



Northern  
Ireland  
Office

# CONSULTATION PAPER

## PARAGRAPH 8.78 OF THE JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007 CODE OF PRACTICE

Following a 12 week consultation period the Northern Ireland Office introduced a Code of Practice in May 2013 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 final Code of Practice included amendments to paragraph 8.78 on page 35 in the '*Stopping and searching persons: Records section*'. The paragraph that appears in the final Code is as follows:

*A record of the stop will be made electronically by the officer. A unique reference number and guidance on how to obtain a full copy of the record must be provided to the person searched. If for any reason an electronic record cannot be made or a unique reference number cannot be provided at the time, guidance must still be given to the person searched.*

This was the subject of a recent Judicial Review decision by the High Court of Northern Ireland which determined that the Secretary of State should have re-consulted with the public on the amended paragraph prior to seeking approval from Parliament for the final version of the Code.

The Northern Ireland Office is seeking your views on this specific paragraph only and is running a 6 week consultation to commence **11 November 2014** with all replies due no later than **22 December 2014**.

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

- In writing:

Code of Practice Consultation  
Security and Protection Group

Northern Ireland Office

Stormont House

Stormont Estate

Belfast, BT4 3SH

- By e-mail:

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- By telephone:

(028) 90 527024

**PARAGRAPH 8.78 OF THE 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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## **1. Introduction**

1.1 The Justice and Security (Northern Ireland) Act 2007 (hereafter referred to as “the 2007 Act”) Code of Practice was made in accordance with section 34(1)(a) of the 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 was 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 The Code came into force at 00:00:01 hours on 15 May 2013.

## **3. Purpose of Code**

3.1 The purpose of the Code was 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 set out the fundamental principles which underpin the use of the powers. The purpose of Annex C was 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. Judicial Review

4.1 Paragraph 8.78 was the subject of a recent Judicial Review which determined that the Secretary of State should have re-consulted with the public on the paragraph prior to seeking approval from Parliament for the final version of the Code. To give some context to the paragraph, the section in which it appears, '*Stopping and searching persons: records*' paragraphs 8.73 to 8.78, has been provided in full at [Annex A](#) exactly as it is currently written in the Code of Practice.

4.2 Should more details be required on the consultation process and documents, the full 2007 Act Code of Practice is available at:

<https://www.gov.uk/government/publications/code-of-practice-for-the-exercise-of-powers-in-the-justice-and-security-northern-ireland-act-2007>

The original Code of Practice consultation document is available at:

<https://www.gov.uk/government/consultations/code-of-practice-for-the-exercise-of-powers-in-the-justice-and-security-northern-ireland-act-2007>

The summary of responses document which was completed after the first consultation is available at:

<https://www.gov.uk/government/publications/nio-release-summary-of-responses-to-public-consultation-on-stop-and-search-powers>

4.3 There were four formal responses to the consultation received from the following organisations:

- Police Superintendents Association Northern Ireland (PSANI);
- Committee for the Administration of Justice (CAJ);
- Northern Ireland Human Rights Commission (NIHRC); and

- The Human Rights and Policing Standards (HRPS) Committee of the Northern Ireland Policing Board (NIPB)<sup>1</sup>

4.4 All respondees to the consultation were content to have their comments attributed to them in the summary of responses document the NIO published.

4.5 The original paragraph 8.78 that went out to consultation was written as follows:

*‘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.’*

4.6 Following the initial 12 week consultation however the paragraph was amended as follows:

*‘A record of the stop will be made electronically by the officer. A unique reference number and guidance on how to obtain a full copy of the record must be provided to the person searched. If for any reason an electronic record cannot be made or a unique reference number cannot be provided at the time, guidance must still be given to the person searched.’*

4.7 The reason for this change was that shortly after the consultation period ended the Northern Ireland Office became aware that the PSNI did not have routine access to portable printers and were unlikely to do so in the near future. This remains the case. The paragraph was subsequently rewritten to reflect that information in order to ensure the public was correctly advised on how they could expect to receive a written record. Further consultation was not carried

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<sup>1</sup> Now known as the Performance Committee.



out on this or any other change that was made on the basis that the Northern Ireland Office did not consider them to be fundamental changes and therefore there was no requirement to do so.

4.8 Mr Justice Treacy however considered that the change to paragraph 8.78 was fundamental and said:

*‘Given that one of the major purposes of the drafting of the Code of Practice was to ensure that the use of s21 and s24 powers was convention compliant, the nature and extent of provisions intended to accord essential safeguards to those affected by the powers were some of the most fundamental provisions to be consulted upon. Whatever the subjective intention of the two respondents in putting together the draft Code, objectively and from the perspective of interested parties, the provision of on the spot written evidence went to the level of safeguards attending the various powers and was therefore fundamental. Truncating the nature and extent of the safeguards in the Code was clearly a fundamental change and one which in the interests of fairness needed to be consulted upon.’*

The full judgement can be found under the 9 May 2014 hearing date on the Northern Ireland Court Service website at: <http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/SummaryJudgments/Pages/default.aspx>

## **5. Re-Consultation**

5.1 The Order that the Mr Justice Treacy made in the Judicial Review was that the Northern Ireland Office re-consult on paragraph 8.78. Therefore we are seeking your views on this specific paragraph only.

## **Annex A**

Excerpt from the Code of Practice as published.

### ***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<sup>2</sup> 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 *A record of the stop will be made electronically by the officer. A unique reference number and guidance on how to obtain a full copy of the record must be provided to the person searched. If for any reason an electronic record cannot be made or a unique reference number cannot be provided at the time, guidance must still be given to the person searched.*

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<sup>2</sup> The Blackberrys used by the PSNI require that the basis for using the power is recorded before the officer can input further details relating to the stop.