

**CODE OF PRACTICE (NORTHERN IRELAND) FOR THE AUTHORISATION AND EXERCISE OF
STOP AND SEARCH POWERS RELATING TO SECTION 47A OF SCHEDULE 6B TO THE
TERRORISM ACT 2000**

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Presented to Parliament pursuant to section 47B(5) of the Terrorism Act 2000

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CODE OF PRACTICE

**TERRORISM ACT 2000 (ISSUED UNDER S47B AS ENACTED BY THE
TERRORISM ACT 2000 (REMEDIAL) ORDER 2011**

**CODE FOR THE AUTHORISATION AND EXERCISE OF STOP AND SEARCH
POWERS IN NORTHERN IRELAND RELATING TO SECTION 47A OF
SCHEDULE 6B TO THE TERRORISM ACT 2000**

Commencement – Transitional Arrangements

This Code applies to the authorisation and exercise of the powers contained in Section 47A and Schedule 6B to the Terrorism Act 2000 (as amended by the Terrorism Act 2000 (Remedial) Order 2011), after 00:00:01 hours on March 18th 2011.

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Code of Practice on Terrorism Stop and Search Powers in Northern Ireland.

1 This Code of Practice deals with the exercise by police officers of the following powers of stop and search:

- section 47A of the Terrorism Act 2000 (searches in specified areas or places).¹
- Schedule 6B to the Terrorism Act 2000 (searches in specific areas or places-supplementary).

2 Commencement

2.1 This Code applies to any search governed by this code by a police officer which commences after 00:00:01hrs on 18 March 2011.

3. The Purpose of this Code is:

3.1 To set out the basic principles that underpin the powers of a senior police officer to make an authorisation under section 47A of and Schedule 6B to the Terrorism Act 2000, and of police constables to search a person or vehicle under those provisions.

3.2 To reflect that these powers entirely replace those previously found in sections 44-47 of the 2000 Act and are not simply a modification of those provisions. As such they carry different criteria for both authorisation and use.

3.3 To provide clarity that the threshold for making an authorisation is higher under the new powers and the way in which the powers may be exercised is also different. There is far greater circumscription in the use of these powers and the

¹ The Terrorism Act 2000 (Remedial Order) 2011 makes non-textual amendments to the Terrorism Act 2000. It provides that the 2000 Act is to have effect as if sections 44 to 47 of that Act are repealed and as if sections 47A to 47C and Schedule 6B were inserted into that Act.

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manner in which these powers are to be implemented by the police. Section 47A powers should only be authorised where other powers or measures are insufficient to deal with the threat and, even where authorised, officers should still consider whether section 47A powers are the most appropriate to use.

3.4 To promote the fundamental principles to be observed by the police and to preserve the effectiveness of, and public confidence in, the use of police powers to stop and search. If these fundamental principles are not observed, public confidence in the use of these powers to stop and search may be affected. Failure to use the powers in the proper manner also reduces their effectiveness. Properly used, stop and search can play an important role in preventing acts of terrorism and in bringing terrorists to justice.

3.5 To ensure that the intrusion on the liberty of the person stopped and searched is as limited as possible and to clarify that detention for the purposes of a search should take place at or near the location of the stop and last only as long as necessary.

3.6 To set out that those using the powers may be required to justify the use of such powers, in relation both to individual searches and the overall pattern of their activity in this regard, to their supervisory officers or in court. Any misuse of the powers is likely to be harmful to counter-terrorism policing and lead to mistrust of the police. Officers must also be able to explain their actions to the member of the public searched. The misuse of these powers can lead to disciplinary action. Proportionate use of the powers can contribute towards the primary purpose of counter-terrorism work: ensuring the safety of the public.

3.7 To reiterate guidance found in PACE Code A that officers must not search a person, even with his or her consent, where no power to search is applicable. Even where a person is prepared to submit to a search voluntarily, the person must not be searched unless the necessary legal power exists, and the search must be in accordance with the relevant power and the provisions of this Code. The only

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exception, where an officer does not require a specific power, applies to searches of persons entering sports grounds or other premises carried out with their consent given as a condition of entry.

4 General

4.1 This Code governs the exercise by police officers of statutory powers to stop and search a vehicle or a person under section 47A of the Terrorism Act 2000, with or without reasonable suspicion that there is anything which may constitute evidence that the vehicle is being used for terrorism or, as the case may be, that the person is a terrorist (that is, that they are or have been concerned in the commission, preparation or instigation of acts of terrorism). The Act has been amended following the case of *Gillan and Quinton v UK* where the ECtHR found that section 44 breached Article 8 of the ECHR because it was capable of being used arbitrarily.

4.2 This Code does not apply to other powers of stop and search under other legislation.

4.3 This Code of practice must be readily available at all police stations for consultation by police officers, detained persons and members of the public.

4.4 The notes for guidance included are not provisions of this Code, but are guidance to police officers and others about its application and interpretation. Provisions in the annexes to the Code are provisions of this Code. This Code of practice comes into effect on 18 March 2011.

4.5 This Code of practice is issued under section 47B of the Terrorism Act 2000.

4.6 The effect of this Code is set out in section 47C of the Terrorism Act 2000: constables must have regard to the Code and the Code is admissible in criminal or civil proceedings (although a breach of the Code itself does not make a person liable to any such proceedings).

5 General principles governing stop and search

5.1 Powers to stop and search must be used fairly, responsibly, with respect for people being searched and without discrimination on the grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender, disability or whether or not they have dependents. At all times PSNI should have regard to their obligations under sections 75 and 76 of the Northern Ireland Act 1998 (the duties not to discriminate, and to promote equality of opportunity and good relations).

5.2 The powers must not be used to stop and search for reasons unconnected with terrorism. The intrusion on the liberty of the person stopped or searched must be as brief as possible and detention for the purpose of search must take place at or near the location of the place where the person or vehicle is stopped.

5.3 If these fundamental principles are not observed the use of powers to stop and search may be drawn into question. Failure to use the powers in the proper manner reduces their effectiveness and may expose officers to legal challenge. Stop and search can play an important role in the detection and prevention of crime, and using the powers fairly makes them more effective.

5.4 The primary purpose of stop and search powers under Part V of the Terrorism Act 2000 is to protect the public by enabling police officers to prevent and detect acts of terrorism. Officers may be required to justify the use or authorisation of such powers, in relation both to individual searches and the overall pattern of their activity in this regard, to their supervisory officers or in court. Any misuse of the powers is likely to be harmful to policing and lead to mistrust of the police. Officers must also be able to explain their actions to the member of the public searched. The misuse of these powers can lead to disciplinary action.

5.5 An officer must not search a person, even with his or her consent, without a lawful power of search. Even where a person is prepared to submit to a search voluntarily, the person must not be searched unless the necessary legal power exists, and the search must be in accordance with the relevant power and the provisions of the relevant Code. The only exception, where an officer does not require a specific power, applies to searches of persons entering sports grounds or venues or other premises carried out with their consent given as a condition of entry.

6 Authorisations under section 47A of the Terrorism Act 2000

6.1 A senior police officer of the rank of Assistant Chief Constable or above, may authorise the use of the following powers to stop and search, in relation to a specified area or place, without reasonable suspicion:

- (a) under section 47A(2) of the Terrorism Act 2000, to give a constable in uniform power to stop and search any vehicle, its driver, any passenger in the vehicle and anything in or on the vehicle or carried by the driver or any passenger; and
- (b) under section 47A(3) of the Terrorism Act 2000, to give a constable in uniform power to stop and search any pedestrian and anything carried by the pedestrian.

6.2 An authorisation may authorise searches under either section 47A(2), section 47A(3), or both.

6.3 In order to make an authorisation, the senior police officer must reasonably suspect that an act of terrorism will take place; and consider that:

- (a) the authorisation is necessary to prevent such an attack;
 - (b) the specified area is no greater than is necessary to prevent such an attack;
- and

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(c) the duration of the authorisation is no longer than is necessary to prevent such an attack.

6.4 Terrorism is defined by section 1 of the Terrorism Act 2000 as the use or threat of action which is:

- Designed to influence the government or an international governmental organisation, or intimidate the public or a section of the public, and
- made for the purpose of advancing a political, religious, racial or ideological cause, and
 - Where the action used or threatened:
 - involves serious violence against a person or serious damage to property
 - endangers a person's life, other than that of the person committing the action
 - creates a serious risk to the health or safety of the public or a section of the public, or
 - is designed seriously to interfere with or seriously to disrupt an electronic system.

6.5. Where the use or threat of such action involves the use of firearms or explosives, it is terrorism whether or not it is designed to influence the government or an international governmental organisation or intimidate the public or a section of the public.

6.6 An act of terrorism may be a terrorist attack, but it may also include acts which may lead to an attack.

6.7 An authorisation may relate to a single suspected act of terrorism, but where there are multiple threats it may be appropriate for these to be considered together

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and a single authorisation made that takes into account all relevant information.

Such an authorisation could relate to:

- multiple threats by different terrorist groups in the same or different areas;
- multiple threats by a single terrorist group in the same or different areas;
- multiple threats occurring at the same time, or over a short period of time; and/or
- multiple threats that are linked in some other way (for example, all relating to a particular event)

6.8 The powers should therefore **not** be authorised solely on the basis that there is a general high threat from terrorism or that a particular site or event is deemed to be “high risk” or vulnerable. However, both these factors may be taken into account when deciding whether to make an authorisation, especially where intelligence about an attack is limited in terms of the potential target or attack method. An authorisation should not be given on the basis that the use of the powers provides public reassurance or that the powers are a useful deterrent or intelligence-gathering tool.

6.9 An authorising police officer must also be satisfied that the powers are ‘necessary’ to prevent such an act of terrorism and that only the use of these powers will be sufficient to meet the perceived threat. He or she should also consider whether section 47A is the most appropriate powers to use in the circumstances. In determining whether or not the use of the powers is necessary the senior police officer must take into account not just available information on the threat from terrorism, but also:

- the proportionality of the use of no reasonable suspicion search powers;
- that searches (if authorised) may be exercised only for the purpose of discovering whether there is anything that may constitute evidence that the vehicle being searched is being used for the purposes of terrorism, or the person being searched is or has been concerned in the commission, preparation or instigation of acts of terrorism;
- the suitability of other search powers including those that require reasonable suspicion;

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- the safety of the public;
- the safety of officers;
- serious damage to property.

6.10 When giving an authorisation, the officer must specify the geographical area in which the power may be used, and the time and date that the authorisation ends (up to a maximum of 14 days from the time the authorisation was given). Both the duration and the geographical extent of an authorisation must be no larger than is necessary to prevent an act of terrorism and based on an assessment of the available information.

6.11 In determining what is necessary in terms of duration and geography the senior police officer should make an assessment in the round about what is the most appropriate operational response, taking into account all relevant factors. Relevant factors would always include information about the particular threat and suspected terrorist activity (and any known information about its likely scope and duration). It could also include but should not be restricted to:

- known terrorist tactics and capabilities;
- recent terrorist activity, including (but not limited to) acts of terrorism;
- particular sites or events that are deemed to be “high risk” or vulnerable;
- the possibility that terrorists could change their target or tactics.

6.12 An authorisation can be granted to apply to all or part of a police area, but only if the identified threat makes it necessary. Police areas cover inland waters such as lakes, reservoirs and rivers and extend to the low water line at the coast. Police areas do not cover the sea below the low water line. An authorisation can cover any internal waters adjacent to the area of the authorisation. An authorisation may also be granted that only covers a specified area of internal waters.

6.13 In principle, section 47A enables an authorisation to cover the whole of Northern Ireland, and to last for a maximum of 14 days. As with all authorisations, any authorisation for the use of the powers that extends to the whole of Northern

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Ireland or for the maximum 14 days must be justified in terms of its necessity in relation to the particular threat. But the mere fact that there are two or more threats may not in itself be sufficient to justify extension throughout Northern Ireland. Where different areas or places are specified within one authorisation, different time periods may be specified in relation to each of these areas or places. The time period necessary for each area will need to be considered and justified. However, where an authorisation responds to multiple threats in different places across a period of time it is more likely that an authorisation for the maximum area and period of time would meet the necessity test. In other cases, separate and tailored authorisations for a number of threats will be appropriate.

6.14 The authorising officer should consider how the powers are intended to be used. This may include the use of vehicle checkpoints, stops and searches of individuals entering or at particular sites in circumstances that relate to an assessed threat. The authorising officer should indicate whether officers will be instructed to conduct stops and searches on the basis of particular indicators (e.g. behavioural indicators, types of items carried or clothes worn, types of vehicles etc), or whether the powers will be exercised on a random basis. If the powers are to be exercised on the basis of an indicator, the indicator should be specified.

6.15 An authorisation may be given orally at first, but it must be confirmed in writing by the officer who gave it as soon as reasonably practicable. The officer giving an authorisation under section 47A (1) must cause the Secretary of State to be informed, as soon as reasonably practicable, that such an authorisation has been given. An authorisation which is not confirmed by the Secretary of State within 48 hours of its having been given, shall have effect up until the end of that 48 hour period or the end of the period specified in the authorisation (whichever is the earlier).

6.16 If there is a significant change in the nature of the particular threat, or the authorising officer's understanding of it, it will be appropriate to seek a new authorisation or to cancel a previous authorisation. Where a single authorisation

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deals with multiple threats a senior police officer should review it as soon as is reasonably practicable after the significant change to assess whether or not the use of the powers as authorised remains necessary to prevent an act of terrorism, or if amendment is required. If the authorising officer no longer holds the reasonable suspicion upon which he originally made an authorisation, he must cancel the authorisation immediately and inform the Secretary of State.

6.17 The following information should be provided to the Secretary of State in support of an authorisation:

6.18 **Intelligence Picture:** The authorising officer should provide a detailed account of the intelligence which has given rise to reasonable suspicion that an act of terrorism will take place. This should include classified material where it exists.

6.19 If an authorisation is one which covers a similar geographical area to one which immediately preceded it, an authorisation must be based on a fresh assessment of the available information. If previous information remains relevant there should be a confirmation that it has been reassessed and is considered relevant and why.

6.20 **Geographical Extent:** Detailed information should be provided to identify the geographical area(s) or place(s) covered by the authorisation and why it is no wider than is necessary. If helpful in describing the area covered by the authorisation, maps should be included.

6.21 **Duration:** The **maximum** period for an authorisation is 14 days, and authorisations should not be made for the maximum period unless it is necessary to do so based on the intelligence about the particular threat. Justification should be provided for the length of an authorisation, setting out why that time period has been sought. If an authorisation is one which is similar to another immediately preceding it, information should be provided as to why a new authorisation is justified (for example, why the period of the initial authorisation was not sufficient). However, this

is not necessary if an authorisation is similar in duration and extent to a preceding authorisation, but relates to different threat information.

6.22 The duration and the geographical extent should not be greater than is necessary or justified to prevent the act or acts of terrorism which rendered the authorisation necessary.

6.23 **Briefing Provided:** Information should be provided which demonstrates that all officers involved in exercising section 47A powers receive appropriate briefing on the use of the powers, including the provisions of the this Code and the broad reason for the use of the powers.

6.24 **Tactical Deployment:** The authorising officer should provide information about how the powers are intended to be used and why particular types of operations may be necessary. This may include the use of vehicle checkpoints, stops and searches of individuals entering leaving or at particular sites in circumstances that relate to an assessed threat and whether or not searches are intended to be conducted randomly or where there are grounds for search.

6.25 Following notification of the authorisation, the Secretary of State may:

- (i) cancel the authorisation with immediate effect or with effect from such other time as he or she may direct;
- (ii) confirm it but for a shorter period than that specified in the authorisation or for a different geographical area; or
- (iii) confirm the authorisation as given.

6.26 The legislation provides that once an authorisation has expired, a new authorisation may be made. A new authorisation covering the same or substantially the same areas or places as a previous authorisation may be made if:

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- a) the intelligence which informed the initial authorisation has been subject to fresh assessment and the officer giving the authorisation is satisfied that the test for authorisation is still met on the basis of that assessment; and/or
- b) there is information of a new or different threat and the officer giving the authorisation is satisfied that an authorisation covering the same or substantially the same areas or places as a previous authorisation is justified.

6.27 If a fresh assessment of the intelligence supports a revision of the area(s) or place(s) authorised, or a shortening of the duration of any part of the authorisation, then this should be done.

6.28 An authorisation renewed continuously on the basis of a general threat is not justifiable under these provisions.

Information for Authorising Officers

6.29 Authorisations under section 47A of the Terrorism Act 2000 may only be given by officers of at least the rank of Assistant Chief Constable. Authorising officers must be either substantive or temporarily promoted into the qualifying rank. Officers who are acting in the rank may not grant authorities.

6.30 An authorisation may be given orally or in writing. If given orally, the authorisation must be confirmed in writing as soon as possible. All authorisations must include the time and date they were given and the time or date of expiry (or, times or dates where more than one area is authorised and where applicable). This must be no later than 14 days from the date on which the authorisation was granted (although the maximum 14 days may only be authorised where necessary to prevent the particular threat(s)). An authorisation must specify an end time no later than 23.59hrs on the 14th day after it was given (or if only the date is given, that date must be the 14th day – and the time will be taken as 23:59hrs on that date).

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6.31 For example, if an authorisation is made at 08.00hrs on the 1st November, the specified end time must be no later than 23.59hrs on the 14th November.

6.32 The authorising officer must inform the Secretary of State as soon as reasonably practicable that an authorisation under section 47A of the Terrorism Act 2000 has been made.

6.33 Authorisations begin at the point at which they are signed, or when they are given orally by the authorising officer. The written authorisation, or written confirmation of an oral authorisation, must state the time at which the authorising officer gave it. In the case of a new authorisation, an authorisation can be given before the expiry of the previous one if necessary.

6.34 When a section 47A authorisation has been granted, the authorising officer should ensure that police officers who will take part in any subsequent stop and search operations are aware of it. The authorising officer should ensure that relevant police officers are briefed of the fact of the authorisation, its intended use and the section 47A powers. Officers should also be briefed on the availability of other powers and the circumstances in which these may be more appropriate.

6.35 Authorisations remain lawful for up to forty-eight hours without Secretary of State approval. If the authorisation is not confirmed within a forty-eight hour period, it ceases to have effect at the end of the forty-eight hours. If confirmed, the authorisation remains lawful until the expiry time specified by the authorising officer or an earlier time substituted by the Secretary of State.

6.36 A police officer of the appropriate rank may authorise the use of section 47A powers for less than forty-eight hours, and in these instances there is no statutory legal requirement for Secretary of State confirmation. There is, however, a statutory requirement that the Secretary of State is informed about an authorisation – regardless of its duration – as soon as is reasonably practicable after it has been given. The authorising officer should inform the Secretary of State that he intends to

make such an authorisation in advance of doing so, unless this is not possible because of the urgent nature of the threat. The authorising officer should also ensure that the supporting details for such an authorisation are made available to the Secretary of State in the same way as for an authorisation lasting for longer than 48 hours.

6.37 Continuous use of 48 hour-long authorisations, whereby the powers could remain in force on a “rolling” basis without requiring confirmation by the Secretary of State, is not justifiable and would constitute an abuse of the provisions.

7 Briefing and Tasking

7.1 Officers should use the information provided in a briefing to influence their decision to stop and search an individual. Officers should also be fully briefed on and aware of the differences between searches under sections 43 and 47A of the Terrorism Act 2000, and the circumstances in which it is appropriate to use these powers.

7.2 These Terrorism Act 2000 powers of search should only be used by officers who have been provided with information about their use. Police services may provide this information by training or briefing.

7.3 Officers should be reminded that other powers of stop and search (including powers exercisable on reasonable suspicion) may be more appropriate to use.

7.4 Officers should be reminded of the need to record information and provide anyone who is stopped and searched, or whose vehicle is stopped and searched, with written confirmation that the stop and search took place and details of the powers used. Accurate recording of information is essential in order to monitor the use of the powers, safeguard against misuse and provide individuals with information about the powers which have been used.

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7.5 The briefing should make officers aware of relevant current information and intelligence including current threats to relevant locations. Briefings should be as comprehensive as possible in order to ensure officers understand the nature and justification of the operation (which will in turn help officers to understand what evidence they are looking for in the course of a search), while recognising that the narrow circumstances in which section 47A will be used mean that it may not be appropriate to communicate highly sensitive intelligence to all officers.

7.6 Officers should be reminded of the purpose for exercising the powers i.e. only for the purpose of discovering whether there is anything that may constitute evidence that the vehicle being searched is being used for the purposes of terrorism, or the individual being searched is a terrorist. The purpose of the search must therefore be to look for items which connect the vehicle or individual being searched to terrorism, rather than generally for items which could be used (e.g. by another individual in different circumstances) in connection with terrorism. However, if during the course of a search, items are discovered which constitute evidence of other crimes, they may be seized using Article 21 of PACE or other appropriate power.

7.7 Briefings should also provide officers with a form of words that they can use when explaining the use of stop and search powers under the Terrorism Act 2000. Officers should be reminded at the briefing of the importance of providing the public with as much information about why the stop and search is being undertaken. The following list can help officers to explain the use of the powers when dealing with the public:

- The power that is being used;
- That if authorised, the powers conferred by section 47A can be exercised whether or not there is reasonable suspicion;
- What the operation is seeking to do, e.g., to prevent terrorist activity in response to a specific threat;
- Why the person was selected to be searched;

- What entitlements the person has.

7.8 In order to demonstrate that the powers are used appropriately and proportionately, the briefing process must be robust and auditable. All officers involved in the process should be reminded that they are fully accountable in law for their own actions.

7.9 Officers should be given clear instructions about where and when they should use their powers. If a section 47A authorisation is in place, officers should be clearly tasked so that the power is used appropriately and proportionately.

7.10 There may be exceptional circumstances where it is impractical to brief officers before they are deployed. Where this occurs, supervisors should provide officers with a briefing as soon as possible after deployment.

8 Conduct of searches

8.1 The powers under 47A of the Terrorism Act 2000 allow a constable to conduct searches where an authorisation is in place. The constable may stop and search a person or a vehicle in a specified area or place for evidence that a person is or has been concerned in the commission, preparation or instigation of acts of terrorism, or (as the case may be) evidence that the vehicle is being used for the purposes of terrorism (section 47A).

8.2 However, this would not prevent a search being carried out under other powers if, in the course of exercising these powers, the officer formed reasonable grounds for suspicion.

8.3 Where an authorisation is in place enabling searches under section 47A, police officers should consider whether other powers of stop and search (including powers exercisable on reasonable suspicion) may be more appropriate to use.

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8.4 Where a person or vehicle is being searched without reasonable suspicion under section 47A there must be a reason why that person has been selected for search. Reasons could include but are not limited to:

- that random searches are being undertaken as part of a planned operation;
- that something in the behaviour of a person or the way a vehicle is being driven has given cause for concern;
- the terms of a briefing provided;
- the answers made to questions about the person's behaviour or presence have given cause for concern.

8.5 There is no power to stop or detain a person in order to find grounds for a search (though this does not prevent police officers exercising other lawful powers to stop and question a person). Police officers have many encounters with members of the public which do not involve detaining people against their will.

8.6 All stops and searches must be carried out with courtesy, consideration and respect for the person concerned. This has a significant impact on public confidence in the police. Every reasonable effort must be made to minimise the embarrassment that a person being searched may experience. [See Note 4].

8.7 The co-operation of the person to be searched must be sought in every case, even if the person initially objects to the search. A forcible search may be made only if it has been established that the person is unwilling to co-operate or resists. Reasonable force may be used as a last resort if necessary to conduct a search or to detain a person or vehicle for the purposes of a search.

8.8 The length of time for which a person or vehicle may be detained must be the minimum required to reasonably permit the search to be carried out. [See Note 5]. In the case of searches under section 47A officers may make any reasonable search to look for items for which they are empowered to search.

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8.9 The search must be carried out at or nearby the place where the person or vehicle was first detained. [See Note 6].

8.10 There is no power to require a person to remove any clothing in public other than an outer coat, jacket, headgear or gloves except under paragraph 1 of Schedule 6B to the Terrorism Act 2000 (which empowers a constable conducting a search under section 47A of that Act to require a person to also remove footwear in public) [See Notes 4 and 6]. A search in public of a person's clothing which has not been removed must be restricted to superficial examination of outer garments. This does not, however, prevent an officer from placing his or her hand inside the pockets of the outer clothing, or feeling round the inside of collars, socks and shoes if this is reasonably necessary in the circumstances to look for the object of the search or to remove and examine any item reasonably suspected to be the object of the search. For the same reasons, a person's hair may also be searched in public.

8.11 Where on reasonable grounds it is considered necessary to conduct a more thorough search (e.g. by requiring a person to take off a T-shirt), this must be done out of public view, for example, in a police van or police station if there is one nearby. [See Note 6]. Any search involving the removal of more than an outer coat, jacket, gloves, headgear or footwear, or any other item concealing identity, should preferably be made by an officer of the same sex as the person searched. [See Notes 4, 7 and 8].

8.12 Stops and searches under 47A may be carried out in any part of United Kingdom territorial waters specified in the authorisation.

Steps to be taken prior to a search

8.13 Before any search of a detained person or attended vehicle takes place the officer must take reasonable steps to give the person to be searched or in charge of the vehicle the following information:

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- (a) that they are being detained for the purposes of a search;
- (b) the officer's warrant or other identification number shall be given and the name of the police station to which the officer is attached;
- (c) the legal search power which is being exercised; and
- (d) a clear explanation of:-
 - (i) the purpose of the search in terms of the article or articles for which there is a power to search; and
 - (ii) in the case of a search under section 47A the nature of the power and of any necessary authorisation and the fact that it has been given.

8.14 Stops and searches under section 47A may be undertaken only by a constable in uniform.

8.15 Before the search takes place the officer must inform the person (or the owner or person in charge of the vehicle that is to be searched) of his or her entitlement to a copy of the record of the search, including his entitlement to a record of the search if an application is made within 12 months, if it is wholly impracticable to make a record at the time. If a record is not made at the time the person should also be told how a copy can be obtained [see note 12].

8.16 If the person to be searched, or in charge of a vehicle to be searched, does not appear to understand what is being said, the officer must take reasonable steps to bring the information regarding the person's rights to his or her attention. If the person is deaf or cannot understand English and is accompanied by someone, then the officer must try to establish whether that person can interpret or otherwise help the officer to give the required information.

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8.17 When undertaking any search, officers should always consider their own safety and the health and safety of others. Officers should have an appropriate level of personal safety to keep themselves and the public safe.

8.18 Police officers can stop and search someone taking photographs just as they can stop and search any other member of the public in the proper exercise of their discretion in accordance with the legislation and provisions of this Code. However an authorisation in itself does not prohibit the taking of photographs or digital images.

8.19 If officers reasonably suspect that photographs are being taken as part of hostile terrorist reconnaissance, a search under section 43 or an arrest should be considered. Film and memory cards may be seized as part of the search if the officer reasonably suspects they are evidence that the person is a terrorist, or a vehicle is being used for the purposes of terrorism, but officers do not have a legal power to delete images or destroy film. Cameras and other devices should be left in the state they were found and forwarded to appropriately trained staff for forensic examination. The person being searched should never be asked or allowed to turn the device on or off because of the danger of evidence being lost or damaged.

8.20 Individuals should not be prevented from photographing police officers under terrorism stop and search powers. Seizures of cameras etc. may only be made, following a search, where the officer reasonably suspects that they constitute evidence that the person is a terrorist or that the vehicle is being used for the purposes of terrorism as the case may be.

9 Recording requirements

9.1 An officer who has carried out a search must make a record unless it is not practicable to do so, on account of the numbers to be searched or for some other operational reason, such as situations involving public disorder. The record must be completed as soon as practicable, preferably on the spot, unless circumstances (e.g. other immediate duties or very bad weather) make this impracticable. [See note 12].

9.2 Except in the circumstances set out in paragraph 9.11, a copy of a record made at the time must be given immediately to the person who has been searched. In all cases the officer must ask for the name, address and date of birth of the person searched, but there is no obligation on a person to provide these details, unless they are obliged to provide it under other relevant legislation and no power of detention if the person is unwilling to do so.

9.3 Where, in accordance with paragraph 9.11, a unique reference number is to be given instead of a copy of the record, this reference must be given immediately to the person who has been searched. It must state how the full record can be accessed. When providing such a reference, the officer must inform the person that the full record is available and how the full record can be accessed. The person may request a copy within 12 months from the date of the search. The full record must comply with paragraph 9.4 of this Code.

9.4 The following information must always be included in the record of a search even if the person does not wish to provide any personal details:

- (i) the name of the person searched, or (if it is withheld) a description;
- (ii) when a vehicle is searched, its registration number; [See Note 10];
- (iii) the date, time, and place that the person or vehicle was first detained;

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- (iv) the date, time and place the person or vehicle was searched (if different from (iii));
- (v) the purpose of the search;
- (vi) the grounds for making it, or in the case of those searches mentioned in paragraph 6.1(a) and (b), the nature of the power and of any necessary authorisation and the fact that it has been given; [See Note 11].
- (vii) its outcome (e.g. arrest or no further action);
- (viii) a note of any injury or damage to property resulting from it;
- (ix) the officer's warrant or other identification number shall be given and the name of the police station to which the officer is attached. [See Note 9].

9.5 The names of police officers are not required to be shown on the search record or any other record required to be made under this Code.

9.6 A record is required for each person and each vehicle searched. However, if a person is in a vehicle and both are searched, and the object and grounds of the search are the same, only one record need be completed.

9.7 The record of the grounds for making a search must, briefly but informatively, explain the reason for suspecting the person concerned, by reference to the person's behaviour and/or other circumstances.

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9.8 After searching an unattended vehicle, or anything in or on it, an officer must leave a notice in it (or on it, if things on it have been searched without opening it) recording the fact that it has been searched.

9.9 The notice must include the name of the police station to which the officer concerned is attached and state where a copy of the record of the search may be obtained and where any application for compensation should be directed.

9.10 The vehicle must if practicable be left secure.

9.11 When an officer makes a record of the stop electronically and if the officer is able to provide a copy of the record at the time of the stop and search, he or she must do so. This means that if the officer has or has access to a portable printer for use with the electronic recording equipment, then a copy of the record must be provided. Otherwise a unique reference number and guidance on how to obtain a full copy of the search should be provided to the person searched.

10 Avoiding Discrimination

10.1 Racial or religious profiling is the use of racial, ethnic, religious or other stereotypes, rather than individual behaviour or specific intelligence, as a basis for making operational or investigative decisions about who may be involved in criminal activity.

10.2 Officers should take care to avoid any form of racial or religious profiling when selecting people to search under section 47A powers. Profiling in this way may amount to an act of unlawful discrimination, as would discrimination on the grounds of any protected characteristics.

10.3 To avoid the kinds of discrimination referred to in paragraph 5.1, great care should be taken to ensure that the selection of people is not based solely on ethnic background, perceived religion or other protected characteristic. A person's

appearance or ethnic background will sometimes form part of a potential suspect's description, but a decision to search them under section 47A should be made only if that description arises from evaluated intelligence. Profiling people from certain ethnicities or religious backgrounds may also lose the confidence of communities.

11 Monitoring and supervising the use of stop and search powers

11.1 Supervising officers must ensure in the use of stop and search powers that there is no evidence of them being exercised on the basis of stereotyped images or inappropriate generalisations. Supervising officers should satisfy themselves that the practice of officers under their supervision in stopping, searching and recording is fully in accordance with this Code. Supervisors must also examine whether the records reveal any trends or patterns which give cause for concern, and if so take appropriate action to address this.

11.2 Senior officers with area or service-wide responsibilities must also monitor the general use of stop and search powers and should take action if they do not feel the powers are being used appropriately.

11.3 Supervision and monitoring must be supported by the compilation of comprehensive statistical records of stops and searches at service, area and local level. Any apparently disproportionate use of the powers by particular officers or groups of officers or in relation to specific sections of the community should be identified and investigated.

12 Oversight and community engagement

12.1 The appropriate use and application of these powers should be overseen and monitored by the Northern Ireland Policing Board.

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12.2 District Commanders should engage with their District Policing Partnerships and Independent Advisory Groups (IAGs) as appropriate.

12.3 Statistics should be regularly published regarding the use of Stop and Search by the Police Service of Northern Ireland.

Notes for Guidance

Officers exercising stop and search powers

1. This Code does not affect the ability of an officer to speak to or question a person in the ordinary course of the officer's duties without detaining the person or exercising any element of compulsion. It is not the purpose of the Code to prohibit such encounters between the police and the community with the co-operation of the person concerned and neither does it affect the principle that all citizens have a duty to help police officers to prevent crime and discover offenders. When a police officer is trying to discover whether, or by whom, an offence has been committed he or she may question any person from whom useful information might be obtained, subject to the restrictions imposed by PACE Code C. A person's unwillingness to reply does not alter this entitlement, but in the absence of a power to arrest, or to detain in order to search, the person is free to leave at will and cannot be compelled to remain with the officer.

2. In some circumstances preparatory questioning may be unnecessary, but in general a brief conversation or exchange will be desirable not only as a means of avoiding unnecessary searches, but to explain the grounds for the stop/search, to gain co-operation and reduce any tension there might be surrounding the stop/search.

3. Where a person is lawfully detained for the purpose of a search, but no search in the event takes place, the detention will not thereby have been rendered unlawful.

4. Many people customarily cover their heads or faces for religious reasons. Where there may be religious sensitivities about ordering the removal of such an item, the officer should permit the item to be removed out of public view. Where practicable, the item should be removed in the presence of an officer of the same sex as the person and out of sight of anyone of the opposite sex.

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5. A search of a person in public should if deemed necessary should be undertaken as soon as possible.

6. A person may be detained under a stop and search power at a place other than where the person was first detained, only if that place, be it a police station or elsewhere, is nearby. The term 'nearby' means close at hand to the place where the person or vehicle was stopped. In the case of a person, for example, this could be a shop doorway or other similar place of shelter, or a closed police van at the scene. It does not mean that a person or vehicle should be taken from the scene to a police station for the search to take place. Such a place should be located within a reasonable travelling distance using whatever mode of travel (on foot or by car) is appropriate. This applies to all searches under stop and search powers, whether or not they involve the removal of clothing or take place in or out of public view.

7. A search in the street itself should be regarded as being in public view, even though it may be empty at the time a search begins. Although there is no power to require a person to do so, there is nothing to prevent an officer from asking a person voluntarily to remove more than an outer coat, jacket, gloves or headgear (and footwear under paragraph 1 of Schedule 6B to the Terrorism Act 2000) in public.

8. Where there may be religious sensitivities about asking someone to remove headgear, the police officer should offer to carry out the search out of public view (for example, in a police van or police station if there is one nearby).

Recording

9. Where a stop and search is conducted by more than one officer the identity of all the officers engaged in the search must be recorded on the record. Nothing prevents an officer who is present but not directly involved in searching from completing the record during the course of the encounter.

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10. Where a vehicle has not been allocated a registration number (e.g. a rally car or a trials motorbike) that part of the requirement does not apply.

11. It is important for monitoring purposes to specify under what power the authority for exercising a stop and search power was made.

12. In situations where it is not practicable to provide a written record or a full copy of an electronic record or an electronic receipt of the stop and search at that time, the officer should consider providing the person with details of the station to which the person may attend for a record. This may take the form of a simple business card, adding the date of the stop and search.

13. An officer with an electronic recording device may be carrying a paper version of the record for use as a contingency in the event of a technical breakdown. In these circumstances, where the officer is able to make an electronic record, there would be no requirement to provide a written record.

Replacement powers to stop and search in specified locations

1.—(1) The Terrorism Act 2000 is to have effect as if before section 48 (and the italic cross-heading before it) there were inserted—

“47A Searches in specified areas or places

(1) A senior police officer may give an authorisation under subsection (2) or (3) in relation to a specified area or place if the officer—

- (a) reasonably suspects that an act of terrorism will take place; and
- (b) considers that—
 - (i) the authorisation is necessary to prevent such an act;
 - (ii) the specified area or place is no greater than is necessary to prevent such an act; and
 - (iii) the duration of the authorisation is no longer than is necessary to prevent such an act.

(2) An authorisation under this subsection authorises any constable in uniform to stop a vehicle in the specified area or place and to search—

- (a) the vehicle;
- (b) the driver of the vehicle;
- (c) a passenger in the vehicle;
- (d) anything in or on the vehicle or carried by the driver or a passenger.

(3) An authorisation under this subsection authorises any constable in uniform to stop a pedestrian in the specified area or place and to search—

- (a) the pedestrian;
- (b) anything carried by the pedestrian.

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(4) A constable in uniform may exercise the power conferred by an authorisation under subsection (2) or (3) only for the purpose of discovering whether there is anything which may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or (as the case may be) that the person concerned is a person falling within section 40(1)(b).

(5) But the power conferred by such an authorisation may be exercised whether or not the constable reasonably suspects that there is such evidence.

(6) A constable may seize and retain anything which the constable—

- (a) discovers in the course of a search under such an authorisation; and
- (b) reasonably suspects may constitute evidence that the vehicle concerned is being used for the purposes of terrorism or (as the case may be) that the person concerned is a person falling within section 40(1)(b).

(7) Schedule 6B (which makes supplementary provision about authorisations under this section) has effect.

(8) In this section—

“driver”, in relation to an aircraft, hovercraft or vessel, means the captain, pilot or other person with control of the aircraft, hovercraft or vessel or any member of its crew and, in relation to a train, includes any member of its crew;

“senior police officer” has the same meaning as in Schedule 6B (see paragraph 14(1) and (2) of that Schedule);

“specified” means specified in an authorisation.”

Replacement powers to stop and search: supplementary provisions

The Terrorism Act 2000 is to have effect as if after Schedule -A there were inserted -

SCHEDULE 6B

Searches in specified areas or places: supplementary

Extent of search powers: supplementary

1. A constable exercising the power conferred by an authorisation under section 47A may not require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves.

2.—(1) Sub-paragraph (2) applies if a constable proposes to search a person or vehicle by virtue of section 47A(2) or (3).

(2) The constable may detain the person or vehicle for such time as is reasonably required to permit the search to be carried out at or near the place where the person or vehicle is stopped.

Requirements as to writing

3. A senior police officer who gives an authorisation under section 47A orally must confirm it in writing as soon as reasonably practicable.

4.—(1) Where—

- (a) a vehicle or pedestrian is stopped by virtue of section 47A(2) or (3), and
- (b) the driver of the vehicle or the pedestrian applies for a written statement that the vehicle was stopped, or that the pedestrian was stopped, by virtue of section 47A(2) or (as the case may be) (3),

the written statement must be provided.

(2) An application under sub-paragraph (1) must be made within the period of 12 months beginning with the date on which the vehicle or pedestrian was stopped.

Duration of authorisations

5.—(1) An authorisation under section 47A has effect during the period—

- (a) beginning at the time when the authorisation is given, and
- (b) ending with the specified date or at the specified time.

(2) This paragraph is subject as follows.

6. The specified date or time must not occur after the end of the period of 14 days beginning with the day on which the authorisation is given.

7.—(1) The senior police officer who gives an authorisation must inform the Secretary of State of it as soon as reasonably practicable.

(2) An authorisation ceases to have effect at the end of the period of 48 hours beginning with the time when it is given unless it is confirmed by the Secretary of State before the end of that period.

(3) An authorisation ceasing to have effect by virtue of sub-paragraph (2) does not affect the lawfulness of anything done in reliance on it before the end of the period concerned.

(4) When confirming an authorisation, the Secretary of State may—

- (a) substitute an earlier date or time for the specified date or time;
- (b) substitute a more restricted area or place for the specified area or place.

8. The Secretary of State may cancel an authorisation with effect from a time identified by the Secretary of State.

9.—(1) A senior police officer may—

- (a) cancel an authorisation with effect from a time identified by the officer concerned;
- (b) substitute an earlier date or time for the specified date or time;

(c) substitute a more restricted area or place for the specified area or place.

(2) Any such cancellation or substitution in relation to an authorisation confirmed by the Secretary of State under paragraph 7 does not require confirmation by the Secretary of State.

10. An authorisation given by a member of the Civil Nuclear Constabulary does not have effect except in relation to times when the specified area or place is a place where members of that Constabulary have the powers and privileges of a constable.

11. The existence, expiry or cancellation of an authorisation does not prevent the giving of a new authorisation.

Specified areas or places

12.—(1) An authorisation given by a senior police officer who is not a member of the British Transport Police Force, the Ministry of Defence Police or the Civil Nuclear Constabulary may specify an area or place together with—

- (a) the internal waters adjacent to that area or place; or
- (b) a specified area of those internal waters.

(2) In sub-paragraph (1) “internal waters” means waters in the United Kingdom that are not comprised in any police area.

13. Where an authorisation specifies more than one area or place—

- (a) the power of a senior police officer under paragraph 5(1)(b) to specify a date or time includes a power to specify different dates or times for different areas or places (and the other references in this Schedule to the specified date or time are to be read accordingly), and
- (b) the power of the Secretary of State under paragraph 7(4)(b), and of a senior police officer under paragraph 9(1)(c), includes a power to remove areas or places from the authorisation.

Interpretation

14.—(1) In this Schedule—

“driver” has the meaning given by section 47A(8);

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“senior police officer” means—

- (a) in relation to an authorisation where the specified area or place is the whole or part of a police area outside Northern Ireland, other than of a police area mentioned in paragraph (b) or (c), a police officer for the area who is of at least the rank of assistant chief constable;
- (b) in relation to an authorisation where the specified area or place is the whole or part of the metropolitan police district, a police officer for the district who is of at least the rank of commander of the metropolitan police;
- (c) in relation to an authorisation where the specified area or place is the whole or part of the City of London, a police officer for the City who is of at least the rank of commander in the City of London police force;
- (d) in relation to an authorisation where the specified area or place is the whole or part of Northern Ireland, a member of the Police Service of Northern Ireland who is of at least the rank of assistant chief constable;

“specified” means specified in an authorisation.

(2) References in this Schedule to a senior police officer are to be read as including—

- (a) in relation to an authorisation where the specified area or place is the whole or part of a police area outside Northern Ireland and is in a place described in section 34(1A), a member of the British Transport Police Force who is of at least the rank of assistant chief constable;
- (b) in relation to an authorisation where the specified area or place is a place to which section 2(2) of the Ministry of Defence Police Act 1987⁽²⁾ applies, a member of the Ministry of Defence Police who is of at least the rank of assistant chief constable;

⁽²⁾ 1987 c.4. Section 2(2) was amended by section 98(1) and (2) and section 125 of and Part 6 of Schedule 8 to the Anti-terrorism, Crime and Security Act 2001 (c.24).

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(c) in relation to an authorisation where the specified area or place is a place in which members of the Civil Nuclear Constabulary have the powers and privileges of a constable, a member of that Constabulary who is of at least the rank of assistant chief constable;

but such references are not to be read as including a member of the British Transport Police Force, the Ministry of Defence Police or the Civil Nuclear Constabulary in any other case.”

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