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## STATUTORY INSTRUMENTS

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# 2007 No. 288

## The Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007

### PART I **N.I.**

#### INTRODUCTORY

##### Title and commencement **N.I.**

1.—(1) This Order may be cited as the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007.

(2) Except as provided by paragraph (3), this Order comes into operation on 1st March 2007.

(3) Articles 18 and 25(2) come into operation on such day as the Secretary of State may by order appoint.

(4) An order under paragraph (3) may contain such transitional or saving provisions as the Secretary of State thinks appropriate.

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##### Subordinate Legislation Made

P1 [Art. 1\(3\)](#) power fully exercised: 1.11.2009 appointed for specified provisions by [S.R. 2009/337](#), [art. 2](#)

##### Interpretation **N.I.**

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order “PACE” means the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12).

### PART II **N.I.**

#### POWERS TO STOP AND SEARCH

##### Power to stop and search for prohibited fireworks **N.I.**

3.—(1) Article 3 of PACE (powers of constables to stop and search) is amended as follows.

(2) In paragraph (2) for “or any article to which paragraph (9) applies” substitute “, any article to which paragraph (9) applies or any firework to which paragraph (9A) applies”.

(3) In paragraph (3) for “or any article to which paragraph (9) applies” substitute “, any article to which paragraph (9) applies or any firework to which paragraph (9A) applies”.

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(4) In paragraph (6) for “or an article to which paragraph (9) applies” substitute “, an article to which paragraph (9) applies or a firework to which paragraph (9A) below applies”.

(5) After paragraph (9) insert—

“(9A) This paragraph applies to any firework within the meaning of the Explosives (Fireworks) Regulations (Northern Ireland) 2002 (SR 2002 No. 147) which a person possesses in contravention of those Regulations.”.

#### **Provisions relating to searches** **N.I.**

4.—(1) Article 4 of PACE (provisions relating to searches) is amended as follows.

(2) In paragraph (4)(a) after “constable's” insert “ name and ”.

(3) In paragraph (7)(b) after “his” insert “ name and ”.

#### **Duty to make records concerning searches** **N.I.**

5.—(1) Article 5 of PACE (duty to make records concerning searches) is amended as follows.

(2) In paragraph (6)(b) after “his” insert “ name and ”.

#### **Road checks** **N.I.**

6.—(1) Article 6 of PACE (road checks) is amended as follows.

(2) In paragraph (4) for “a serious arrestable offence” (wherever it occurs) substitute “ an indictable offence ”.

(3) In paragraph (14) for “serious arrestable offence” substitute “ indictable offence ”.

## **PART III** **N.I.**

### **POWERS OF ENTRY, SEARCH AND SEIZURE**

#### **Search warrants** **N.I.**

7.—(1) Article 10 of PACE (power of lay magistrate to authorise entry and search of premises) is amended as follows.

(2) In paragraph (1)(a) for “a serious arrestable offence” substitute “ an indictable offence ”.

(3) In paragraph (1)—

(a) in sub-paragraph (b), for “specified in the application” substitute “ mentioned in paragraph (1A) ”,

(b) in sub-paragraph (e), at the end add “ in relation to each set of premises specified in the application ”.

(4) After paragraph (1) insert—

“(1A) The premises referred to in paragraph (1)(b) are—

(a) one or more sets of premises specified in the application (in which case the application is for a “specific premises warrant”); or

(b) any premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified (in which case the application is for an “all premises warrant”).

(1B) If the application is for an all premises warrant, the lay magistrate must also be satisfied—

- (a) that because of the particulars of the offence referred to in sub-paragraph (a) of paragraph (1), 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 in order to find the material referred to in sub-paragraph (b) of that paragraph; and
- (b) that it is not reasonably practicable to specify in the application all the premises which he occupies or controls and which might need to be searched.

(1C) The warrant may authorise entry to and search of premises on more than one occasion if, on the application, the lay magistrate is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which he issues the warrant.

(1D) If it authorises multiple entries, the number of entries authorised may be unlimited, or limited to a maximum.”.

- (5) In paragraph (6) for “a serious arrestable offence” substitute “ an indictable offence ”.

### Special procedure material **N.I.**

8.—(1) Schedule 1 to PACE (special procedure for access to certain material) is amended as follows.

- (2) In paragraph 2(a)(i) for “a serious arrestable offence” substitute “ an indictable offence ”.
- (3) In each of paragraphs 2(a)(ii) and 3(a) at the end add “ , or on premises occupied or controlled by a person specified in the application (including all such premises on which there are reasonable grounds for believing that there is such material as it is reasonably practicable so to specify); ”.
- (4) In paragraph 3(b) for “the premises” substitute “ such premises ”.
- (5) In paragraph 9—
  - (a) in sub-paragraph (a)(ii), after “fulfilled” insert “ in relation to each set of premises specified in the application ”,
  - (b) at the end add “ or (as the case may be) all premises occupied or controlled by the person referred to in paragraph 2(a)(ii) or 3(a), including such sets of premises as are specified in the application (an “all premises warrant”) ”.
- (6) After paragraph 9 insert—

“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
- (b) that it is not reasonably practicable to specify all the premises which he occupies or controls which might need to be searched.”.

- (7) In paragraph 11(a) omit “to which the application relates”.

### Search warrants – safeguards **N.I.**

9.—(1) Article 17 of PACE (search warrants – safeguards) is amended as follows.

- (2) In paragraph (2)(a)—
  - (a) omit “and” at the end of head (i),

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- (b) at the end of head (ii) insert “ and ”,
- (c) after that head insert—
  - “(iii) if the application is for a warrant authorising entry and search on more than one occasion, the ground on which he applies for such a warrant, and whether he seeks a warrant authorising an unlimited number of entries, or (if not) the maximum number of entries desired;”.
- (3) For paragraph (2)(b) substitute—
  - “(b) to specify the matters set out in paragraph (2A); and”.
- (4) After paragraph (2) insert—
  - “(2A) The matters which must be specified pursuant to paragraph (2)(b) are—
    - (a) if the application relates to one or more sets of premises specified in the application, each set of premises which it is desired to enter and search;
    - (b) if the application relates to any premises occupied or controlled by a person specified in the application,—
      - (i) as many sets of premises which it is desired to enter and search as it is reasonably practicable to specify;
      - (ii) the person who is in occupation or control of those premises and any others which it is desired to enter and search;
      - (iii) why it is necessary to search more premises than those specified under head (i); and
      - (iv) why it is not reasonably practicable to specify all the premises which it is desired to enter and search.”.
- (5) In paragraph (5), at the end add “ unless it specifies that it authorises multiple entries ”.
- (6) After paragraph (5) insert—
  - “(5A) If it specifies that it authorises multiple entries, it must also specify whether the number of entries authorised is unlimited, or limited to a specified maximum.”.
- (7) For paragraph (6)(a)(iv) substitute—
  - “(iv) each set of premises to be searched, or (in the case of an all premises warrant) the person who is in occupation or control of premises to be searched, together with any premises under his occupation or control which can be specified and which are to be searched; and”.
- (8) For paragraph (7) substitute—
  - “(7) Two copies shall be made of a warrant which specifies only one set of premises and does not authorise multiple entries; and as many copies as are reasonably required may be made of any other kind of warrant.”.

## Execution of warrants **N.I.**

- 10.**—(1) Article 18 of PACE (execution of warrants) is amended as follows.
- (2) After paragraph (2) insert—
  - “(2A) A person so authorised has the same powers as the constable whom he accompanies in respect of—
    - (a) the execution of the warrant; and
    - (b) the seizure of anything to which the warrant relates.
  - (2B) But he may exercise those powers only in the company of, and under the supervision of, a constable.”.

(3) In paragraph (3) for “one month” substitute “ 3 months ”,

(4) After paragraph (3) insert—

“(3A) If the warrant is an all premises warrant, no premises which are not specified in it may be entered or searched unless a police officer of at least the rank of inspector has in writing authorised them to be entered.

(3B) No premises may be entered or searched for the second or any subsequent time under a warrant which authorises multiple entries unless a police officer of at least the rank of inspector has in writing authorised that entry to those premises.”.

(5) In paragraph (9), after sub-paragraph (b) add “ and, unless the warrant is a warrant specifying one set of premises only, he shall do so separately in respect of each set of premises entered and searched, which he shall in each case state in the endorsement. ”.

(6) For paragraph (10) substitute—

“(10) A warrant shall be returned to the appropriate person mentioned in paragraph (10A)

—

(a) when it has been executed; or

(b) in the case of a specific premises warrant which has not been executed, or an all premises warrant, or any warrant authorising multiple entries, upon the expiry of the period of 3 months referred to in paragraph (3) or sooner.

(10A) The appropriate person is—

(a) if the warrant was issued by a lay magistrate, the clerk of petty sessions for the petty sessions district in which the magistrate was acting when he issued the warrant;

(b) if it was issued by a judge, the appropriate officer of the court from which he issued it.”.

(7) In paragraph (12), for “the premises” substitute “ premises ”.

#### **Entry for purposes of arrest, etc. N.I.**

**11.**—(1) Article 19 of PACE (entry for purposes of arrest, etc.) is amended as follows.

(2) In paragraph (1)(b) for “arrestable” substitute “ indictable ”.

(3) After paragraph (1)(b) insert—

“(ba) of arresting a person for an offence under Article 15 of the Road Traffic (Northern Ireland) Order 1995 (driving while under influence of drink or drugs) or Article 180(1) of the Road Traffic (Northern Ireland) Order 1981 (NI 1);

(bb) of arresting a person for an offence to which Article 42(8) of the Diseases of Animals (Northern Ireland) Order 1981 applies;”.

#### **Entry and search after arrest N.I.**

**12.**—(1) Article 20 of PACE (entry and search after arrest) is amended as follows.

(2) In paragraph (1) for “arrestable” (in both places) substitute “ indictable ”.

#### **Access and copying N.I.**

**13.**—(1) Article 23 of PACE (access and copying) is amended as follows.

(2) At the end add—

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“(9) The reference to a constable in paragraphs (1), (2), (3)(a) and (5) include a person authorised under Article 18(2) to accompany a constable executing a warrant.”.

## Retention **N.I.**

14.—(1) Article 24 of PACE (retention) is amended as follows.

(2) At the end add—

“(7) The reference in paragraph (1) to anything seized by a constable includes anything seized by a person authorised under Article 18(2) to accompany a constable executing a warrant.”.

## PART IV **N.I.**

### ARREST

## Powers of arrest **N.I.**

15.—(1) For Article 26 of PACE (arrest without warrant for arrestable offences) substitute—

### “Arrest without warrant: constables

26.—(1) A constable may arrest without a warrant—

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

(2) If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.

(3) If an offence has been committed, 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.

(4) But the power of summary arrest conferred by paragraph (1), (2) or (3) is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in paragraph (5) it is necessary to arrest the person in question.

(5) The reasons are—

- (a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name);
- (b) correspondingly as regards the person's address;
- (c) to prevent the person in question—
  - (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 (subject to paragraph (6)); or
  - (v) causing an unlawful obstruction on a road (within the meaning of the Road Traffic (Northern Ireland) Order 1995 (NI 18);
  - (d) to protect a child or other vulnerable person from the person in question;
  - (e) to allow the prompt and effective investigation of the offence or of the conduct of the person in question;
  - (f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question.
- (6) Paragraph (5)(c)(iv) applies only where members of the public going about their normal business cannot reasonably be expected to avoid the person in question.

#### **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.”.
- (2) Article 27 of PACE (general arrest conditions) shall cease to have effect.
- (3) The Articles 26 and 26A of PACE substituted by paragraph (1) are to have effect in relation to any offence whenever committed.
- (4) Schedule 1, which supplements this Article by providing for the amendment or repeal of certain statutory provisions (including some which are spent), has effect.

#### **Fingerprinting of certain offenders** **N.I.**

- 16.**—(1) Article 29 of PACE (fingerprinting of certain offenders) is amended as follows.
- (2) After paragraph (1) insert—
- “(1A) Where a person convicted of a recordable offence has already had his fingerprints taken as mentioned in sub-paragraph (c) of paragraph (1), that fact (together with any time

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when he has been in police detention for the offence) shall be disregarded for the purposes of that paragraph if—

- (a) the fingerprints taken on the previous occasion do not constitute a complete set of his fingerprints; or
- (b) some or all of the fingerprints taken on the previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching.

(1B) Paragraphs (1) and (1A) apply where a person has been given a caution in respect of a recordable offence which, at the time of the caution, he has admitted as they apply where a person has been convicted of an offence, and references in this Article to a conviction shall be construed accordingly.”.

### Search upon arrest **N.I.**

17.—(1) Article 34 (search upon arrest) of PACE is amended as follows.

(2) In paragraph (2) for sub-paragraph (b) substitute—

- “(b) if the offence for which he has been arrested is an indictable offence, to enter and search any premises in which he was when arrested or immediately before he was arrested for evidence relating to the offence.”

### Arrested juveniles **N.I.**

18.—(1) Article 38 (duties of custody officers before charge) is amended as follows.

(2) In paragraph (14), in the definition of “arrested juvenile”, for “17” substitute “ 18 ”.

## PART V **N.I.**

### DETENTION

#### Detention reviews **N.I.**

19.—(1) Article 41 of PACE (review of police detention) is amended as follows.

(2) In paragraph (8) for the words from “the substitution” to the end substitute “ the modifications specified in paragraph (8A) ”.

(3) After that paragraph insert—

“(8A) The modifications are—

- (a) the substitution of references to the person whose detention is under review for references to the person arrested;
- (b) the substitution of references to the review officer for references to the custody officer; and
- (c) in paragraph (6), the insertion after sub-paragraph (a) of—

“( ) asleep;”.

(4) In paragraph (10) for the words from “the substitution” to the end substitute “ the modifications specified in paragraph (10A) ”.

(5) After that paragraph insert—

“(10A) The modifications are—

- (a) the substitution of references to the person whose detention is under review for any reference to the person arrested or to the person charged; and



- (b) in paragraph (5), the insertion after sub-paragraph (a) of—  
    “(‘) asleep;’”.

#### **Use of telephone for review of detention** **N.I.**

**20.** After Article 41 of PACE insert—

##### **“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.”.

#### **Authorisation of continued detention** **N.I.**

**21.**—(1) Article 43 of PACE (authorisation of continued detention) is amended as follows.

(2) In paragraph (1)(b) for “arrestable offence” substitute “ indictable offence ”.

#### **Warrants of further detention** **N.I.**

**22.**—(1) Article 44 of PACE (warrants of further detention) is amended as follows.

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(2) In paragraph (4)(b) for “a serious arrestable offence” substitute “an indictable offence”.

## Use of video conferencing facilities for decisions about detention **N.I.**

23. After Article 46 of PACE insert—

### “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—

- (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.”

#### **Bail after arrest** **N.I.**

24. In Article 48 (bail after arrest) in paragraph (2) after “appointed under” insert “ sub-paragraph (a) of ”.

## **PART VI** **N.I.**

### **QUESTIONING AND TREATMENT OF PERSONS BY POLICE**

#### **Definitions** **N.I.**

- 25.—(1) Article 53 of PACE (interpretation of Part VI) is amended as follows.
- (2) In paragraph (1), in the definition of appropriate consent”, in paragraph (a) for “17” substitute “ 18 ”.
- (3) In paragraph (1) at the appropriate place insert—  
““analysis”, in relation to a skin impression, includes comparison and matching;”
- (4) In paragraph (1) for the definition of “fingerprints” substitute—  
““fingerprints”, in relation to any person, means a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of—  
(a) any of that person's fingers; or  
(b) either of his palms;”.
- (5) In paragraph (1) in the definition of “intimate sample”, for paragraph (c) substitute—  
“a swab taken from any part of a person's genitals (including pubic hair) or from a person's body orifice other than the mouth;”.
- (6) In paragraph (1) in the definition of “non-intimate sample”, for paragraph (c) substitute—  
“a swab taken from any part of a person's body other than a part from which a swab taken would be an intimate sample;”.
- (7) In paragraph (1) in the definition of “non-intimate sample”, for paragraph (e) substitute—  
“a skin impression;”.
- (8) In paragraph (1) after the definition of “registered health care professional” insert—

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““skin impression”, in relation to any person, means any record (other than a fingerprint) which is a record (in any form and produced by any method) of the skin pattern and other physical characteristics or features of the whole or any part of his foot or of any other part of his body;”.

(9) In paragraph (1) in the definition of “sufficient” and “insufficient”, after “means” insert “(subject to paragraph (3))”.

(10) After paragraph (2) add—

“(3) References in this Part to a sample's proving insufficient include references to where, as a consequence of—

- (a) the loss, destruction or contamination of the whole or any part of the sample,
- (b) any damage to the whole or a part of the sample, or
- (c) the use of the whole or a part of the sample for an analysis which produced no results or which produced results some or all of which must be regarded, in the circumstances, as unreliable,

the sample has become unavailable or insufficient for the purpose of enabling information, or information of a particular description, to be obtained by means of analysis of the sample.”.

#### Commencement Information

**II** [Art. 25](#) wholly in operation at 1.11.2009; [art. 25](#) (except [art. 25\(2\)](#)) in operation at 1.3.2007 see [art. 1\(2\)-\(4\)](#); [art. 25\(2\)](#) in operation at 1.11.2009 by [S.R. 2009/337](#), [art. 2\(b\)](#)

#### Intimate searches **N.I.**

**26.**—(1) Article 56 of PACE (intimate searches) is amended as follows.

(2) In paragraphs (1) and (5) for “superintendent” substitute “ inspector ”.

#### Right to have someone informed when arrested **N.I.**

**27.**—(1) Article 57 of PACE (right to have someone informed when arrested) is amended as follows.

(2) In each of paragraphs (2)(a) and (5)(a), for “a serious arrestable offence” substitute “ an indictable offence ”.

(3) In paragraph (2)(b) for “superintendent” substitute “ inspector ”.

(4) In paragraph (5A)(a), for “the serious arrestable offence” substitute “ “the indictable offence” ”.

#### Access to legal advice **N.I.**

**28.**—(1) Article 59 of PACE (access to legal advice) is amended as follows.

(2) In each of paragraphs (6)(a) and (8)(a), for “a serious arrestable offence” substitute “ an indictable offence ”.

(3) In paragraph (8A)(a), for “the serious arrestable offence” substitute “ the indictable offence ”.

#### Visual recording of interviews **N.I.**

**29.**—(1) Article 60A of PACE (video-recording of interviews) is amended as follows.

(2) For “video-recording” (wherever it occurs) “substitute “ visual recording ”.

## Fingerprinting **N.I.**

30.—(1) Article 61 of PACE (fingerprinting) is amended as follows.

(2) After paragraph (4) insert—

“(4A) Where a person mentioned in sub-paragraph (a) of paragraph (3) or (4) has already has his fingerprints taken in the course of the investigation of the offence by the police, that fact shall be disregarded for the purposes of that paragraph if—

- (a) the fingerprints taken on the previous occasion do not constitute a complete set of his fingerprints; or
- (b) some or all of the fingerprints taken on the previous occasion are not of sufficient quality to allow satisfactory analysis, comparison or matching (whether in the case in question or generally).

(4AA) The fingerprints of a person who has answered to bail at a court or police station may be taken without the appropriate consent at the court or station if—

- (a) the court, or
- (b) an officer of at least the rank of inspector,

authorises them to be taken.

(4B) A court or officer may only give an authorisation under paragraph (4AA) if—

- (a) the person who has answered to bail has answered to it for a person whose fingerprints were taken on a previous occasion and there are reasonable grounds for believing that he is not the same person; or
- (b) the person who has answered to bail claims to be a different person from a person whose fingerprints were taken on a previous occasion.”

(5) An officer may give an authorisation under paragraph (4AA) orally or in writing, but if he gives it orally he shall confirm it in writing as soon as is practicable.”

(3) In paragraph (6) for “he has been convicted of a recordable offence” substitute—

- “(a) he has been convicted of a recordable offence; or
- (b) he has been given a caution in respect of a recordable offence which, at the time of the caution, he has admitted.”

(4) After paragraph (6) insert—

“(6A) A constable may take a person's fingerprints without the appropriate consent if—

- (a) the constable reasonably suspects that the person is committing or attempting to commit an offence, or has committed or attempted to commit an offence; and
- (b) either of the two conditions mentioned in paragraph (6B) is met.

(6B) The conditions are that—

- (a) the name of the person is unknown to, and cannot be readily ascertained by, the constable;
- (b) the constable has reasonable grounds for doubting whether a name furnished by the person as his name is his real name.

(6C) The taking of fingerprints by virtue of paragraph (6A) does not count for any of the purposes of this Order as taking them in the course of the investigation of an offence by the police.”

(5) In paragraph (7), for “or (6)” substitute “, (6) or (6A)”.

(6) In paragraph (7A)—

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- (a) after “police station,” insert “ or by virtue of paragraph (6A) at a place other than a police station,”,
- (b) in sub-paragraph (a), after “an officer” insert “ (or, in a paragraph (6A) case, the constable) ”.
- (7) <sup>F1</sup> .....

**Textual Amendments**  
**F1** [Art. 30\(7\)](#) repealed (12.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), ss. 112(2), 116(6)(b), [Sch. 8 Pt. 13](#)

**Impressions of footwear** N.I.

31. After Article 61 of PACE insert—

**“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—

- (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.

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(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.”.

**Intimate samples** **N.I.**

**32.**—(1) Article 62 of PACE (intimate samples) is amended as follows.

(2) In paragraphs (1)(a) and (1A)(a) for “superintendent” substitute “ inspector ”.

**Non-intimate samples** **N.I.**

**33.**—(1) Article 63 of PACE (non-intimate samples) is amended as follows.

(2) In paragraph (3)(b) for “superintendent” substitute “ inspector ”.

(3) After paragraph (5) insert—

“(5A) An officer shall not give an authorisation under paragraph (3) for the taking from any person of a non-intimate sample consisting of a skin impression if—

(a) a skin impression of the same part of the body has already been taken from that person in the course of the investigation of the offence; and

(b) the impression previously taken is not one that has proved insufficient.”.

(4) <sup>F2</sup> .....

**Textual Amendments**

**F2** [Art. 33\(4\)](#) repealed (12.1.2010) by [Policing and Crime Act 2009 \(c. 26\)](#), ss. 112(2), 116(6)(b), [Sch. 8 Pt. 13](#)

**Fingerprints and samples: supplementary** **N.I.**

**34.**—(1) Article 63A of PACE (fingerprints and samples: supplementary provisions) is amended as follows.

(2) For paragraphs (1) and (1A) substitute—

“(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, impressions of footwear 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, impressions of footwear or samples to which the person seeking to check has access and which are held by or on behalf of any one or more relevant law-enforcement authorities or which are held in connection with or as a 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).

(1ZA) Fingerprints taken by virtue of Article 61(6A) may be checked against other fingerprints to which the person seeking to check has access and which are held by or

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on behalf of any one or more relevant law-enforcement authorities or which are held in connection with or as a result of an investigation of an offence.”.

(1A) In paragraphs (1) and (1ZA) “relevant law-enforcement authority” means—

- (a) a police force;
- (b) the Serious Organised Crime Agency;
- (c) a public authority (not falling within sub-paragraph (a) or (b)) with functions in any part of the British Islands which consist of or include the investigation of crimes or the charging of offenders;
- (d) any person with functions in any country or territory outside the United Kingdom which—
  - (i) correspond to those of a police force; or
  - (ii) otherwise consist of or include the investigation of conduct contrary to the law of that country or territory, or the apprehension of persons guilty of such conduct;
- (e) any person with functions under any international agreement which consist of or include the investigation of conduct which is—
  - (i) unlawful under the law of one or more places;
  - (ii) prohibited by such an agreement; or
  - (iii) contrary to international law;
 or the apprehension of persons guilty of such conduct.

(1B) The reference in paragraph (1A) to a police force is a reference to any of the following—

- (a) the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve;
- (b) any police force maintained under section 2 of the Police Act 1996 (c. 16);
- (c) the metropolitan police force;
- (d) the City of London police force;
- (e) any police force maintained under section 1 of the Police (Scotland) Act 1967 (c. 77);
- (f) the Ministry of Defence Police;
- (g) the Royal Navy Regulating Branch;
- (h) the Royal Military Police;
- (i) the Royal Air Force Police;
- (j) the Royal Marines Police;
- (k) the British Transport Police;
- (l) the States of Jersey Police Force
- (m) the salaried police force of the Island of Guernsey;
- (n) the Isle of Man Constabulary.

(1C) Where—

- (a) fingerprints, impressions of footwear or samples have been taken from any person in connection with the investigation of an offence but otherwise than in circumstances to which paragraph (1) applies, and



- (b) that person has given his consent in writing to the use in a speculative search of the fingerprints, of the impressions of footwear or of the samples and of information derived from them,

the fingerprints or impressions of footwear or, as the case may be, those samples and that information may be checked against any of the fingerprints, impressions of footwear, samples or information mentioned in sub-paragraph (a) or (b) of that paragraph.

(1D) A consent given for the purposes of paragraph (1C) shall not be capable of being withdrawn.”.

## **Destruction of fingerprints and samples** **N.I.**

**35.**—(1) Article 64 of PACE (destruction of fingerprints and samples) is amended as follows.

(2) In paragraph (1A)—

- (a) after “fingerprints” in both places where it occurs insert “ , impressions of footwear ”;
- (b) for “or the conduct of a prosecution” substitute “ , the conduct of a prosecution or the identification of a deceased person or of the person from whom a body part came ”.

(3) In paragraph (1B) after “fingerprint” insert “ or an impression of footwear ”.

(4) After paragraph (1B) insert—

“(1BA) Fingerprints taken from a person by virtue of Article 61(6A) must be destroyed as soon as they have fulfilled the purpose for which they were taken.”.

(5) In paragraph (3) after “fingerprints” insert “ , impressions of footwear ”.

(6) In paragraph (3AA)—

- (a) for “and fingerprints” substitute “ , fingerprints and impressions of footwear ”;
- (b) in sub-paragraph (b), for “or, as the case may be, fingerprint” substitute “ , fingerprint or (as the case may be) an impression of footwear ”.

(7) In paragraph (3AB)—

- (a) for “paragraph (3)” substitute “ paragraph (1BA) or (3) ”;
- (b) after the first and third places “fingerprint” occurs insert “ , impression of footwear ”;
- (c) after the second place “fingerprint” occurs insert “ , nor the impression of footwear, ”.

(8) In paragraph (3AC)—

- (a) after “fingerprint” in each place where it occurs insert “ , impression of footwear ”;
- (b) in sub-paragraph (a), after “that” insert “ fingerprint, impression of footwear or ”;
- (c) after sub-paragraph (b) insert—
  - “(c) that consent shall be treated as comprising a consent for the purposes of Article 63A(1C).”;
- (d) at the end add the following new sentence— “ This paragraph does not apply to fingerprints taken from a person by virtue of Article 61(6A). ”.

(9) In paragraph (3AD), after “fingerprint” insert “ , impression of footwear ”.

(10) In paragraph (5), after “fingerprints” in each place where it occurs insert “ or impressions of footwear ”.

(11) In paragraph (6), after “fingerprints” insert “ or impressions of footwear ”.

(12) In paragraph (7), after “fingerprints” insert “ or impressions of footwear ”.

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### Photographing of suspects. etc **N.I.**

36.—(1) Article 64A of PACE (photographing of suspects, etc.) is amended as follows.

(2) After paragraph (1) insert—

“(1A) A person falling within paragraph (1B) may, on the occasion of the relevant event referred to in paragraph (1B), be photographed elsewhere than at a police station—

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

(1B) A person falls within this paragraph if he has been—

- (a) arrested by a constable for an offence;
- (b) taken into custody by a constable after being arrested for an offence by a person other than a constable;
- (c) given a fixed penalty notice by a constable in uniform under Article 60 of the Road Traffic Offenders (Northern Ireland) Order 1996.”.

(3) In paragraph (4)(a), after “prosecution” insert “ or to the enforcement of a sentence ”.

(4) In paragraph (5), after sub-paragraph (b) insert

“; and

(c) “sentence” includes any order made by a court in Northern Ireland when dealing with an offender in respect of his offence.”.

(5) After paragraph (6) insert—

“(6A) In this Article, a “photograph” includes a moving image, and corresponding expressions shall be construed accordingly.”.

## PART VII **N.I.**

### CODES OF PRACTICE

#### Codes of practice **N.I.**

37.—(1) Article 65 of PACE (codes of practice) is amended as follows.

(2) In paragraph (a)—

- (a) omit “or” at the end of sub-paragraph (i),
- (b) at the end of sub-paragraph (ii) insert

“or

(“) to arrest a person;”.

## PART VIII **N.I.**

### EVIDENCE IN CRIMINAL PROCEEDINGS

#### Confessions by mentally handicapped persons **N.I.**

38.—(1) Article 75 of PACE (confessions by mentally handicapped persons) is amended as follows.

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(2) In paragraph (3) in the definition of “police purposes” for the words from “police cadets” to the end substitute “ police trainees, police reserve trainees and police cadets appointed under sections 39, 40 and 42 respectively of the Police (Northern Ireland) Act 2000 (c. 32) and of the police support staff”.

## **PART IX** **N.I.**

### **POLICE: GENERAL**

#### **Police officers performing duties of higher rank** **N.I.**

**39.** <sup>F3</sup> .....

.....

#### **Textual Amendments**

**F3** Art. 39 repealed (8.6.2008) by [Criminal Justice \(Northern Ireland\) Order 2008 \(S.I. 2008/1216 \(N.I. 1\)\)](#), arts. 1(3)(b), 102(2), [Sch. 6 Pt. 2](#)

## **PART X** **N.I.**

### **SUPPLEMENTARY**

#### **Regulations** **N.I.**

**40.**—(1) Article 89 of PACE (orders and regulations) is amended as follows.

(2) After “Article 29(4)” insert “ or 46A ”.

#### **Minor amendment and repeals** **N.I.**

**41.**—(1) In Article 2 of PACE (interpretation) in paragraph (3) for “paragraph (4)” substitute “ paragraphs (4) and (4A) ”.

(2) The statutory provisions set out in column 1 of Schedule 2 are repealed to the extent specified in column 2 of that Schedule.

*Christine Cook*  
Deputy Clerk of the Privy Council

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- art. 35 repealed by [2013 c. 7 \(N.I.\) Sch. 4 Pt. 3](#)