleged to have been committed by the juvenile, as soon as it is practicable to do so.

(14) In this Part—

“arrested juvenile” means a person arrested with or without a warrant who appears to be under the age of 17 and is not excluded from this Part by Article 52;

“endorsed for bail” means endorsed with a direction for bail in accordance with Article 129 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>F90</sup>.

**F87** 1995 NI 17

**F88** 1950 c. 7 (NI)

**F89** 1998 NI 9

**F90** 1981 NI 26

**Modifications etc. (not altering text)**

**C33** Art. 38(1)-(10) applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, **Sch. 1**, Sch. 2

**C34** Art. 38(14) applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, **Sch. 1**, Sch. 2

**Duties of custody officer after charge**

**39.**—(1) Where a person arrested for an offence otherwise than under a warrant endorsed for bail is charged with an offence, the custody officer shall order his release from police detention, either on bail or without bail, unless—

(a) if the person arrested is not an arrested juvenile—

- (i) his name or address cannot be ascertained or the custody officer has reasonable grounds for doubting whether a name or address furnished by him as his name or address is his real name or address;

[<sup>F91</sup>(ia) in the case of a person arrested for an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from committing an offence;]

- (ii) the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary<sup>F92</sup> for his own protection or to prevent him from causing

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physical injury to any other person or from causing loss of or damage to property;<sup>F92</sup>  
or

(iii) the custody officer has reasonable grounds for believing that the person arrested will fail to appear in court to answer to bail or that his detention is necessary to prevent him from interfering with the administration of justice or with the investigation of offences or of a particular offence;<sup>F93</sup>

(b) if he is an arrested juvenile—

(i) any of the requirements of sub#paragraph (a) is satisfied; or

(ii) the custody officer has reasonable grounds for believing that he ought to be detained in his own interests.

[<sup>F91</sup>(1A) In paragraph (1) “imprisonable offence” means an offence for which a person over the age of 21 years is liable, on first conviction, to a term of imprisonment.]

(2) If the release of a person arrested is not required by paragraph (1), the custody officer may authorise him to be kept in police detention.

<sup>F94</sup>(3) Where a custody officer authorises a person who has been charged to be kept in police detention, he shall, as soon as practicable, make a written record of the grounds for the detention.

(4) Subject to paragraph (5), the written record shall be made in the presence of the person charged who shall at that time be informed by the custody officer of the grounds for his detention.

(5) Paragraph (4) shall not apply where the person charged is, at the time when the written record is made—

(a) incapable of understanding what is said to him;

(b) violent or likely to become violent; or

(c) in urgent need of medical attention.

(6) Where a custody officer authorises an arrested juvenile to be kept in police detention under paragraph (1), the custody officer shall, unless he certifies that it is impracticable to do so, make arrangements for the arrested juvenile to be taken to a place of safety and detained there; and it shall be lawful to detain him in pursuance of the arrangements.

(7) A certificate made under paragraph (6) in respect of an arrested juvenile shall be produced to the court before which he is first brought thereafter.

[<sup>F95</sup>(8) In paragraph (6) “place of safety”<sup>F96</sup> means any juvenile justice centre, any hospital or surgery, or any other suitable place, the occupier of which is willing temporarily to receive the arrested juvenile.]

**F91** 1995 NI 17

**F92** prosp. rep. by 2003 NI 13

**F93** prosp. addition by 2003 NI 13

**F94** prosp. insertion by 2003 NI 13

**F95** 1998 NI 9

**F96** prosp. subst. by 2002 c. 26

## Responsibilities in relation to persons detained

**40.**—(1) Subject to paragraphs (2) and (4), it shall be the duty of the custody officer at a police station to ensure—

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- (a) that all persons in police detention at that station are treated in accordance with this Order and any code of practice issued under it and relating to the treatment of persons in police detention; and
  - (b) that all matters relating to such persons which are required by this Order or by such codes of practice to be recorded are recorded in the custody records relating to such persons.
- (2) If the custody officer, in accordance with any code of practice issued under this Order, transfers or permits the transfer of a person in police detention—
- (a) to the custody of a police officer investigating an offence for which that person is in police detention; or
  - (b) to the custody of an officer who has charge of that person outside the police station,
- the custody officer shall cease in relation to that person to be subject to the duty imposed on him by paragraph (1)(a); and it shall be the duty of the officer to whom the transfer is made to ensure that he is treated in accordance with the provisions of this Order and of any such codes of practice as are mentioned in paragraph (1).
- (3) If the person detained is subsequently returned to the custody of the custody officer, it shall be the duty of the officer investigating the offence to report to the custody officer as to the manner in which this Article and the codes of practice have been complied with while that person was in his custody.
- (4) If an arrested juvenile is taken to a place of safety in pursuance of arrangements made under Article 39(6), the custody officer shall cease in relation to that person to be subject to the duty imposed on him by paragraph (1).
- (5) Where an arrested juvenile is taken to a place of safety in pursuance of such arrangements, it shall be the duty of the occupier of that place to make available to him such advice and assistance as may be appropriate in the circumstances.
- (6) Where—
- (a) an officer of higher rank than the custody officer gives directions relating to a person in police detention; and
  - (b) the directions are at variance—
    - (i) with any decision made or action taken by the custody officer in the performance of a duty imposed on him under this Part; or
    - (ii) with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty,
- the custody officer shall refer the matter at once to an officer of the rank of superintendent or above who is responsible for the police station for which the custody officer is acting as custody officer.

**Modifications etc. (not altering text)**

- C35** Art. 40 applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, **Sch. 1**, Sch. 2
- C36** Art. 40(2)(3) applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

**Review of police detention**

**41.—(1)** Reviews of the detention of each person in police detention in connection with the investigation of an offence shall be carried out periodically in accordance with the following provisions of this Article—

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- (a) in the case of a person who has been arrested and charged, by the custody officer; and
  - (b) in the case of a person who has been arrested but not charged, by an officer of at least the rank of inspector who has not been directly involved in the investigation.
- (2) The officer to whom it falls to carry out a review is referred to in this Article as a “review officer”.
- (3) Subject to paragraph (4)—
- (a) the first review shall be not later than six hours after the detention was first authorised;
  - (b) the second review shall be not later than nine hours after the first;
  - (c) subsequent reviews shall be at intervals of not more than nine hours.
- (4) A review may be postponed—
- (a) if, having regard to all the circumstances prevailing at the latest time for it specified in paragraph (3), it is not practicable to carry out the review at that time;
  - (b) without prejudice to the generality of sub#paragraph (a)—
    - (i) if at that time the person in detention is being questioned by a police officer and the review officer is satisfied that an interruption of the questioning for the purpose of carrying out the review would prejudice the investigation in connection with which he is being questioned; or
    - (ii) if at that time no review officer is readily available.
- (5) If a review is postponed under paragraph (4) it shall be carried out as soon as practicable after the latest time specified for it in paragraph (3).
- (6) If a review is carried out after postponement under paragraph (4), the fact that it was so carried out shall not affect any requirement of this Article as to the time at which any subsequent review is to be carried out.
- (7) The review officer shall record the reasons for any postponement of a review in the custody record.
- (8) Subject to paragraph (9), where the person whose detention is under review has not been charged before the time of the review, Article 38(1) to (6) shall have effect in relation to him, but with the substitution—
- (a) of references to the person whose detention is under review for references to the person arrested; and
  - (b) of references to the review officer for references to the custody officer.
- (9) Where a person has been kept in police detention by virtue of Article 38(9), Article 38(1) to (6) shall not have effect in relation to him but it shall be the duty of the review officer to determine whether he is yet in a fit state.
- (10) Where the person whose detention is under review has been charged before the time of the review, Article 39(1) to (6) shall have effect in relation to him, but with the substitution of references to the person whose detention is under review for references to the person arrested.
- (11) Where—
- (a) an officer of higher rank than the review officer gives directions relating to a person in police detention; and
  - (b) the directions are at variance—
    - (i) with any decision made or action taken by the review officer in the performance of a duty imposed on him under this Part; or
    - (ii) with any decision or action which would but for the directions have been made or taken by him in the performance of such a duty,

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the review officer shall refer the matter at once to an officer of the rank of superintendent or above who is responsible for the police station for which the review officer is acting as review officer in connection with the detention.

(12) Before determining whether to authorise a person's continued detention the review officer shall give—

- (a) that person (unless he is asleep); or
- (b) any solicitor representing him who is available at the time of the review,

an opportunity to make representations to him about the detention.

(13) Subject to paragraph (14), the person whose detention is under review or his solicitor may make representations under paragraph (12) either orally or in writing.

(14) The review officer may refuse to hear oral representations from the person whose detention is under review if he considers that he is unfit to make such representations by reason of his condition or behaviour.

VALID FROM 01/03/2007

#### [<sup>F97</sup>Use of telephone for review under Article 41

**41A.**—(1) A review under Article 41(1)(b) may be carried out by means of a discussion, conducted on the telephone, with one or more persons at the police station where the arrested person is held.

(2) But paragraph (1) does not apply if—

- (a) the review is of a kind authorised by regulations under Article 46A to be carried out using video conferencing facilities; and
- (b) it is reasonably practicable to carry it out in accordance with those regulations.

(3) Where any review is carried out under this Article by an officer who is not present at the station where the arrested person is held—

- (a) any obligation of that officer to make a record in connection with the carrying out of the review shall have effect as an obligation to cause another officer to make the record;
- (b) any requirement for the record to be made in the presence of the arrested person shall apply to the making of that record by that other officer; and
- (c) the requirements under Article 41(12) and (13) for—
  - (i) the arrested person, or
  - (ii) a solicitor representing him,

to be given any opportunity to make representations (whether in writing or orally) to that officer shall have effect as a requirement for that person, or such a solicitor, to be given an opportunity to make representations in a manner authorised by paragraph (4).

(4) Representations are made in a manner authorised by this paragraph—

- (a) in a case where facilities exist for the immediate transmission of written representations to the officer carrying out the review, if they are made either—
  - (i) orally by telephone to that officer; or
  - (ii) in writing to that officer by means of those facilities; and
- (b) in any other case, if they are made orally by telephone to that officer.

(5) In this Article “video-conferencing facilities” has the same meaning as in Article 46A.]

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**F97** Art. 41A inserted (1.3.2007) by [Police and Criminal Evidence \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/288 \(N.I. 2\)\)](#), arts. 1(2), **20**

### Limits on period of detention without charge

**42.**—(1) Subject to the following provisions of this Article and to Articles 43 and 44, a person shall not be kept in police detention for more than 24 hours without being charged.

(2) The time from which the period of detention of a person is to be calculated (in this Order referred to as “the relevant time”)—

- (a) in the case of a person arrested outside Northern Ireland, shall be—
  - (i) the time at which that person arrives at the first police station to which he is taken in Northern Ireland; or
  - (ii) the time 24 hours after the time of that person's entry into Northern Ireland, whichever is the earlier;
- (b) in the case of a person who—
  - (i) attends voluntarily at a police station; or
  - (ii) accompanies a constable to a police station without having been arrested,<sup>[F98 or]</sup>
    - <sup>[F98]</sup>(iii) is taken to a police station in pursuance of a direction under section 16 of the Prison Act (Northern Ireland) 1953;]

and is arrested at the police station, shall be the time of his arrest;

<sup>[F99]</sup>(ba) in the case of a person who attends a police station to answer to bail granted under Article 32A, the time when he arrives at the police station;]

- (c) in any other case, shall be the time at which the person arrested arrives at the first police station to which he is taken after his arrest.

(3) Paragraph (2) shall have effect in relation to a person arrested under Article 33 as if every reference in it to his arrest or his being arrested were a reference to his arrest or his being arrested for the offence for which he was originally arrested.

(4) When a person who is in police detention is removed to hospital because he is in need of medical treatment, any time during which he is being questioned in hospital or on the way there or back by a police officer for the purpose of obtaining evidence relating to an offence shall be included in any period which falls to be calculated for the purposes of this Part, but any other time while he is in hospital or on his way there or back shall not be so included.

(5) Subject to paragraph (6), a person who at the expiry of 24 hours after the relevant time is in police detention and has not been charged shall be released at that time either on bail or without bail.

(6) Paragraph (5) does not apply to a person whose detention for more than 24 hours after the relevant time has been authorised or is otherwise permitted in accordance with Article 43 or 44.

(7) A person released under paragraph (5) shall not be re#arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release<sup>[F100]</sup>;but this paragraph does not prevent an arrest under Article 47A].

**F98** 1995 NI 17

**F99** 2004 NI 9

**F100** 1995 NI 17



*Status: Point in time view as at 08/02/2007. This version of this Order contains provisions that are not valid for this point in time.*

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#### **Modifications etc. (not altering text)**

**C37** Art. 42 applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, [Sch. 1](#), [Sch. 2](#)

#### **Authorisation of continued detention**

**43.**—(1) Where a police officer of the rank of superintendent or above who is responsible for the police station at which a person is detained has reasonable grounds for believing that—

(a) the detention of that person without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;

[<sup>F101</sup>(b) an offence for which he is under arrest is an arrestable offence; and]

(c) the investigation is being conducted diligently and expeditiously,

he may authorise the keeping of that person in police detention for a period expiring at or before 36 hours after the relevant time.

(2) Where an officer such as is mentioned in paragraph (1) has authorised the keeping of a person in police detention for a period expiring less than 36 hours after the relevant time, such an officer may authorise the keeping of that person in police detention for a further period expiring not more than 36 hours after that time if the conditions specified in paragraph (1) are still satisfied when he gives the authorisation.

(3) No authorisation under paragraph (1) shall be given in respect of any person—

(a) more than 24 hours after the relevant time; or

(b) before the second review of his detention under Article 41 has been carried out.

(4) Where an officer authorises the keeping of a person in police detention under paragraph (1), it shall be his duty—

(a) to inform that person of the grounds for his continued detention; and

(b) to record the grounds in that person's custody record.

(5) Before determining whether to authorise the keeping of a person in detention under paragraph (1) or (2), an officer shall give—

(a) that person; or

(b) any solicitor representing him who is available at the time when it falls to the officer to determine whether to give the authorisation,

an opportunity to make representations to him about the detention.

(6) Subject to paragraph (7), the person in detention or his solicitor may make representations under paragraph (5) either orally or in writing.

(7) The officer to whom it falls to determine whether to give the authorisation may refuse to hear oral representations from the person in detention if he considers that he is unfit to make such representations by reason of his condition or behaviour.

(8) Where—

(a) an officer authorises the keeping of a person in detention under paragraph (1); and

(b) at the time of the authorisation he has not yet exercised a right conferred on him by Article 57 or 59,

the officer—

(i) shall inform him of that right;

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- (ii) shall decide whether he should be permitted to exercise it;
- (iii) shall record the decision in his custody record; and
- (iv) if the decision is to refuse to permit the exercise of the right, shall also record the grounds for the decision in that record.

(9) Where an officer has authorised the keeping of a person who has not been charged in detention under paragraph (1) or (2), he shall be released from detention, either on bail or without bail, not later than 36 hours after the relevant time, unless—

- (a) he has been charged with an offence; or
- (b) his further detention is authorised or otherwise permitted in accordance with Article 44.

(10) A person released under paragraph (9) shall not be re#arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release<sup>F102</sup>; but this paragraph does not prevent an arrest under Article 47A].

**F101** 2004 NI 9

**F102** 1995 NI 17

### **Warrants of further detention**

**44.**—(1) Where, on a complaint made in writing by a constable and substantiated on oath, a magistrates' court is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the complaint relates is justified, it may issue a warrant of further detention authorising the keeping of that person in police detention.

(2) A court may not hear a complaint under paragraph (1) unless the person to whom the complaint relates—

- (a) has been furnished with a copy of the complaint; and
- (b) has been brought before the court for the hearing.

(3) The person to whom the complaint relates shall be entitled to be legally represented at the hearing and, if he is not so represented but wishes to be so represented—

- (a) the court shall adjourn the hearing to enable him to obtain representation; and
- (b) he may be kept in police detention during the adjournment.

(4) A person's further detention is only justified for the purposes of this Article or Article 45 if—

- (a) his detention without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;
- (b) an offence for which he is under arrest is a serious arrestable offence; and
- (c) the investigation is being conducted diligently and expeditiously.

(5) Subject to paragraph (7), a complaint under paragraph (1) may be made—

- (a) at any time before the expiry of 36 hours after the relevant time; or
- (b) in a case where—

- (i) it is not practicable for the magistrates' court to which the complaint will be made to sit at the expiry of 36 hours after the relevant time; but
- (ii) the court will sit during the 6 hours following the end of that period, at any time before the expiry of the said 6 hours.

(6) In a case to which paragraph (5)(b) applies—

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- (a) the person to whom the complaint relates may be kept in police detention until the complaint is heard; and
  - (b) the custody officer shall make a note in that person's custody record—
    - (i) of the fact that he was kept in police detention for more than 36 hours after the relevant time; and
    - (ii) of the reason why he was so kept.
- (7) If—
- (a) a complaint under paragraph (1) is made after the expiry of 36 hours after the relevant time; and
  - (b) it appears to the magistrates' court that it would have been reasonable for the police to make it before the expiry of that period,
- the court shall dismiss the complaint.
- (8) Where on a complaint under paragraph (1) a magistrates' court is not satisfied that there are reasonable grounds for believing that the further detention of the person to whom the complaint relates is justified, it shall be its duty—
- (a) to refuse to issue a warrant of further detention; or
  - (b) to adjourn the hearing of it until a time not later than 36 hours after the relevant time.
- (9) The person to whom the complaint relates may be kept in police detention during the adjournment.
- (10) A warrant of further detention shall—
- (a) state the time at which it is issued;
  - (b) authorise the keeping in police detention of the person to whom it relates for the period stated in it.
- (11) Subject to paragraph (12), the period stated in a warrant of further detention shall be such period as the magistrates' court thinks fit, having regard to the evidence before it.
- (12) The period shall not be longer than 36 hours.
- (13) A complaint under paragraph (1) shall state—
- (a) the nature of the offence for which the person to whom the complaint relates has been arrested;
  - (b) the general nature of the evidence on which that person was arrested;
  - (c) what inquiries relating to the offence have been made by the police and what further inquiries are proposed by them;
  - (d) the reasons for believing the continued detention of that person to be necessary for the purposes of such further inquiries.
- (14) Where a complaint under paragraph (1) is dismissed, the person to whom the complaint relates shall forthwith be charged or, subject to paragraph (15), released, either on bail or without bail.
- (15) A person need not be released under paragraph (14)—
- (a) before the expiry of 24 hours after the relevant time; or
  - (b) before the expiry of any longer period for which his continued detention is or has been authorised under Article 43.
- (16) Where a complaint under paragraph (1) is dismissed, no further complaint shall be made under that paragraph in respect of the person to whom the dismissal relates, unless supported by evidence which has come to light since the dismissal.

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(17) Where a warrant of further detention is issued, the person to whom it relates shall be released from police detention, either on bail or without bail, upon or before the expiry of the warrant unless he is charged.

(18) A person released under paragraph (17) shall not be re#arrested without a warrant for the offence for which he was previously arrested unless new evidence justifying a further arrest has come to light since his release<sup>F103</sup>; but this paragraph does not prevent an arrest under Article 47A].

(19) A magistrates' court hearing a complaint under this Article shall not sit in open court.

**F103** 1995 NI 17

### Extension of warrants of further detention

**45.**—(1) On a complaint made in writing by a constable and substantiated on oath, a magistrates' court may extend a warrant of further detention issued under Article 44 if it is satisfied that there are reasonable grounds for believing that the further detention of the person to whom the complaint relates is justified.

(2) Subject to paragraph (3), the period for which a warrant of further detention may be extended shall be such period as the court thinks fit, having regard to the evidence before it.

(3) The period shall not—

- (a) be longer than 36 hours; or
- (b) end later than 96 hours after the relevant time.

(4) Where a warrant of further detention has been extended under paragraph (1), or further extended under this paragraph, for a period ending before 96 hours after the relevant time, on a complaint such as is mentioned in that paragraph a magistrates' court may further extend the warrant if it is satisfied as there mentioned; and paragraphs (2) and (3) apply to such further extensions as they apply to extensions under paragraph (1).

(5) A warrant of further detention shall, if extended or further extended under this Article, be endorsed with a note of the period of the extension.

(6) Paragraphs (2), (3), (13) and (19) of Article 44 shall apply to a complaint made under this Article as they apply to a complaint made under that Article.

(7) Where a complaint under this Article is dismissed, the person to whom the complaint relates shall forthwith be charged or, subject to paragraph (8), released, either on bail or without bail.

(8) A person need not be released under paragraph (7) before the expiry of any period for which a warrant of further detention issued in relation to him has been extended or further extended on an earlier complaint made under this Article.

#### Modifications etc. (not altering text)

- C38** Art. 45 applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, **Sch. 1**, Sch. 2
- C39** Art. 45 applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

### Detention before charge—supplementary

**46.** Any reference in this Part to a period of time or a time of day is to be treated as approximate only.

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**Modifications etc. (not altering text)**

**C40** Art. 46 applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

VALID FROM 01/03/2007

**[<sup>F104</sup>Use of video-conferencing facilities for decisions about detention**

**46A.**—(1) Subject to the following provisions of this Article, the Secretary of State may by regulations provide that, in the case of an arrested person who is held in a police station, some or all of the functions mentioned in paragraph (2) may be performed (notwithstanding anything in the preceding provisions of this Part) by an officer who—

- (a) is not present in that police station; but
- (b) has access to the use of video-conferencing facilities that enable him to communicate with persons in that station.

(2) Those functions are—

- (a) the functions in relation to an arrested person taken to, or answering to bail at, a police station that is not a designated police station which, in the case of an arrested person taken to a station that is a designated police station, are functions of a custody officer under Article 38, 39 or 41; and
- (b) the function of carrying out a review under Article 41(1)(b) (review, by an officer of at least the rank of inspector, of the detention of person arrested but not charged).

(3) Regulations under this Article shall specify the use to be made in the performance of the functions mentioned in paragraph (2) of the facilities mentioned in paragraph (1).

(4) Regulations under this Article shall not authorise the performance of any of the functions mentioned in paragraph (2)(a) by such an officer as is mentioned in paragraph (1) unless he is a custody officer for a designated police station.

(5) Where any functions mentioned in paragraph (2) are performed in a manner authorised by regulations under this Article—

- (a) any obligation of the officer performing those functions to make a record in connection with the performance of those functions shall have effect as an obligation to cause another officer to make the record; and
- (b) any requirement for the record to be made in the presence of the arrested person shall apply to the making of that record by that other officer.

(6) Where the functions mentioned in paragraph (2)(b) are performed in a manner authorised by regulations under this Article, the requirements under Article 41(12) and (13) for—

- (a) the arrested person, or
- (b) a solicitor representing him,

to be given any opportunity to make representations (whether in writing or orally) to the person performing those functions shall have effect as a requirement for that person, or such a solicitor, to be given an opportunity to make representations in a manner authorised by paragraph (7).

(7) Representations are made in a manner authorised by this paragraph—

- (a) in a case where facilities exist for the immediate transmission of written representations to the officer performing the functions, if they are made either—

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- (i) orally to that officer by means of the video-conferencing facilities used by him for performing those functions; or
  - (ii) in writing to that officer by means of the facilities available for the immediate transmission of the representations; and
- (b) in any other case if they are made orally to that officer by means of the video-conferencing facilities used by him for performing the functions.
- (8) Regulations under this Article may be made so as to have effect in relation only to the police stations specified or described in the regulations.
- (9) Any reference in this Article to video-conferencing facilities, in relation to any functions, is a reference to any facilities (whether a live television link or other facilities) by means of which the functions may be performed with the officer performing them, the person in relation to whom they are performed and any legal representative of that person all able to both see and to hear each other.]

**F104** Art. 46A inserted (1.3.2007) by [Police and Criminal Evidence \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/288 \(N.I. 2\)\)](#), arts. 1(2), 23

#### *Detention—miscellaneous*

#### **Detention after charge**

- 47.—(1) Where a person—
- (a) is charged with an offence; and
  - (b) after being charged—
    - (i) is kept in police detention; or
    - (ii) is detained in a place of safety in pursuance of arrangements made under Article 39,
- he shall be brought before a magistrates' court in accordance with the provisions of this Article.
- (2) If he is to be brought before a magistrates' court for the petty sessions district in which the police station at which he was charged is situated, he shall be brought before such a court as soon as is practicable and in any event not later than the day next following the day on which he is charged with the offence.
- (3) If he is to be brought before a magistrates' court for a petty sessions district other than that in which the police station at which he was charged is situated, he shall be removed to that petty sessions district as soon as is practicable and brought before such a court as soon as is practicable after his arrival in that district and in any event not later than the day next following the day of his arrival in that district.
- <sup>F105</sup>(4) Where the day next following the day on which the person is charged with the offence is Christmas Day, Good Friday or a Sunday, he shall be brought before a magistrates' court on the next following day which is not one of those days.
- (5) Nothing in this Article requires a person who is in hospital to be brought before a court if he is not well enough.

**F105** prosp. subst. by [1995 NI 17](#)

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**Modifications etc. (not altering text)**

**C41** Art. 47 applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

[<sup>F106</sup>Power of arrest for failure to answer to police bail

**47A.**—(1) A constable may arrest without a warrant any person who, having been released on bail under this Part subject to a duty to attend at a police station, fails to attend at that police station at the time appointed for him to do so.

(2) A person who is arrested under this Article shall be taken to the police station appointed as the place at which he is to surrender to custody as soon as practicable after the arrest.

(3) For the purposes of—

- (a) Article 32 (subject to the obligation in paragraph (2), and
- (b) Article 33,

an arrest under this Article shall be treated as an arrest for an offence.]

**F106** 1995 NI 17

**Bail after arrest**

**48.**—(1) <sup>F107</sup>A person who is released on bail shall be subject to a duty—

- (a) to appear before a magistrates' court at such time and at such place as the custody officer may appoint; or
- (b) to attend at such police station at such time as the custody officer may appoint.

<sup>F108</sup>(2) The time to be appointed under paragraph (1) shall be either the date of the next petty sessions at the place appointed or a date not later than 28 days from the date on which the person is released.

<sup>F109</sup><sup>F107</sup>(3) The custody officer may require a person who is to be released on bail, to enter into a recognisance conditioned upon—

- (a) his subsequent appearance before a magistrates' court in accordance with sub# paragraph (a) of paragraph (1); or
- (b) his subsequent attendance at a police station in accordance with sub#paragraph (b) of that paragraph,

as the case may be.

<sup>F107</sup>(4) A recognisance under paragraph (3) may be taken before the custody officer.

<sup>F107</sup>(5) A person entering into a recognisance to appear before a magistrates' court in accordance with sub#paragraph (a) of paragraph (1) shall be deemed for the purpose of Articles 48 and 49 of the Magistrates' Courts (Northern Ireland) Order 1981<sup>F110</sup> to have been remanded on bail.

(6) Paragraphs (7) to (11) apply to a person who is released on bail<sup>F111</sup> (with or without entering into a recognisance) subject to a duty to attend at a police station in accordance with sub# paragraph (b) of paragraph (1).

(7) The custody officer may give notice in writing to such a person as is mentioned in paragraph (6) that his attendance at the police station is not required.



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(8) Where it appears to the custody officer that such a person is, by reason of illness or other unavoidable cause, unable to appear at the police station at the time appointed, the custody officer may extend the time for such further period as may appear reasonable in the circumstances.

(9) Where a person is detained under Article 38(3), any time during which he was in police detention prior to being granted bail shall be included as part of any period which falls to be calculated under this Part.

(10) Nothing in this Article shall prevent the re#arrest without warrant of such a person as is mentioned in paragraph (6) if new evidence justifying a further arrest has come to light since his release.

(11) Where such a person is re#arrested, the provisions of this Part shall apply to him as they apply to a person arrested for the first time<sup>F112</sup>; but this paragraph does not apply to a person who is arrested under Article 47A or has attended a police station in accordance with the grant of bail (and who accordingly is deemed by Article 35(8) to have been arrested for an offence)].

(12) In Article 129 of the Magistrates' Courts (Northern Ireland) Order 1981, for paragraph (2) there shall be substituted the following paragraph—

“(2) Where a warrant has been endorsed for bail under paragraph (1)—

- (a) where the person arrested is to be released on bail on his entering into a recognizance without sureties, it shall not be necessary to take him to a police station, but if he is so taken, he shall be released from custody on his entering into the recognizance; and
- (b) where he is to be released on his entering into a recognizance with sureties, he shall be taken to a police station on his arrest, and the custody officer there shall (subject to his approving any surety tendered in compliance with the endorsement) release him from custody as directed in the endorsement.” .

(13) In this Part “bail” means bail granted in accordance with this Article.

**F107** prosp. subst. by 2003 NI 13

**F108** prosp. insertion by 2005 NI 15

**F109** prosp. insertion by 2003 NI 13

**F110** 1981 NI 26

**F111** prosp. rep. by 2003 NI 13

**F112** 1995 NI 17

VALID FROM 12/03/2007

### <sup>F113</sup> Forfeiture of security

**48A.**—(1) Where a person has given security in pursuance of Article 48(3C), and a magistrates' court is satisfied that he failed to surrender to custody then, unless it appears to the court that he had reasonable cause for his failure, the court may order the forfeiture of the security.

(2) If a court orders the forfeiture of a security under paragraph (1), the court may declare that the forfeiture extends to such amount less than the full value of the security as it thinks fit to order.

(3) An order under paragraph (1) shall, unless previously revoked, take effect at the end of 21 days beginning with the day on which it is made.

(4) A court which has ordered the forfeiture of a security under paragraph (1) may, if satisfied on an application by or on behalf of the person who gave it that he did have reasonable cause for



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his failure to surrender to custody, by order remit the forfeiture or declare that it extends to such amount less than the full value of the security as it thinks fit to order.

(5) An application under paragraph (4) may be made before or after the order for forfeiture has taken effect, but shall not be entertained unless the court is satisfied that the prosecution was given reasonable notice of the applicant's intention to make it.]

**F113** Art. 48A inserted (12.3.2007) by [Criminal Justice \(Northern Ireland\) Order 2003 \(S.I. 2003/1247 \(N.I. 13\)\)](#), arts. 1(3), 8(2); S.R. 2007/56, **art. 2**

### Police detention to count towards custodial sentence

**49.**—(1) In subsection (2) of section 26 of the Treatment of Offenders Act (Northern Ireland) 1968<sup>F114</sup> (computation of custodial sentences) for the words from “period”, in the first place where it occurs, to “the offender” there shall be substituted the words “relevant period, but where he”.

(2) The following subsection shall be inserted after that subsection—

“(2A) In subsection (2) “relevant period” means—

- (a) any period during which the offender was in police detention in connection with the offence for which the sentence was passed; or
- (b) any period during which he was in custody—
  - (i) by reason only of having been committed to custody by an order of a court made in connection with any proceedings relating to that sentence or the offence for which it was passed or any proceedings from which those proceedings arose; or
  - (ii) by reason of his having been so committed and having been concurrently detained otherwise than by order of a court.”.

(3) The following subsections shall be added after subsection (5) of that section—

“(6) A person is in police detention for the purposes of this section—

- (a) at any time when he is in police detention for the purposes of the Police and Criminal Evidence (Northern Ireland) Order 1989; and
- (b) at any time when he is detained under section 14 of the Prevention of Terrorism (Temporary Provisions) Act 1989.

(7) No period of police detention shall be taken into account under this section unless it falls after the coming into operation of Article 49 of the Police and Criminal Evidence (Northern Ireland) Order 1989.”.

**F114** 1968 c. 29 (NI)

### Modifications etc. (not altering text)

**C42** Art. 49 applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

### Records of detention

**50.**—(1) The Chief Constable shall keep written records showing on an annual basis—

- (a) the number of persons kept in police detention for more than 24 hours and subsequently released without charge;

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- (b) the number of applications for warrants of further detention and the results of the applications; and
- (c) in relation to each warrant of further detention—
  - (i) the period of further detention authorised by it;
  - (ii) the period which the person named in it spent in police detention on its authority; and
  - (iii) whether he was charged or released without charge.

(2) Every annual report under<sup>F115</sup> section 58(1) of the Police (Northern Ireland) Act 2000] shall contain information about the matters mentioned in paragraph (1) in respect of the period to which the report relates.

**F115** 2000 c. 32

**Modifications etc. (not altering text)**

- C43** Art. 50 applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, **Sch. 1**, Sch. 2
- C44** Art. 50 applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

**Savings**

**51.** Nothing in this Part shall affect—

- (a) the powers conferred on immigration officers by section 4 of and Schedule 2 to the Immigration Act 1971<sup>F116</sup> (administrative provisions as to control on entry etc.);
- <sup>F117</sup>(b) the powers conferred by virtue of section 41 of, or Schedule 7 to, the Terrorism Act 2000 (powers of arrest and detention);]
- (c) any duty of a police officer under—
  - (i) section 129, 190 or 202 of the Army Act 1955<sup>F118</sup> (duties of governors of prisons and others to receive prisoners, deserters, absentees and persons under escort);
  - (ii) section 129, 190 or 202 of the Air Force Act 1955<sup>F119</sup> (duties of governors of prisons and others to receive prisoners, deserters, absentees and persons under escort);
  - (iii) section 107 of the Naval Discipline Act 1957<sup>F120</sup> (duties of governors of civil prisons etc.); or
  - (iv) paragraph 5 of Schedule 5 to the Reserve Forces Act 1980<sup>F121</sup> (duties of governors of civil prisons); or
- (d) any right of a person in police detention to apply for a writ of habeas corpus or other prerogative remedy.

**F116** 1971 c. 77

**F117** 2000 c. 11

**F118** 1955 c. 18

**F119** 1955 c. 19

**F120** 1957 c. 53

**F121** 1980 c. 9

**Modifications etc. (not altering text)**

- C45** Art. 51(d) applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, **Sch. 1**, Sch. 2

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**C46** Art. 51(d) applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

## Children

**52.** This Part does not apply to a child apparently under the age of 14 who is arrested without a warrant for an offence other than homicide and to whom<sup>F122</sup> Articles 7 and 8 of the Criminal Justice (Children) (Northern Ireland) Order 1998 accordingly apply].

**F122** 1998 NI 9

### Modifications etc. (not altering text)

**C47** Art. 52 applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, **Sch. 1**, Sch. 2

## PART VI

### QUESTIONING AND TREATMENT OF PERSONS BY POLICE

#### Interpretation of Part VI

**53**<sup>F123</sup>. 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;

*Definitions rep. by 2002 c. 29*

<sup>F124</sup>“extradition arrest power” means any of the following—

- (a) a Part 1 warrant (within the meaning given by the Extradition Act 2003) in respect of which a certificate under section 2 of that Act has been issued;
- (b) section 5 of that Act;
- (c) a warrant issued under section 71 of that Act;
- (d) a provisional warrant (within the meaning given by that Act).]

“fingerprints” includes palm prints;

<sup>F125</sup>“intimate sample” means—

- (a) a sample of blood, semen or any other tissue fluid, urine or pubic hair;
- (b) a dental impression;
- (c) a swab taken from a person's body orifice other than the mouth;]

<sup>F126</sup>“intimate search” means a search which consists of the physical examination of a person's body orifices other than the mouth;]

“medical practitioner” means a fully registered person within the meaning of the Medical Act 1983<sup>F127</sup>;

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[<sup>F125</sup>“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 swab taken from any part of a person's body including the mouth but not any other body orifice;
- (d) saliva;
- (e) a footprint or a similar impression of any part of a person's body other than a part of his hand;]

[<sup>F125</sup>“registered dentist” has the same meaning as in the Dentists Act 1984;

<sup>F128</sup>“speculative search”, in relation to a person's fingerprints or samples, means such a check against other fingerprints or samples or against information derived from other samples as is referred to in Article 63A(1);

“sufficient” and “insufficient”, in relation to a sample, means sufficient or insufficient (in point of quantity or quality) for the purpose of enabling information to be produced by the means of analysis used or to be used in relation to the sample.]

F129 . . . F123

- F123 prosp. insertion by 2003 c. 6
- F124 2003 c. 41
- F125 1995 NI 17
- F126 1995 NI 17
- F127 1983 c. 54
- F128 prosp. insertion by 2003 c. 6 (as amended by SI 2004/1771)
- F129 2002 c. 29

VALID FROM 01/06/2021

[<sup>F130</sup>“Qualifying offence” etc

**53A.—**(1) In this Part, “qualifying offence” means—

- (a) an offence specified in paragraph (2), or
  - (b) an ancillary offence relating to such an offence.
- (2) The offences referred to in paragraph (1)(a) are—
- (a) murder;
  - (b) manslaughter;
  - (c) false imprisonment;
  - (d) kidnapping;
  - (e) an offence under section 4, 16, 18, 20 to 24 or 47 of the Offences Against the Person Act 1861;
  - (f) an offence under section 2 or 3 of the Explosive Substances Act 1883;
  - (g) an offence under section 20 of the Children and Young Persons Act (Northern Ireland) 1968 (c. 34 (N.I.));
  - (h) an offence under section 9 or 10 of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.));

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- (i) an offence under Article 3 of the Criminal Damage (Northern Ireland) Order 1977 (S.I. 1977/426 (N.I. 4)) required to be charged as arson;
- (j) an offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978 (S.I.1978/1047 (N.I. 17));
- (k) an offence under Article 172B of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)) involving an accident which caused a person's death;
- (l) an offence under section 1 of the Aviation Security Act 1982;
- (m) an offence under Article 4 of the Child Abduction (Northern Ireland) Order 1985 (S.I. 1985/1638 (N.I. 17));
- (n) an offence under section 9 of the Aviation and Maritime Security Act 1990;
- (o) an offence under sections 57 to 59 of the Sexual Offences Act 2003;
- (p) an offence under section 5 of the Domestic Violence, Crime and Victims Act 2004;
- (q) an offence under Article 58, 59 or 60 of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3));
- (r) an offence for the time being listed in section 41(1) of the Counter-Terrorism Act 2008;
- (s) an offence under any of Articles 5 to 26, 32, 33, 37 to 40, 43 to 54, 62, 63, 65 to 71, 73 and 74 of the Sexual Offences (Northern Ireland) Order 2008 (S.I. 2008/1769 (N.I. 2)).
- [ an offence under section 1 or 2 of the Human Trafficking and Exploitation (Criminal <sup>F131</sup>(t) Justice and Support for Victims) Act (Northern Ireland) 2015.”.]
- (3) The Secretary of State may by order amend paragraph (2) (subject to Article 89).

[ <sup>F132</sup>(3A) The power to make an order under paragraph (3) is exercisable by the Department of Justice (and not by the Secretary of State) so far as the power may be used to make provision which could be made by an Act of the Northern Ireland Assembly without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998).]

- (4) In paragraph (1)(b) “ancillary offence”, in relation to an offence, means—
  - (a) aiding, abetting, counselling or procuring the commission of the offence;
  - (b) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to the offence (including, in relation to times before the commencement of that Part, an offence of incitement);
  - (c) attempting or conspiring to commit the offence.]

**F130** Art. 53A inserted (1.6.2021 for specified purposes) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 13(1)**, 59(1); S.R. 2021/135, art. 2; S.I. 2021/621, art. 2

**F131** Art. 53A(2)(t) added (14.1.2015) by [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015 \(c. 2\)](#), s. 28(2), **Sch. 4 para. 3** (but this amendment cannot take effect until the commencement of S.I. 1989/1341, art. 53A)

**F132** Art. 53A(3A) inserted by 2010 c. 17, **s. 13(1)** (as inserted (18.10.2012) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2012 \(S.I. 2012/2595\)](#), arts. 1(2), **22(2)(a)** (with arts. 24-28))

### Abolition of certain powers of constables to search persons

**54.**—(1) <sup>F133</sup>. . . , 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—

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- (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.

*Para. (2) rep. by 2000 c. 11*

**F133** 2000 c. 11

### Searches of detained persons

**55.**—<sup>F134</sup>(1) The custody officer at a police station shall ascertain<sup>F135</sup> . . . 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).

[<sup>F135</sup>(2) The custody officer may record or cause to be recorded all or any of the things which he ascertains under paragraph (1).

(2A) In the case of an arrested person, any such record may 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.

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**F134** mod. by SI 2003/3107

**F135** 2004 NI 9

**Modifications etc. (not altering text)**

**C48** Art. 55 applied (with modifications) (1.12.2007) by [Police and Criminal Evidence \(Application to Revenue and Customs\) Order \(Northern Ireland\) 2007 \(S.R. 2007/464\)](#), arts. 3-15, **Sch. 1**, Sch. 2

**C49** Art. 55 applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

**[<sup>F136</sup> Searches and examination to ascertain identity**

**55A.**—(1) If an officer of at least the rank of inspector authorises it, a person who is detained in a police station may be searched or examined, or both—

- (a) for the purpose of ascertaining whether he has any mark that would tend to identify him as a person involved in the commission of an offence; or
- (b) for the purpose of facilitating the ascertainment of his identity.

(2) An officer may only give an authorisation under paragraph (1) for the purpose mentioned in sub-paragraph (a) of that paragraph if—

- (a) the appropriate consent to a search or examination that would reveal whether the mark in question exists has been withheld; or
- (b) it is not practicable to obtain such consent.

(3) An officer may only give an authorisation under paragraph (1) in a case in which paragraph (2) does not apply if—

- (a) the person in question has refused to identify himself; or
- (b) the officer has reasonable grounds for suspecting that that person is not who he claims to be.

(4) 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.

(5) Any identifying mark found on a search or examination under this Article may be photographed—

- (a) with the appropriate consent; or
- (b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.

(6) Where a search or examination may be carried out under this Article, or a photograph may be taken under this Article, the only persons entitled to carry out the search or examination, or to take the photograph, are—<sup>F137</sup> constables.]

(7) A person may not under this Article carry out a search or examination of a person of the opposite sex or take a photograph of any part of the body of a person of the opposite sex.

(8) An intimate search may not be carried out under this Article.

(9) A photograph taken under this Article—

- (a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; and
- (b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.

(10) In paragraph (9)—

- (a) the reference to crime includes a reference to any conduct which—



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- (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom); or
- (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences;

and

- (b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom.

(11) In this Article—

- (a) references to ascertaining a person's identity include references to showing that he is not a particular person; and
- (b) references to taking a photograph include references to using any process by means of which a visual image may be produced, and references to photographing a person shall be construed accordingly.

(12) In this Article "mark" includes features and injuries; and a mark is an identifying mark for the purposes of this Article if its existence in any person's case facilitates the ascertainment of his identity or his identification as a person involved in the commission of an offence.

[  
<sup>F138</sup>(13) Nothing in this Article applies to a person arrested under an extradition arrest power.]]

**F136** 2001 c. 24

**F137** 2003 c. 6

**F138** 2003 c. 41

**Modifications etc. (not altering text)**

**C50** Art. 55A applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, [Sch. 1](#), [Sch. 2](#)

**Intimate searches**

**56.**—<sup>F139</sup>(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.



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<sup>F140</sup>(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.

<sup>F141</sup>(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.

<sup>F140</sup>(11) The information required to be recorded by <sup>F142</sup> 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.

<sup>F140</sup>(14) Every annual report under <sup>F143</sup> section 58(1) of the Police (Northern Ireland) Act 2000] 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—

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- (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<sup>F144</sup> (possession of controlled drug with intent to supply to another); or
- (b) section 68(2) of the Customs and Excise Management Act 1979<sup>F145</sup> (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<sup>F146</sup>.

**F139** mod. by SI 2003/3107

**F140** prosp. insertion by 2005 c. 17

**F141** prosp. insertion by 2003 c. 6

**F142** prosp. subst. by 2005 c. 17

**F143** 2000 c. 32

**F144** 1971 c. 38

**F145** 1979 c. 2

**F146** 1979 c. 36

VALID FROM 01/04/2007

### **X-rays and ultrasound scans**

[<sup>F147</sup>56A.—(1) If an officer of at least the rank of superintendent has reasonable grounds for believing that a person who has been arrested for an offence and is in police detention—

- (a) may have swallowed a Class A drug, and
- (b) was in possession of it with the appropriate criminal intent before his arrest,

the officer may authorise that an x-ray is taken of the person or an ultrasound scan is carried out on the person (or both).

(2) An x-ray must not be taken of a person and an ultrasound scan must not be carried out on him unless the appropriate consent has been given in writing.

(3) If it is proposed that an x-ray is taken or an ultrasound scan is carried out, a constable must inform the person who is to be subject to it—

- (a) of the giving of the authorisation for it, and
- (b) of the grounds for giving the authorisation.

(4) An x-ray may be taken or an ultrasound scan carried out only by a suitably qualified person and only at—

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- (a) a hospital,
  - (b) a registered medical practitioner's surgery, or
  - (c) some other place used for medical purposes.
- (5) The custody record of the person must also state—
- (a) the authorisation by virtue of which the x-ray was taken or the ultrasound scan was carried out,
  - (b) the grounds for giving the authorisation, and
  - (c) the fact that the appropriate consent was given.
- (6) The information required to be recorded by subsection (5) must be recorded as soon as practicable after the x-ray has been taken or ultrasound scan carried out (as the case may be).
- (7) Every annual report under section 58 of the Police (Northern Ireland) Act 2000 must contain information about x-rays which have been taken and ultrasound scans which have been carried out under this Article during the period to which it relates.
- (8) The information about such x-rays and ultrasound scans must be presented separately and must include—
- (a) the total number of x-rays;
  - (b) the total number of ultrasound scans;
  - (c) the results of the x-rays;
  - (d) the results of the ultrasound scans.
- (9) If the appropriate consent to an x-ray or ultrasound scan of any person is refused without good cause, in any proceedings against that person for an offence—
- (a) the court, in determining whether to commit the accused for trial or whether there is a case to answer,
  - (b) a judge, in deciding whether to grant an application made by the accused under—
    - (i) Article 5 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 (application for dismissal of charges where a case of fraud has been transferred from a magistrates' court to the Crown Court under Article 3 of that Order), or
    - (ii) paragraph 4 of Schedule 1 to the Children's Evidence (Northern Ireland) Order 1995 (application for dismissal of charge of violent or sexual offence involving child in respect of which notice of transfer has been given under Article 4 of that Order), and
  - (c) 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.
- (10) In this Article “the appropriate criminal intent”, “Class A drug” and “suitably qualified person” have the same meanings as in Article 56 above.]

**F147** Art. 56A inserted (1.4.2007) by [Drugs Act 2005 \(c. 17\)](#), ss. 6, 24(3); S.I. 2007/562, **art. 2(1)(b)**

**Modifications etc. (not altering text)**

**C51** Art. 56A extended by [Police \(Northern Ireland\) Act 2003 \(c. 6\)](#), Sch. 2 para. 20D(b) (as inserted (22.4.2007) by [Policing \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2007 \(S.I. 2007/912 \(N.I. 6\)\)](#), arts. 1(3), 4, **Sch. 2 para. 2**)

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**C52** Art. 56A extended by Police (Northern Ireland) Act 2003 (c. 6), Sch. 4 para. 23C(b) (as inserted (prosp.) by Policing (Miscellaneous Provisions) (Northern Ireland) Order 2007 (S.I. 2007/912 (N.I. 6)), arts. 1(2), 6(2), **Sch. 4 para. 5**)

## Right to have someone informed when arrested

**57.**—<sup>F148</sup>(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
- (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) [<sup>F149</sup>Subject to paragraph (5A)] 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.

[<sup>F150</sup>(5A) An officer may also authorise delay where he has reasonable grounds for believing that—

- (a) the person detained for the serious arrestable offence has benefited from his criminal conduct, and
- (b) the recovery of the value of the property constituting the benefit will be hindered by telling the named person of the arrest.

(5B) For the purposes of paragraph (5A) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 4 of the Proceeds of Crime Act 2002.]

(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.

**F148** mod. by SI 2003/3107

*Status: Point in time view as at 08/02/2007. This version of this Order contains provisions that are not valid for this point in time.*

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**F149** 1990 NI 17

**F150** 2002 c. 29

Art. 58 rep. by 1998 NI 9

### Access to legal advice

**59.**—<sup>F151</sup>(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) [<sup>F152</sup>Subject to paragraph (8A)] 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.

[<sup>F153</sup>(8A) An officer may also authorise delay where he has reasonable grounds for believing that—

- (a) the person detained for the serious arrestable offence has benefited from his criminal conduct, and
- (b) the recovery of the value of the property constituting the benefit will be hindered by the exercise of the right conferred by paragraph (1).

(8B) For the purposes of paragraph (8A) the question whether a person has benefited from his criminal conduct is to be decided in accordance with Part 4 of the Proceeds of Crime Act 2002.]

(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.

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**F151** mod. by SI 2003/3107

**F152** 1990 NI 17

**F153** 2002 c. 29

### **Tape#recording of interviews**

**60.**—<sup>[F154F154]</sup>(1) 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.

*Para. (2) rep. by 2000 c. 11*

**F154** 1998 c. 9

### **<sup>[F155]</sup>Video recording of interviews**

**60A.** It shall be the duty of the Secretary of State—

- (a) to issue a code of practice in connection with the video-recording with sound of interviews of persons suspected of the commission of criminal offences which are held by police officers at police stations;
- (b) to make an order (subject to Article 89) requiring the video-recording with sound 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.]

**F155** 2000 c. 32

### **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.

<sup>[F156]</sup>(3) The fingerprints of a person detained at a police station may be taken without the appropriate consent if—

- (a) he is detained in consequence of his arrest for a recordable offence; and
- (b) he has not had his fingerprints taken in the course of the investigation of the offence by the police.

(4) The fingerprints of a person detained at a police station may be taken without the appropriate consent if—

- (a) he has been charged with a recordable offence or informed that he will be reported for such an offence; and

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(b) he has not had his fingerprints taken in the course of the investigation of the offence by the police.]

Para. (5) rep. by 2004 NI 9

(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<sup>[F156]</sup> paragraph (3), (4) 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.

<sup>[F157]</sup>(7A) If a person's fingerprints are taken at a police station, whether with or without the appropriate consent—

(a) before the fingerprints are taken, an officer shall inform him that they may be the subject of a speculative search; and

(b) the fact that the person has been informed of this possibility shall be recorded as soon as is practicable after the fingerprints have been taken.]

(8) If he is detained at a police station when the fingerprints are taken, the reason for taking them<sup>[F157]</sup> and, in the case falling within paragraph (7A), the fact referred to in sub-paragraph (b) of that paragraph] shall be recorded on his custody record.

<sup>[F158]</sup>(8A) The fingerprints of a person detained at a police station may be taken without the appropriate consent by a constable.]

(9) Nothing in this Article—

(a) affects any power conferred by paragraph 18(2) of Schedule 2 to the Immigration Act 1971<sup>[F159]</sup>, section 141 of the Immigration and Asylum Act 1999 or regulations made under section 144 of that Act]; or

<sup>[F160]</sup>(b) applies to a person arrested or detained under the terrorism provisions]

<sup>[F161]</sup>(10) Nothing in this Article applies to a person arrested under an extradition arrest power.]

**F156** 2004 NI 9

**F157** 1995 NI 17

**F158** 2003 c. 6

**F159** 1999 c. 33

**F160** 2000 c. 11

**F161** 2003 c. 41

VALID FROM 01/03/2007

### <sup>[F162]</sup>**Impressions of footwear**

**61A.**—(1) Except as provided by this Article, no impression of a person's footwear may be taken without the appropriate consent.

(2) Consent to the taking of an impression of a person's footwear must be in writing if it is given at a time when he is at a police station.

(3) Where a person is detained at a police station, an impression of his footwear may be taken without the appropriate consent if—



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- (a) he is detained in consequence of his arrest for a recordable offence, or has been charged with a recordable offence, or informed that he will be reported for a recordable offence; and
  - (b) he has not had an impression taken of his footwear in the course of the investigation of the offence by the police.
- (4) Where a person mentioned in sub-paragraph (a) of paragraph (3) has already had an impression taken of his footwear in the course of the investigation of the offence by the police, that fact shall be disregarded for the purposes of that paragraph if the impression of his footwear taken previously is—
- (a) incomplete; or
  - (b) is not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).
- (5) If an impression of a person's footwear is taken at a police station, whether with or without the appropriate consent—
- (a) before it is taken, an officer shall inform him that it may be the subject of a speculative search; and
  - (b) the fact that the person has been informed of this possibility shall be recorded as soon as is practicable after the impression has been taken, and if he is detained at a police station, the record shall be made on his custody record.
- (6) In a case where, by virtue of paragraph (3), an impression of a person's footwear is taken without the appropriate consent—
- (a) he shall be told the reason before it is taken; and
  - (b) the reason shall be recorded on his custody record as soon as is practicable after the impression is taken.
- (7) The power to take an impression of the footwear of a person detained at a police station without the appropriate consent shall be exercisable by any constable.
- (8) Nothing in this Article applies to any person—
- (a) arrested or detained under the terrorism provisions;
  - (b) arrested under an extradition arrest power.]

**F162** Art. 61A inserted (1.3.2007) by [Police and Criminal Evidence \(Amendment\) \(Northern Ireland\) Order 2007 \(S.I. 2007/288 \(N.I. 2\)\)](#), arts. 1(2), **31**

**Modifications etc. (not altering text)**

- C53** Art. 61A extended by [Police \(Northern Ireland\) Act 2003 \(c. 6\)](#), Sch. 2 para. 20A (as inserted (22.4.2007) by [Policing \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2007 \(S.I. 2007/912 \(N.I. 6\)\)](#), arts. 1(3), 4, **Sch. 2 para. 2**)
- C54** Art. 61A applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

**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.



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[<sup>F163</sup>(1A) An intimate sample may be taken from a person who is not in police detention but from whom, in the course of the investigation of an offence, two or more non-intimate samples suitable for the same means of analysis have been taken which have proved insufficient—

- (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[<sup>F163</sup> under paragraph (1) or (1A)] if he has reasonable grounds—

- (a) for suspecting the involvement of the person from whom the sample is to be taken in a[<sup>F163</sup> recordable 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)[<sup>F163</sup> or (1A)] 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.

[<sup>F163</sup>(7A) If an intimate sample is taken from a person at a police station—

- (a) before the sample is taken, an officer shall inform him that it may be the subject of a speculative search; and
- (b) the fact that the person has been informed of this possibility shall be recorded as soon as practicable after the sample has been 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)[<sup>F163</sup> or (7A)] shall be recorded in his custody record.

<sup>F164</sup>(9) An intimate sample, other than a sample of urine[<sup>F163</sup> or a dental impression], may only be taken from a person by a medical practitioner[<sup>F163</sup> and a dental impression may only be taken by a registered dentist].

(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

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[<sup>F165</sup>(aa) a judge, in deciding whether to grant an application made by the accused under paragraph 4 of Schedule 1 to the Children's Evidence (Northern Ireland) Order 1995 (application for dismissal of charge of violent or sexual offence involving child in respect of which notice of transfer has been given under Article 4 of that Order); 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.

[<sup>F166</sup>(11) Nothing in this Article affects Articles 13 to 21 of the Road Traffic (Northern Ireland) Order 1995[<sup>F167</sup> or Articles 18 and 19 of the Road Traffic Offenders (Northern Ireland) Order 1996].]

[<sup>F168</sup>(12) Nothing in this Article applies to a person arrested or detained under the terrorism provisions; and paragraph (1A) shall not apply where the non-intimate samples mentioned in that paragraph were taken under paragraph 10 of Schedule 8 to the Terrorism Act 2000.]

**F163** 1995 NI 17  
**F164** prosp. subst. by 2003 c.6  
**F165** 1995 NI 3  
**F166** 1995 NI 18  
**F167** 1996 NI 10  
**F168** 2000 c. 11

### 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.

[<sup>F169</sup>(2A) A non-intimate sample may be taken from a person without the appropriate consent if—

- (a) he is in police detention in consequence of his arrest for a recordable offence; and
- (b) either he has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by the police, or he has had such a sample taken but it proved insufficient.]

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

- (a) he<sup>F169</sup> . . . [<sup>F170</sup> is being held in custody by the police on the authority of a court]; and
- (b) an officer of at least the rank of superintendent authorises it to be taken without the appropriate consent.

[<sup>F171</sup>(3A) A non-intimate sample may be taken from a person[<sup>F169</sup> (whether or not he is in police detention or held in custody by the police on the authority of a court)] without the appropriate consent if—

- (a) he has been charged with a recordable offence or informed that he will be reported for such an offence; and
- (b) either he has not had a non-intimate sample taken from him in the course of the investigation of the offence by the police or he has had a non-intimate sample taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(3B) A non-intimate sample may be taken from a person without the appropriate consent if he has been convicted of a recordable offence.]

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- (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<sup>F171</sup> recordable 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.
- <sup>F171</sup>(8A) In a case where by virtue of<sup>F169</sup> paragraph (2A), (3A)] or (3B) a sample is taken from a person without the appropriate consent—
- (a) he shall be told the reason before the sample is taken; and
  - (b) the reason shall be recorded as soon as practicable after the sample is taken.
- (8B) If a non-intimate sample is taken from a person at a police station, whether with or without the appropriate consent—
- (a) before the sample is taken, an officer shall inform him that it may be the subject of a speculative search; and
  - (b) the fact that the person has been informed of this possibility shall be recorded as soon as practicable after the sample has been 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)<sup>F171</sup>, (8A) or (8B)] shall be recorded in his custody record.
- <sup>F172</sup>(9A) The power to take a non-intimate sample from a person without the appropriate consent is exercisable by a constable.]
- <sup>F171</sup>(10) Paragraph (3B) shall not apply to persons convicted before the date on which that paragraph comes into operation.]
- <sup>F173</sup>(11) Nothing in this Article applies to a person arrested or detained under the terrorism provisions]
- <sup>F174</sup>(12) Nothing in this Article applies to a person arrested under an extradition arrest power.]

**F169** 2004 NI 9  
**F170** 1991 NI 16  
**F171** 1995 NI 17  
**F172** 2003 c. 6  
**F173** 2000 c. 11

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**F174** 2003 c. 41

## [<sup>F175</sup>Fingerprints and samples: supplementary provisions

### 63A.—[

<sup>F176</sup>(1) Where a person has been arrested on suspicion of being involved in a recordable offence or has been charged with such an offence or has been informed that he will be reported for such an offence, fingerprints or samples or the information derived from samples taken under any power conferred by this Part from the person may be checked against—

- (a) other fingerprints or samples to which the person seeking to check has access and which are held by or on behalf of a police force (or police forces) falling within paragraph (1A) or are held in connection with or as the result of an investigation of an offence;
- (b) information derived from other samples if the information is contained in records to which the person seeking to check has access and which are held as mentioned in sub-paragraph (a).

(1A) Each of the following police forces falls within this paragraph—

- (a) the Royal Ulster Constabulary and the Royal Ulster Constabulary Reserve;
- (b) a police force within the meaning given by section 62 of the Police Act 1964;
- (c) a police force within the meaning given by section 50 of the Police (Scotland) Act 1967;
- (d) the States of Jersey Police Force;
- (e) the salaried police force of the Island of Guernsey;
- (f) the Isle of Man Constabulary.]

(2) Where a sample of hair other than pubic hair is to be taken the sample may be taken either by cutting hairs or by plucking hairs with their roots so long as no more are plucked than the person taking the sample reasonably considers to be necessary for a sufficient sample.

(3) Where any power to take a sample is exercisable in relation to a person the sample may be taken in a custodial establishment.

(4) Any constable may, within the allowed period, require a person who is neither in police detention nor held in custody by the police on the authority of a court to attend a police station in order to have a sample taken where—

- (a) the person has been charged with a recordable offence or informed that he will be reported for such an offence and either he has not had a sample taken from him in the course of the investigation of the offence by the police or he has had a sample so taken from him but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient; or
- (b) the person has been convicted of a recordable offence and either he has not has a sample taken from him since the conviction or he has had a sample taken from him (before or after his conviction) but either it was not suitable for the same means of analysis or, though so suitable, the sample proved insufficient.

(5) The period allowed for requiring a person to attend a police station for the purpose specified in paragraph (4) is—

- (a) in the case of a person falling within sub-paragraph (a), one month beginning with the date of the charge or one month beginning with the date on which the appropriate officer is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be;

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- (b) in the case of a person falling within sub-paragraph (b), one month beginning with the date of the conviction or one month beginning with the date on which the appropriate officer is informed of the fact that the sample is not suitable for the same means of analysis or has proved insufficient, as the case may be.
- (6) A requirement under paragraph (4)—
  - (a) shall give the person at least 7 days within which he must so attend; and
  - (b) may direct him to attend at a specified time of day or between specified times of day.
- (7) Any constable may arrest without a warrant a person who has failed to comply with a requirement under paragraph (4).
- (8) In this Article “the appropriate officer” is—
  - (a) in the case of a person falling within paragraph (4)(a), the officer investigating the offence with which that person has been charged or as to which he was informed that he would be reported;
  - (b) in the case of a person falling within paragraph (4)(b), the officer in charge of the police station from which the investigation of the offence of which he was convicted was conducted.]

F175 1995 NI 17

F176 1996 c. 25

### **Destruction of fingerprints and samples**

64.—<sup>F177</sup>(1A) Where—

- (a) fingerprints or samples are taken from a person in connection with the investigation of an offence; and
- (b) paragraph (3) does not require them to be destroyed,

the fingerprints or samples may be retained after they have fulfilled the purposes for which they were taken but shall not be used by any person except for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution.

(1B) In paragraph (1A)—

- (a) the reference to using a fingerprint includes a reference to allowing any check to be made against it under Article 63A(1) and to disclosing it to any person;
- (b) the reference to using a sample includes a reference to allowing any check to be made under Article 63A(1) against it or against information derived from it and to disclosing it or any such information to any person;
- (c) the reference to crime includes a reference to any conduct which—
  - (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom); or
  - (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences;

and

- (d) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom.]

(3) If—

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(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<sup>[F178]</sup> except as provided in<sup>[F177]</sup> the following provisions of this Article]] be destroyed as soon as they have fulfilled the purpose for which they were taken.

<sup>[F177]</sup>(3AA) Samples and fingerprints are not required to be destroyed under paragraph (3) if—

- (a) they were taken for the purposes of the investigation of an offence of which a person has been convicted; and
- (b) a sample or, as the case may be, fingerprint was also taken from the convicted person for the purposes of that investigation.

(3AB) Subject to paragraph (3AC), where a person is entitled under paragraph (3) to the destruction of any fingerprint or sample taken from him (or would be but for paragraph (3AA)), neither the fingerprint nor the sample, nor any information derived from the sample, shall be used—

- (a) in evidence against the person who is or would be entitled to the destruction of that fingerprint or sample; or
- (b) for the purposes of the investigation of any offence;

and paragraph (1B) applies for the purposes of this paragraph as it applies for the purposes of paragraph (1A).

(3AC) Where a person from whom a fingerprint or sample has been taken consents in writing to its retention—

- (a) that sample need not be destroyed under paragraph (3); and
- (b) paragraph (3AB) shall not restrict the use that may be made of the fingerprint or sample or, in the case of a sample, of any information derived from it;

and a consent given for the purposes of this paragraph shall not be capable of being withdrawn.

(3AD) For the purposes of paragraph (3AC) it shall be immaterial whether the consent is given at, before or after the time when the entitlement to the destruction of the fingerprint or sample arises.]  
*Para. (4) rep. by 2001 c. 16*

(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—

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- (a) affects any power conferred by paragraph 18(2) of Schedule 2 to the Immigration Act 1971<sup>F179</sup><sup>F177</sup> or section 20 of the Immigration and Asylum Act 1999 (c. 33) (disclosure of police information to the Secretary of State for use for immigration purposes);]; or
- (b) applies to a person arrested or detained under the terrorism provisions.

**F177** 2001 c. 16

**F178** 1995 NI 17

**F179** 1971 c. 77

PROSPECTIVE

### <sup>F180</sup> Destruction of samples

**64ZA.**—(1) A DNA sample to which Article 64 applies must be destroyed—

- (a) as soon as a DNA profile has been derived from the sample, or
- (b) if sooner, before the end of the period of 6 months beginning with the date on which the sample was taken.

(2) Any other sample to which Article 64 applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.

**F180** Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

PROSPECTIVE

### Destruction of data given voluntarily

**64ZB.**—(1) This Article applies to—

- (a) fingerprints or impressions of footwear taken in connection with the investigation of an offence with the consent of the person from whom they were taken, and
- (b) a DNA profile derived from a DNA sample taken in connection with the investigation of an offence with the consent of the person from whom the sample was taken.

(2) Material to which this Article applies must be destroyed as soon as it has fulfilled the purpose for which it was taken or derived, unless it is—

- (a) material relating to a person who is convicted of the offence,
- (b) material relating to a person who has previously been convicted of a recordable offence, other than a person who has only one exempt conviction,
- (c) material in relation to which any of Articles 64ZC to 64ZH applies, or
- (d) material which is not required to be destroyed by virtue of consent given under Article 64ZL.

(3) If material to which this Article applies leads to the person to whom the material relates being arrested for or charged with an offence other than the offence under investigation—

- (a) the material is not required to be destroyed by virtue of this Article, and

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- (b) Articles 64ZD to 64ZH have effect in relation to the material as if the material was taken (or, in the case of a DNA profile, was derived from material taken) in connection with the investigation of the offence in respect of which the person is arrested or charged.

**F180** Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

**Modifications etc. (not altering text)**

- C55** Art. 64ZB(2) modified (2.4.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) Regulations 2020 \(S.I. 2020/391\)](#), regs. 1, **4(3)(b)** (with reg. 5)
- C56** Art. 64ZB(2) modified (1.10.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) \(No. 2\) Regulations 2020 \(S.I. 2020/973\)](#), regs. 1(1), **4(3)(b)(4)**

PROSPECTIVE

**Destruction of data relating to a person subject to a control order**

**64ZC.**—(1) This Article applies to material falling within paragraph (2) relating to a person who—

- (a) has no previous convictions or only one exempt conviction, and  
(b) is subject to a control order.

(2) Material falls within this paragraph if it is—

- (a) fingerprints taken from the person, or  
(b) a DNA profile derived from a DNA sample taken from the person.

(3) The material must be destroyed before the end of the period of 2 years beginning with the date on which the person ceases to be subject to a control order.

(4) This Article ceases to have effect in relation to the material if the person is convicted—

- (a) in England and Wales or Northern Ireland of a recordable offence, or  
(b) in Scotland of an offence which is punishable by imprisonment,

before the material is required to be destroyed by virtue of this Article.

(5) For the purposes of paragraph (1)—

- (a) a person has no previous convictions if the person has not previously been convicted—  
(i) in England and Wales or Northern Ireland of a recordable offence, or  
(ii) in Scotland of an offence which is punishable by imprisonment, and

- (b) if the person has been previously convicted of a recordable offence in England and Wales or Northern Ireland, the conviction is exempt if it is in respect of a recordable offence other than a qualifying offence, committed when the person is aged under 18.

(6) For the purposes of that paragraph—

- (a) a person is to be treated as having been convicted of an offence if—

- (i) he has been given a caution in England and Wales or Northern Ireland in respect of the offence which, at the time of the caution, he has admitted, [<sup>F181</sup>and]

<sup>F182</sup>(ii) . . . . .

- (b) if a person is convicted of more than one offence arising out of a single course of action, those convictions are to be treated as a single conviction.



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(7) In this Article—

- (a) “recordable offence” has, in relation to a conviction in England and Wales, the meaning given by section 118(1) of the Police and Criminal Evidence Act 1984, and
- (b) “qualifying offence” has, in relation to a conviction in respect of a recordable offence committed in England and Wales, the meaning given by section 65A of that Act.

**F180** Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

**F181** Word in art. 64ZC(6)(a)(i) substituted (8.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 24 para. 12(a)** (with s. 135(4)); S.I. 2013/453, art. 4(f) (but this amendment cannot take effect until the commencement of S.I. 1989/1341, art. 64ZC)

**F182** Art. 64ZC(6)(a)(ii) omitted (8.4.2013) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), **Sch. 24 para. 12(b)** (with s. 135(4)); S.I. 2013/453, art. 4(f) (but this amendment cannot take effect until the commencement of S.I. 1989/1341, art. 64ZC)

PROSPECTIVE

### **Destruction of data relating to persons not convicted**

**64ZD.**—(1) This Article applies to material falling within paragraph (2) relating to a person who—

- (a) has no previous convictions or only one exempt conviction,
- (b) is arrested for or charged with a recordable offence, and
- (c) is aged 18 or over at the time of the alleged offence.

(2) Material falls within this paragraph if it is—

- (a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence, or
- (b) a DNA profile derived from a DNA sample so taken.

(3) The material must be destroyed—

- (a) in the case of fingerprints or impressions of footwear, before the end of the period of 6 years beginning with the date on which the fingerprints or impressions were taken,
- (b) in the case of a DNA profile, before the end of the period of 6 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).

(4) But if, before the material is required to be destroyed by virtue of this Article, the person is arrested for or charged with a recordable offence the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge.

(5) This Article ceases to have effect in relation to the material if the person is convicted of a recordable offence before the material is required to be destroyed by virtue of this Article.

**F180** Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

### **Modifications etc. (not altering text)**

**C57** Art. 64ZD(3) modified (2.4.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) Regulations 2020 \(S.I. 2020/391\)](#), regs. 1, **4(3)(b)** (with reg. 5)

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**C58** Art. 64ZD(3) modified (1.10.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) \(No. 2\) Regulations 2020 \(S.I. 2020/973\)](#), regs. 1(1), **4(3)(b)(4)**

PROSPECTIVE

### **Destruction of data relating to persons under 18 not convicted: recordable offences other than qualifying offences**

**64ZE.**—(1) This Article applies to material falling within paragraph (2) relating to a person who—

- (a) has no previous convictions or only one exempt conviction,
- (b) is arrested for or charged with a recordable offence other than a qualifying offence, and
- (c) is aged under 18 at the time of the alleged offence.

(2) Material falls within this paragraph if it is—

- (a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence, or
- (b) a DNA profile derived from a DNA sample so taken.

(3) The material must be destroyed—

- (a) in the case of fingerprints or impressions of footwear, before the end of the period of 3 years beginning with the date on which the fingerprints or impressions were taken,
- (b) in the case of a DNA profile, before the end of the period of 3 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).

(4) But if, before the material is required to be destroyed by virtue of this Article, the person is arrested for or charged with a recordable offence—

- (a) where the person is aged 18 or over at the time of the alleged offence, the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,

(b) where—

- (i) the alleged offence is not a qualifying offence, and
- (ii) the person is aged under 18 at the time of the alleged offence,

the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,

(c) where—

- (i) the alleged offence is a qualifying offence, and
- (ii) the person is aged under 16 at the time of the alleged offence,

the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,

(d) where—

- (i) the alleged offence is a qualifying offence, and
- (ii) the person is aged 16 or 17 at the time of the alleged offence,

the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,

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(e) where—

- (i) the person is convicted of the offence,
- (ii) the offence is not a qualifying offence,
- (iii) the person is aged under 18 at the time of the offence, and
- (iv) the person has no previous convictions,

the material may be further retained until the end of the period of 5 years beginning with the date of the arrest or charge.

(5) This Article ceases to have effect in relation to the material if, before the material is required to be destroyed by virtue of this Article, the person—

- (a) is convicted of a recordable offence and is aged 18 or over at the time of the offence,
- (b) is convicted of a qualifying offence, or
- (c) having a previous exempt conviction, is convicted of a recordable offence.

**F180** Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

**Modifications etc. (not altering text)**

**C59** Art. 64ZE(3) modified (2.4.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) Regulations 2020 \(S.I. 2020/391\)](#), regs. 1, **4(3)(b)** (with reg. 5)

**C60** Art. 64ZE(3) modified (1.10.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) \(No. 2\) Regulations 2020 \(S.I. 2020/973\)](#), regs. 1(1), **4(3)(b)(4)**

PROSPECTIVE

**Destruction of data relating to persons under 16 not convicted: qualifying offences**

**64ZF.**—(1) This Article applies to material falling within paragraph (2) relating to a person who—

- (a) has no previous convictions or only one exempt conviction,
- (b) is arrested for or charged with a qualifying offence, and
- (c) is aged under 16 at the time of the alleged offence.

(2) Material falls within this paragraph if it is—

- (a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence, or
- (b) a DNA profile derived from a DNA sample so taken.

(3) The material must be destroyed—

- (a) in the case of fingerprints or impressions of footwear, before the end of the period of 3 years beginning with the date on which the fingerprints or impressions were taken,
- (b) in the case of a DNA profile, before the end of the period of 3 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).

(4) But if, before the material is required to be destroyed by virtue of this Article, the person is arrested for or charged with a recordable offence—

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- (a) where the person is aged 18 or over at the time of the alleged offence, the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,
  - (b) where—
    - (i) the alleged offence is not a qualifying offence, and
    - (ii) the person is aged under 18 at the time of the alleged offence,
 the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,
  - (c) where—
    - (i) the alleged offence is a qualifying offence, and
    - (ii) the person is aged under 16 at the time of the alleged offence,
 the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,
  - (d) where—
    - (i) the alleged offence is a qualifying offence, and
    - (ii) the person is aged 16 or 17 at the time of the alleged offence,
 the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,
  - (e) where—
    - (i) the person is convicted of the offence,
    - (ii) the offence is not a qualifying offence,
    - (iii) the person is aged under 18 at the time of the offence, and
    - (iv) the person has no previous convictions,
 the material may be further retained until the end of the period of 5 years beginning with the date of the arrest or charge.
- (5) This Article ceases to have effect in relation to the material if, before the material is required to be destroyed by virtue of this Article, the person—
- (a) is convicted of a recordable offence and is aged 18 or over at the time of the offence,
  - (b) is convicted of a qualifying offence, or
  - (c) having a previous exempt conviction, is convicted of a recordable offence.

**F180** Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

**Modifications etc. (not altering text)**

**C61** Art. 64ZF(3) modified (2.4.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) Regulations 2020 \(S.I. 2020/391\)](#), regs. 1, **4(3)(b)** (with reg. 5)

**C62** Art. 64ZF(3) modified (1.10.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) \(No. 2\) Regulations 2020 \(S.I. 2020/973\)](#), regs. 1(1), **4(3)(b)(4)**

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PROSPECTIVE

### **Destruction of data relating to persons aged 16 or 17 not convicted: qualifying offences**

**64ZG.**—(1) This Article applies to material falling within paragraph (2) relating to a person who—

- (a) has no previous convictions or only one exempt conviction,
- (b) is arrested for or charged with a qualifying offence, and
- (c) is aged 16 or 17 at the time of the alleged offence.

(2) Material falls within this paragraph if it is—

- (a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence, or
- (b) a DNA profile derived from a DNA sample so taken.

(3) The material must be destroyed—

- (a) in the case of fingerprints or impressions of footwear, before the end of the period of 6 years beginning with the date on which the fingerprints or impressions were taken,
- (b) in the case of a DNA profile, before the end of the period of 6 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).

(4) But if, before the material is required to be destroyed by virtue of this Article, the person is arrested for or charged with a recordable offence—

- (a) where the person is aged 18 or over at the time of the alleged offence, the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,

(b) where—

- (i) the alleged offence is not a qualifying offence, and
- (ii) the person is aged under 18 at the time of the alleged offence,

the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,

(c) where—

- (i) the alleged offence is a qualifying offence, and
- (ii) the person is aged 16 or 17 at the time of the alleged offence,

the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,

(d) where—

- (i) the person is convicted of the offence,
- (ii) the offence is not a qualifying offence,
- (iii) the person is aged under 18 at the time of the offence, and
- (iv) the person has no previous convictions,

the material may be further retained until the end of the period of 5 years beginning with the date of the arrest or charge.

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(5) This Article ceases to have effect in relation to the material if, before the material is required to be destroyed by virtue of this Article, the person—

- (a) is convicted of a recordable offence and is aged 18 or over at the time of the offence,
- (b) is convicted of a qualifying offence, or
- (c) having a previous exempt conviction, is convicted of a recordable offence.

**F180** Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

**Modifications etc. (not altering text)**

**C63** Art. 64ZG(3) modified (2.4.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) Regulations 2020 \(S.I. 2020/391\)](#), regs. 1, **4(3)(b)** (with reg. 5)

**C64** Art. 64ZG(3) modified (1.10.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) \(No. 2\) Regulations 2020 \(S.I. 2020/973\)](#), regs. 1(1), **4(3)(b)(4)**

PROSPECTIVE

**Destruction of data relating to persons under 18 convicted of a recordable offence other than a qualifying offence**

**64ZH.**—(1) This Article applies to material falling within paragraph (2) relating to a person who—

- (a) has no previous convictions,
- (b) is convicted of a recordable offence other than a qualifying offence, and
- (c) is aged under 18 at the time of the offence.

(2) Material falls within this paragraph if it is—

- (a) fingerprints or impressions of footwear taken from the person in connection with the investigation of the offence, or
- (b) a DNA profile derived from a DNA sample so taken.

(3) The material must be destroyed—

- (a) in the case of fingerprints or impressions of footwear, before the end of the period of 5 years beginning with the date on which the fingerprints or impressions were taken,
- (b) in the case of a DNA profile, before the end of the period of 5 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).

(4) But if, before the material is required to be destroyed by virtue of this Article, the person is arrested for or charged with a recordable offence—

- (a) where the person is aged 18 or over at the time of the alleged offence, the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge,

(b) where—

- (i) the alleged offence is not a qualifying offence, and
- (ii) the person is aged under 18 at the time of the alleged offence,

the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,

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(c) where—

(i) the alleged offence is a qualifying offence, and

(ii) the person is aged under 16 at the time of the alleged offence,

the material may be further retained until the end of the period of 3 years beginning with the date of the arrest or charge,

(d) where—

(i) the alleged offence is a qualifying offence, and

(ii) the person is aged 16 or 17 at the time of the alleged offence,

the material may be further retained until the end of the period of 6 years beginning with the date of the arrest or charge.

(5) This Article ceases to have effect in relation to the material if the person is convicted of a further recordable offence before the material is required to be destroyed by virtue of this Article.

**F180** Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), ss. **15(2)**, 59(1)

**Modifications etc. (not altering text)**

**C65** Art. 64ZH(3) modified (2.4.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) Regulations 2020 \(S.I. 2020/391\)](#), regs. 1, **4(3)(b)** (with reg. 5)

**C66** Art. 64ZH(3) modified (1.10.2020) by [The Coronavirus \(Retention of Fingerprints and DNA Profiles in the Interests of National Security\) \(No. 2\) Regulations 2020 \(S.I. 2020/973\)](#), regs. 1(1), **4(3)(b)(4)**

PROSPECTIVE

**Articles 64ZB to 64ZH: supplementary provision**

**64ZI.**—(1) Any reference in Article 64ZB or Articles 64ZD to 64ZH to a person being charged with an offence includes a reference to a person being informed that he will be reported for an offence.

(2) For the purposes of those Articles—

(a) a person has no previous convictions if the person has not previously been convicted of a recordable offence, and

(b) if the person has been previously convicted of a recordable offence, the conviction is exempt if it is in respect of a recordable offence other than a qualifying offence, committed when the person is aged under 18.

(3) For the purposes of those Articles, a person is to be treated as having been convicted of an offence if he has been given a caution in respect of the offence which, at the time of the caution, he has admitted.

(4) If a person is convicted of more than one offence arising out of a single course of action, those convictions are to be treated as a single conviction for the purpose of any provision of those Articles relating to an exempt, first or subsequent conviction.

(5) Subject to the completion of any speculative search that the Chief Constable considers necessary or desirable, material falling within any of Articles 64ZD to 64ZH must be destroyed immediately if it appears to the Chief Constable that—

(a) the arrest was unlawful,



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- (b) the taking of the fingerprints, impressions of footwear or DNA sample concerned was unlawful,
- (c) the arrest was based on mistaken identity, or
- (d) other circumstances relating to the arrest or the alleged offence mean that it is appropriate to destroy the material.

**F180** Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

PROSPECTIVE

#### **Destruction of fingerprints taken under Article 61(6A)**

**64ZJ** Fingerprints taken from a person by virtue of Article 61(6A) (taking fingerprints for the purposes of identification) must be destroyed as soon as they have fulfilled the purpose for which they were taken.

**F180** Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

PROSPECTIVE

#### **Retention for purposes of national security**

**64ZK.**—(1) Paragraph (2) applies if the Chief Constable determines that it is necessary for—

- (a) a DNA profile to which Article 64 applies, or
- (b) fingerprints to which Article 64 applies, other than fingerprints taken under Article 61(6A),

to be retained for the purposes of national security.

(2) Where this paragraph applies—

- (a) the material is not required to be destroyed in accordance with Articles 64ZB to 64ZH, and
- (b) Article 64ZN(2) does not apply to the material,

for as long as the determination has effect.

(3) A determination under paragraph (1) has effect for a maximum of 2 years beginning with the date on which the material would otherwise be required to be destroyed, but a determination may be renewed.

**F180** Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)



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PROSPECTIVE

**Retention with consent**

**64ZL.**—(1) If a person consents in writing to the retention of fingerprints, impressions of footwear or a DNA profile to which Article 64 applies, other than fingerprints taken under Article 61(6A)—

- (a) the material is not required to be destroyed in accordance with Articles 64ZB to 64ZH, and
  - (b) Article 64ZN(2) does not apply to the material.
- (2) It is immaterial for the purposes of paragraph (1) whether the consent is given at, before or after the time when the entitlement to the destruction of the material arises.
- (3) Consent given under this Article can be withdrawn at any time.

**F180** Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

PROSPECTIVE

**Destruction of copies, and notification of destruction**

**64ZM.**—(1) If fingerprints or impressions of footwear are required to be destroyed by virtue of any of Articles 64ZB to 64ZJ, any copies of the fingerprints or impressions of footwear must also be destroyed.

- (2) If a DNA profile is required to be destroyed by virtue of any of those Articles, no copy may be kept except in a form which does not include information which identifies the person to whom the DNA profile relates.
- (3) If a person makes a request to the Chief Constable to be notified when anything relating to the person is destroyed under any of Articles 64ZA to 64ZJ, the Chief Constable or a person authorised by the Chief Constable or on the Chief Constable's behalf must within 3 months of the request issue the person with a certificate recording the destruction.

**F180** Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

PROSPECTIVE

**Use of retained material**

**64ZN.**—(1) Any material to which Article 64 applies which is retained after it has fulfilled the purpose for which it was taken or derived must not be used other than—

- (a) in the interests of national security,
- (b) for the purposes of a terrorist investigation,
- (c) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or

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- (d) for purposes related to the identification of a deceased person or of the person to whom the material relates.
- (2) Material which is required to be destroyed by virtue of any of Articles 64ZA to 64ZJ, or of Article 64ZM, must not at any time after it is required to be destroyed be used—
  - (a) in evidence against the person to whom the material relates, or
  - (b) for the purposes of the investigation of any offence.
- (3) In this Article—
  - (a) the reference to using material includes a reference to allowing any check to be made against it and to disclosing it to any person,
  - (b) the reference to crime includes a reference to any conduct which—
    - (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom), or
    - (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences, and
  - (c) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom.]

**F180** Arts. 64ZA-64ZN inserted (prosp.) by [Crime and Security Act 2010 \(c. 17\)](#), **ss. 15(2)**, 59(1)

### [<sup>F183</sup> **Photographing of suspects etc.**

- 64A.**—(1) A person who is detained at a police station may be photographed—
- (a) with the appropriate consent; or
  - (b) if the appropriate consent is withheld or it is not practicable to obtain it, without it.
- (2) A person proposing to take a photograph of any person under this Article—
- (a) may, for the purpose of doing so, require the removal of any item or substance worn on or over the whole or any part of the head or face of the person to be photographed; and
  - (b) if the requirement is not complied with, may remove the item or substance himself.
- (3) Where a photograph may be taken under this Article, the only persons entitled to take the photograph are—[<sup>F184</sup> constables.]
- (4) A photograph taken under this Article—
- (a) may be used by, or disclosed to, any person for any purpose related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution; and
  - (b) after being so used or disclosed, may be retained but may not be used or disclosed except for a purpose so related.
- (5) In paragraph (4)—
- (a) the reference to crime includes a reference to any conduct which—
    - (i) constitutes one or more criminal offences (whether under the law of a part of the United Kingdom or of a country or territory outside the United Kingdom); or
    - (ii) is, or corresponds to, any conduct which, if it all took place in any one part of the United Kingdom, would constitute one or more criminal offences;

and

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(b) the references to an investigation and to a prosecution include references, respectively, to any investigation outside the United Kingdom of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside the United Kingdom.

(6) References in this Article to taking a photograph include references to using any process by means of which a visual image may be produced; and references to photographing a person shall be construed accordingly.

[  
F185(7) Nothing in this Article applies to a person arrested under an extradition arrest power.]]

F183 2001 c. 24

F184 2003 c. 6

F185 2003 c. 41

## PART VII

### CODES OF PRACTICE—GENERAL

#### Codes of practice

65. The Secretary of State shall issue codes of practice in connection with—

- (a) the exercise by police officers of statutory powers—
  - (i) to search a person without first arresting him; or
  - (ii) to search a vehicle without making an arrest;
- (b) the detention, treatment, questioning and identification of persons by police officers;
- (c) searches of premises by police officers; and
- (d) the seizure of property found by police officers on persons or premises.

#### Codes of practice—supplementary

66.—(1) When the Secretary of State proposes to issue a code of practice to which this Article applies, he shall prepare and publish a draft of that code, shall consider any representations made to him about the draft and may modify the draft accordingly.

(2) This Article applies to a code of practice under Article 60[F186, 60A] or 65.

(3) The Secretary of State shall lay before both Houses of Parliament a draft of any code of practice prepared by him under this Article.

(4) When the Secretary of State has laid the draft of a code before Parliament, he may bring the code into operation by order, subject to Article 89.

(5) An order bringing a code of practice into operation may contain such transitional provisions or savings as appear to the Secretary of State to be necessary or expedient in connection with the code of practice thereby brought into operation.

(6) The Secretary of State may from time to time revise the whole or any part of a code of practice to which this Article applies and issue that revised code; and the foregoing provisions of this Article shall apply (with appropriate modifications) to such a revised code as they apply to the first issue of a code.

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[<sup>F187</sup>(6A) Subject to paragraph (6B), the Secretary of State may by order subject to Article 89 provide that a code of practice for the time being in force is to be treated as having effect with such modifications as may be set out in the order.

(6B) The effect of the modifications made by an order under paragraph (6A) must be confined to one or more of the following —

- (a) the effect of the code during such period, not exceeding two years, as may be so specified;
- (b) the effect of the code in relation to such offences or descriptions of offender as may be so specified.]

<sup>F188</sup>(7) A police officer shall be liable to disciplinary proceedings for a failure to comply with any provision of such a code, unless such proceedings are precluded by Article 22 of the Police (Northern Ireland) Order 1987<sup>F189</sup>.

(8) Persons other than police officers who are charged with the duty of investigating offences or charging offenders shall in the discharge of that duty have regard to any relevant provision of such a code.

[<sup>F187</sup>(8A) A person on whom powers are conferred or duties are imposed by a designation under section 30 or 31 of the Police (Northern Ireland) Act 2003 shall have regard to any relevant provision of a code of practice to which this Article applies in —

- (a) the exercise of the powers conferred on him by the designation;
- (b) the performance of the duties imposed on him by the designation.]

(9) A failure on the part—

- (a) of a police officer to comply with any provision of such a code; or
- (b) of any person other than a police officer who is charged with the duty of investigating offences or charging offenders to have regard to any relevant provision of such a code in the discharge of that duty, [<sup>F187</sup>; or]

[<sup>F187</sup>(c) of a person designated under section 30 or 31 of the Police (Northern Ireland) Act 2003 to comply with paragraph (8A),]

shall not of itself render him liable to any criminal or civil proceedings.

(10) In all criminal and civil proceedings any such code shall be admissible in evidence; and if any provision of such a code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

(11) In this Article “criminal proceedings” includes—

- (a) proceedings in Northern Ireland before a court#martial constituted under the Army Act 1955<sup>F190</sup>, the Air Force Act 1955<sup>F191</sup> or the Naval Discipline Act 1957<sup>F192F193</sup> . . .; and

- (b) proceedings in Northern Ireland before the Courts#Martial Appeal Court.

*Para. (12) rep. by 2000 c. 11*

**F186** 2000 c. 32

**F187** 2003 c. 6

**F188** prosp. rep. by 1995 NI 17

**F189** 1987 NI 10

**F190** 1955 c. 18

**F191** 1955 c. 19

**F192** 1957 c. 53

**F193** 2001 c. 19

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## PART VIII

### DOCUMENTARY EVIDENCE IN CRIMINAL PROCEEDINGS

#### Interpretation of Part VIII

**67.**—<sup>F194</sup>(1) In this Part “copy”, in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly,<sup>F195</sup> and “statement” means any representation of fact, however made.]

(2) Nothing in this Part shall prejudice any power of a court to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion.

**F194** 1997 NI 21

**F195** prosp. rep. by 1999 NI 8

*Art. 68 rep. by 1999 NI 8*

#### Microfilm copies

**69.** In any criminal proceedings the contents of a document may (whether or not the document is still in existence) be proved by the production of an enlargement of a microfilm copy of that document or of the material part of it, authenticated in such manner as the court may approve.

## PART IX

### EVIDENCE IN CRIMINAL PROCEEDINGS—GENERAL

#### Interpretation of Part IX

**70.**—(1) In this Part—

“confession” includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise;

“Service court” means a court#martial or a Standing Civilian Court; and

“sexual offence” has the meaning given in<sup>F196</sup> Schedule 1 to the Criminal Justice (Children) (Northern Ireland) Order 1998].

(2) In this Part references to conviction before a Service court are<sup>F197</sup> references to a finding of guilty which is, or falls to be treated as , the finding of the court.]

(3) Nothing in this Part shall prejudice any power of a court to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion.

**F196** 1998 NI 9

**F197** 1996 c. 46

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## *Convictions and acquittals*

### **Proof of convictions and acquittals**

**71.**—(1) Where in any criminal proceedings the fact that a person has in the United Kingdom been convicted or acquitted of an offence otherwise than by a Service court is admissible in evidence, it may be proved by producing a certificate of conviction or, as the case may be, of acquittal relating to that offence, and proving that the person named in the certificate as having been convicted or acquitted of the offence is the person whose conviction or acquittal of the offence is to be proved.

(2) For the purposes of this Article a certificate of conviction or of acquittal—

- (a) shall, as regards a conviction or acquittal on indictment, consist of a certificate, signed by the clerk of the court where the conviction or acquittal took place, giving the substance and effect (omitting the formal parts) of the indictment and of the conviction or acquittal; and
- (b) shall, as regards a conviction or acquittal on a summary trial, consist of a copy of the conviction or of the dismissal of the information, signed by the clerk of the court where the conviction or acquittal took place or by the clerk of the court, if any, to which a memorandum of the conviction or acquittal was sent;

and a document purporting to be a duly signed certificate of conviction or acquittal under this Article shall be taken to be such a certificate unless the contrary is proved.

(3) References in this Article to the clerk of a court include references to any other person having the custody of the court record.

(4) The method of proving a conviction or acquittal authorised by this Article shall be in addition to and not to the exclusion of any other authorised manner of proving a conviction or acquittal.

### **Conviction as evidence of commission of offence**

**72.**—(1) In any criminal proceedings the fact that a person other than the accused has been convicted of an offence by or before any court in the United Kingdom or by a Service court outside the United Kingdom shall be admissible in evidence for the purpose of proving<sup>F198</sup> that that person committed that offence, where evidence of his having done so is admissible], whether or not any other evidence of his having committed that offence is given.

(2) In any criminal proceedings in which by virtue of this Article a person other than the accused is proved to have been convicted of an offence by or before any court in the United Kingdom or by a Service court outside the United Kingdom, he shall be taken to have committed that offence unless the contrary is proved.

(3) In any criminal proceedings where evidence is admissible of the fact that the accused has committed an offence,<sup>F199</sup> . . . if the accused is proved to have been convicted of the offence—

- (a) by or before any court in the United Kingdom; or
- (b) by a Service court outside the United Kingdom,

he shall be taken to have committed that offence unless the contrary is proved.

(4) Nothing in this Article shall prejudice—

- (a) the admissibility in evidence of any conviction which would be admissible apart from this Article; or
- (b) the operation of any statutory provision whereby a conviction or a finding of fact in any criminal proceedings is for the purposes of any other criminal proceedings made conclusive evidence of any fact.

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**F198** Words in art. 72(1) substituted (3.4.2006) by Criminal Justice (Evidence) (Northern Ireland) Order 2004 (S.I. 2004/1501 (N.I. 10)), arts. 1(3), 46(1), Sch. 1 para. 3(2); S.R. 2006/63, art. 2

**F199** Words in art. 72(3) repealed (3.4.2006) by Criminal Justice (Evidence) (Northern Ireland) Order 2004 (S.I. 2004/1501 (N.I. 10)), arts. 1(3), 46, Sch. 1 para. 3(3), Sch. 2; S.R. 2006/63, art. 2

## Provisions supplementary to Article 72

73.—(1) Where evidence that a person has been convicted of an offence is admissible by virtue of Article 72, then without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based—

- (a) the contents of any document which is admissible as evidence of the conviction; and
- (b) the contents of the complaint, information, indictment or charge sheet on which the person in question was convicted,

shall be admissible in evidence for that purpose.

(2) Where in any criminal proceedings the contents of any document are admissible in evidence by virtue of paragraph (1), a copy of that document, or of the material part of it, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of that document shall be admissible in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.

(3) Nothing in any of the following—  
*Subpara. (a) rep. by 1996 NI 24*

- (b) section 13 of the Powers of Criminal Courts Act 1973<sup>F200</sup> (which makes provision similar to section 8 of that Act of 1950); and
- (c) section 392 of the Criminal Procedure (Scotland) Act 1975<sup>F201</sup> (which makes similar provision in respect of convictions on indictment in Scotland);

shall affect the operation of Article 72; and for the purposes of that Article any order made by a court of summary jurisdiction in Scotland under section 182 or 183 of the said Act of 1975 shall be treated as a conviction.

(4) Nothing in Article 72 shall be construed as rendering admissible in any criminal proceedings evidence of any conviction other than a subsisting one.

**F200** 1973 c. 62

**F201** 1975 c. 21

## Confessions

### Confessions

74.—(1) In any criminal proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this Article.

(2) If, in any criminal proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained—

- (a) by oppression of the person who made it; or

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- (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.

(3) In any criminal proceedings where the prosecution proposes to give in evidence a confession made by an accused person, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in paragraph (2).

(4) The fact that a confession is wholly or partly excluded in pursuance of this Article shall not affect the admissibility in evidence—

- (a) of any facts discovered as a result of the confession; or
- (b) where the confession is relevant as showing that the accused speaks, writes or expresses himself in a particular way, of so much of the confession as is necessary to show that he does so.

(5) Evidence that a fact to which this paragraph applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by him or on his behalf.

(6) Paragraph (5) applies—

- (a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this Article; and
- (b) to any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) Nothing in Part VIII shall prejudice the admissibility of a confession made by an accused person.

(8) In this Article “oppression” includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).

(9) <sup>F202</sup> .....

**F202** Art. 74(9) repealed (19.2.2006) by [Terrorism \(Northern Ireland\) Act 2006 \(c. 4\)](#), s. 5(2)(3), [Sch.](#)

**[<sup>F203</sup>Confessions may be given in evidence for co-accused**

**74A.**—(1) In any criminal proceedings a confession made by an accused person may be given in evidence for another person charged in the same proceedings (a co-accused) in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this Article.

(2) If, in any criminal proceedings where a co-accused proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained—

- (a) by oppression of the person who made it; or
- (b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

the court shall not allow the confession to be given in evidence for the co-accused except in so far as it is proved to the court on the balance of probabilities that the confession (notwithstanding that it may be true) was not so obtained.



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(3) Before allowing a confession made by an accused person to be given in evidence for a co-accused in any criminal proceedings, the court may of its own motion require the fact that the confession was not obtained as mentioned in paragraph (2) above to be proved in the proceedings on the balance of probabilities.

(4) The fact that a confession is wholly or partly excluded in pursuance of this Article shall not affect the admissibility in evidence—

- (a) of any facts discovered as a result of the confession; or
- (b) where the confession is relevant as showing that the accused speaks, writes or expresses himself in a particular way, of so much of the confession as is necessary to show that he does so.

(5) Evidence that a fact to which this paragraph applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by him or on his behalf.

(6) Paragraph (5) above applies—

- (a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this Article; and
- (b) to any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) In this Article "oppression" includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture).]

**F203** 2004 NI 10

### **Confessions by mentally handicapped persons**

**75.**—(1) Without prejudice to the general duty of the court at a trial on indictment<sup>[F204</sup> with a jury] to direct the jury on any matter on which it appears to the court appropriate to do so, where at such a trial—

- (a) the case against the accused depends wholly or substantially on a confession by him; and
- (b) the court is satisfied—
  - (i) that he is mentally handicapped; and
  - (ii) that the confession was not made in the presence of an independent person,

the court shall warn the jury that there is special need for caution before convicting the accused in reliance on the confession, and shall explain that the need arises because of the circumstances mentioned in sub#paragraphs (a) and (b).

(2) In any case where a person is being tried summarily for an offence it appears to the court that a warning under paragraph (1) would be required if the trial were on indictment<sup>[F205</sup> with a jury], the court shall treat the case as one in which there is a special need for caution before convicting the accused on his confession.

<sup>[F206</sup>(2A) In any case where at the trial on indictment without a jury of a person for an offence it appears to the court that a warning under paragraph (1) would be required if the trial were with a jury, the court shall treat the case as one in which there is a special need for caution before convicting the accused on his confession.]

(3) In this Article—

“independent person” does not include a constable or a person employed for, or engaged on, police purposes;

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“mentally handicapped” in relation to a person means that he is in a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning; and

“police purposes” includes the purposes of police cadets undergoing training with a view to becoming members of the<sup>F207</sup> police and of the police support staff.]

- F204** Words in art. 75(1) inserted (8.1.2007) by Criminal Justice Act 2003 (c. 44), ss. 331, 336(3), Sch. 36 para. 61(2); S.I. 2006/3422, art. 2(b)(c)
- F205** Words in art. 75(2) inserted (8.1.2007) by Criminal Justice Act 2003 (c. 44), ss. 331, 336(3), Sch. 36 para. 61(3); S.I. 2006/3422, art. 2(b)(c)
- F206** Art. 75(2A) inserted (8.1.2007) by Criminal Justice Act 2003 (c. 44), ss. 331, 336(3), Sch. 36 para. 61(4); S.I. 2006/3422, art. 2(b)(c)
- F207** 2000 c. 32

*Miscellaneous*

**Exclusion of unfair evidence**

76.—(1) In any criminal proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(2) Nothing in this Article shall—

- (a) prejudice any rule of law requiring a court to exclude evidence; <sup>F208</sup> . . .
- (b) <sup>F208</sup> . . . . .

- F208** Art. 76(2)(b) and the word immediately preceding repealed (19.2.2006) by Terrorism (Northern Ireland) Act 2006 (c. 4), s. 5(2)(3), Sch.

**Time for taking accused's evidence**

77. If at the trial of any person for an offence—

- (a) the defence intends to call two or more witnesses to the facts of the case; and
- (b) those witnesses include the accused,

the accused shall be called before the other witness or witnesses unless the court in its discretion otherwise directs.

**Abolition of right of accused to make unsworn statement**

78.—(1) Subject to paragraphs (2) and (3), in any criminal proceedings the accused shall not be entitled to make a statement without being sworn, and accordingly, if he gives evidence, he shall do so<sup>F209</sup> on oath and be liable to cross#examination; but this Article shall not affect the right of the accused, if not represented by counsel or a solicitor, to address the court or jury otherwise than on oath on any matter on which, if he were so represented, counsel or a solicitor could address the court or jury on his behalf.

(2) Nothing in paragraph (1) shall prevent the accused making a statement without being sworn—

- (a) if it is one which he is required by law to make personally; or

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- (b) if he makes it by way of mitigation before the court passes sentence upon him.
- (3) Nothing in this Article shall apply—
  - (a) to a trial which began before the day of the coming into operation of this Article; or
  - (b) to proceedings before a magistrates' court, where—
    - (i) the court, in conducting a preliminary investigation, began to hear the evidence for the prosecution (other than a deposition relating to the arrest or remand of the accused) before that day, or
    - (ii) the court began to conduct a preliminary inquiry before that day.

**F209** prosp. insertion by 1999 NI 8

**<sup>F210</sup>Competence and compellability of accused's spouse<sup>F211</sup> or civil partner]**

**79.**—<sup>F212</sup>(1) In any criminal proceedings the wife or husband of the accused shall be competent to give evidence—

- (a) subject to paragraph (4), for the prosecution; and
- (b) on behalf of the accused or any person jointly charged with the accused.

<sup>F213</sup>(2) In any criminal proceedings the<sup>F214</sup> spouse or civil partner] of the accused shall, subject to paragraph (4), be compellable to give evidence on behalf of the accused.

<sup>F213</sup>(3) In any criminal proceedings the<sup>F214</sup> spouse or civil partner] of the accused shall, subject to paragraph (4), be compellable to give evidence for the prosecution or on behalf of any person jointly charged with the accused if and only if—

- (a) the offence charged involves an assault on, or injury or a threat of injury to, the<sup>F214</sup> spouse or civil partner] of the accused or a person who was at the material time under the age of seventeen; or
- (b) the offence charged is a sexual offence alleged to have been committed in respect of a person who was at the material time under that age; or
- (c) the offence charged consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within sub# paragraph (a) or (b).

<sup>F213</sup>(4) Where a husband and wife are jointly charged with an offence neither spouse shall at the trial be competent or compellable by virtue of paragraph (1)(a), (2) or (3) to give evidence in respect of that offence unless that spouse is not, or is no longer, liable to be convicted of that offence at the trial as a result of pleading guilty or for any other reason.

(5) In any criminal proceedings a person who has been but is no longer married to the accused shall be<sup>F215</sup> competent and compellable to give evidence as if that person and the accused had never been married.

<sup>F211</sup>(5A) In any criminal proceedings a person who has been but is no longer the civil partner of the accused shall be compellable to give evidence as if that person and the accused had never been civil partners.]

(6) Where in any criminal proceedings the age of any person at any time is material for the purposes of paragraph (3), his age at the material time shall for the purposes of that provision be deemed to be or to have been that which appears to the court to be or to have been his age at that time.

<sup>F212</sup>(7) The failure of the wife or husband of the accused to give evidence shall not be made the subject of any comment by the prosecution.

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(8) Proviso (d) in section 1 of the Criminal Evidence Act (Northern Ireland) 1923<sup>F216</sup> (communications between husband and wife) and section 7(2) of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951<sup>F217</sup> so far as it is unrepealed (evidence as to marital intercourse) shall cease to have effect.

**F210** prosp. rep. by 1999 NI 8  
**F211** 2004 c. 33  
**F212** prosp. rep. by 1999 NI 8  
**F213** prosp. subst. by 1999 NI 8  
**F214** 2004 c. 33  
**F215** prosp. rep. by 1999 NI 8  
**F216** 1923 c. 9 (NI)  
**F217** 1951 c. 7 (NI)

**Modifications etc. (not altering text)**

**C67** Art. 79(3)(c) modified (1.10.2008) by Serious Crime Act 2007 (c. 27), ss. 63(1), 94(1), **Sch. 6 para. 17** (with Sch. 13 para. 5); S.I. 2008/2504, **art. 2(a)**

VALID FROM 04/05/2010

**[<sup>F218</sup> Rule where accused's spouse [<sup>F219</sup> or civil partner] not compellable**

**79A.** The failure of the [<sup>F220</sup> spouse or civil partner] of a person charged in any proceedings to give evidence in the proceedings shall not be made the subject of any comment by the prosecution.]

**F218** Art. 79A inserted (4.5.2010) by Criminal Evidence (Northern Ireland) Order 1999 (S.I. 1999/2789 (N.I. 8)), arts. 1(2), 40(1), Sch. 1 para. 3(5); S.R. 2010/142, **art. 2**, Sch. paras. 2, 5(1)(b)  
**F219** Words in art. 79A inserted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(3), 263(10)(d), **Sch. 29 para. 89(b)**; S.I. 2005/3255, art. 2(1)(2), **Sch.**  
**F220** Words in art. 79A substituted (5.12.2005) by Civil Partnership Act 2004 (c. 33), ss. 261(3), 263(10)(d), **Sch. 29 para. 89(a)**; S.I. 2005/3255, art. 2(1)(2), **Sch.**

**Advance notice of expert evidence in Crown Court**

**80.**—(1) Crown Court rules may make provision for—

- (a) requiring any party to criminal proceedings before the court to disclose to the other party or parties any expert evidence which he proposes to adduce in the proceedings; and
- (b) prohibiting a party who fails to comply in respect of any evidence with any requirement imposed by virtue of sub#paragraph (a) from adducing that evidence without the leave of the court.

(2) Crown Court rules made by virtue of this Article may specify the kinds of expert evidence to which they apply and may exempt facts or matters of any description specified in the rules.

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## [<sup>F221</sup>Evidence through live links

**80A.**—(1) In this Article live link means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there and to be seen and heard by—

- (a) the judge and the jury (if there is one);
- (b) legal representatives acting in the proceedings; and
- (c) any interpreter or other person appointed to assist the witness.

(2) Where two or more legal representatives are acting for a party to the proceedings, paragraph (1) (b) is to be regarded as satisfied in relation to those representatives if the witness is able at all material times to see and be seen by at least one of them.

(3) Where the court gives leave, a witness [<sup>F222</sup> (other than the accused)] who is outside the United Kingdom may give evidence through a live link in proceedings to which this Article applies.

(4) This Article applies—

- (a) to preliminary investigations or preliminary inquiries into indictable offences;
- (b) to trials on indictment;
- (c) to appeals to the Court of Appeal; and
- (d) to hearings of references under section 10 of the Criminal Appeal Act 1995 (c. 35).

(5) A statement made on oath by a person outside the United Kingdom and given in evidence through a link by virtue of this Article shall be treated for the purposes of Article 3 of the Perjury (Northern Ireland) Order 1979 (NI 19) as having been made in the proceedings in which it is given in evidence.

(6) Where in proceedings before a magistrates' court—

- (a) evidence is given by means of a live link by virtue of this Article, but
- (b) suitable facilities for receiving such evidence are not available at any court-house in which that court can (apart from this paragraph) lawfully sit,

the court may sit for the purposes of the whole or any part of those proceedings at a place designated by the Lord Chancellor [<sup>F223</sup>, after consultation with the Lord Chief Justice,] as a place having facilities to receive evidence given through a live link.

(7) Without prejudice to any power to make such rules, magistrates' courts rules, Crown Court rules and rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Article.

(8) References in this Article to a person being able to see or hear, or be seen or heard by, another person are to be taken as not applying to the extent that either of them is unable to see or hear by reason of any impairment of sight or hearing.

[  
<sup>F224</sup>(9) In this Article, “judge” includes, in relation to a magistrates' court, resident magistrate.]]

**F221** Art. 80A inserted (13.11.2006) by Criminal Justice (Northern Ireland) Order 2003 (S.I. 2003/1247 (N.I. 13)), arts. 1(3), 31; S.R. 2006/451, **art. 2**

**F222** Words in art. 80A(3) inserted (18.9.2006) by Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965 (N.I. 15)), arts. 1(2), 24(1)(a); S.R. 2006/368, **art. 2(b)**

**F223** Words in art. 80A(6) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 78; S.I. 2006/1014, **art. 2(a)**, Sch. 1 paras. 10, 12(a)

**F224** Art. 80A(9) added (18.9.2006) by Criminal Justice (Northern Ireland) Order 2005 (S.I. 2005/1965 (N.I. 15)), arts. 1(2), 24(1)(b); S.R. 2006/368, **art. 2(b)**

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## Evidence through television links

<sup>F225</sup>81.—(1) A person other than the accused may give evidence through a live television link<sup>F226</sup> in proceedings to which paragraph (1A) applies] if—

- (a) the witness is in Northern Ireland; and
- (b) the witness—
  - (i) will not give evidence otherwise through fear, or
  - (ii) is<sup>F226</sup> a child, or is to be cross-examined following the admission under Article 81A of a video recording of testimony from him, and the offence] is one to which paragraph (3) applies.

<sup>F226</sup>(1A) This paragraph applies—

- (a) to preliminary investigations or preliminary inquiries into indictable offences, to trials on indictment, appeals to the Court of Appeal and hearings of references under<sup>F227</sup> section 10 of the Criminal Appeal Act 1995];
  - (b) except in a case where paragraph (1)(b)(i) applies, to proceedings in<sup>F228</sup> magistrates] courts and<sup>F227</sup>, appeals to the county court arising out of such proceedings and hearings of references under section 12 of the Criminal Appeal Act 1995 so arising]; and
  - (c) in a case to which paragraph (1)(b)(i) applies, to proceedings in juvenile courts being preliminary investigations or preliminary inquiries into indictable offences.]
- (2) Evidence may not be given through a link by virtue of this Article without leave of the court.
- (3) This paragraph applies—
- (a) to an offence which involves an assault on, or injury or threat of injury to, a person;
  - (b) to an offence under section 20 of the Children and Young Persons Act (Northern Ireland) 1968<sup>F229</sup>;
  - (c) to a sexual offence<sup>F226</sup>. . . ; and
  - (d) to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within sub# paragraph (a), (b) or (c).

<sup>F230</sup>(3A) Where the court gives leave under paragraph (2) for a witness falling within paragraph (1)(b)(ii) to give evidence through a live television link, then, subject to paragraph (3B), the witness concerned may not give evidence otherwise than through a live television link.

(3B) In a case falling within paragraph (3A) the court may give permission for the witness to give evidence otherwise than through a live television link if it appears to the court to be in the interests of justice to give such permission.

(3C) Permission may be given under paragraph (3B)—

- (a) on an application by a party to the case, or
- (b) of the court's own motion;

but no application may be made under sub-paragraph (a) unless there has been a material change of circumstances since the leave was given under paragraph (2).]

(4) Subject to Article 89, the Secretary of State may by order—

- (a) direct that this Article shall apply—
  - (i) to a witness falling within head (i) or (ii) of paragraph (1)(b) who is in Great Britain, or
  - (ii) to any witness who is outside the United Kingdom; and

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- (b) provide that a statement made on oath by such a witness and given in evidence through a link by virtue of this Article shall be treated for the purposes of Article 3 of the Perjury (Northern Ireland) Order 1979<sup>F231</sup> as having been made in the proceedings in which it is given in evidence.

(5) Without prejudice to the generality of any statutory provision conferring power to make rules to which this paragraph applies, such rules may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Article.

(6) The rules to which paragraph (5) applies are—

- (a) magistrates' courts rules;  
[<sup>F226</sup>(aa) county court rules;]  
(b) Crown Court rules; and  
(c) rules of court.

(7) Where, at a<sup>F226</sup> preliminary investigation or a preliminary inquiry into an indictable offence or in proceedings before a<sup>F228</sup> magistrates' court or on an appeal to the county court arising out of such proceedings], a court grants leave for evidence to be given through a link by virtue of this Article—

- (a) that court may, notwithstanding anything in<sup>F226</sup> any statutory provision adjourn the investigation, inquiry, proceedings or appeal, as the case may require] and order that it be held at such time and at such designated place as may be specified in the order; and  
(b) a court sitting at a designated place shall, by virtue of this paragraph, have jurisdiction<sup>F226</sup>. . . to deal with an offence in relation to which an investigation<sup>F226</sup> or inquiry or any proceedings or appeal] is so adjourned.

(8) In paragraph (7) “designated place” means any place designated under this paragraph by the Lord Chancellor<sup>F232</sup>, after consultation with the Lord Chief Justice,] as a place having facilities to receive evidence given through a link by virtue of this Article.

[<sup>F226</sup>(9) Paragraph (7) of Article 81A shall apply for the purposes of this Article as it applies for the purposes of that Article, but with the omission of the references to a person being, in the cases there mentioned, under the age of 15 years or under the age of 18 years.]

**F225** Art. 81 repealed (30.6.2003 and 1.12.2003 for certain purposes, otherwise prosp.) by [Criminal Evidence \(Northern Ireland\) Order 1999 \(S.I. 1999/2789 \(N.I. 8\)\)](#), arts. 1(2), 40(3), **Sch. 3**; S.R. 2003/323, art. 2, **Sch.**; S.R. 2003/476, **art. 2**

**F226** 1995 NI 3

**F227** 1995 c. 35

**F228** 1998 NI 9

**F229** 1968 c. 34 (NI)

**F230** Art. 81(3A)-(3C) inserted (4.7.1996 with application as mentioned in s. 62(3) of the amending Act) by [Criminal Procedure and Investigations Act 1996 \(c. 25\)](#), s. 62(1) (as modified in its application to Northern Ireland by Sch. 4 para. 25)

**F231** 1979 NI 19

**F232** Words in art. 81(8) inserted (3.4.2006) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 15(2), 148(1), Sch. 5 para. 79; S.I. 2006/1014, **art. 2(a)**, Sch. 1 paras. 10, 12(a)

### <sup>F233</sup>**Video recordings of testimony from child witnesses**

<sup>F234</sup>**81A.**—(1) This Article applies in relation to the following proceedings, namely—

- (a) trials on indictment for any offence to which Article 81(3) applies;



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- (b) appeals to the Court of Appeal and hearings of references under<sup>F235</sup> section 10 of the Criminal Appeal Act 1995] in respect of any such offence; and
  - (c) proceedings in<sup>F236</sup> magistrates] courts for any such offence<sup>F235</sup>, appeals to the county court arising out of such proceedings and hearings of references under section 12 of the Criminal Appeal Act 1995 so arising].
- (2) In any such proceedings a video recording of an interview which—
- (a) is conducted between an adult and a child who is not the accused or one of the accused (“the child witness”); and
  - (b) relates to any matter in issue in the proceedings,
- may, with the leave of the court, be given in evidence in so far as it is not excluded by the court under paragraph (3).
- (3) Where a video recording is tendered in evidence under this Article, the court shall (subject to the exercise of any power of the court to exclude evidence which is otherwise admissible) give leave under paragraph (2) unless—
- (a) it appears that the child witness will not be available for cross-examination;
  - (b) any rules to which this paragraph applies requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court; or
  - (c) the court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording ought not to be admitted;
- and where the court gives such leave it may, if it is of the opinion that in the interests of justice any part of the recording ought not to be admitted, direct that that part shall be excluded.
- (4) In considering whether any part of a recording ought to be excluded under paragraph (3), the court shall consider whether any prejudice to the accused, or one of the accused, which might result from the admission of that part is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.
- (5) Where a video recording is admitted under this Article—
- (a) the child witness shall be called by the party who tendered it in evidence;
  - (b) that witness shall not be examined in chief on any matter which, in the opinion of the court, has been dealt with adequately in his recorded testimony.
- (6) Where a video recording is given in evidence under this Article, any statement made by the child witness which is disclosed by the recording shall be treated as if given by that witness in direct oral testimony; and accordingly—
- (a) any such statement shall be admissible evidence of any fact of which such testimony from him would be admissible;
  - (b) no such statement shall be capable of corroborating any other evidence given by him;
- and in estimating the weight, if any, to be attached to such a statement, regard shall be had to all the circumstances from which any inference can reasonably be drawn (as to its accuracy or otherwise).

<sup>F237</sup>(6A) Where the court gives leave under paragraph (2) the child witness shall not give relevant evidence (within the meaning given by paragraph (6D)) otherwise than by means of the video recording; but this is subject to paragraph (6B).

(6B) In a case falling within paragraph (6A) the court may give permission for the child witness to give relevant evidence (within the meaning given by paragraph (6D)) otherwise than by means of the video recording if it appears to the court to be in the interests of justice to give such permission.



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(6C) Permission may be given under paragraph (6B)—

- (a) on an application by a party to the case, or
- (b) of the court's own motion;

but no application may be made under sub-paragraph (a) unless there has been a material change of circumstances since the leave was given under paragraph (2).

(6D) For the purposes of paragraphs (6A) and (6B) evidence is relevant evidence if—

- (a) it is evidence in chief on behalf of the party who tendered the video recording, and
- (b) it relates to matter which, in the opinion of the court, is dealt with in the recording and which the court has not directed to be excluded under paragraph (3).]

(7) In this Article “child” means a person who—

- (a) in the case of an offence falling within Article 81(3)(a) or (b), is under 14 years of age or, if he was under that age when the video recording was made, is under 15 years of age; or
- (b) in the case of an offence falling within Article 81(3)(c), is under 17 years of age or, if he was under that age when the video recording was made, is under 18 years of age.

(8) Any reference in paragraph (7) to an offence falling within sub-paragraph (a), (b) or (c) of Article 81(3) includes a reference to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within that paragraph.

(9) In this Article—

“statement” includes any representation of fact, whether made in words or otherwise;

“video recording” means any recording, on any medium, from which a moving image may by any means be produced and includes the accompanying sound-track.

(10) A magistrates' court conducting a preliminary investigation or a preliminary inquiry may consider any video recording as respects which leave under paragraph (2) is to be sought at the trial, notwithstanding that the child witness is not called at the committal proceedings.

(11) Without prejudice to the generality of any statutory provision conferring power to make rules to which this paragraph applies, such rules may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Article.

(12) Nothing in this Article shall prejudice the admissibility of any video recording which would be admissible apart from this Article.

(13) The rules to which paragraphs (3)(b) and (11) apply are—

- (a) Crown Court rules;
- (b) rules of court;
- (c) county court rules; and
- (d) magistrates' courts rules.]

**F233** 1995 NI 3

**F234** Art. 81A repealed (30.6.2003 for certain purposes, 1.12.2003 for certain purposes, otherwise prosp.) by Criminal Evidence (Northern Ireland) Order 1999 (S.I. 1999/2789 (N.I. 8)), arts. 1(2), 40(3), **Sch. 3**; S.R. 2003/323, art. 2, **Sch.**; S.R. 2003/476, art. 2

**F235** 1995 c. 35

**F236** 1998 NI 9

**F237** Art. 81A(6A)-(6D) inserted (4.7.1996 with application as mentioned in s. 62(3) of the amending Act) by Criminal Procedure and Investigations Act 1996 (c. 25), s. 62(2) (as modified in its application to Northern Ireland by Sch. 4 para. 25)

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Art. 81B rep. by 1999 NI 8

## PART X

### POLICE—GENERAL

Arts. 82#83 rep. by 1998 c. 32

#### Police officers performing duties of higher rank

**84.**—(1) For the purpose of any provision of this Order or any other statutory provision under which a power in respect of the investigation of offences or the treatment of persons in police custody is exercisable only by or with the authority of a police officer of at least the rank of superintendent, an officer of the rank of chief inspector shall be treated as holding the rank of superintendent if he has been authorised by an officer of at least the rank of [F238 assistant chief constable] to exercise the power or, as the case may be, to give his authority for its exercise.

(2) For the purpose of any provision of this Order or any other statutory provision under which such a power is exercisable only by or with the authority of an officer of at least the rank of inspector, an officer of the rank of sergeant shall be treated as holding the rank of inspector if he has been authorised by an officer of at least the rank of [F238 assistant chief constable] to exercise the power or, as the case may be, to give his authority for its exercise.

F238 1998 c. 32

## PART XI

### MISCELLANEOUS AND SUPPLEMENTARY

#### Application of Order to Customs and Excise

**85.**—(1) Subject to Article 89, the Treasury may by order direct—

- (a) that any provision of this Order which relates to investigations of offences conducted by police officers or to persons detained by the police shall apply, subject to such modifications as the order may specify, to investigations conducted by officers of Customs and Excise of offences which relate to assigned matters, as defined in section 1 of the Customs and Excise Management Act 1979<sup>F239</sup>, or to persons detained by officers of Customs and Excise; and
- (b) that, in relation to investigations of offences conducted by officers of Customs and Excise—
  - (i) this Order shall have effect as if the following Article were inserted after Article 16—

#### “Exception for Customs and Excise

**16A.** Material in the possession of a person who acquired or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office and which relates to an assigned matter, as defined in section 1 of the Customs and Excise Management Act 1979, is

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neither excluded material nor special procedure material for the purposes of any statutory provision such as is mentioned in Article 11(2).”

; and

(ii) Article 56 shall have effect as if it related only to things such as are mentioned in paragraph (1)(a) of that Article.

(2) Nothing in any order under paragraph (1) shall be taken to limit any powers exercisable under section 164 of the Customs and Excise Management Act 1979<sup>F239</sup>.

*Para. (3) rep. by 2005 c. 11*

**F239** 1979 c. 2

#### *Article 86—Amendments*

#### **Meaning of “serious arrestable offence”**

**87.**—(1) This Article has effect for determining whether an offence is a serious arrestable offence for the purposes of this Order.

(2) The following arrestable offences are always serious—

(a) an offence (whether at common law or under any statutory provision) specified in Part I of Schedule 5; and

[<sup>F240</sup>(aa) any offence which is specified in paragraph 1 of Schedule 5 to the Proceeds of Crime Act 2002 (drug trafficking offences);

(ab) any offence under section 327, 328 or 329 of that Act (certain money laundering offences);]

(b) an offence under a statutory provision specified in Part II of that Schedule.

(3) Subject to<sup>F241</sup> paragraphs (4) and (5), any other arrestable offence is serious only if its commission—

(a) has led to any of the consequences specified in paragraph (6); or

(b) is intended or is likely to lead to any of those consequences.

(4) An arrestable offence which consists of making a threat is serious if carrying out the threat would be likely to lead to any of the consequences specified in paragraph (6).

<sup>F242</sup>(5) A person arrested under section 14(1)(b) of the Prevention of Terrorism (Temporary Provisions) Act 1989<sup>F243</sup> is to be treated for the purposes of Articles 62 and 63 as having been arrested on suspicion of involvement in a serious arrestable offence, and any reference in those Articles to such an offence includes a reference to being or having been concerned in the commission, preparation or instigation of acts of terrorism to which Part IV of that Act applies.

(6) The consequences mentioned in paragraphs (3) and (4) are—

(a) serious harm to the safety of the United Kingdom, or any part of it, or to public order;

(b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;

(c) the death of any person;

(d) serious injury to any person;

(e) substantial financial gain to any person; and

(f) serious financial loss to any person.

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(7) Loss is serious for the purposes of this Article if, having regard to all the circumstances, it is serious for the person who suffers it.

(8) In this Article “injury” includes any disease and any impairment of a person's physical or mental condition.

**F240** 2002 c. 29

**F241** prosp. subst. by 1995 NI 17

**F242** prosp. rep. by 1995 NI 17

**F243** 1989 c. 4

### Power of constable to use reasonable force

**88.** Where any provision of this Order—

- (a) confers a power on a constable; and
- (b) does not provide that the power may only be exercised with the consent of some person, other than a police officer,

the constable may use reasonable force, if necessary, in the exercise of the power.

#### Modifications etc. (not altering text)

**C68** Art. 88 applied (with modifications) (18.5.2009) by [Police and Criminal Evidence \(Application to the Police Ombudsman\) Order \(Northern Ireland\) 2009 \(S.R. 2009/142\)](#), art. 3, **Sch. 1**, Sch. 2

### Orders and regulations

**89.** Orders made under Articles<sup>F244</sup> 60<sup>[F245]</sup>, 60A], 66, 81 and 85(1) and regulations made under Article 29(4) shall be subject to annulment in pursuance of a resolution of either House of Parliament and section 5 of the Statutory Instruments Act 1946<sup>F246</sup> shall apply accordingly.

**F244** prosp. insertion by 2003 c. 6

**F245** 2000 c. 32

**F246** 1946 c. 36

### Amendments and repeals

**90.**—(1) The statutory provisions mentioned in Schedule 6 shall have effect with the amendments there specified.

(2) The statutory provisions mentioned in Schedule 7 (which include enactments already obsolete or unnecessary) are repealed to the extent specified in the third column of that Schedule.

(3) The repeals in Part II of Schedule 7 have effect only in relation to criminal proceedings.

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*Changes to legislation: The Police and Criminal Evidence (Northern Ireland) Order 1989 is up to date with all changes known to be in force on or before 24 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 1

Article 11.

#### SPECIAL PROCEDURE

#### Making of orders by county court judge

1. If on an application made by a constable a county court judge is satisfied that one or other of the sets of access conditions is fulfilled, he may make an order under paragraph 4.
2. The first set of access conditions is fulfilled if—
  - (a) there are reasonable grounds for believing—
    - (i) that a serious arrestable offence has been committed;
    - (ii) that there is material which consists of special procedure material or includes special procedure material and does not also include excluded material on premises specified in the application;
    - (iii) that the material is likely to be of substantial value (whether by itself or together with other material) to the investigation in connection with which the application is made; and
    - (iv) that the material is likely to be relevant evidence;
  - (b) other methods of obtaining the material—
    - (i) have been tried without success; or
    - (ii) have not been tried because it appeared that they were bound to fail; and
  - (c) it is in the public interest, having regard—
    - (i) to the benefit likely to accrue to the investigation if the material is obtained; and
    - (ii) to the circumstances under which the person in possession of the material holds it, that the material should be produced or that access to it should be given.
3. The second set of access conditions is fulfilled if—
  - (a) there are reasonable grounds for believing that there is material which consists of or includes excluded material or special procedure material on premises specified in the application;
  - (b) but for Article 11(2) a search of the premises for that material could have been authorised by the issue of a warrant to a constable under a statutory provision other than this Schedule; and
  - (c) the issue of such a warrant would have been appropriate.
4. An order under this paragraph is an order that the person who appears to the county court judge to be in possession of the material to which the application relates shall—
  - (a) produce it to a constable for him to take away; or
  - (b) give a constable access to it,

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not later than the end of the period of seven days from the date of the order or the end of such longer period as the order may specify.

5. Where the material consists of information<sup>F247</sup> stored in any electronic form]
  - (a) an order under paragraph 4(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible<sup>F248</sup> or from which it can readily be produced in a visible and legible form]; and
  - (b) an order under paragraph 4(b) shall have effect as an order to give a constable access to the material in a form in which it is visible and legible.

F247 2001 c. 16

F248 2001 c. 16

6. For the purposes of Articles 23 and 24 material produced in pursuance of an order under paragraph 4(a) shall be treated as if it were material seized by a constable.

#### Notices of applications for orders

7. An application for an order under paragraph 4 shall be made inter partes.
8. Where notice of an application for an order under paragraph 4 has been served on a person, he shall not conceal, destroy, alter or dispose of the material to which the application relates except—
  - (a) with the leave of a judge; or
  - (b) with the written permission of a constable,
 until—
  - (i) the application is dismissed or abandoned; or
  - (ii) he has complied with an order under paragraph 4 made on the application.

#### Issue of warrants by county court judge

9. If on an application made by a constable a county court judge—
  - (a) is satisfied—
    - (i) that either set of access conditions is fulfilled; and
    - (ii) that any of the further conditions set out in paragraph 11 is also fulfilled; or
  - (b) is satisfied—
    - (i) that the second set of access conditions is fulfilled; and
    - (ii) that an order under paragraph 4 relating to the material has not been complied with,
 he may issue a warrant authorising a constable to enter and search the premises.

VALID FROM 01/03/2007

<sup>F249</sup>9A. The judge may not issue an all premises warrant unless he is satisfied—

- (a) that there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application, as well as those which are, in order to find the material in question; and

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(b) that it is not reasonably practicable to specify all the premises which he occupies or controls which might need to be searched.]

**F249** Sch. 1 para. 9A inserted (1.3.2007) by Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/288 (N.I. 2)), arts. 1(2), 8(6)

**10.** A constable may seize and retain anything for which a search has been authorised under paragraph 9.

**11.** The further conditions mentioned in paragraph 9(a)(ii) are—

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises to which the application relates;
- (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the material;
- (c) that the material contains information which—
  - (i) is subject to a restriction or obligation such as is mentioned in Article 13(2)(b); and
  - (ii) is likely to be disclosed in breach of it if a warrant is not issued;
- (d) that service of notice of an application for an order under paragraph 4 may seriously prejudice the investigation for the purpose of which the application is sought, or other investigations.

**12.—(1)** If a person fails to comply with an order under paragraph 4, a county court judge may deal with him as if he had committed a contempt of the Crown Court.

(2) Any statutory provision relating to contempt of the Crown Court shall have effect in relation to such a failure as if it were such a contempt.

### Costs

**13.** The costs of any application under this Schedule and of anything done or to be done in pursuance of an order made under it shall be in the discretion of the judge.

## SCHEDULE 2

Article 28.

### PRESERVED POWERS OF ARREST

|               |   |
|---------------|---|
| 1845 c. cxlii | Section CCXXX of the Belfast Improvement Act 1845 (subject to Note 1)             |
| 1847 c. 89    | Section 28 of the Town Police Clauses Act 1847 (subject to Notes 1 and 2)         |
| 1854 c. 103   | Section 72 of the Towns Improvement (Ireland) Act 1854 (subject to Notes 1 and 2) |
| 1892 c. 43    | Section 17(2) of the Military Lands Act 1892                                      |
| <b>F250</b>   | <b>F250</b>   |
| ...           | ...   |

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|                          |  |
|--------------------------|--|
| F251                     | Section 13 of the Visiting Forces Act 1952   |
| F251                     |  |
| 1952 c. 67               |  |
| 1953 c. 18 (NI)          | Section 38(1) of the Prison Act (Northern Ireland) 1953  |
| 1955 c. 18               | Sections 186 and 190B of the Army Act 1955   |
| 1955 c. 19               | Sections 186 and 190B of the Air Force Act 1955  |
| 1957 c. 53               | Sections 104 and 105 of the Naval Discipline Act 1957  |
| 1962 c. 14 (NI)          | Rule 33 in Schedule 5 to the Electoral Law Act (Northern Ireland) 1962   |
| F252                     | F252   |
| ...                      | ...  |
| 1969 c. 54               | Section 32 of the Children and Young Persons Act 1969  |
| 1971 c. 77               | Section 24(2) of the Immigration Act 1971 and paragraphs 17, 24 and 33 of Schedule 2 and paragraph 7 of Schedule 3 to that Act   |
| F253                     | F253   |
| ...                      | ...  |
| F254                     | F254   |
| ...                      | ...  |
| F255                     | F255   |
| ...                      | ...  |
| 1980 c. 9                | Schedule 5 to the Reserve Forces Act 1980  |
| F256                     | F256   |
| ...                      | ...  |
| 1981 NI 22               | Article 42(5) and (8) of the Diseases of Animals (Northern Ireland) Order 1981   |
| S.I. 1982/1135           | Article 7A(6) of, and Rule 35 in Schedule 2 to, the Northern Ireland Assembly Elections Order 1982   |
| 1983 c. 2 S.I. 1986/2250 | Rule 36 in Schedule 1 to the Representation of the People Act 1983 (including that rule as applied by regulation 5(1) of, and Schedule 1 to, the European Parliamentary Elections (Northern Ireland) Regulations 1986) |
| 1984 c. 47               | Section 5(5) of the Repatriation of Prisoners Act 1984   |



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|               |  |
|---------------|--|
| S.I. 1985/454 | Article 15(6) of the Local Elections (Northern Ireland) Order 1985   |
| 1985 c. 2     | Section 3(6) of the Elections (Northern Ireland) Act 1985 (including that section as applied by regulation 5(1) of, and Schedule 1 to, the European Parliamentary Elections (Northern Ireland) Regulations 1986) |
| 1986 NI 4     | Articles 29, 42(10), 43(5), 45(6), 130(1) and 132 of the Mental Health (Northern Ireland) Order 1986   |
| 1987 NI 7     | Article 24<br>F257<br>... (2) of the Public Order (Northern Ireland) Order 1987  |
| F258          | F258   |
| ...           | ...  |
| Note 1        | The power of arrest under the section is preserved only in relation to the offence of loitering and importuning by a common prostitute or nightwalker.   |
| Note 2        | The reference to the section includes a reference to it as incorporated with any other statutory provision.  |

- F250 2004 c. 36
- F251 prosp. insertion by 1995 NI 17
- F252 1998 NI 9
- F253 1991 c. 24
- F254 1995 NI 2
- F255 1993 NI 6
- F256 1991 NI 3
- F257 1998 c. 2
- F258 2000 c. 11

PROSPECTIVE

## [F259] SCHEDULE 2A

Fingerprinting and samples: power to require attendance at police station

**F259** Sch. 2A inserted (prosp.) by Crime and Security Act 2010 (c. 17), ss. 12(2), 59(1) (as amended (15.12 2011) by Terrorism Prevention and Investigation Measures Act 2011 (c. 23), ss. 29(3), 31(2), Sch. 7 para. 6(3) (with Sch. 8))

**Status:** Point in time view as at 08/02/2007. This version of this Order contains provisions that are not valid for this point in time.

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## Part 1

### Fingerprinting

#### *Persons arrested and released*

1.—(1) A constable may require a person to attend a police station for the purpose of taking his fingerprints under Article 61(5A).

(2) The power under sub-paragraph (1) may not be exercised in a case falling within Article 61(5A)(b) (fingerprints taken on previous occasion insufficient etc) after the end of the period of six months beginning with the day on which the appropriate officer was informed that Article 61(4A)(a) or (b) applied.

(3) In sub-paragraph (2) “appropriate officer” means the officer investigating the offence for which the person was arrested.

#### *Persons charged etc*

2.—(1) A constable may require a person to attend a police station for the purpose of taking his fingerprints under Article 61(5B).

(2) The power under sub-paragraph (1) may not be exercised after the end of the period of six months beginning with—

- (a) in a case falling within Article 61(5B)(a) (fingerprints not taken previously), the day on which the person was charged or informed that he would be reported, or
- (b) in a case falling within Article 61(5B)(b) (fingerprints taken on previous occasion insufficient etc), the day on which the appropriate officer was informed that Article 61(4A)(a) or (b) applied.

(3) In sub-paragraph (2)(b) “appropriate officer” means the officer investigating the offence for which the person was charged or informed that he would be reported.

#### *Persons convicted etc of an offence in Northern Ireland*

3.—(1) A constable may require a person to attend a police station for the purpose of taking his fingerprints under Article 61(6).

(2) Where the condition in Article 61(6ZA)(a) is satisfied (fingerprints not taken previously), the power under sub-paragraph (1) may not be exercised after the end of the period of two years beginning with—

- (a) the day on which the person was convicted or cautioned, or
- (b) if later, the day on which this Schedule comes into force.

(3) Where the condition in Article 61(6ZA)(b) is satisfied (fingerprints taken on previous occasion insufficient etc), the power under sub-paragraph (1) may not be exercised after the end of the period of two years beginning with—

- (a) the day on which an appropriate officer was informed that Article 61(4A)(a) or (b) applied, or
- (b) if later, the day on which this Schedule comes into force.

(4) In sub-paragraph (3)(a) “appropriate officer” means an officer of the police force which investigated the offence in question.

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(5) Sub-paragraphs (2) and (3) do not apply where the offence is a qualifying offence (whether or not it was such an offence at the time of the conviction or caution).

*Persons subject to a control order*

VALID FROM 15/12/2011

.....  
**4** F260 .....

**F260** Sch. 2 para. 4 never in operation, omitted (15.12.2011) by virtue of [Terrorism Prevention and Investigation Measures Act 2011 \(c. 23\)](#), ss. 29(3), 31(2), [Sch. 7 para. 7\(3\)](#) (with Sch. 8)

*Persons convicted etc of an offence outside Northern Ireland*

**5** A constable may require a person to attend a police station for the purpose of taking his fingerprints under Article 61(6D).

*Multiple attendance*

**6.—(1)** Where a person's fingerprints have been taken under Article 61 on two occasions in relation to any offence, he may not under this Schedule be required to attend a police station to have his fingerprints taken under that Article in relation to that offence on a subsequent occasion without the authorisation of an officer of at least the rank of inspector.

(2) Where an authorisation is given under sub-paragraph (1) —

- (a) the fact of the authorisation, and
- (b) the reasons for giving it,

shall be recorded as soon as practicable after it has been given.

## Part 2

### Intimate samples

*Persons suspected to be involved in an offence*

**7** A constable may require a person to attend a police station for the purpose of taking an intimate sample from him under Article 62(1A) if, in the course of the investigation of an offence, two or more non-intimate samples suitable for the same means of analysis have been taken from him but have proved insufficient.

*Persons convicted etc of an offence outside Northern Ireland*

**8** A constable may require a person to attend a police station for the purpose of taking a sample from him under Article 62(2A) if two or more non-intimate samples suitable for the same means of analysis have been taken from him under Article 63(3D) but have proved insufficient.

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## Part 3

### Non-intimate samples

#### *Persons arrested and released*

9.—(1) A constable may require a person to attend a police station for the purpose of taking a non-intimate sample from him under Article 63(3ZA).

(2) The power under sub-paragraph (1) may not be exercised in a case falling within Article 63(3ZA)(b) (sample taken on a previous occasion not suitable etc) after the end of the period of six months beginning with the day on which the appropriate officer was informed of the matters specified in Article 63(3ZA)(b)(i) or (ii).

(3) In sub-paragraph (2) “appropriate officer” means the officer investigating the offence for which the person was arrested.

#### *Persons charged etc*

10.—(1) A constable may require a person to attend a police station for the purpose of taking a non-intimate sample from him under Article 63(3A).

(2) The power under sub-paragraph (1) may not be exercised in a case falling within Article 63(3A)(a) (sample not taken previously) after the end of the period of six months beginning with the day on which he was charged or informed that he would be reported.

(3) The power under sub-paragraph (1) may not be exercised in a case falling within Article 63(3A)(b) (sample taken on a previous occasion not suitable etc) after the end of the period of six months beginning with the day on which the appropriate officer was informed of the matters specified in Article 63(3A)(b)(i) or (ii).

(4) In sub-paragraph (3) “appropriate officer” means the officer investigating the offence for which the person was charged or informed that he would be reported.

#### *Persons convicted etc of an offence in Northern Ireland*

11.—(1) A constable may require a person to attend a police station for the purpose of taking a non-intimate sample from him under Article 63(3B).

(2) Where the condition in Article 63(3BA)(a) is satisfied (sample not taken previously), the power under sub-paragraph (1) may not be exercised after the end of the period of two years beginning with—

- (a) the day on which the person was convicted or cautioned, or
- (b) if later, the day on which this Schedule comes into force.

(3) Where the condition in Article 63(3BA)(b) is satisfied (sample taken on a previous occasion not suitable etc), the power under sub-paragraph (1) may not be exercised after the end of the period of two years beginning with—

- (a) the day on which an appropriate officer was informed of the matters specified in Article 63(3BA)(b)(i) or (ii), or
- (b) if later, the day on which this Schedule comes into force.

(4) In sub-paragraph (3)(a) “appropriate officer” means an officer of the police force which investigated the offence in question.

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(5) Sub-paragraphs (2) and (3) do not apply where the offence is a qualifying offence (whether or not it was such an offence at the time of the conviction or caution).

*Persons subject to a control order*

VALID FROM 15/12/2011

.....  
**12** <sup>F261</sup> .....

**F261** Sch. 2 para. 12 never in operation, omitted (15.12.2011) by virtue of [Terrorism Prevention and Investigation Measures Act 2011 \(c. 23\)](#), ss. 29(3), 31(2), [Sch. 7 para. 7\(3\)](#) (with Sch. 8)

*Persons convicted etc of an offence outside Northern Ireland*

**13** A constable may require a person to attend a police station for the purpose of taking a non-intimate sample from him under Article 63(3D).

*Multiple exercise of power*

**14.**—(1) Where a non-intimate sample has been taken from a person under Article 63 on two occasions in relation to any offence, he may not under this Schedule be required to attend a police station to have another such sample taken from him under that Article in relation to that offence on a subsequent occasion without the authorisation of an officer of at least the rank of inspector.

(2) Where an authorisation is given under sub-paragraph (1) —

- (a) the fact of the authorisation, and
- (b) the reasons for giving it,

shall be recorded as soon as practicable after it has been given.

## Part 4

### General and supplementary

*Requirement to have power to take fingerprints or sample*

**15** A power conferred by this Schedule to require a person to attend a police station for the purposes of taking fingerprints or a sample under any provision of this Order may be exercised only in a case where the fingerprints or sample may be taken from the person under that provision (and, in particular, if any necessary authorisation for taking the fingerprints or sample under that provision has been obtained).

*Date and time of attendance*

**16.**—(1) A requirement under this Schedule—

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(a) shall give the person a period of at least seven days within which he must attend the police station; and

(b) may direct him so to attend at a specified time of day or between specified times of day.

(2) In specifying a period or time or times of day for the purposes of sub-paragraph (1), the constable shall consider whether the fingerprints or sample could reasonably be taken at a time when the person is for any other reason required to attend the police station.

(3) A requirement under this Schedule may specify a period shorter than seven days if—

(a) there is an urgent need for the fingerprints or sample for the purposes of the investigation of an offence; and

(b) the shorter period is authorised by an officer of at least the rank of inspector.

(4) Where an authorisation is given under sub-paragraph (3)(b)—

(a) the fact of the authorisation, and

(b) the reasons for giving it,

shall be recorded as soon as practicable after it has been given.

(5) If the constable giving a requirement under this Schedule and the person to whom it is given so agree, it may be varied so as to specify any period within which, or date or time at which, the person must attend; but a variation shall not have effect unless confirmed by the constable in writing.

### *Enforcement*

**17** A constable may arrest without warrant a person who has failed to comply with a requirement under this Schedule.]

## F262 SCHEDULE 3

Article 68(4).

### PROVISIONS SUPPLEMENTARY TO ARTICLE 68(4)

**F262** prosp. rep. by [1999 NI 8](#)

**1.** In any criminal proceedings where it is desired to give a statement in evidence in accordance with Article 68, a certificate—

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters mentioned in paragraph (1) of Article 68; and

(d) purporting to be signed by a person occupying a responsible position in relation to the operation of the computer,

shall be evidence of anything stated in it; and for the purposes of this paragraph it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

**2.** Notwithstanding paragraph 1, a court may require oral evidence to be given of anything of which evidence could be given by a certificate under that paragraph.

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3. Any person who in a certificate tendered under paragraph 1 in a magistrates' court, a county court, the Crown Court or the Court of Appeal makes a statement which he knows to be false or does not believe to be true shall be guilty of an offence and liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.

4. In estimating the weight, if any, to be attached to a statement regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular—

- (a) to the question whether or not the information which the information contained in the statement reproduces or is derived from was supplied to the relevant computer, or recorded for the purpose of being supplied to it, contemporaneously with the occurrence or existence of the facts dealt with in that information; and
- (b) to the question whether or not any person concerned with the supply of information to that computer, or with the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts.

5. For the purposes of paragraph 4 information shall be taken to be supplied to a computer whether it is supplied directly or (with or without human intervention) by means of any appropriate equipment.

6. For the purpose of deciding whether or not a statement is admissible in evidence the court may draw any reasonable inference—

- (a) from the circumstances in which the statement was made or otherwise came into being; or
- (b) from any other circumstances, including the form and contents of the document in which the statement is contained.

7. Provision may be made by the rules mentioned in paragraph (3) of Article 68 supplementing the provisions of that Article or this Schedule.

*Schedule 4—Amendments*

SCHEDULE 5

Article 87.

SERIOUS ARRESTABLE OFFENCES

PART I

OFFENCES MENTIONED IN ARTICLE 87(2)(a)

1. Treason.

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2. Murder.
3. Manslaughter.
4. Rape.
5. Kidnapping.
6. Incest with a girl under the age of 14.

[<sup>F263</sup>7. Buggery with a person under the age of 16.]

F263 2003 NI 13

8. Indecent assault which constitutes an act of gross indecency.

[<sup>F264</sup>9 An offence under section 170 of the Customs and Excise Management Act 1979 (c. 2) of being knowingly concerned, in relation to any goods, in any fraudulent evasion or attempt at evasion of a prohibition in force with respect to the goods under section 42 of the Customs Consolidation Act 1876 (c. 36) (prohibition on importing indecent or obscene articles).]

F264 2001 c. 16

## PART II

### OFFENCES MENTIONED IN ARTICLE 87(2)(b)

*Explosive Substances Act 1883 (c. 3)*

1. Section 2 (causing explosion likely to endanger life or property).

*Criminal Law Amendment Act 1885 (c. 69)*

2. Section 4 (unlawful carnal knowledge of a girl under the age of 14).

[<sup>F265</sup>The Road Traffic (Northern Ireland) Order 1981]

F265 2004 NI 15



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**2A.** Article 172B (aggravated vehicle#taking causing death or grievous bodily injury).

*Para. 3 rep. by 1995 NI 18*

*Paras. 4#6 rep. by 2004 NI 3*

*Taking of Hostages Act 1982 (c. 28)*

**7.** Section 1 (hostage#taking).

*Aviation Security Act 1982 (c. 36)*

**8.** Section 1 (hijacking).

*Criminal Justice Act 1988 (c. 33)*

**9.** Section 134 (torture).

*[<sup>F266</sup>Aviation and Maritime Security Act 1990 (c. 31)]*

**F266** 1990 c. 31

**10.** Section 1 (endangering safety at aerodromes).

**11.** Section 9 (hijacking of ships).

**12.** Section 10 (seizing or exercising control of fixed platforms).

*[<sup>F267</sup>Protection of Children (Northern Ireland) Order 1978 (1978 N.I. 17)]*

**F267** 1994 c. 33

**13.** Article 3 (indecent photographs and pseudo-photographs of children).

*[<sup>F268</sup>Channel Tunnel (Security) Order 1994 No. 570]*

**F268** SI 1994/570

**13.** Article 4 (hijacking of Channel Tunnel trains).

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14. Article 5 (seizing or exercising control of the tunnel system).

**[<sup>F269</sup>Road Traffic (Northern Ireland) Order 1995]**

**F269** 1995 NI 18

[<sup>F270</sup>13A]. Article 9 (causing death, or grievous bodily injury, by dangerous driving).

**F270** 1996 NI 10

14. Article 14 (causing death, or grievous bodily injury, by careless driving when under the influence of drugs).

**[<sup>F271</sup>Domestic Violence, Crime and Victims Act 2004]**

**F271** 2004 c. 28

15. Section 5 (causing or allowing the death of a child or vulnerable adult).

**[<sup>F272</sup>Firearms (Northern Ireland) Order 2004]**

**F272** 2004 NI 3

16. Article 58(1) (possession of firearm with intent to endanger life, etc.).

17. Article 59(1) (use of firearm or imitation firearm to resist arrest).

18. Article 60 (carrying firearm or imitation firearm with criminal intent).

*Schedule 6—Minor and Consequential Amendments*

*Schedule 7—Repeals*

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