



Northern
Ireland
Office

Review of Powers of Entry
Exercised under the Justice
and Security (Northern Ireland)
Act 2007

November 2014

**REVIEW OF POWERS OF ENTRY EXERCISED
UNDER THE JUSTICE AND SECURITY
(NORTHERN IRELAND) ACT 2007**

Northern Ireland Office

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Presented to Parliament pursuant to Section 42 of the Protection of Freedoms
Act 2012



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Northern Ireland Office Powers of Entry Review

STARTS

1. Introduction by Secretary Of State

The Protection of Freedoms Act 2012 (POFA) requires Ministers of the Crown to conduct a review of relevant powers of entry and associated powers for which they are responsible. As Secretary of State for Northern Ireland I have responsibility for powers of entry contained within the Justice and Security (Northern Ireland) Act 2007 (2007 Act). The purpose of the Act was to deliver a number of measures which were deemed necessary to deliver a commitment to security normalisation in Northern Ireland, whilst at the same time ensuring that the necessary powers were in place to protect the public.

After reviewing the powers of entry contained within the 2007 Act, I have concluded that the powers remain necessary and proportionate to protect the public in the face of an ongoing security threat in Northern Ireland.

I am confident that we have robust safeguards in place to ensure that these powers are only used where it is necessary and proportionate to do so. As well as a Code of Practice (published in 2013), all powers in the 2007 Act (found in sections 21-32) are subject to annual review by the Independent Reviewer appointed under section 40 of the 2007 Act, a process that results in an annual report to Parliament.

I therefore intend to retain these powers of entry as set out in the 2007 Act until I am satisfied that they are no longer required.

Theresa Villiers

Secretary of State for Northern Ireland

2. Review of Powers of Entry

2.1 A summary of the powers

The 2007 Act is applicable to Northern Ireland only. Sections 21-33 of the 2007 Act provide the Police Service of Northern Ireland (PSNI) and armed forces with a range of security related powers such as the powers to stop and question, of entry and to stop and search. These powers are used in the context of the residual security threat in Northern Ireland: the threat level from Northern Ireland Related Terrorism in Northern Ireland currently stands at SEVERE.

2.2 Who can use the powers?

There are four powers of entry within the 2007 Act. Two of these, Section 23 and Section 24/Schedule 3 provide powers of entry to the PSNI and members of Her Majesty's forces, who may be required in some circumstances to act in support of the PSNI. The two other powers Section 22(3) and Section 25 are for use by the armed forces only. Further details on the conditions attached to each power are set out in the sections below on Authorisations and Records.

- i. Section 22: Arrest – power of entry for the purpose of arresting a person. A member of Her Majesty's forces on duty, under section 22(3) may enter and search any premises in which he knows or reasonably suspects, the person to be.
- ii. Section 23: Entry – a member of Her Majesty's forces on duty or a constable may enter any premises if he considers it necessary in the course of operations for the preservation of the peace or the maintenance of order.
- iii. Section 24/Schedule 3, paragraph 2: Search for Munitions and Transmitters¹ – a member of Her Majesty's forces on duty or a constable may enter and search any premises for the purpose of ascertaining:
 - a. whether there are any munitions unlawfully on the premises, or
 - b. whether there is any wireless apparatus on the premises.

¹ A transmitter means apparatus (or part of apparatus) for wireless telegraphy. This apparatus is designed or adapted for emission, as opposed to reception.

Section 25: Search for unlawfully detained persons – a member of Her Majesty’s forces on duty who reasonably believes that a person is unlawfully detained in such circumstances that his life is in danger may enter and search any premises for the purpose of ascertaining whether the person is detained there.

2.3 Necessity and Proportionality

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. The powers of entry of premises, set out in the 2007 Act, help the PSNI meet these requirements and can only be used if the relevant conditions are met in each case. Furthermore the PSNI must be guided by the principles of section 32 of the Police (Northern Ireland) Act 2000, set out above, 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.

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). The Code of Practice² accompanying the 2007 Act makes clear that officers must exercise their powers in accordance with the obligations of public authorities under the Human Rights Act 1998, and must respect individual rights when using these powers. The Code of Practice states that it is imperative that the powers are exercised in a way which ensures the least possible interference with individual rights.

The nature and length of such intrusion should be proportionate to the aim sought to be achieved, which must be one of the legitimate aims in Article 8

² <https://www.gov.uk/government/publications/code-of-practice-for-the-exercise-of-powers-in-the-justice-and-security-northern-ireland-act-2007>

(these include public safety, the prevention of disorder or crime and the protection of the rights and freedoms of others). Officers should also consider if any alternative, less intrusive ways of achieving those aims can be used. Officers will also need to take into account the specific circumstances, the need for immediate action and the type of premises – entering a field for example, 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 proper basis for any interference with individual rights, and that interference is kept to a minimum.

Why powers of entry are maintained for the armed forces

The nature of the security threat in Northern Ireland requires the armed forces to operate alongside the PSNI from time to time, particularly when faced with explosives related security incidents. In his Sixth Report³ published December 2013, the Independent Reviewer of the 2007 Act commented on the support provided by the armed forces to the PSNI, against an ongoing pattern of explosives related security incidents. He summarised:

“The police do not have the resources to deal with bomb incidents and are reliant on the armed forces for this specialist technical support. For that reason, the need for powers of entry and search enabling the armed forces to act in support of the police has continued throughout the reporting year”.

Annex C of the Code of Practice makes clear that members of the armed forces should only use the powers contained within the 2007 Act in exceptional circumstances. Although not routinely used by the armed forces, given the role they have in supporting the PSNI – particularly in terms of Explosives Ordnance Disposal (EOD) and providing advanced search capabilities it is important that they retain powers which they may need to use during the course of support operations. The Code of Practice also makes clear that these powers are the minimum necessary to fulfil this role.

3

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294878/6th_Report_of_the_Independent_Reviewer_of_the_Justice_and_Security_NI_Act_2007_2012-2013.PDF

2.4 How widely used are the powers of entry

When powers have been used, details of their use are recorded and statistics⁴ published. Information and details around all the powers of entry are publicly available in the Independent Reviewer's report. For the period 1 August 2012 to 31 July 2013⁵ the section 23 power of entry in the 2007 Act was used by the PSNI 147 times. In the same period the section 24/schedule 3 power was used by the PSNI in premises that are not dwellings 65 times and in dwellings 188 times. The armed forces did not use the section 23 power or section 24/schedule 3 power of entry in the reporting period but on occasion may have been present in support of the police in respect of explosive ordnance disposal (EOD) when the power of entry was used. In addition there were no uses by the armed forces of the section 22(3) and section 25 powers in the reporting period 1 August 2012 to 31 July 2013⁶, reflecting the fact that exceptional circumstances are required before those powers may be used by the armed forces.

2.5 Safeguards

Oversight

The Government considers that these powers are important tools for the police in dealing with security related incidents. The operation of all the powers including the powers of entry in section 22(3), section 23, section 24/schedule 3 and section 25 are reviewed on an annual basis by the Independent Reviewer of the 2007 Act, formerly Mr Robert Whalley CB⁷, who in his latest report published December 2013 (his sixth) concluded that the powers should continue to be available for at least a further year. Further comment on this follows in Section 3 below.

In addition, the use of the 2007 Act powers by the PSNI is subject to external scrutiny by the Northern Ireland Policing Board (NIPB) and if a member of the

⁴ The Independent Reviewer of the 2007 Act has published statistics on the use of these powers as provided to him by Statistics branch, Police Service of Northern Ireland.

⁵ The reporting period covered by the Independent reviewer of the 2007 Act in his sixth annual report. The seventh annual report is due to be published in December 2014.

⁶ See paragraphs 382 and 392 of Independent Reviewer's annual report of December 2013.

⁷ Mr David Seymour CB took up post as the Independent Reviewer of the 2007 Act on 1 February 2014.

public has an issue with the use of a particular power they can raise the issue with the Police Ombudsman for Northern Ireland (PONI).

Post Legislative Scrutiny

All Acts of Parliament must complete formal post legislative scrutiny⁸ and this process was completed on the 2007 Act in July 2012. It confirmed that the legislation met its original objectives to deliver measures to bring about security normalisation in Northern Ireland consistent with the level of threat.

Code of Practice

On 15 May 2013 the NIO published a Code of Practice for the exercise of powers in the 2007 Act. The purpose of the 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. Annex C of the Code 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.

Authorisations

Contained within the 2007 Act are specific authorisation requirements in relation to the powers of entry. The Code of Practice includes further guidance on the powers of entry and when they may be used. Under the section 23 power, an authorisation is not required for entry into premises that are not a building⁹ but is required for a constable to enter a building.

The authorisation required for a constable to enter a building is as follows:

- (i) the written authorisation of a PSNI officer of at least the rank of Superintendent; or

⁸ <https://www.gov.uk/government/publications/post-legislative-scrutiny-northern-ireland-act-2007-and-justice-and-security-northern-ireland-act-2007>

⁹ 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.

- (ii) if it is not reasonably practicable to obtain written authorisation, on the oral authorisation of a PSNI officer of at least the rank of Inspector;
- (iii) where it is not reasonably practicable to obtain either written or oral authorisation, a constable may enter a building without 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.

The section 24/Schedule 3 paragraph 2 power of entry requires the officer to be an authorised officer if the power is used to enter a dwelling¹⁰, and it also requires the officer to reasonably suspect that the dwelling unlawfully contains munitions or contains wireless apparatus. An authorised officer means, in the case of a constable, that he is authorised by a PSNI officer of at least the rank of inspector. In the case of Her Majesty's forces, an authorised officer means a member who is on duty and authorised by a commissioned officer of those forces.

In order to exercise the section 25 power to enter premises which are a dwelling, the member of the armed forces on duty must be authorised for that purpose by a commissioned officer, and must reasonably believe that a person is unlawfully detained there in such circumstances that his life is in danger.

Records

Where a constable enters a building under section 23 or where a constable or a member of the armed forces enters premises under section 24/schedule 3 paragraph 2, he or she must ensure that as soon as reasonably practicable a record is made. Copies of such records should be given to the owner or

¹⁰ A dwelling is defined in section 42 of the 2007 Act as a building or part of a building used as a dwelling, or a vehicle which is habitually stationary and is used as a dwelling. A vehicle is defined as including an aircraft, hovercraft, train or vessel.

occupier of the building or premises as soon as is reasonably practicable¹¹. In the case of section 23, a copy of a written authorisation to enter a building, or a copy of a written record of an oral authorisation must be given to the owner or occupier of the building to which it relates as soon as reasonably practicable. There is no express requirement under the 2007 Act to make a record of use of the section 22(3) or section 25 powers of entry, although as stated in Annex C of the Code of Practice, the use and application of these powers (in the exceptional circumstances in which they may be used) by the armed forces is overseen and monitored by the Independent Reviewer of the 2007 Act.

Compensation

There is provision for compensation to be paid in certain circumstances for loss or damage to property arising from the exercise of these powers. The details are set out in Schedule 4 to the 2007 Act.

3. Outcome

There is no intention to repeal, re-write or introduce further safeguards to the powers at this time. This is because the powers are judged to be necessary in the context of the security situation in Northern Ireland, and in light of the substantial safeguards currently in place, in particular the 2007 Act Code of Practice and the legislation's Independent Review process. The new Independent Reviewer, David Seymour CB, appointed 1 February 2014, is currently drafting the seventh report on the operation of all the powers in section 21-32 of the 2007 Act to cover the period 1 August 2013 to 31 July 2014. Mr Seymour was consulted in the drafting of this report specifically on powers of entry and agreed with the conclusions of the Northern Ireland Office. However, should the Independent Reviewer make recommendations in his subsequent annual reports regarding any of the powers including powers of entry these recommendations will be considered and the necessary action taken. This action could take the form of a repeal, re-write or the inclusion of additional safeguards.

¹¹ The record keeping requirements are set out in section 23 of and Schedule 3 paragraphs 6 and 7 to the 2007 Act.

4. Additional Information

- The background to the role of the Independent Reviewer of the 2007 Act is attached at **Annex A**.
- The Code of Practice for the Exercise of Powers in the Justice and Security (NI) Act 2007 which came into force in Parliament May 2013 can be accessed here:
- <https://www.gov.uk/government/publications/code-of-practice-for-the-exercise-of-powers-in-the-justice-and-security-northern-ireland-act-2007>

- The Post Legislative Scrutiny Command Paper can be accessed here:

<https://www.gov.uk/government/publications/post-legislative-scrutiny-northern-ireland-act-2007-and-justice-and-security-northern-ireland-act-2007>

- The sixth report of the Independent Reviewer of the 2007 Act can be accessed here:
- https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/294878/6th_Report_of_the_Independent_Reviewer_of_the_Justice_and_Security_NI_Act_2007_2012-2013.PDF

NB: The seventh report of the Independent Reviewer is due to be published in December 2014

The Role of the Independent Reviewer of the Justice and Security (Northern Ireland) Act 2007.

Background

Under section 40 (Review) of the Justice and Security (Northern Ireland) Act 2007, the Secretary of State is required to appoint a “reviewer” to examine the operation of sections 21 to 32 and Schedules 3 and 4.

Terms of Reference

“The overall aim of the Independent Reviewer will be, in accordance with the Act:

- *to review the operation of sections 21 to 32 of the Act and those who use or are affected by those sections;*
- *to review the procedures adopted by the GOC NI¹² for receiving, investigating and responding to complaints;*
- *and to report annually to the Secretary of State*

The Reviewer will act in accordance with any request by the Secretary of State to include in a review specified matters over and above those outlined in Sections 21 to 32 of the Act and the GOC remit outlined above.

- *The Reviewer may make recommendations to be considered by the Secretary of State on whether to repeal powers in the Act”.*

Mr Robert Whalley CB was appointed as Independent Reviewer of the 2007 Act in 2008 and held the post for 6 years. The current Independent Reviewer is Mr David Seymour CB who took up this position on 1 February 2014. His first report will cover the period 1 August 2013 to 31 July 2014 and will be laid in Parliament in December 2014.

¹² In January 2009 the post of GOC Northern Ireland was abolished and subsumed under that of Brigadier 38 (Irish) Brigade. This has brought no change to the relationship between the senior military commander in Northern Ireland and the reviewer.

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