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## STATUTORY INSTRUMENTS

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# 1989 No. 1341

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

### PART IV

#### ARREST

##### **Arrest without warrant for arrestable offences**

**26.**—<sup>F1</sup>(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>F2</sup>); and
- (c) to the offences to which paragraph (2) applies,

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

(2) <sup>F3</sup> <sup>F4</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>F5</sup>;
- (b) offences under the Official Secrets Act 1920<sup>F6</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>F7</sup> (procuration); and
- (e) offences under Article 172 of the Road Traffic (Northern Ireland) Order 1981<sup>F8</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>F9</sup>.

[<sup>F10</sup>(ee) offences under Article 167(1) of the Road Traffic (Northern Ireland) Order 1981 (driving while disqualified);]

[<sup>F11</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>F12</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.)]

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- [<sup>F13</sup>(iza) an offence under Article 18(3) of the Public Order (Northern Ireland) Order 1987 (riotous behaviour in public place);]
- [<sup>F14</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).]
- [<sup>F15</sup>(j) an offence mentioned in section 14(1) of the Wireless Telegraphy Act 1949 (offences under that Act which are triable either way);]
- [<sup>F14</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>F16</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>F17</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>F18</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>F19</sup>(n) an offence under section 42 of the Offences against the Person Act 1861 (c. 100) (common assault etc).]
- [<sup>F20</sup>(o) an offence under section 9(3) of the Prevention of Terrorism Act 2005.]
- [<sup>F21</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).]
- (3) Without prejudice to Article 4 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983<sup>F22</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.

<b>F1</b>	mod. by SI 1999/2821; 3133
<b>F2</b>	1981 NI 26
<b>F3</b>	mod. by SI 2005/253
<b>F4</b>	mod. by SI 2005/3432
<b>F5</b>	1979 c. 2
<b>F6</b>	1920 c. 75
<b>F7</b>	1885 c. 69
<b>F8</b>	1981 NI 1
<b>F9</b>	1969 c. 16 (NI)
<b>F10</b>	2004 c. 4
<b>F11</b>	1994 c. 33
<b>F12</b>	1998 NI 6
<b>F13</b>	2003 NI 13
<b>F14</b>	2001 c. 24
<b>F15</b>	2003 c. 21
<b>F16</b>	2003 c. 19
<b>F17</b>	2003 NI 18
<b>F18</b>	2005 NI 16
<b>F19</b>	2004 c. 28
<b>F20</b>	2005 c. 2
<b>F21</b>	2005 NI 15
<b>F22</b>	1983 NI 13

VALID FROM 01/03/2007

**[<sup>F23</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

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- (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.]

**F23** 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>F24</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.

**F24** 1981 NI 1

### **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>F25</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.

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(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.

**F25** 2000 c. 11

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

- C1** 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
- C2** 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>[F26]</sup>(1) 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>[F27]</sup>(2) 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.]

**F26** 1995 NI 17

**F27** 1995 NI 17

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

- C3** 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
- C4** 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>[F28]</sup>(1) 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>[F28]</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—

(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>[F29]</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>[F28]</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.

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(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>F28</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.

(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>F28</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>F30</sup>; or

[<sup>F31</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.

**F28** 2004 NI 9

**F29** 2000 c. 32

**F30** 1971 c. 77

**F31** 2000 c. 11

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

**C5** 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

**C6** 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

**C7** 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>F32</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.]

**F32** 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.

(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.

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## 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.

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

- C8** 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
- C9** 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>[F33]</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.

(10) Nothing in this Article shall be taken to affect the powers conferred by<sup>F34</sup> section 43 of the Terrorism Act 2000].

**F33** 1995 NI 17

**F34** 2000 c. 11

**Status:**

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