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STATUTORY INSTRUMENTS

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**1989 No. 1341**

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

**PART III**

**POWERS OF ENTRY, SEARCH AND SEIZURE**

*Search warrants*

**Power of justice of the peace to authorise entry and search of premises**

**10.**—(1) If on an application made by a constable a justice of the peace is satisfied that there are reasonable grounds for believing—

- (a) that a serious arrestable offence has been committed; and
- (b) that there is material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence; and
- (c) that the material is likely to be relevant evidence; and
- (d) that it does not consist of or include items subject to legal privilege, excluded material or special procedure material; and
- (e) that any of the conditions specified in paragraph (3) applies,

he may issue a warrant authorising a constable to enter and search the premises.

(2) A constable may seize and retain anything for which a search has been authorised under paragraph (1).

(3) The conditions mentioned in paragraph (1)(e) are—

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) that it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;
- (c) that entry to the premises will not be granted unless a warrant is produced;
- (d) that the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.

(4) In this Order “relevant evidence”, in relation to an offence, means anything that would be admissible in evidence at a trial for the offence.

(5) The power to issue a warrant conferred by this Article is in addition to any such power otherwise conferred.

**Special provisions as to access**

**11.**—(1) A constable may obtain access to excluded material or special procedure material for the purposes of a criminal investigation by making an application under Schedule 1 and in accordance with that Schedule.

(2) Subject to paragraph (3), any statutory provision passed or made before the making of this Order under which a search of premises for the purposes of a criminal investigation could be authorised by the issue of a warrant to a constable shall cease to have effect so far as it relates to the authorisation of searches—

- (a) for items subject to legal privilege; or
- (b) for excluded material; or
- (c) for special procedure material consisting of documents or records other than documents.

(3) Nothing in this Article or in Schedule 1 shall affect the powers conferred by section 17 of, and Schedule 7 to, the Prevention of Terrorism (Temporary Provisions) Act 1989(1).

**Meaning of “items subject to legal privilege”**

**12.**—(1) Subject to paragraph (2), in this Order “items subject to legal privilege” means—

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) items enclosed with or referred to in such communications and made—
  - (i) in connection with the giving of legal advice; or
  - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them.

(2) Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.

**Meaning of “excluded material”**

**13.**—(1) Subject to the following provisions of this Article, in this Order “excluded material” means—

- (a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence;
- (b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence;
- (c) journalistic material which a person holds in confidence and which consists—
  - (i) of documents; or
  - (ii) of records other than documents.

(2) A person holds material other than journalistic material in confidence for the purposes of this Article if he holds it subject—

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(1) 1989 c. 4

- (a) to an express or implied undertaking to hold it in confidence; or
  - (b) to a restriction on disclosure or an obligation of secrecy contained in any statutory provision, including a statutory provision passed or made after the making of this Order.
- (3) A person holds journalistic material in confidence for the purposes of this Article if—
- (a) he holds it subject to such an undertaking, restriction or obligation; and
  - (b) it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

**Meaning of “personal records”**

**14.** In this Part “personal records” means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating—

- (a) to his physical or mental health;
- (b) to spiritual counselling or assistance given or to be given to him; or
- (c) to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who—
  - (i) by reason of his office or occupation has responsibilities for his personal welfare; or
  - (ii) by reason of an order of a court has responsibilities for his supervision.

**Meaning of “journalistic material”**

**15.**—(1) Subject to paragraph (2), in this Order “journalistic material” means material acquired or created for the purposes of journalism.

(2) Material is only journalistic material for the purposes of this Order if it is in the possession of a person who acquired or created it for the purposes of journalism.

(3) A person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

**Meaning of “special procedure material”**

**16.**—(1) In this Order “special procedure material” means—

- (a) material to which paragraph (2) applies; and
- (b) journalistic material, other than excluded material.

(2) Subject to the following provisions of this Article, this paragraph applies to material, other than items subject to legal privilege and excluded material, in the possession of a person who—

- (a) acquired or created it in the course of any trade, business, profession or other occupation or for the purpose of any paid or unpaid office; and
- (b) holds it subject—
  - (i) to an express or implied undertaking to hold it in confidence; or
  - (ii) to a restriction or obligation such as is mentioned in Article 13(2)(b).

(3) Where material is acquired—

- (a) by an employee from his employer and in the course of his employment; or
- (b) by a company from an associated company,

it is only special procedure material if it was special procedure material immediately before the acquisition.

(4) Where material is created by an employee in the course of his employment, it is only special procedure material if it would have been special procedure material had his employer created it.

(5) Where material is created by a company on behalf of an associated company, it is only special procedure material if it would have been special procedure material had the associated company created it.

(6) A company is to be treated as another's associated company for the purposes of this Article if it would be so treated under section 416 of the Income and Corporation Taxes Act 1988(2).

### **Search warrants—safeguards**

**17.—**(1) This Article and Article 18 have effect in relation to the issue to constables under any statutory provision, including a statutory provision passed or made after the making of this Order, of warrants to enter and search premises; and an entry on or search of premises under a warrant is unlawful unless the warrant complies with this Article and is executed in accordance with Article 18.

(2) Where a constable applies for any such warrant, it shall be his duty—

(a) to state—

(i) the ground on which he makes the application; and

(ii) the statutory provision under which the warrant would be issued;

(b) to specify the premises which it is desired to enter and search; and

(c) to identify, so far as is practicable, the articles or persons to be sought.

(3) An application for such a warrant shall be supported by a complaint in writing and substantiated on oath.

(4) The constable shall answer any question that the justice of the peace or judge hearing the application asks him.

(5) A warrant shall authorise an entry on one occasion only.

(6) A warrant—

(a) shall specify—

(i) the name of the person who applies for it;

(ii) the date on which it is issued;

(iii) the statutory provision under which it is issued; and

(iv) the premises to be searched; and

(b) shall identify, so far as is practicable, the articles or persons to be sought.

(7) Two copies shall be made of a warrant.

(8) The copies shall be clearly certified as copies by the justice of the peace or judge who issues the warrant.

### **Execution of warrants**

**18.—**(1) A warrant to enter and search premises may be executed by any constable.

(2) Such a warrant may authorise persons to accompany any constable who is executing it.

(3) Entry and search under a warrant must be within one month from the date of its issue.

(4) Entry and search under a warrant must be at a reasonable hour unless it appears to the constable executing it that the purpose of a search may be frustrated on an entry at a reasonable hour.

(5) Where the occupier of premises which are to be entered and searched is present at the time when a constable seeks to execute a warrant to enter and search them, the constable—

- (a) shall identify himself to the occupier and, if not in uniform, shall produce to him documentary evidence that he is a constable;
- (b) shall produce the warrant to him; and
- (c) shall supply him with a certified copy of it.

(6) Where—

- (a) the occupier of such premises is not present at the time when a constable seeks to execute such a warrant; but
- (b) some other person who appears to the constable to be in charge of the premises is present, paragraph (5) shall have effect as if any reference to the occupier were a reference to that other person.

(7) If there is no person present who appears to the constable to be in charge of the premises, he shall leave or affix a copy of the warrant in a prominent place on the premises.

(8) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.

(9) A constable executing a warrant shall make an endorsement on it stating—

- (a) whether the articles or persons sought were found; and
- (b) whether any articles were seized, other than articles which were sought.

(10) A warrant which—

- (a) has been executed; or
- (b) has not been executed within the time authorised for its execution,

shall be returned to the clerk of petty sessions for the petty sessions district in which the premises are situated.

(11) A warrant which is returned under paragraph (10) shall be retained for 12 months from its return.

(12) If during the period for which a warrant is to be retained the occupier of the premises to which it relates asks to inspect it, he shall be allowed to do so.

#### *Entry and search without search warrant*

#### **Entry for purpose of arrest etc.**

**19.—**(1) Subject to the following provisions of this Article, and without prejudice to any other statutory provision, a constable may enter and search any premises for the purpose—

- (a) of executing—
  - (i) a warrant of arrest issued in connection with or arising out of criminal proceedings; or
  - (ii) a warrant of commitment issued under Article 92 of the Magistrates' Courts (Northern Ireland) Order 1981(3);
- (b) of arresting a person for an arrestable offence;

- (c) of arresting a person for an offence under Article 9 or 21 of the Public Order (Northern Ireland) Order 1987(4);
  - (d) of recapturing a person who is unlawfully at large and whom he is pursuing; or
  - (e) of saving life or limb or preventing serious damage to property.
- (2) Except for the purpose specified in paragraph (1)(e), the powers of entry and search conferred by this Article—
- (a) are only exercisable if the constable has reasonable grounds for believing that the person whom he is seeking is on the premises; and
  - (b) are limited, in relation to premises consisting of two or more separate dwellings, to powers to enter and search—
    - (i) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any other such dwelling; and
    - (ii) any such dwelling in which the constable has reasonable grounds for believing that the person whom he is seeking may be.
- (3) The power of search conferred by this Article is only a power to search to the extent that is reasonably required for the purpose for which the power of entry is exercised.
- (4) Subject to paragraph (5), all the rules of common law under which a constable has power to enter premises without a warrant are hereby abolished.
- (5) Nothing in paragraph (4) affects any power of entry to deal with or prevent a breach of the peace.

### **Entry and search after arrest**

- 20.**—(1) Subject to the following provisions of this Article, a constable may enter and search any premises occupied or controlled by a person who is under arrest for an arrestable offence, if he has reasonable grounds for suspecting that there is on the premises evidence, other than items subject to legal privilege, that relates—
- (a) to that offence; or
  - (b) to some other arrestable offence which is connected with or similar to that offence.
- (2) A constable may seize and retain anything for which he may search under paragraph (1).
- (3) The power to search conferred by paragraph (1) is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence.
- (4) Subject to paragraph (5), the powers conferred by this Article may not be exercised unless an officer of the rank of inspector or above has authorised them in writing.
- (5) A constable may conduct a search under paragraph (1)—
- (a) before taking the person to a police station; and
  - (b) without obtaining an authorisation under paragraph (4),
- if the presence of that person at a place other than a police station is necessary for the effective investigation of the offence.
- (6) If a constable conducts a search by virtue of paragraph (5), he shall inform an officer of the rank of inspector or above that he has made the search as soon as practicable after he has made it.
- (7) An officer who—
- (a) authorises a search; or

(b) is informed of a search under paragraph (6), shall make a record in writing—

- (i) of the grounds for the search; and
- (ii) of the nature of the evidence that was sought.

(8) If the person who was in occupation or control of the premises at the time of the search is in police detention at the time the record is to be made, the officer shall make the record as part of his custody record.

(9) In the application of this Article to a member of a constabulary not maintained by the Police Authority, references to an officer of the rank of inspector or above shall be construed as references to a member of that constabulary whose rank is above that of constable.

*Seizure etc.*

**General power of seizure etc.**

**21.**—(1) The powers conferred by paragraphs (2), (3) and (4) are exercisable by a constable who is lawfully on any premises.

(2) The constable may seize anything which is on the premises if he has reasonable grounds for believing—

- (a) that it has been obtained in consequence of the commission of an offence; and
- (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) The constable may seize anything which is on the premises if he has reasonable grounds for believing—

- (a) that it is evidence in relation to an offence which he is investigating or any other offence; and
- (b) that it is necessary to seize it in order to prevent the evidence being concealed, lost, damaged, altered or destroyed.

(4) The constable may require any information which is contained in a computer and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible if he has reasonable grounds for believing—

- (a) that—
  - (i) it is evidence in relation to an offence which he is investigating or any other offence; or
  - (ii) it has been obtained in consequence of the commission of an offence; and
- (b) that it is necessary to do so in order to prevent it being concealed, lost, tampered with or destroyed.

(5) The powers conferred by this Article are in addition to any power otherwise conferred.

(6) No power of seizure conferred on a constable under any statutory provision (including a statutory provision passed or made after the making of this Order) is to be taken to authorise the seizure of an item which the constable exercising the power has reasonable grounds for believing to be subject to legal privilege.

**Extension of powers of seizure to computerised information**

**22.**—(1) Every power of seizure which is conferred by a statutory provision to which this Article applies on a constable who has entered premises in the exercise of a power conferred by a statutory

provision shall be construed as including a power to require any information contained in a computer and accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible.

- (2) This Article applies—
- (a) to any statutory provision passed or made before the making of this Order;
  - (b) to Articles 10 and 20;
  - (c) to paragraph 10 of Schedule 1; and
  - (d) to any statutory provision passed or made after the making of this Order.

### **Access and copying**

**23.**—(1) A constable who seizes anything in the exercise of a power conferred by any statutory provision, including a statutory provision passed or made after the making of this Order, shall, if so requested by a person showing himself—

- (a) to be the occupier of premises on which it was seized; or
- (b) to have had custody or control of it immediately before the seizure,

provide that person with a record of what he seized.

(2) The constable shall provide the record within a reasonable time from the making of the request for it.

(3) Subject to paragraph (8), if a request for permission to be granted access to anything which—

- (a) has been seized by a constable; and
- (b) is retained by the police for the purpose of investigating an offence,

is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of a constable.

(4) Subject to paragraph (8), if a request for a photograph or copy of any such thing is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the officer shall—

- (a) allow the person who made the request access to it under the supervision of a constable for the purpose of photographing or copying it; or
- (b) photograph or copy it, or cause it to be photographed or copied.

(5) A constable may also photograph or copy, or have photographed or copied, anything which he has power to seize, without a request being made under paragraph (4).

(6) Where anything is photographed or copied under paragraph (4)(b), the photograph or copy shall be supplied to the person who made the request.

(7) The photograph or copy shall be so supplied within a reasonable time from the making of the request.

(8) There is no duty under this Article to grant access to, or to supply a photograph or copy of, anything if the officer in charge of the investigation for the purposes of which it was seized has reasonable grounds for believing that to do so would prejudice—

- (a) that investigation;
- (b) the investigation of an offence other than the offence for the purposes of investigating which the thing was seized; or
- (c) any criminal proceedings which may be brought as a result of—
  - (i) the investigation of which he is in charge; or



- (ii) any such investigation as is mentioned in sub-paragraph (b).

### **Retention**

**24.**—(1) Subject to paragraph (4), anything which has been seized by a constable or taken away by a constable following a requirement made by virtue of Article 21 or 22 may be retained so long as is necessary in all the circumstances.

(2) Without prejudice to the generality of paragraph (1)—

(a) anything seized for the purposes of a criminal investigation may be retained, except as provided by paragraph (4)—

(i) for use as evidence at a trial for an offence; or

(ii) for forensic examination or for investigation in connection with an offence; and

(b) anything may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

(3) Nothing seized on the ground that it may be used—

(a) to cause physical injury to any person;

(b) to damage property;

(c) to interfere with evidence; or

(d) to assist in escape from police detention or lawful custody,

may be retained when the person from whom it was seized is no longer in police detention or the custody of a court or is in the custody of a court but has been released on bail.

(4) Nothing may be retained for either of the purposes mentioned in paragraph (2)(a) if a photograph or copy would be sufficient for that purpose.

(5) Nothing in this Article affects any power of a court to make an order under section 1 of the Police (Property) Act 1897(5).

### *Supplementary*

### **Meaning of “premises” etc.**

**25.** In this Order—

“premises” includes any place and, in particular, includes—

(a) any vehicle, vessel, aircraft or hovercraft;

(b) any offshore installation; and

(c) any tent or movable structure; and

“offshore installation” has the meaning given to it by section 1 of the Mineral Workings (Offshore Installations) Act 1971(6).

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(5) 1897 c. 30

(6) 1971 c. 61