



Northern
Ireland
Office

CONSULTATION PAPER

**CODE OF PRACTICE FOR THE
EXERCISE OF POWERS IN THE
JUSTICE AND SECURITY
(NORTHERN IRELAND) ACT**

December 2012

The Northern Ireland Office has prepared a Code of Practice for the exercise by the Police Service of Northern Ireland (PSNI) of certain statutory powers under the Justice and Security (Northern Ireland) Act 2007 (the 2007 Act). The purpose of the code is to set out how these powers should be exercised. It also sets out the fundamental principles which underpin the use of the powers.

The Code is made in accordance with section 34(1)(a) of the 2007 Act. It applies to the exercise by the PSNI of the powers at sections 21, 23, 24/Schedule 3 and 26 of the 2007 Act. The Armed Forces also have powers under the 2007 Act which they can use in support of the PSNI. Annex C is made in accordance with section 34(2) of the 2007 Act and sets out the general principles for the use of those powers, at sections 21-28 and 30 of the 2007 Act, in the exceptional circumstances in which they may be exercised.

Schedule 6 to the Protection of Freedoms Act 2012 amended Schedule 3 to the 2007 Act, introducing an authorisation procedure for the exercise by the police of stop and search powers which do not require reasonable suspicion. Schedule 6 also introduces, by way of amendments to Schedule 3 to the 2007 Act, a power to stop and search, whether in public or private, if a constable reasonably suspects that an individual has munitions unlawfully with him or wireless apparatus. This Code reflects the Protection of Freedoms Act 2012 amendments which have been made to the stop and search power at section 24/Schedule 3 of the 2007 Act.

This Code applies to police powers in the 2007 Act, which are specific to Northern Ireland. It does not cover any other police powers in UK wide legislation or legislation which is applicable to Northern Ireland only. It does not affect the operation of other Codes of Practice, including the Police and Criminal Evidence Order (Northern Ireland) 1989 ("PACE") Codes.

The Northern Ireland Office is seeking your views on the draft Code for the use of these powers under the 2007 Act and is running a 12 week consultation to commence **13 December 2012**, with all replies due no later than **06 March 2013**.

Responses to and queries on the consultation can be made in a number of ways.

- In writing:

Code of Practice Consultation
Security Legacy Group
Northern Ireland Office
Stormont House
Stormont Estate
Belfast, BT4 3SH

- By e-mail:

the.secretary@nio.x.gsi.gov.uk

- By telephone:

(028) 90 527024

**CODE OF PRACTICE FOR THE EXERCISE OF POWERS IN THE
JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007.**

Presented to Parliament pursuant to section 34(4) of the Justice and Security
(Northern Ireland) Act 2007

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Any enquiries regarding this publication should be sent to us at
Northern Ireland Office
Security and Legacy Group
Stormont House
Stormont Estate
Belfast
BT4 3SH

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1. Introduction

1.1 This Code of Practice is made in accordance with section 34(1)(a) of the Justice and Security (Northern Ireland) Act 2007 (hereafter referred to as “the 2007 Act”).

1.2 It applies to the exercise by the Police Service of Northern Ireland (PSNI) of the following powers under the 2007 Act:

- Section 21: Stop and question
- Section 23: Entry
- Section 24/Schedule 3: Search for Munitions and Wireless Apparatus
- Section 26: Premises: Vehicles &c.

1.3 Annex C to this Code is made in accordance with section 34(2) of the 2007 Act and deals with the exercise of the powers at sections 21-28 and 30 of the 2007 Act by the armed forces.

2. Commencement

2.1 This Code applies to the exercise of all powers governed by this Code after 00:00:01 hrs on [].

3. Purpose of Code

3.1 The purpose of this Code is to set out how the powers at sections 21, 23, 24/Schedule 3 and 26 of the 2007 Act should be exercised by the PSNI. It also sets out the fundamental principles which underpin the use of the powers. The purpose of Annex C is to set out the general principles for the use of the powers at sections 21-28 and 30 of the 2007 Act by the armed forces, in the exceptional circumstances in which they may be exercised.

4. General

- 4.1 This Code is issued under section 34(1)(a) and 34(2) of the 2007 Act.
- 4.2 It governs the exercise by police officers of statutory powers set out at sections 21, 23, 24/Schedule 3 and 26 of the 2007 Act¹. This legislation provides the police with powers of stop and question, entry of premises and search for munitions and wireless apparatus. It also gives police the power to seize items found during searches of people, premises and vehicles².
- 4.3 It reflects the changes to the powers of stop and search for munitions and wireless apparatus in the 2007 Act which were brought into effect by the Protection of Freedoms Act 2012. Schedule 6 to the Protection of Freedoms Act amended Schedule 3 to the 2007 Act, introducing an authorisation procedure for the exercise by the police of stop and search powers in relation to munitions and wireless transmitters. These powers do not require reasonable suspicion in relation to each individual who is searched, although they do require the authorising officer to have a reasonable suspicion that the safety of any person might be endangered by the use of munitions or wireless apparatus. Schedule 6 also introduced, by way of amendments to Schedule 3 to the 2007 Act, a power to stop and search, whether in public or private, if a constable reasonably suspects that an individual has munitions unlawfully with him or her or wireless apparatus with him or her.
- 4.4 This Code applies to police powers in the 2007 Act, which are specific to Northern Ireland. It does not cover any other police powers in UK-wide legislation or legislation applicable to Northern Ireland only. It does not

¹ A broad summary of these powers is set out at Annex A.

² Schedule 3, paragraph 5 of the 2007 Act gives police the power to seize and retain munitions or wireless apparatus found during the course of a search, unless it appears these are being, have been, and will be used only lawfully. This Code does not provide guidance on seizure or retention.

affect the operation of other Codes of Practice, including the Police and Criminal Evidence Order (Northern Ireland) 1989 (“PACE”) Codes.

- 4.5 Whilst a number of the powers in the 2007 Act are primarily for use by the PSNI, the armed forces also have powers under the Act which they can use in support of the police. Annex C sets out the general principles for the use of the powers at sections 21-28 and 30 of the 2007 Act by the armed forces, in the exceptional circumstances in which they may be exercised.
- 4.6 This Code should be held in all police stations and military bases for reference, guidance and training purposes. It must also be readily available at all police stations for consultation by police officers, detained persons, members of the public, appropriate adults³ and solicitors.
- 4.7 The effect of this Code is set out at section 35(1) and 35(3) of the 2007 Act: the Code is admissible as evidence in criminal or civil proceedings, and shall be taken into account by a court or tribunal in any case where it appears relevant. However, failure by a police officer to comply with a provision of this or any other applicable Code does not of itself make that officer liable to criminal or civil proceedings.
- 4.8 The effect of Annex C to this Code is set out in section 35(2) and 35(3) of the 2007 Act: the Code is admissible as evidence in criminal or civil proceedings, and shall be taken into account by a court or tribunal in any case where it appears relevant. However, failure by a member of the armed forces to comply with a provision of a Code does not of itself make him liable to criminal or civil proceedings, other than the proceedings as set out in section 35(2) of the 2007 Act.

³ If a Custody Sergeant suspects that a person might be mentally disordered or otherwise mentally vulnerable he is obliged under PACE to seek the services of an ‘appropriate adult’ to represent the person’s best interests. This also applies if the person is a juvenile. Their role is to support, advise and assist the detainee, and to ensure that the individual understands the processes and their rights during detention in police custody.

5. General principles governing the exercise of police powers under sections 21, 23, 24/schedule 3 and 26 of the 2007 Act

5.1 The Police (Northern Ireland) Act 2000 sets out the general functions of the PSNI. Section 32(1) requires the PSNI to:

- protect life and property;
- preserve order;
- prevent the commission of offences; and
- where an offence has been committed, to take measures to bring the offender to justice.

The powers in the 2007 Act are important tools which help the PSNI to meet these obligations. The PSNI should exercise the powers for the purpose of fulfilling these objectives.

5.2 The Police (Northern Ireland) Act 2000 also sets out how the PSNI should carry out its functions. Section 32(5) stipulates that police officers shall, so far as practicable, carry out their functions in co-operation with, and with the aim of, securing the support of the local community. The PSNI should respect members of the public, and protect their human rights and fundamental freedoms which are listed in Schedule 1 to the Human Rights Act 1998.

5.3 The PSNI must also adhere to the PSNI Code of Ethics which emphasises that officers must safeguard the rule of law, protect human dignity and conduct investigations in an accountable and responsible manner.

5.4 At all times the PSNI should have regard to its obligations under sections 75 and section 76 of the Northern Ireland Act 1998: namely the duty to promote equality of opportunity and good relations and not to discriminate, in the circumstances prescribed. Whenever the powers are

used, it must be without discrimination on the grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender, disability or whether or not a person has dependents.

- 5.5 The powers must be exercised in accordance with the obligations of public authorities under the Human Rights Act 1998. The PSNI must respect individual rights when using powers under the 2007 Act, including the right to liberty, and the right to family and private life. It is imperative that the powers are exercised in a way which ensures the least possible interference with individual rights, where those rights may lawfully be interfered with in prescribed circumstances.
- 5.6 The powers should be used only if it is proportionate and necessary. Proportionality requires the powers to be used only where justified by the particular situation. Necessity requires a proper basis for the exercise of the powers, as provided for in the 2007 Act. Furthermore, where reasons are expressly set out in the legislation for the use of a particular power, the PSNI must not rely on any other rationale for its use.
- 5.7 If these fundamental principles are not observed the use of the powers may be drawn into question. Wherever possible, less intrusive strategies should be used. But where there is no other alternative, the powers should be used in line with the principles set out above.

Accountability

- 5.8 The PSNI is accountable for its use of the powers in the 2007 Act. Supervising officers must ensure powers under the 2007 Act are not exercised without a basis for doing so and should satisfy themselves that the use of powers by officers under their supervision is fully in accordance with this Code. Senior officers should take action if they do not feel the powers are being used appropriately. The use and application of these powers should be overseen and monitored by the

Northern Ireland Policing Board and the Independent Reviewer of the 2007 Act.

Support to the PSNI

5.9 When the PSNI exercises powers under the 2007 Act to protect the public from endangerment, officers may be supported by other organisations, such as the armed forces. Whilst the armed forces have certain powers under the 2007 Act, such as powers of arrest, entry, and stop and search, these powers are not routinely used. The key role of the armed forces is supporting the PSNI by disposing safely of munitions and transmitters. This specialist support is vital in preventing serious harm to the public. The armed forces, and any other agencies that work with the PSNI, are expected to act in accordance with the general principles set out above. A separate annex is attached (Annex C) which covers the armed forces' use of their powers under the 2007 Act.

6. SECTION 21: STOP AND QUESTION

Background

6.1 Section 32 of the Police (Northern Ireland) Act 2000 requires the PSNI to take steps to protect life and property, preserve order, prevent the commission of offences and bring offenders to justice. Section 21(1) of the 2007 Act allows a constable to stop and question a person for as long as is necessary to ascertain that person's identity and movements. This power can help the PSNI to prevent crimes and bring offenders to justice, by ascertaining individuals' identities and why they are in a particular area.

6.2 The police depend on the goodwill and co-operation of the public in these situations. When stopping and questioning a member of the public, it is vital that officers do so courteously and with minimum inconvenience to

the public. Properly used, the powers may reduce the need for more intrusive powers, such as stop and search, to be used.

Use

- 6.3 Stop and question should generally only be used where there is a basis for doing so: it should not be used on a purely random basis. For example, stop and question may be required to help identify suspected offenders within a particular geographic location. Where practicable, an individual should be informed at the outset of the basis for the stop and question.
- 6.4 Officers must ensure that a person is stopped and questioned only for as long as necessary to establish their identity and movements. Members of the public should not be subject to any undue delay.
- 6.5 Officers may ask a person any question necessary to ascertain their identity. For example, officers may request a person's name, address, and date of birth. In order to establish their identity a person may provide a form of identification, such as a driving licence or a passport. As soon as an officer is satisfied that identity has been established, the person should no longer be subject to questions relating to their identity.
- 6.6 If a person's identity is already known to officers who are using stop and question, that person must not be asked to confirm their identity. That person may only be questioned in respect of their movements.
- 6.7 When seeking to ascertain movements, officers may, for example ask a person about their journey's starting point, route and destination.
- 6.8 Once the facts of identity and movement are clearly established, an officer must no longer use the stop and question powers under section 21(1).

Offences

6.9 Under section 21(3) a person commits an offence if he or she:

- (a) fails to stop when required to do so. This includes, for example, where a driver of a vehicle ignores a clear police signal to stop or where a pedestrian ignores an oral request from an officer to answer questions relating to their identity and movements; or
- (b) refuses to answer a question. This covers instances where a person refuses to answer a reasonable direct question from an officer which relates to his or her identity or movements; or
- (c) fails to answer a question to the best of his or her knowledge and ability.

6.10 A person arrested for one or more of these offences must be informed of the reason for their arrest.

Vehicles

6.11 Section 21(5) provides that the power to stop a person includes the power to stop a vehicle⁴. If a vehicle is stopped officers may question the occupant or occupants separately or jointly to establish identity and movements, as set out at paragraphs 6.3 – 6.8.

Stop and Question: Records

6.12 Records should be made of instances of stop and question. Officers should inform those stopped and questioned how they can obtain a copy of the record if required. A copy of the record may be requested within 12 months.

⁴ For the purposes of Section 21(5) a vehicle is taken to include an aircraft (unless airborne), hovercraft, train or vessel (see section 42).

7. SECTION 23: ENTRY

Background

- 7.1 Section 32 of the Police (Northern Ireland) Act 2000 requires the PSNI to take steps to protect life and property, preserve order, prevent the commission of offences and bring offenders to justice. Powers of entry of premises, set out at section 23 of the 2007 Act, help the PSNI meet these requirements.
- 7.2 Powers of entry under section 23 of the 2007 Act can only be used if it is considered necessary in the course of operations, for the preservation of the peace or the maintenance of order. Furthermore the PSNI must be guided by the principles of section 32 of the Police (Northern Ireland) Act 2000 when considering if it is necessary to enter premises. Entry of premises can be used in a range of circumstances to help keep the public safe. For example, in a public order context, PSNI officers may need to enter premises to facilitate the policing operation. If it can be demonstrated that any entry is necessary for the preservation of the peace or the maintenance of order, section 23 may be used.
- 7.3 Whilst powers of entry help keep the public safe, their use may involve some interference with a person's rights under Article 8 of the European Convention on Human Rights (the right to privacy) and/or Article 1 of Protocol No. 1 to the Convention (peaceful enjoyment of possessions). Officers should not intrude unless it is necessary to preserve the peace or maintain order, and the nature and length of such intrusion should be proportionate to the aim sought to be achieved. Officers should also consider if any alternative, less intrusive ways of preserving the peace and maintaining order can be used. Much will depend on the specific circumstances the officer is faced with and the need for immediate action. The type of premises involved will also influence the officer's decision: entering some premises, such as a field, would not impinge significantly - if at all - on a person's Article 8 rights. These factors should be taken into consideration before entering any premises, so that

there is a basis for any interference with individual rights, and that interference is kept to a minimum.

Entry of Premises other than buildings

7.4 Under section 23(1) an officer may enter any premises if he or she considers it necessary in the course of operations for the preservation of the peace or the maintenance of order. Authorisations are not required to enter premises (unless those premises comprise a building⁵ - see paragraphs 7.6 to 7.14 below). Premises are defined at section 42 of the 2007 Act as including any place and in particular a vehicle, an offshore installation within the meaning given in section 44 of the Petroleum Act 1998, a tent or moveable structure.

7.5 Where the entry of premises does not require prior authorisation, officers should still consider if there are any other less intrusive means of preserving the peace or maintaining order. Where it is necessary to enter premises, respect should be shown towards any property contained on the premises and it should be left in a reasonable condition. If the premises are secure upon entry, they must be secured by the PSNI upon leaving.

Entry of Buildings

7.6 The 2007 Act allows officers to enter buildings in 3 sets of circumstances:

- (i) on the written authorisation of an officer of at least the rank of Superintendent;
- (ii) if it is not reasonably practicable to obtain written authorisation, on the oral authorisation of an officer of at least the rank of Inspector; and

⁵ A building is taken as a structure with four walls and a roof.

- (iii) without any authorisation, where it is not reasonably practicable to obtain either written or oral authorisation.

This sliding scale of authorisation gives the PSNI the flexibility to respond to different types of incidents within different timescales, as some incidents will be faster moving than others and may require an immediate response. However, the default position is that written authorisations should be sought before entry into a building, unless it is not reasonably practicable to do so.

- 7.7 Section 23(3)(a) requires that written authorisations must be from an officer of at least the rank of Superintendent who considers it necessary for the preservation of the peace or the maintenance of order. A written authorisation should be made in all circumstances where a police operation is pre-planned, or where it is known well in advance that entry into buildings will be required at a particular date and time.
- 7.8 Section 23(3)(b) requires that where it is not reasonably practicable to obtain written authorisation, oral authorisation must be given by an officer of at least the rank of Inspector. For example, oral authorisations may be required where it is relatively urgent for police to enter a building, but time allows only for an oral authorisation to be sought. Section 23(5) requires that an officer giving oral authorisation shall make a written record as soon as is reasonably practicable.
- 7.9 Section 23(2)(b) allows an officer to enter a building to preserve the peace or maintain order without an authorisation only where it is not reasonably practicable to obtain authorisation. Whilst the default position is for an authorisation to be in place, preferably written, there may be circumstances in which this is not reasonably practicable. As outlined above, officers may be required to immediately enter premises in order to preserve the peace or maintain order, and in these cases obtaining authorisation is not reasonably practicable.

- 7.10 Where practicable, officers should seek the co-operation of the owner or occupier of the building (if known) and inform them of their intention to enter it under authority of section 23 powers. If possible and without prejudicing ongoing police operations, officers should inform the owner or occupier of the purpose for entry.
- 7.11 Officers should exercise their powers courteously and with respect for persons and property. Reasonable force should only be used when it is considered both necessary and proportionate. If reasonable force has been used to gain entry to a building, officers must ensure the building is left secure, by arranging for the owner or occupier to be present or by any other appropriate means.
- 7.12 Officers should leave the building as soon as it is no longer necessary for the preservation of peace or maintenance of order, unless exercising other powers either under the 2007 Act or other legislation.

Entry of Buildings: Records

- 7.13 Section 23(6) requires that where a constable enters a building, he or she must ensure that as soon as reasonably practicable a record is made of the:
- Address of the building, if known;
 - Location of the building;
 - Date of entry;
 - Time of entry;
 - Purpose of entry;
 - Police number of each constable entering; and
 - Police number and rank of the authorising officer (if applicable).

Copies of such records should be given to the owner or occupier of the building as soon as is reasonably practicable. Likewise copies of written

authorisations to enter premises⁶, or copies of written records of oral authorisations⁷ must be provided to the owner or occupier of the building to which they relate as soon as reasonably practicable.

7.14 Copies of such records must be given as soon as is reasonably practicable to any person who requests a copy and who has, in the opinion of the person who has the authorisation or record, sufficient reason for the request. Authorisations and records compiled under this section must be retained for at least one year, or for the duration of any associated legal proceedings, if longer.

8. SECTION 24/SCHEDULE 3: MUNITIONS AND TRANSMITTERS: SEARCH AND SEIZURE

Background

8.1 Section 24/Schedule 3 provides the PSNI with powers to enter and search premises for any munitions unlawfully on the premises or for any wireless apparatus on the premises. It also allows the PSNI to stop and search persons for any unlawfully held munitions or for any wireless apparatus. Paragraph 5 of Schedule 3 provides that any munitions or wireless apparatus found during the course of a search of a person or premises may be seized and retained (unless it appears to the officer that the munitions or wireless apparatus are being, have been and will be used only lawfully). Paragraph 6 of Schedule 3 also sets out certain record keeping requirements in relation to searches of premises conducted under that Schedule.

8.2 Munitions are explosives, firearms and ammunition, including anything used or capable of being used in the manufacture of an explosive, a firearm or ammunition. Wireless apparatus means a scanning receiver or transmitter, which includes equipment that can send or receive or

⁶ Under section 23(3)a of the 2007 Act

⁷ Under section 23(5) of the 2007 Act

intercept messages or which can operate or control machinery or apparatus. This includes radios and mobile telephones. A full definition is provided at Annex B (as set out in paragraph 1 of Schedule 3).

8.3 Munitions may be owned and used lawfully (for example, a person may have a legally held firearm). Wireless apparatus may also be used without breaking the law. However, officers may consider that munitions are in somebody's possession unlawfully or that munitions or wireless apparatus are being used unlawfully and in a way which endangers the public (although this is not a pre-requisite for the use of the power). This danger may be in, for example, the context of serious criminal activity or public disorder. Identifying munitions and transmitters can help the police to protect life, prevent the commission of offences and bring offenders to justice. In such circumstances, the police may enter and search any premises for the purpose of ascertaining whether there are any munitions unlawfully on the premises, or whether there is any wireless apparatus on the premises. They may also stop and search people to ascertain whether they are unlawfully holding munitions or have wireless apparatus with them.

8.4 The use of these powers can protect people's rights under the European Convention on Human Rights, such as Article 2 (the right to life) by preventing serious harm posed by use of unlawful munitions and wireless apparatus. However, if these powers are exercised there may be some interference with other rights under the Convention, such as the right to private life, and this should be borne in mind when officers judge it necessary to use these powers.

8.5 Entering and searching premises (other than dwellings)

8.5 The term, 'premises' refers to any place and includes a vehicle, an offshore installation within the meaning given in s.44 of the Petroleum Act 1998, a tent or moveable structure. Dwellings are dealt with separately (see paragraphs 8.7 to 8.9 below). Paragraph 2(1) of

Schedule 3 permits an officer to enter and search any premises for the purposes of ascertaining whether there are any munitions unlawfully on the premises, or whether there is any wireless apparatus on the premises. An officer exercising the power to enter and search may, if necessary, be accompanied by other people.

- 8.6 Officers should exercise consideration when entering and searching premises. If entry is forced, officers should endeavour to cause as little damage as possible to the premises. If reasonable force has been used to gain entry to a building, officers must ensure the building is left secure, by arranging for the owner or occupier to be present or by any other appropriate means.

Entering and searching premises: Dwellings

- 8.7 Paragraph 2(2) of Schedule 3 requires an officer, before entering a dwelling, to reasonably suspect that the dwelling⁸ unlawfully contains munitions or contains wireless apparatus. Officers must also be authorised to enter by an officer of at least the rank of Inspector.
- 8.8 Where practicable, officers should seek the co-operation of any person in the dwelling. Officers should inform the occupier of the dwelling that a search for unlawfully held munitions and/or wireless apparatus in the dwelling will be carried out.
- 8.9 Officers should exercise their powers courteously and with respect for persons and property. Officers should endeavour to cause as little damage as possible to the dwelling and its contents. Reasonable force should only be used when it is considered necessary and any force used should be proportionate. If reasonable force has been used to gain entry to a dwelling officers must ensure the dwelling is left secure, by arranging for any person in or at the dwelling to be present or by any other

⁸ In line with Section 42, a dwelling means a building or part of a building which is used as a dwelling, and a vehicle which is habitually stationary and which is used as a dwelling.

appropriate means. There should be no undue delay and every effort should be made to conclude the search as soon as practicable.

Requirements

8.10 Paragraph 3(1) of Schedule 3 allows an officer to take certain steps during a search of premises if he or she reasonably believes it is necessary for the search to be carried out or to prevent the search being frustrated. An officer may require a person:

- (i) to stay on the premises;
- (ii) to stay in a specified part of the premises;
- (iii) not to enter a certain part of the premises;
- (iv) to move from one part of the premises to the other;
- (v) who is not a resident of the premises to refrain from entering them.

8.11 A requirement made by an officer must cease when the search ends, or four hours after any requirement is put in place, whichever is sooner. This four hour period can be extended by a further four hours, if an officer of at least the rank of Superintendent reasonably believes it is necessary in order to carry out the search or to prevent it from being frustrated.

8.12 A person may not be detained during the course of a search of premises in order to discover his name. However, a person may be obliged to provide their name, address and date of birth under other relevant legislation and may be detained if this information is not provided.

Entering and searching premises: Records

8.13 Paragraphs 6 and 7 of Schedule 3 require records to be made of all searches of premises. These records must specify:

- (i) the address of the premises searched;

- (ii) the date and the time of the search;
- (iii) details of any damage caused in the course of the search;
- (iv) details of anything seized in the course of the search; and
- (v) the officer's identification number and the name of the police station to which the officer is attached.

8.14 The record shall also include, if known, the name of any person appearing to the officer to be the occupier of the premises searched. If the officer does not know the name of any person appearing to be the occupier of the premises searched, he or she shall include in the record a note describing them.

8.15 Unless it is not reasonably practicable to do so, officers should give the occupier of the premises a written record of the search immediately after the search is finished. If it is not reasonably practicable to give the occupier a record at that time, it should be supplied as soon as it is reasonably practicable. Officers should inform the occupier that a record is available, where this can be obtained, and that it can be requested within 12 months of the search. Records compiled under this section must be retained for at least one year, or for the duration of any associated legal proceedings, if longer.

Stopping and searching persons

8.16 The 2007 Act provides police officers with two different powers of stop and search of persons:

- Stop and search in specified locations with authorisation
- Stop and search with reasonable suspicion

8.17 Officers can stop and search in public places in specified locations if an authorisation has been given. This is given by a senior officer if he or she reasonably suspects that the safety of any person might be

endangered by the use of munitions or wireless apparatus and reasonably considers that an authorisation is necessary to prevent this danger. This means officers conducting searches do not require reasonable suspicion in relation to each person that they search.

8.18 Alternatively, officers can stop and search persons in either a public or private place without authorisation from senior officers if they reasonably suspect that the person has munitions unlawfully with them or wireless apparatus with them.

Stopping and searching persons in specified locations: authorisations

8.19 Paragraph 4A(1) of Schedule 3 allows a senior police officer of the rank of Assistant Chief Constable or above to authorise the stopping and searching of persons in a specified area or place if he:

- (a) reasonably suspects (whether in relation to a particular case, a description of case or generally) that the safety of any person might be endangered by the use of munitions or wireless apparatus, and
- (b) reasonably considers that the:
 - (i) authorisation is necessary to prevent such danger;
 - (ii) specified area is no greater than is necessary to prevent such danger; and
 - (iii) duration of the authorisation is no longer than is necessary to prevent such danger.

8.20 An authorisation may relate to a single suspected act of a person endangering life by having unlawful munitions or wireless apparatus, but where there are multiple suspected acts it may be appropriate for these to be considered together and a single authorisation made that takes into account all relevant information. Such an authorisation could relate to multiple threats:

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

8.21 The powers should therefore **not** be authorised solely on the basis that there is general endangerment from unlawfully held munitions or wireless apparatus. However, this may be taken into account when deciding whether to make an authorisation, especially where intelligence about endangerment 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.

8.22 The authorising police officer must also be satisfied that the powers are necessary to prevent such endangerment and that the use of these powers is required to help deal with the perceived threat. He or she should also consider whether the paragraph 4A(1) power is the most appropriate 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 endangerment from munitions or wireless apparatus, but also:

- the proportionality of the use of without reasonable suspicion search powers;
- that searches (if authorised) may be exercised only for the purpose of discovering unlawfully held munitions or wireless apparatus;
- the suitability of other search powers including those that require reasonable suspicion; and
- the safety of the public and the safety of officers.

- 8.23 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. The authorisation will cease to have effect at the end of 48 hours unless it is confirmed by the Secretary of State before the end of that period. Both the duration and the geographical extent of an authorisation must be no greater than is necessary to prevent endangerment to the public caused by use of munitions or wireless apparatus and based on an assessment of the available information.
- 8.24 In determining what is necessary in terms of duration and geography the senior police officer should make an assessment of what is the most appropriate operational response, taking into account all relevant factors. Relevant factors would always include information about the endangerment caused by suspected use of munitions or wireless apparatus (and any known information about its likely scope and duration). It could also include but should not be restricted to:
- known tactics and capabilities of individuals and groups who may be intent on endangering the public;
 - recent activity posing a danger to the public.
- 8.25 An authorisation can be granted to apply to all or part of Northern Ireland but only if the endangerment from munitions or wireless apparatus makes it necessary. The authorisation can cover internal waters such as lakes, reservoirs and rivers and extend to the low water line at the coast but not the sea below the low water line. An authorisation can cover any internal waters in the United Kingdom which are adjacent to Northern Ireland. An authorisation may also be granted that only covers a specified area of internal waters.

- 8.26 In principle, paragraph 4A(1) 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 Ireland or for the maximum 14 days must be justified in terms of its necessity in relation to the particular threat. Endangerment of the public, based on a number of threats relating to munitions or wireless apparatus, 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 will be more appropriate.
- 8.27 The authorising officer should consider how the powers are intended to be used. Where possible, officers should be briefed on the nature of the endangerment from munitions or wireless apparatus and the basis for the use of the powers.
- 8.28 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 paragraph 4A(1) must ensure the Secretary of State is informed, as soon as reasonably practicable, that such an authorisation has been given. The Secretary of State will then consider the authorisation and may cancel it.
- 8.29 If the authorising officer considers there is a significant change in the nature of the particular threat or threats, or the authorising officer's understanding of it has changed, it may be appropriate to seek a new authorisation or to cancel a previous authorisation. 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.

Role of the Secretary of State

- 8.30 Any authorisations made by the PSNI under paragraph 4A(1) of Schedule 3 to the 2007 Act will be passed to the Secretary of State as soon as reasonably practicable. An authorisation ceases to have effect at the end of 48 hours unless it is confirmed by the Secretary of State before the end of that period. Further information is provided at paragraph 8.38.
- 8.31 The following information should be provided to the Secretary of State in support of an authorisation:
- 8.32 **Intelligence Picture:** The authorising officer should provide a detailed account of the intelligence which has given rise to reasonable suspicion that the safety of any person may be endangered by munitions or wireless apparatus. This should include classified material where it exists.
- 8.33 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.
- 8.34 **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 may be included.
- 8.35 **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, on the basis of 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.

- 8.36 The duration and the geographical extent should not be greater than is necessary or justified to prevent the endangerment of the public which rendered the authorisation necessary.
- 8.37 **Briefing Provided:** Information should be provided which demonstrates that all officers involved in exercising stop and search powers receive appropriate briefing on the use of the powers, including the provisions of this Code and the basis for the use of the powers.
- 8.38 Following notification of the authorisation, the Secretary of State may:
- (i) confirm it;
 - (ii) confirm it but substitute an earlier date or time for the specified date or time;
 - (iii) confirm it but substitute a more restricted area or place for the specified area or place; or
 - (iv) cancel it with effect from a time specified by the Secretary of State.
- 8.39 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:

- 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
- 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.

Where a successive authorisation is given, it may be given before the expiry of the existing authorisation, but that existing authorisation should be cancelled.

8.40 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 may be done.

8.41 An authorisation renewed continuously without justification is not permitted under these provisions. The authorising officer must consider afresh the justification for the authorisation of stop and search powers each time that he or she authorises their use.

Information for Authorising Officers

8.42 Authorisations under paragraph 4A(1) of Schedule 3 to the 2007 Act 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 authorisation.

- 8.43 An authorisation may be given orally or in writing. If given orally, the authorisation must be confirmed in writing as soon as reasonably practicable. 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 endangerment). 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).
- 8.44 For example, if an authorisation is made at 08.00hrs on the 1st March, the specified end time must be no later than 23.59hrs on the 14th March.
- 8.45 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. In such a case, the previous authorisation should be cancelled if it covers substantially the same area as the new authorisation.
- 8.46 When a paragraph 4A(1) 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 24/Schedule 3 powers. Officers should also be briefed on the availability of other powers and the circumstances in which these may be more appropriate.
- 8.47 Authorisations remain lawful for up to 48 hours without Secretary of State approval, unless the authorisation period is for less than 48 hours in

which case it ceases to have effect earlier. If confirmed by the Secretary of State, the authorisation remains lawful until the expiry time specified by the authorising officer or an earlier time substituted by the Secretary of State. If the authorisation is cancelled at any time by the Secretary of State, it ceases to have effect from the time specified by him or her.

- 8.48 The authorising officer should inform the Secretary of State that he or she intends to make such an authorisation in advance of doing so, unless this is not possible because of the urgent nature of the threat. There is a statutory duty that the authorising officer must inform the Secretary of State as soon as reasonably practicable after an authorisation under paragraph 4A(1) of Schedule 3 to the 2007 Act has been made. The authorising officer should also ensure that the supporting details for such an authorisation are made available to the Secretary of State. The Secretary of State will then need to consider the authorisation and either confirm it within 48 hours of it being given (in line with paragraph 4D(2)), confirm it but with amendments (in line with paragraph 4D(3)) or cancel it (in line with paragraph 4E).

Briefing for officers

- 8.49 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 section 24/Schedule 3 of the 2007 Act and searches under other legislation, as well as the circumstances in which it is appropriate to use these powers.
- 8.50 These powers of search should only be used by officers who have been briefed about the powers. Following briefing, individual officers should use their discretion as to whether a stop and search of a person or vehicle should be carried out.

- 8.51 Officers should be reminded that other powers of stop and search (including powers exercisable on reasonable suspicion) may be more appropriate to use.
- 8.52 Officers should be reminded of the need to record information and provide anyone who is stopped and searched with written confirmation that the stop and search took place and details of the powers used.
- 8.53 The briefing should make officers aware of relevant current information and intelligence, including current threats. 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).
- 8.54 Officers should be reminded of the purpose for exercising the powers i.e. only for the purpose of discovering whether the person has munitions unlawfully with them or wireless apparatus with them. The purpose of the search must therefore be to look for these items rather than generally for items which could be used to endanger the public (e.g. by another individual in different circumstances). If munitions or wireless apparatus are discovered during the course of a search, powers of seizure at paragraph 5 of Schedule 3 may be used. If items are discovered which constitute evidence of other crimes, they may be seized under article 21 of the Police and Criminal Evidence (Northern Ireland) Order 1989 or other appropriate power.
- 8.55 Briefings should also make officers aware of the basis for the use of stop and search powers under the 2007 Act. Officers should be reminded of the importance of providing the public with as much information as practicable 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 paragraph 4A(1) can be exercised whether or not there is reasonable suspicion;
- What the operation is seeking to do, e.g., to prevent endangerment to the public by stopping and searching for munitions and wireless apparatus.

8.56 Officers should be comprehensively briefed to ensure that powers of stop and search are used appropriately and proportionately. All officers involved in the process should be reminded that they are fully accountable in law for their own actions.

8.57 Officers should be given clear instructions about where and when they can use their powers. If a paragraph 4A(1) authorisation is in place, officers should be clearly tasked so that the power is used appropriately and proportionately.

8.58 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.

Conduct of searches

8.59 The powers under paragraph 4A(1) of Schedule 3 to the 2007 Act allow an officer to conduct searches where an authorisation is in place. As noted at paragraph 8.17, the officer conducting the search does not need to reasonably suspect that the person has munitions or wireless apparatus but may rely on an authorisation made by a senior officer. The officer may stop and search a person in a specified area or place for the purpose of ascertaining whether the person has munitions unlawfully with them or wireless apparatus with them.

8.60 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. For example, paragraph 4(4) of Schedule 3 also allows a constable to conduct searches if he or she reasonably suspects that a person has munitions unlawfully with them or wireless apparatus with them. Police officers should consider whether this power of stop and search may be more appropriate to use.

8.61 Where a person or vehicle is being searched without reasonable suspicion by an officer (but with an authorisation from a senior officer under paragraph 4A(1)) there must be a basis for that person being subject to search. The basis could include but is not limited to:

- 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 that give cause for concern.

8.62 Officers should seek to exercise their powers with the co-operation of the public.

8.63 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.

8.64 Before conducting a stop and search of a person, police officers must ensure they have a lawful power and a basis for their actions. Officers should consider if their actions are proportionate and whether a less intrusive alternative exists. If a stop and search takes place, officers must ensure that a record is made.

8.65 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 if necessary to conduct a search or to detain a person or vehicle for the purposes of a search.

- 8.66 The length of time for which a person may be detained must be no longer than is necessary to permit the search to be carried out. The search should be carried out, where practicable, at or near where the person is stopped. In the case of searches under section 24/Schedule 3 officers may search for the items for which they are empowered to search, namely for unlawfully held munitions or for wireless apparatus.
- 8.67 There is no power to require a person to remove any clothing in public other than headgear, footwear, an outer coat, a jacket or gloves. 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.
- 8.68 Where it is considered necessary to conduct a more thorough search (e.g. by requiring a person to take off a T-shirt), this should, where practicable, be done out of public view. For example, the search may be conducted in a police van or police station if there is one nearby. It is good practice (but not a legal requirement) for any search involving the removal of more than headgear, footwear, an outer coat, a jacket or gloves, or any other item concealing identity, to be carried out by an officer of the same sex as the person searched. Some 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.

Steps to be taken prior to a search

8.69 Before any search of a detained person takes place the officer must take reasonable steps to outline the basis for the stop and search, and provide the following information:

- (a) that they are being detained for the purposes of a search;
- (b) the officer's 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 paragraph 4A the nature of the power and of any necessary authorisation and the fact that it has been given.

8.70 Officers should take reasonable steps to inform the person of his or her entitlement to a copy of the record of the search if an application is made within 12 months. The person should also be told how they can obtain a copy of the record if required.

8.71 If the person 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.

8.72 When undertaking any search, officers should always consider their own safety and the health and safety of others.

Stopping and searching persons: records

8.73 A record must be made of every stop and search. An officer who is present at a search should ensure that a record is made at the time unless it is impractical to do so. The person should be informed that a full record will be available, how it can be accessed and that it can be requested within 12 months of the search.

8.74 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 and no power to detain a person if they do not provide these details. However, they may be obliged to provide their name, address and date of birth under other relevant legislation and may be detained if this information is not provided.

8.75 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) the date, time, and place that the person was first detained;
- (iii) the date, time and place the person was searched (if different from (ii) above);
- (iv) the purpose of the search;

- (v) the basis for the use of the power, including any necessary authorisation that has been given;
- (vi) the outcome of the search (e.g. arrest, seizure or no further action);
- (vii) a note of any injury or damage to property resulting from it; and
- (viii) the officer's identification number and the name of the police station to which the officer is attached.

8.76 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.

8.77 A record is required for each person searched. However, if a person is in a vehicle and both are searched, and the object of the search is the same, only one record need be completed. Authorisations and records compiled under this section must be retained for at least one year, or for the duration of any associated legal proceedings, if longer.

8.78 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 record should be provided to the person searched.

Stopping and searching persons with reasonable suspicion

8.79 Paragraph 4(4) of Schedule 3 allows an officer to stop and search a person, whether or not they are in a public place, if he or she reasonably

suspects that person to have munitions unlawfully with him or wireless apparatus with him. These searches should be conducted in the same manner as searches authorised by a senior officer, and similar records must be made. Details are set out at paragraphs 8.62 to 8.78 above.

- 8.80 Additionally in such cases, 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.

9. SECTION 26: PREMISES: VEHICLES, &C.

Background

- 9.1 Paragraph 2(1) of Schedule 3 allows officers to enter and search premises for munitions unlawfully on the premises or wireless apparatus on the premises. Section 23 also provides a power to enter and search premises in specified circumstances. Section 42 provides a definition of premises that includes vehicles, including aircraft, hovercraft, trains or vessels, thereby extending the powers to enter and search premises in sections 23 and Schedule 3 to powers to enter and search vehicles. Section 26 provides officers with the power to stop a vehicle and the power to take a vehicle to any place for the purpose of carrying out a search under Schedule 3, i.e. a search for munitions unlawfully in the vehicle and wireless apparatus in the vehicle.
- 9.2 The power to stop and search vehicles for unlawfully held munitions and for wireless apparatus helps the police to protect life, prevent the commission of offences and bring offenders to justice. Vehicles may be used to transport munitions and wireless apparatus from one location to another, so stopping and searching vehicles can prevent endangerment to the public.

9.3 Stopping and searching people may interfere with a person's right to privacy under Article 8 of the European Convention on Human Rights, which is listed in Schedule 1 to the Human Rights Act 1998. Stop and search of a vehicle, whilst not as intrusive as search of a person, may require a person to leave their vehicle and may involve interference with their personal possessions. Accordingly, officers should consider if any other less intrusive means can be used. If this is not possible, stop and search of vehicles should only be used where necessary and justified.

Conduct of searches

9.4 An officer does not need authorisation to stop, enter and search a vehicle. However, before deciding whether to stop and search a vehicle, officers should consider if other less intrusive means can be used to ascertain if there are munitions or wireless apparatus in that vehicle.

9.5 If the officer decides that the vehicle should be searched, the officer should explain the basis for the stop and search to the driver of the vehicle. Ideally, searches should take place with the co-operation of the driver and any passengers in the vehicle, and officers should request co-operation at the outset of the search.

9.6 The search should be conducted only for as long as is necessary to ascertain if there are munitions unlawfully or wireless apparatus in the vehicle. The driver of the vehicle should be informed as soon as the stop and search has ended and, where reasonably practicable, provided with a written record of the search. If no written record can be provided, the officer should provide the name of the station to which the officer is attached and state where a copy of the record of the search may be obtained.

Removal of vehicles

9.7 Section 26(1)(b) allows an officer to take a vehicle to any place for the purpose of carrying out the search. For example, an officer may need to move a vehicle to a safer location or a place where there are specific search facilities. In these circumstances officers should explain to the driver of the vehicle where the vehicle is being taken to and the reason for its removal. The vehicle should not be kept in the location of the search for any longer than is necessary.

Requirements to remain with a vehicle

9.8 If an officer reasonably believes that it is necessary to carry out the search or prevent it from being frustrated, under section 26(5) he or she may:

- require a person in or on the vehicle to remain with it;
- require a person in or on the vehicle to go to and remain at any place to which the vehicle is taken;
- use reasonable force to secure compliance with an order to remain with a vehicle, either where it is or where it is taken.

9.9 A requirement only lasts for the duration of the stop and search, or up to four hours after the requirement is made, whichever is shorter. Officers should inform a person subject to a requirement as soon as it ends.

Records

9.10 If an officer stops and searches a vehicle, he or she shall make a record of the search, unless it is not reasonably practicable to do so. The record should specify:

- the location of the place and the vehicle;

- the registration number of the vehicle;
- the date and time of the search;
- details of any damage caused during the course of the search;
- details of anything seized in the course of the search; and
- the officer's identification number shall be given and the name of the police station to which the officer is attached.

- 9.11 The record shall also include, if known, the name of any person appearing to the officer to be the person in charge of the vehicle. If the officer does not know the name of any person appearing to be the person in charge of the vehicle, he or she shall include in the record a note describing them.
- 9.12 Officers should take reasonable steps to inform the person whose vehicle has been stopped of his or her entitlement to a copy of the record of the search if an application is made within 12 months. The person should also be told how they can obtain a copy of the record if required.
- 9.13 If an officer searches an unattended vehicle or anything on it, where practicable he should 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. 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. The vehicle must if practicable be left secure.
- 9.14 Authorisations and records compiled under this section must be retained for at least one year, or for the duration of any associated legal proceedings, if longer.

ANNEX A: SUMMARY OF POLICE POWERS

This summary sets out the powers in the 2007 Act which are used by the PSNI and which are covered in this Code. For a full description of the powers reference should be made to the relevant section of the 2007 Act. More details on how the powers should be exercised are set out at the relevant sections of this Code.

Section	Power	Overview	Records
21	21(1) A constable may stop a person for so long as is necessary to question him to ascertain his identity and movements.	<p>This power allows a police officer to stop and question a member of the public to establish their identity and movements.</p> <p>People stopped and questioned may be asked for their name, date of birth, and address. They may also be asked for identification. They may be asked to give details of their recent movements.</p> <p>A person commits an offence and may be prosecuted if they fail to stop when required to do so, if they refuse to answer a question addressed to them under this section or if they fail to answer to the best of his ability a question put to him.</p>	<p>A record of each stop and question must be made.</p> <p>The record will include details of the person's name, when they were stopped and questioned, and the officer number of the police officer who conducted the stop and question.</p> <p>Officers should inform those who have been stopped and questioned how they can obtain a copy of the record if required.</p>
23	23(1) A constable may enter any premises if he or she considers it necessary in the course of operations for the preservation of peace and the maintenance of order.	<p>This power allows a police officer to enter premises to keep the peace or maintain order.</p> <p>If the premises is a building (a structure with four walls and a roof), the police officer generally requires prior authorisation, either oral (from a Superintendent or above) or written (from an Inspector or above).</p> <p>However in circumstances where it is not reasonably practicable to obtain an authorisation (for example, where there is an urgent need to enter a building to preserve peace or maintain order) officers can enter a building without prior authorisation.</p>	<p>A record of each entry into a building must be made. Records are not required for any premises other than buildings.</p> <p>Records must be provided as soon as reasonably practicable to the owner or occupier of the building.</p> <p>Otherwise the officer should inform the owner or occupier how to obtain a copy of the record.</p> <p>The record will include the address of the building (if known), its location, the date and time of entry, the purpose of entry, the police number of each officer entering and the rank of the authorising officer (if any).</p>

Section	Power	Overview	Records
24/Schedule 3	<p>Paragraph 2: An officer may enter and search any premises for the purpose of ascertaining whether there are any munitions unlawfully on the premises, or whether there is any wireless apparatus on the premises.</p>	<p>This power allows officers to enter and search any premises for munitions or wireless apparatus.</p> <p>For an officer to enter a dwelling, two conditions must be met: (i) he or she must reasonably suspect that munitions or wireless apparatus are in the dwelling (ii) he or she must have authorisation from an officer at least the rank of Inspector.</p> <p>Officers may be accompanied by other persons during the course of a search.</p> <p>During the course of a search, officers may make requirements of anyone on the premises or anyone who enters the premises to remain on the premises. For example, movement within the premises may be restricted, or entry into the premises not permitted. A person commits an offence and may be prosecuted if they fail to submit to a requirement or wilfully obstruct or seeks to frustrate a search of premises.</p> <p>A requirement may last up to four hours, unless extended for a further four hours if an officer at least the rank of Superintendent considers it necessary.</p>	<p>A written record for each search of premises must be made, unless it is not reasonably practicable to do so. A copy of this record will be given to the person who appears to the officer to be the occupier of the premises.</p> <p>The record will include the address of the premises searched, the date and time of the search, any damage caused during the course of the search and anything seized during the search. The record will also include the name of any person on the premises who appears to the officer to be the occupier of the premises. The record will provide the officer's police number.</p>
24/Schedule 3	<p>Paragraph 4: A constable may search a person (whether or not that person is in a public place) whom the constable reasonably suspects to have munitions unlawfully with him or to have wireless apparatus with him.</p>	<p>This power allows officers to search people who they reasonably suspect to have munitions or wireless apparatus. Searches can take place whether or not someone is in a public place.</p> <p>If searches take place in public, officers can only require someone to remove their headgear, footwear, outer coat, jacket or gloves. The person may be detained for as long as is reasonably required for the search to be carried out. The search may be at or near the place where the person is stopped. Searches may also be conducted of people travelling in vehicles.</p>	<p>A written record of each stop and search must be made.</p> <p>The officer should inform the person how to obtain a copy of the record.</p> <p>The record will include details of the person's name, when they were stopped and searched, and the officer number of the police officer who conducted the stop and search.</p>

Section	Power	Overview	Records
24/Schedule 3	Paragraph 4A(1): A senior officer may give an authorisation under this paragraph in relation to a specified area or place.	<p>This power allows a senior officer to authorise officers to stop and search people for munitions or wireless apparatus in specified locations.</p> <p>A senior officer can only make an authorisation if he or she reasonably suspects that the safety of any person may be endangered by the use of munitions or wireless apparatus. He or she must also reasonably consider that the authorisation is necessary to prevent such danger, and that the specified location and duration of the authorisation is no greater than necessary.</p> <p>The authorisation lasts for 48 hours, unless the Secretary of State confirms it for a period of up to 14 days from when the authorisation was first made. The Secretary of State may also restrict the area and duration of the authorisation or cancel it altogether.</p> <p>Whilst an authorisation is in place, officers may stop and search people for munitions and wireless apparatus whether or not they reasonably suspect that the person has munitions or wireless apparatus.</p> <p>Searches may take place in public. Officers may ask the person being searched to remove their headgear, footwear, outer coat, jacket or gloves. The person may be detained for as long as is reasonably required for the search to be carried out. The search may be at or near the place where the person is stopped. Searches may also be conducted of people travelling in vehicles.</p>	<p>A written record of each stop and search must be made.</p> <p>The officer should inform the person how to obtain a copy of the record.</p> <p>The record will include details of the person's name, when they were stopped and searched, and the officer number of the police officer who conducted the stop and search.</p>
26 and 42	A power under section 24 or 25 to search premises also applies to vehicles, which include aircraft, hovercraft, train or vessel. The power includes the power to stop a vehicle (other than an aircraft which is airborne) and the power to take a vehicle or cause it to be taken, where necessary or expedient, to any place for the purposes of carrying out the search.	<p>Section 42 extends the power to search premises to vehicles. Section 26 also gives officers the power to stop a vehicle (other than an aircraft which is airborne) and to take a vehicle, where necessary or expedient, to any place to carry out the search.</p> <p>A person commits an offence and may be prosecuted if he or she fails to stop a vehicle when required to do so.</p> <p>When an officer is carrying out a vehicle search he may require a person in/on the vehicle to remain with it, or to go to any place the vehicle is taken for a search. An officer may also use reasonable force to ensure compliance with these requirements.</p>	<p>A written record of each stop and search of a vehicle must be made.</p> <p>The officer should inform the person how to obtain a copy of the record.</p> <p>The record will include details of the person's name, when their vehicle was stopped and searched, and the officer number of the police officer who conducted the stop and search.</p>

ANNEX B: USEFUL DEFINITIONS

The powers in the 2007 Act allow searches to be made for munitions and wireless apparatus. Munitions and wireless apparatus are defined in paragraph 1 of Schedule 3 of the 2007 Act. Reference should be made to the 2007 Act for full details. A summarised version is set out below.

Munitions means:

- Explosives, firearms and ammunition, and
- Anything used or capable of being used in the manufacture of an explosive, a firearm, or ammunition.

Explosives means:

- An article or substance manufactured for the purpose of producing a practical effect by explosion;
- Materials for making such articles or substances;
- Any part of any of the above; and
- Anything used or intended to be used for causing or assisting in causing an explosion.

Firearm includes an air gun or a pistol.

Wireless Apparatus means a scanning receiver or transmitter

A transmitter means apparatus (or part of apparatus) for wireless telegraphy. This apparatus is designed or adapted for emission, as opposed to reception.

A scanning receiver means apparatus (or part of apparatus) for wireless telegraphy. This apparatus is designed or adapted to automatically monitor selected frequencies, or automatically scan a selected range of frequencies, to enable transmissions on any of those frequencies to be intercepted or detected.

In line with section 116 of the Wireless Telegraphy Act 2006, **Wireless Telegraphy** means the emitting or receiving of electromagnetic energy (of a frequency not exceeding 3,000 gigahertz) that—

- serves for conveying messages, sound or visual images (whether or not the messages, sound or images are actually received by anyone), or for operating or controlling machinery or apparatus; or
- is used in connection with determining position, bearing or distance, or for gaining information as to the presence, absence, position or motion of an object or of a class of objects.

ANNEX C: ARMED FORCES

Background

1. Throughout the UK, the armed forces may provide support to the civil authorities under Military Aid to Civil Authorities (MACA) arrangements. The same arrangements apply in Northern Ireland. Support may be provided in a range of scenarios, such as during severe flooding, but is usually only provided if there is an imminent threat to life. The armed forces may also provide support to the police under Military Aid to the Civil Power (MACP) provisions.

2. In the context of the ongoing security threat in Northern Ireland, however, the armed forces may provide additional support to the police under Operation Helvetic⁹. The PSNI and armed forces also have powers under the 2007 Act which help counter the threat. Whilst a number of the powers in the 2007 Act are primarily for use by the PSNI, the armed forces also have powers under the Act which they can use in support of the police. The powers are:
 - Section 21: stop and question;
 - Section 22: arrest;
 - Section 23: entry;
 - Section 24/Schedule 3: search for munitions and transmitters;
 - Section 25: search for unlawfully detained persons;
 - Section 27-28: examination of documents.
 - Section 30: Road closure: immediate

3. These powers are designed to help counter the danger to the public caused by unlawful use of munitions and wireless apparatus. These powers are not routinely used by the armed forces¹⁰. However, given the role the armed forces has in supporting the PSNI - particularly in terms of Explosive Ordnance Disposal (EOD) and providing advanced

⁹ Military support to the PSNI is delivered through Operation Helvetic, following the end of Operation Banner on 31 July 2007. See Hansard reference : HC Deb, 25 July 2007, c72WS)

¹⁰ The reports of the Independent Reviewer of the Justice and Security (NI) Act 2007 provide further information on the powers and how often these have been used.

search capabilities – it is important that they retain powers which they may need to use during the course of support operations. The armed forces has no alternative statutory powers which would allow them to offer this specific support to the police in Northern Ireland, and these powers are the minimum necessary to fulfil this role.

4. This Annex sets out the general principles for the use of the powers, in the exceptional circumstances in which they may be exercised. It also provides guidance on oversight and accountability mechanisms.
5. This Annex is made in accordance with section 34(2) of the 2007 Act. This Code has been made, in its entirety, by the Secretary of State for Northern Ireland. This Annex, which governs the exercise of relevant powers by the armed forces, has been agreed by the Secretary of State for Defence.

Principles for use of the powers

6. The PSNI¹¹ is obliged by law to protect life and property, preserve order, prevent the commission of offences, and take measures to bring offenders to justice where an offence has been committed. In discharging these functions, the PSNI may request the support of the armed forces. Accordingly when the armed forces use the powers, although they are not bound by statute in the same way as the PSNI, they should use the powers with the aim of meeting the following principles: to protect life and property, preserve order and prevent the commission of offences, and to assist the police in bringing offenders to justice.
7. Members of the armed forces should only use the powers in the course of their duties whilst responding to requests for support to PSNI tasks. For example, the PSNI could seek the assistance of the armed forces to deal with a suspicious device. The PSNI would formally task the

¹¹ The PSNI is bound by the provisions of the Police (Northern Ireland) Act 2000. This does not apply to the armed forces.

armed forces to assist in a given location, and the armed forces may use certain powers under the 2007 Act as part of any proposed response. When tasked by the PSNI, the armed forces should keep the PSNI informed of their actions.

8. When the armed forces use any powers in the 2007 Act, they should endeavour to do so with respect towards the public, and where possible, they should seek the public's support and co-operation. Members of the armed forces should seek to uphold those human rights and fundamental freedoms listed in Schedule 1 to the Human Rights Act 1998. Members of the armed forces are individually responsible for their actions in both criminal and civil law.

9. Members of the armed forces should only use the powers provided in the 2007 Act if it is proportionate and necessary to do so. A judgment as to whether or not the powers should be used must be made in conjunction with the PSNI, in accordance with paragraph 3 above. The decision to use the powers must be based on proportionality and necessity: proportionality requires the powers to be used only where justified by the scale of the threat; necessity requires a proper basis for the exercise of the powers, as provided for in the 2007 Act. It is imperative that the powers are exercised in a way which ensures the least possible interference with individual rights, where those rights may lawfully be interfered with. In line with the armed force's values and standards, all conduct must be lawful, appropriate and professional.¹²

10. Furthermore, where reasons are expressly set out in the legislation for the use of a particular power, members of the armed forces should comply with the provisions and purpose of the 2007 Act.

¹² See values and standards of the British Army at:
http://www.army.mod.uk/documents/general/v_s_of_the_british_army.pdf

11. When exercising the powers under the 2007 Act, members of the armed forces should do so without prejudice on grounds of age, race, colour, language, sex, disability, political or religious beliefs, ethnic or social background, national or social origin, association with a national minority, property, birth or other status. If these fundamental principles are not observed the use of the powers could be challenged, and it is vital that the armed forces uphold these guidelines at all times.

Oversight and accountability

12. The armed forces are accountable for their use of the powers in the 2007 Act. Military commanders must ensure that powers under the 2007 Act are not exercised without a basis and should satisfy themselves that members of the armed forces under their supervision use the powers in accordance with these principles. Action should be taken if the powers are being used inappropriately.
13. The Secretary of State for Defence is accountable to the United Kingdom Parliament for the actions of the armed forces when using the powers. As set out at paragraph 8 above, each individual member of the armed forces is accountable for his or her actions under criminal or civil law.
14. The use and application of the powers by the armed forces is overseen and monitored by the Independent Reviewer of the 2007 Act, who produces an annual report on the use of the powers which is laid before Parliament. The Independent Reviewer must also consider the procedures adopted by the Commander 38 (Irish) Brigade for receiving, investigating and responding to complaints. The Commander 38 (Irish) Brigade must also provide information, disclose documents and provide assistance as the Independent Reviewer may require.