

*Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament*

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DRAFT STATUTORY INSTRUMENTS

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**2006 No. (N.I. )**

**NORTHERN IRELAND**

**The Police and Criminal Evidence (Amendment)  
(Northern Ireland) Order 2006**

*Made - - - - 2006*

*Coming into operation in accordance with Article 1(2) to (4)*

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*Police and Criminal Evidence (Amendment)*

At the Court at Buckingham Palace, the \*\* day of \*\* 2006

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c.1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

INTRODUCTORY

**Title and commencement**

1.—(1) This Order may be cited as the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2006.

(2) This Part comes into operation one week after the day on which this Order is made.

(3) The remaining provisions of this Order come into operation on such day or days 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.

**Interpretation**

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

PART II

POWERS TO STOP AND SEARCH

**Power to stop and search for prohibited fireworks**

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”.

(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 a prohibition imposed by those Regulations.”.

### **Road checks**

4.—(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**

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

#### **Search warrants**

5.—(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”).

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(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**

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

(2) In paragraph (2)(a) 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**

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

(2) In paragraph (2)(a)—

(a) omit “and” at the end of sub-paragraph (i),

(b) at the end of sub-paragraph (ii) insert “and”,

(c) after that sub-paragraph 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**

8.—(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.**

**9.**—(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**

**10.**—(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**

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

(2) At the end add—

“(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**

**12.**—(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

### PART IV

### ARREST

#### **Powers of arrest**

**13.**—(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**

**14.**—(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 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**

15.—(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.”

## PART V

### DETENTION

### **Detention reviews**

16.—(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—  
“(aa) 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—  
“(aa) asleep;”.

PART V

**Use of telephone for review of detention**

17. After Article 41 of PACE insert—

**“Use of telephone for review under Article 41**

41A.—(1) A review under Article 41(2)(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**

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

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

PART V

**Warrants of further detention**

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

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

**Use of video conferencing facilities for decisions about detention**

**20.** 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.

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(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**

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

PART VI

## PART VI

### QUESTIONING AND TREATMENT OF PERSONS BY POLICE

#### **Definitions**

**22.—**(1) Article 53 of PACE (interpretation of Part VI) is amended as follows.

(2) In paragraph (1) at the appropriate place insert—

“ “analysis”, in relation to a skin impression, includes comparison and matching;”

(3) 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;”.

(4) In paragraph (1) in the definition of “intimate sample”, for paragraph (c) substitute—

“(c) 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;”.

(5) In paragraph (1) in the definition of “non-intimate sample”, for paragraph (c) substitute—

“(c) 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;”.

(6) In paragraph (1) in the definition of “non-intimate sample”, for paragraph (e) substitute—

“(e) a skin impression;”.

(7) In paragraph (1) after the definition of “registered health care professional” insert—

“ “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;”.

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

(9) 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.”.

### **Intimate searches**

**23.**—(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**

**24.**—(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**

**25.**—(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**

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

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

### **Fingerprinting**

**27.**—(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

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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)—

- (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) After paragraph (8) insert—

“(8A) Where a person's fingerprints are taken electronically, they must be taken only in such manner, and using such devices, as the Secretary of State has approved for the purposes of electronic fingerprinting.”.

### **Impressions of footwear**

**28.** 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.

(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.”.

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**Intimate samples**

29.—(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**

**30.**—(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) After paragraph (10) insert—

“(10A) Where a non-intimate sample consisting of a skin impression is taken electronically from a person, it must be taken only in such manner, and using such devices, as the Secretary of State has approved for the purpose of the electronic taking of such an impression.”.

**Fingerprints and samples: supplementary**

**31.**—(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 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—

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- (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.

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(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**

**32.**—(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”.

### **Photographing of suspects. etc**

**33.**—(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.”.

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## PART VII

### CODES OF PRACTICE

#### **Codes of practice**

**34.**—(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  
“(iii) to arrest a person;”.

**Codes of practice: supplementary**

**35.**—(1) Article 66 of PACE is amended as follows.

(2) For paragraphs (1) to (7) substitute—

“(1) In this Article “code” means a code of practice under Article 60, 60A or 65.

(2) The Secretary of State may at any time revise the whole or any part of a code.

(3) A code may be made, or revised, so as to—

- (a) apply only in relation to one or more specified areas;
- (b) have effect only for a specified period;
- (c) apply only in relation to specified offences or descriptions of offender.

(4) Before issuing a code, or any revision of a code, the Secretary of State must consult—

- (a) the Northern Ireland Policing Board;
- (b) the Chief Constable;
- (c) the Bar Council of Northern Ireland;
- (d) the Law Society of Northern Ireland;
- (e) such other persons as he thinks fit.

(5) A code, or a revision of a code, does not come into operation until the Secretary of State by order so provides; and no such order may be made until the consultation required by paragraph (4) has taken place.

(6) When an order under paragraph (5) is laid before Parliament, the code or revision of a code to which it relates must also be laid.

(7) An order bringing a code or revision of a code into operation may include transitional or saving provisions.”.

(3) In paragraph (8) omit “such”.

(4) In paragraph (8A) omit “of practice to which this Article applies”;

(5) In paragraph (9)(a) and (b) omit “such”.

(6) In paragraph (10) omit “such” in each place where it occurs.

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PART VII

EVIDENCE IN CRIMINAL PROCEEDINGS

**Confessions by mentally handicapped persons**

**36.**—(1) Article 75 of PACE is amended as follows.

(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 VIII

#### POLICE: GENERAL

#### **Police officers performing duties of higher rank**

**37.**—(1) Article 84 of PACE (police officers performing duties of higher rank) is amended as follows.

- (2) In paragraph (2) for the words from “he has been” to the end substitute—
- “(a) he has been authorised by an officer holding a rank above the rank of superintendent to exercise the power or, as the case may be, to give his authority for its exercise; or
  - (b) he is acting during the absence of an officer holding the rank of superintendent who has authorised him, for the duration of that absence, to exercise the power or, as the case may be, to give his authority for its exercise.”.

#### PART IX

#### SUPPLEMENTARY

#### **Regulations**

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

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

#### **Minor amendment and repeals**

**39.**—(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.

SCHEDULES

SCHEDULE 1

Article 13

POWERS OF ARREST: SUPPLEMENTARY

*The Unlawful Drilling Act 1819 (c. 1)*

1. In section 2 (power to disperse unlawful meeting), omit “, or for any other person acting in their aid or assistance,”.

*The Railway Regulation Act 1842 (c. 55)*

2. Section 17 (punishment of persons guilty of misconduct) shall cease to have effect.

*The Companies Clauses Consolidation Act 1845 (c. 16)*

3. In section 156 (transient offenders) omit “, and all persons called by him to his assistance,”.

*The Railways Clauses Consolidation Act 1845 (c. 20)*

4. Sections 104 (detention of offenders) and 154 (transient offenders) shall cease to have effect.

*The Vagrancy (Ireland) Act 1847 (c. 84)*

5. Section 4 (power to apprehend offenders) shall cease to have effect.

*The Town Police Clauses Act 1847 (c.89)*

6. In section 28 (offences) omit the words from “and any constable” to “(that is to say)”.

*The Public Stores Act 1875 (c. 25)*

7. In section 12 (powers of arrest and search) subsection (1) shall cease to have effect.

*The Military Lands Act 1892 (c. 43)*

8. Section 17(2) (powers relating to breaches of byelaws) shall cease to have effect so far as it confers a power of arrest without warrant on a constable.

*The Summary Jurisdiction (Ireland) Act 1908 (c,24)*

9. In Article 9(1) (persons found drunk in charge of children omit “may be apprehended and”

*The Official Secrets Act 1911 (c. 28)*

10. Section 6 (power of arrest) shall cease to have effect.

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*The Game Preservation Act (Northern Ireland) 1928 (c.25)*

11. In section 2 (3) (power of police to enter on land) for “Article 27” substitute “Article 26”.

*The Criminal Justice (Northern Ireland) Act 1953 (c.14)*

12. Section 14 (proof of previous conviction by fingerprints) shall cease to have effect.

*The Criminal Law Act (Northern Ireland) 1967 (c. 18)*

13.—(1) In section 4 (penalties for assisting offenders)—

(a) in subsection (1)—

(i) for “an arrestable offence” substitute “a relevant offence”,

(ii) for “other arrestable offence” substitute “other relevant offence”,

(b) for subsection (1A) substitute—

“(1A) In this section and section 5, “relevant offence” means—

(a) an offence for which the sentence is fixed by law,

(b) an offence for which a person of 21 years 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).”,

(c) in subsection (2), for “an arrestable offence” substitute “a relevant offence”.

(2) In section 5 (penalties for concealing offences or giving false information), in subsection (1)—

(a) for “an arrestable offence” substitute “a relevant offence”,

(b) for “other arrestable offence” substitute “other relevant offence”.

*The Theft Act (Northern Ireland) 1969 (c. 16 (N.I.))*

14. In section 24 (going equipped for stealing etc.), omit subsection (4).

*The Immigration Act 1971 (c. 77)*

15. In section 28A (arrest without warrant), in each of subsections (1) and (9A), for “A constable or” substitute “An”.

*The Theft (Northern Ireland) Order 1978 (NI 23)*

16. In Article 5 (making off without payment), omit paragraph (4).

*The Customs and Excise Management Act 1979 (c. 2)*

17. In section 138 (provisions about arrest), in subsection (4)(c), after “Article 26” insert “or 26A”.

*The Diseases of Animals (Northern Ireland) Order 1981 (NI 22)*

18. In Article 42 (functions of constables)—

(a) in paragraph (4) for “Article 27” substitute “Article 26”;

- (b) omit paragraph (5); and
- (c) in paragraph (8) for the words before sub-paragraph (a) substitute “The offences to which this paragraph applies for the purposes of Article 19(1)(bb) of the Police and Criminal Evidence (Northern Ireland) Order 1989 are offences against this Order consisting of—”;
- (d) omit paragraph (9).

*The Aviation Security Act 1982 (c. 36)*

- 19.—(1) In section 13 (power to require aerodrome managers to promote searches at airports), in subsection (5)(c), for “27” substitute “26A”.
- (2) In section 28 (byelaws for designated airports), omit subsection (3).

*The Housing (Northern Ireland) Order 1983 (NI 15)*

20. In Part I of Schedule 3 (which sets out grounds upon which a court may order possession of dwelling-houses let under secure tenancies), in Ground 2, in paragraph (b)(ii), for “arrestable” substitute “indictable”.

*The Wildlife (Northern Ireland) Order 1985 (NI 2)*

21. In Article 25 (enforcement), in paragraph (2), for “Article 27” substitute “Article 26”.

*The Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (NI 11)*

22. In Article 4 (persons found on premises used for betting transactions) omit paragraph (3).

*The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 (NI 15)*

23. In Schedule 2 (control of sex establishments), omit paragraph 24.

*The Public Order (Northern Ireland) Order 1987 (NI 7)*

24. In Article 24 (powers of arrest) omit paragraphs (1) and (2).

*The Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12)*

- 25.—(1) In Article 2(2) (general interpretation) omit the definitions of “arrestable offence” and “serious arrestable offence”.

- (2) In Schedule 2 (preserved powers of arrest), omit—  
the entry relating to the Military Lands Act 1892 (c. 43),  
the entry relating to the Diseases of Animals (Northern Ireland) Order 1981,  
the entry relating to the Public Order (Northern Ireland) Order 1981.

*The Aviation and Maritime Security Act 1990 (c. 31)*

26. In section 22 (power to require harbour authorities to promote searches in harbour areas), in subsection (10)(c), for “27” substitute “26A”.

*The Criminal Justice and Public Order Act 1994 (c. 33)*

27.—(1) In section 68 (offence of aggravated trespass) omit subsection (4).

(2) In section 69 (powers to remove persons committing or participating in aggravated trespass) omit subsection (5).

(3) In section 140 (reciprocal powers of arrest), in subsection (5), for “Article 26(6) or (7) or 27” substitute “Article 26”.

*The Road Traffic (Northern Ireland) Order 1995 (NI)*

28. In Article 15 (driving etc. under influence of drink or drugs), omit paragraphs (6) and (7).

*The Reserve Forces Act 1996 (c. 14)*

29. In Schedule 2 (deserters and absentees without leave), omit paragraph 2(1).

*The Public Processions (Northern Ireland) Act 1998 (c.2)*

30. Section 15 (powers of arrest) shall cease to have effect.

*The Terrorism Act 2000 (c. 11)*

31. In Schedule 8 (detention), in paragraph 8 (which relates to the rights of a person detained under Schedule 7 to or section 41 of that Act) in sub-paragraph (9), omit the words “(in relation to England and Wales)” and the words from “and (in relation to Northern Ireland)” to “Order 1989”.

*The International Criminal Court Act 2001 (c. 17)*

32.—(1) In section 33 (entry, search and seizure), in subsection (2), omit “(in the case of Part 2 of the 1984 Act)” and the words “or (in the case of Part III of the 1989 Order) to a serious arrestable offence”.

(2) In section 62 (meaning of “ancillary offence” under the law of Northern Ireland), in subsection (5), in each of paragraphs (a) and (b), for “an arrestable offence” substitute “a relevant offence”.

*The Crime (International Co-operation) Act 2003 (c. 32)*

33.—(1) In section 16 (extension of statutory search powers in England and Wales and Northern Ireland), in subsection (3)—

(a) for “serious arrestable offences” substitute “indictable offences”,

(b) in paragraph (b), for “a serious arrestable offence” substitute “an indictable offence”.

(2) In section 17 (warrants in England and Wales or Northern Ireland)—

(a) in subsection (3)(b) after “(if it occurred in England and Wales)” insert “or Northern Ireland” and omit “or (if it occurred in Northern Ireland) constitute an arrestable offence”; and

(b) omit the definition of “arrestable offence”.

*The Gangmasters (Licensing) Act 2004 (c. 11)*

34. In Schedule 2 (application of Act to Northern Ireland), in paragraph 14, for “Article 26(4) and (5)” substitute “Article 26A”.

*The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19)*

35.—(1) In section 2 (entering U.K. without passport, etc.), in subsection (10), for “a constable or” substitute “an”.

(2) In section 35 (deportation or removal: cooperation), in subsection (5), for “a constable or” substitute “an”.

SCHEDULE 2

REPEALS

| Short Title   | Extent of repeal  |
|---|---|
| The Unlawful Drilling Act 1819 (c.1)  | In section 2 the words “, or for any other person acting in their aid or assistance”. |
| The Railway Regulation Act 1842 (c.55)  | Section 17.   |
| The Companies Clauses Consolidation Act 1845 (c.16)                                 | In section 156 the words “, and all persons called by him to his assistance”.         |
| The Railways Clauses Consolidation Act 1845 (c.20)                                  | Section 104.<br>Section 154.  |
| The Vagrancy (Ireland) Act 1847 (c.84)  | Section 4.  |
| The Town Police Clauses (Ireland) Act 1847 (c.89)                                   | In section 28 the words from “and any constable” to “(that is to say)”.               |
| The Public Stores Act 1875 (c.25)   | Section 12(1).  |
| The Summary Jurisdiction (Ireland) Act 1908 (c.24)                                  | Section 9(1) the words “may be apprehended and”.                                      |
| The Official Secrets Act 1911 (c.28)  | Section 6.  |
| The Criminal Justice (Northern Ireland) Act 1953 (c. 14)                            | Section 14.   |
| The Criminal Justice (Miscellaneous Provisions) (Northern Ireland) Act 1968 (c. 28) | Section 5.<br>Section 10.   |

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| Short Title   | Extent of repeal   |
|---|--|
| The Theft Act (Northern Ireland) 1969 (c.16)  | Section 24(4).   |
| The Theft (Northern Ireland) Order 1978 (NI 23)                                       | Article 5(4).  |
| The Diseases of Animals (Northern Ireland) Order 1981 (NI 22)                         | Article 42(9).   |
| The Aviation Security Act 1982 (c.36)   | Section 28(3).   |
| The Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 (NI 11)   | Article 4(3).  |
| The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985 (NI 15) | In Schedule 2, paragraph 24.   |
| The Public Order (Northern Ireland) Order 1987 (NI 7)                                 | Article 24(1) and (2).   |
| The Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12).               | <p>In Article 2(2), the definitions of “arrestable offence” and “serious arrestable offence”.</p> <p>In Article 17(2)(a)(i) the word “and” at the end.</p> <p>Article 27.</p> <p>In Article 60(1) the words “Subject to Article 66(12),”.</p> <p>In Article 65(a)(i) the word “or” at the end.</p> <p>In Article 66—</p> <ul style="list-style-type: none"> <li>(a) the word “such” in paragraphs (8), (9)(a) and (b) and in both places where it occurs in paragraph (10);</li> <li>(b) the words “of practice to which this Article applies” in paragraph (8A).</li> </ul> <p>Article 87.</p> <p>In Schedule 1, in paragraph 11(a) the words “to which the application relates”.</p> <p>In Schedule 2 the entries relating to the Town Police Clauses Act 1847, the Military Lands Act 1892, the Diseases of Animals (Northern Ireland) Order 1981 and the Public Order (Northern Ireland) Order 1987.</p> <p>Schedule 5.</p> <p>In Schedule 6, paragraph 5.</p> |

| Short Title   | Extent of repeal   |
|---|--|
| The Aviation and Maritime Security Act 1990 (c.31)                          | In Schedule 3, paragraph 11.   |
| The Criminal Justice and Public Order Act 1994 (c.33)                       | Section 68(4).<br>Section 69 (5).<br>Section 85(4) to (6).   |
| The Road Traffic (Northern Ireland) Order 1995 (NI 18)                      | Article 15(6) and (7).<br>In Schedule 3, paragraph 39.   |
| The Reserve Forces Act 1996 (c.14)  | In Schedule 2, paragraph 2(1).   |
| The Criminal Procedure and Investigations Act 1996 (c. 25)                  | Section 64<br>In Schedule 4, paragraph 27.   |
| The Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10)            | In Schedule 3, paragraph 36.   |
| The Criminal Justice (Northern Ireland) Order 1996 (NI 24)                  | Article 55.  |
| The Public Processions (Northern Ireland) Act 1998 (c.2)                    | Section 15.  |
| The Family Homes and Domestic Violence (Northern Ireland) Order 1998 (NI 6) | Article 26.  |
| The Terrorism Act 2000 (c.11)   | In Schedule 8, in paragraph 8(9), the words “(in relation to England and Wales)” and the words from “and (in relation to Northern Ireland)” to “Order 1989”.         |
| The Police (Northern Ireland) Act 2000 (c. 32)                              | Section 72(3).<br>In Schedule 6, paragraph 10(5).  |
| The Criminal Justice and Police Act 2001 (c.16)                             | Section 72.  |
| The International Criminal Court Act 2001 (c.17)                            | In section 33(2) the words “(in the case of Part 2 of the 1984 Act)” and the words “or (in the case of Part III of the 1989 Order) to a serious arrestable offence”. |
| The Anti-terrorism, Crime and Security Act 2001 (c. 24)                     | Section 82(2).<br>Section 95(2).   |
| The Police (Northern  | Section 43   |

*Police and Criminal Evidence (Amendment)*

| Short Title   | Extent of repeal                                |
|---|---|
| Ireland) Act 2003 (c.6)   |   |
| The Aviation (Offences) Act 2003 (c.19)                           | Section 1(2).                                   |
| The Communications Act 2003 (c.21)                                | Section 181(2).                                 |
| The Criminal Justice (Northern Ireland) Order 2003 (NI 13)        | Article 30.<br>In Schedule 1, paragraph 11      |
| The Criminal Justice (No.2) (Northern Ireland) Order 2003 (NI 18) | The whole Order                                 |
| The Justice (Northern Ireland) Act 2004 (c.4)                     | Section 15.                                     |
| The Domestic Violence, Crime and Victims Act 2004 (c.28)          | Section 10(2).<br>In Schedule 10, paragraph 29. |
| The Firearms (Northern Ireland) Order 2004 (NI 3).                | In Schedule 7, paragraph 12.                    |
| The Criminal Justice (No.2) (Northern Ireland) Order 2004 (NI 15) | Article 5(5).                                   |
| The Prevention of Terrorism Act 2005 (c.2)                        | Section 9(10).                                  |
| The Criminal Justice (Northern Ireland) Order 2005 (NI 15)        | Article 23                                      |
| The Firearms (Amendment) (Northern Ireland) Order 2005 (NI 16)    | Article 5(3).                                   |



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**PROPOSAL FOR A DRAFT POLICE & CRIMINAL EVIDENCE  
(AMENDMENT) (NORTHERN IRELAND) ORDER 2006**

**EXPLANATORY MEMORANDUM**

Comments on the proposal are invited and should be made to the address below  
before 14 June 2006

**Police Division  
Northern Ireland Office  
Room B4.22  
Block B, Level 4  
Castle Buildings  
Stormont Estate  
BELFAST  
BT4 3SU**

**March 2006**

**NORTHERN IRELAND OFFICE**

**PROPOSAL FOR A DRAFT ORDER IN COUNCIL UNDER PARAGRAPH  
1(1) OF THE SCHEDULE TO THE NORTHERN IRELAND ACT 2000**

**DRAFT POLICE & CRIMINAL EVIDENCE (AMENDMENT)  
(NORTHERN IRELAND) ORDER 2006**

**EXPLANATORY DOCUMENT**

This Explanatory Memorandum has been prepared by the Northern Ireland Office to assist the reader in the understanding of the proposed draft Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2006 and to help inform consideration of the proposals. It does not form part of the draft Order. It is not, and is not intended to be, a comprehensive description of the Order. Where an Article or part of an Article does not seem to require explanation or comment none is given.

Comments on the proposals should be submitted in writing to:

**Police Division  
Northern Ireland Office  
Police Powers Unit  
Room B4.22  
Block B, Level 4  
Castle Buildings  
Stormont Estate  
BELFAST  
BT4 3SU**

**Telephone: 028 90520090  
Fax: 028 9023322  
Textphone: 028 90527668  
E-mail: [policepowers@nio.x.gsi.gov.uk](mailto:policepowers@nio.x.gsi.gov.uk)**

**Written comments should be submitted by post, fax or e-mail to arrive no later than 14 June 2006.**

Further copies of the proposal and this document can be obtained free of charge from the above address. They may also be viewed or downloaded from the Northern Ireland Office consultation website: [www.nio.gov.uk](http://www.nio.gov.uk)

The proposal and this document can also be made available in different formats, for individuals with particular needs, on request. A text-phone facility is also available by phoning 028 90527668.

The Northern Ireland Office is committed to publishing a list of those who comment on these proposals and to make available, to anyone who asks for it, a copy of the

comments and of our response to them. If you do not wish your comments to be published in this way, you must make this clear in any response you submit.

If you have any questions concerning the documentation or the consultation process please contact the Police Powers Unit who will be pleased to assist you.

If you have any complaints or concerns about the consultation process, you should contact the Northern Ireland Office's consultation co-ordinator, Dr Jim Alford, on 02890 527015 or e-mail him at [jim.alford@nio.x.gsi.gov.uk](mailto:jim.alford@nio.x.gsi.gov.uk). Alternatively, you may wish to write to the address below:

Dr. Jim Alford  
Central Management Unit  
Northern Ireland Office  
Stormont House  
Stormont Estate  
Belfast  
BT4 3SH

## **BACKGROUND AND POLICY OBJECTIVES**

The Police and Criminal Evidence (Northern Ireland) Order 1989 and its associated Codes of Practice are vital parts of the framework of legislation providing the police with the powers they need to tackle and investigate crime.

The last major review of Police and Criminal Evidence (PACE) in Northern Ireland was carried out in 1995/1996. Since then police powers in England & Wales have been extensively revised in recent years mainly as a result of recommendations flowing from a fundamental review of the PACE Act and the accompanying Codes of Practice carried out jointly by the Home Office/ Cabinet Office in 2002/2003 and a further Home Office Consultation Paper entitled "Policing – Modernising Police Powers to meet Community Needs" published in August 2004. Many of the proposals in both consultation papers have now been enacted in England & Wales through the Criminal Justice Act 2003 and Serious Organised Crime and Police Act 2005. Consequently, the PACE provision in Northern Ireland is somewhat out of step with England & Wales.

The draft Order makes provision for the introduction of new police powers in addition to the extension and revision of the current provisions within the Police & Criminal Evidence (Northern Ireland) Order 1989 with the primary aim of bringing the PACE legislation and associated Codes of Practice in Northern Ireland more into line with the provisions currently available to police in England & Wales.

## **2. OVERVIEW OF THE PROVISIONS OF THE DRAFT ORDER**

Many of the provisions within the draft order mirror changes already made to the Police & Criminal Evidence Act 1984 which provides the legislative framework in England & Wales. The draft order includes provisions to:-

- (a) redefine the framework of arrest powers so that a police officer can arrest for any offence subject to a necessity test;
- (b) increase the range of search warrants which can be issued;
- (c) take fingerprints of a suspect elsewhere other than a police station for the purpose of confirming identity;
- (d) take a visual image of an arrested person elsewhere other than a police station;
- (e) take footwear impressions with or without the suspect's consent;
- (f) stop and search a person or vehicle and seize prohibited fireworks;
- (g) allow the review of detention without charge to be carried out by telephone or video-conferencing facilities;
- (h) extend powers to take fingerprints without consent;
- (i) lower police authorisation levels for taking of intimate and non-intimate samples;

- (j) extend the scope for the speculative searches of fingerprints and other samples;
- (k) simplify the procedure for issuing and revising codes of practice.

### **3. CONSULTATION**

As part of the review of PACE in Northern Ireland, the Department has held extensive discussions with the Police Service of Northern Ireland and other main stakeholders. All are generally supportive of the proposed policy changes.

### **4. EUROPEAN CONVENTION ON HUMAN RIGHTS**

The provisions of the Order are compatible with the Convention on Human Rights.

### **5. EQUALITY IMPACT ASSESSMENT**

Impact Assessment screenings were carried out on the proposals. The Equality of Opportunity screening on the proposed policy concluded that a full equality impact assessment was not required. There would, therefore, be no significant adverse impact on any of the groups listed in Section 75 of the Northern Ireland Act 1998.

### **6. SUMMARY OF THE REGULATORY IMPACT**

The proposals are not considered likely to impose a new cost or saving on businesses, charities or the voluntary sector. Therefore, in line with the Cabinet Office guidance, a Regulatory Impact Assessment is considered unnecessary.

### **7. COMMENTARY ON PROVISIONS**

#### **Article 3: Prohibited fireworks**

This amendment provides for the police to stop and search a person or vehicle and seize fireworks in cases where they have reasonable suspicion that possession is in contravention of a prohibition imposed by the current fireworks regulations.

#### **Article 5 & 6: Search warrants**

These Articles contain amendments increasing the range of search warrants which can be issued. In addition to the current warrant issued for one specified premises, warrants will also be available for multiple specified premises and for all premises “owned or occupied by” an individual whether or not all addresses are known at the time of the application. It also allows for a warrant to authorise access on more than one occasion.

#### **Article 7: Search warrants - safeguards**

This amendment builds on existing safeguards and protections and provides for a greater requirement on police to provide specific information when making an application for a search warrant. In addition, the Lay Magistrate must also be satisfied in the first instance of the need for a particular type of warrant and requires the applicant to justify the need for a warrant to be issued.

### **Article 8: Execution of warrants**

This Article provides for persons authorised to accompany police officers in the execution of a search warrant to have the same powers as a constable for the purposes of executing the warrant and the seizure of material, but only if they are accompanied and supervised by police officers.

It also extends the lifetime of warrants from one month to three months from application and provides that no premises may be entered or searched for the second or any subsequent times without the written authority of an officer of at least inspector rank.

### **Article 13: Powers of arrests**

This Article introduces new proposals providing a power of arrest for all offences based on the concept of necessity.

Under the current provisions, only specific offences are subject to a power of arrest under PACE based on the principle of seriousness. In the case of an arrest under the general arrest conditions, the constable is required to justify why an arrest is necessary. Although relatively successful the basis of arrest remains diverse and is not always straightforward or clear to police officers or members of the public when and if the power of arrest exists for offences at the lower end of seriousness.

The new proposals require a police officer to consider the necessity for arrest in order to decide whether to affect an arrest. This will mean the abolition of the current concept of arrestable and serious arrestable offences and provide police with a power of arrest for all offences, if considered necessary. A new Code of Practice on arrest will also be introduced to clarify the necessity principle.

This Article also deals with the powers of arrest for people who are not constables and aims to provide greater clarity on the particular situations when a person other than a constable can affect a citizen's arrest.

### **Article 14: Fingerprinting of certain offenders**

This Article provides police with the power to retake fingerprints from a person convicted or cautioned for a recordable offence if the fingerprints taken previously were found to be incomplete or of insufficient quality.

### **Article 17: Use of telephone for review of detention**

The effect of this Article is to allow police to carry out the periodic review of a person's detention in police custody over the telephone.

### **Article 20: Use of video-conferencing facilities for decisions about detention**

This Article provides police with the ability to perform certain custody officer functions at a non-designated police station through the use of video-conferencing facilities. It also allows for a review of a person's detention at a police station to be carried by the use of these facilities.

**Article 21: Bail after arrest**

This article removes the current requirement for a person released on police bail to attend back at a police station on a date not later than 28 days from the date the person is released.

**Article 23: Intimate samples**

This Article has the effect of lowering the authorisation level for the taking of intimate samples from a superintendent to an inspector.

**Article 27: Fingerprinting**

This Article provides police with the power to retake fingerprints from a person if the fingerprints taken previously in the course of the investigation were found to be incomplete or of insufficient quality. A similar power will also apply to a person cautioned if, at the time of the caution, the offence was admitted by the person.

A further amendment extends the existing powers allowing police to take fingerprints without consent at a court or police station for the purposes of confirming a person's identity.

**Article 28: Impressions of footwear**

This Article provides for the taking, retention and use of footwear impressions on the same statutory footing as fingerprints and DNA.

**Article 29: Intimate samples**

This Article has the effect of lowering the authorisation level for the taking of intimate samples from a superintendent to an inspector.

**Article 30: Non-intimate samples**

This Article has the effect of lowering the authorisation level for the taking of non-intimate samples without consent from a superintendent to an inspector.

It also provides a provision requiring a device for taking of a skin impression electronically to be approved for this purpose by the Secretary of State.

**Article 31: Fingerprints and samples: supplementary**

This Article provides for fingerprints, footwear impressions and samples taken from a person arrested on suspicion of being involved in a recordable offence or charged with or reported for such an offence to be subject to a speculative search against other databases maintained by other law-enforcement authorities.

The Article also provides for a speculative search in other circumstances but only if the person consents in writing.

**Article 32: Destruction of fingerprints and samples**

This Article makes consequential amendments to existing provisions covering destruction of fingerprints and samples to take account of the new powers to take impressions of footwear.

There is also an amendment allowing fingerprints and DNA samples from deceased persons or body parts to be checked against databases for identification purposes.

### **Article 33: Photographing of suspects**

This Article has the effect of extending the range of circumstances in which a visual image of a person may be taken elsewhere than at a police station with or without their consent. The Article will also allow police to retain moving images for identification purposes.

### **Article 34 & 35: Codes of Practice**

This Article has the effect of simplifying the current procedure for the introduction and revisions to the codes of practice. It provides for a more limited consultation by a specified group of stakeholders.

### **Schedule 1: Powers of Arrest: Supplementary**

This schedule makes consequential amendments and specific repeals to a range of legislation resulting from the abolition of arrestable and serious arrestable offences.

### **Schedule 2: Repeals**

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