

JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Powers

Section 21: Stop and Question

60. This section provides a member of the armed forces on duty or a constable with the power to stop and question a person for so long as is necessary to establish their identity and movements.
61. Additionally, members of the armed forces may stop a person to question him or her about a recent explosion or incident endangering life, or about their knowledge of a person killed or injured in a recent explosion or incident. These additional grounds are intended to assist the military to undertake explosive ordnance disposal work, where they may wish to question people about explosions to gain knowledge which will help them ensure the safety of an area. Anyone who fails to stop or answer to the best of their knowledge and ability commits an offence.

Section 22: Arrest

62. This section allows a member of the armed forces to arrest and detain a person for up to four hours if he or she reasonably suspects they are committing, about to commit or have committed an offence. Premises where that person is or is reasonably suspected to be may be entered and searched for the purposes of an arrest.
63. The power to detain a person for up to four hours is intended to allow sufficient time for a PSNI officer to attend in order to re-arrest the person and charge them with an offence, if appropriate.
64. It is envisaged that members of the armed forces will be deployed increasingly rarely, so will not have recourse to these powers on a regular basis. They are not expected to know the law as intimately as a police constable, hence in exercising their powers of arrest they will not be required to provide detailed legal grounds for arrest. *Subsection (2)* provides that members of the armed forces comply with any laws requiring them to state grounds for arrest by saying that they are making the arrest as a member of Her Majesty's Forces. There is an exception in *subsection (5)* for laws that only have effect by virtue of the Human Rights Act 1998. The effect of this is that the armed forces satisfy their legal obligations if they comply with *subsection (2)*, except any overarching requirement under the Human Rights Act 1998.
65. A member of the armed forces can seize and detain for up to four hours anything he or she reasonably suspects is being, has been or is intended to be used in the commission of an offence under section 31 or 32 (offences related to powers of road closure and land seizure). This measure enables the retention of the articles to be used in the commission

of those offences until a constable attends who will then decide whether to arrest and charge.

Section 23: Entry

66. This section provides a power of entry to premises. Premises are defined at section 42 to include vehicles.
67. This section allows a member of the armed forces or a constable to enter premises if he or she considers it necessary in the course of operations for the preservation of peace or the maintenance of order. Since no warrant is required, this section enables officers on the ground to respond immediately to events as they arise.
68. A constable may not enter a building unless the conditions in *subsection (2)* are satisfied. First, there must be written authorisation from an officer of the rank of superintendent or above. If no such authorisation is in place and it is not reasonably practicable to obtain written authorisation, then oral authorisation may be provided by an officer of the rank of Inspector or above. If it is not reasonably practicable to obtain either written or oral authorisation then a constable may enter a building without it.
69. An authorisation must relate to a specified area within Northern Ireland. All authorisations must be retained in written form and constables who enter premises must make a record of each entry as soon as reasonably practicable. *Subsection (6)* sets out the information that should be included in such records. Copies of records or authorisations must be given to the owners or occupiers of buildings which have been entered as soon as is reasonably practicable.

Section 24: Search for munitions and transmitters

70. This gives effect to Schedule 3, detail of which is provided below.

Section 25: Search for unlawfully detained persons

71. This section allows members of the armed forces to enter and search any premises in order to search for any person whom they reasonably believe has been unlawfully detained and whose life is endangered. No warrant is to be required because time will be critical in these situations.
72. The section requires the power to search a dwelling to be exercised only if authorised by a commissioned officer. This recognises the special status of people's homes: 'dwelling' is defined at section 42 of the Act.

Section 26: Premises: vehicles, &c.

73. This section provides that a power to search premises includes a power to stop a vehicle, and where necessary or expedient, cause it to be taken away for searching. References to premises (found in sections 22(3), 23, 25, 28 and 33 and Schedule 3) include vehicles by virtue of section 42. Where records must be made of a search, and that search is of a vehicle, references to the need to record an address will be taken as a reference to the location of the vehicle and its registration number. References to the occupier will be taken to refer to the owner or driver of the vehicle. An offence of failing to stop a vehicle is created.
74. *Subsection (5)* enables, when searching a vehicle for munitions and transmitters, the searcher to require a person to remain with the vehicle or to go to any place the vehicle is taken where the searcher reasonably believes it necessary for carrying out the search. Reasonable force may be used to secure compliance with these requirements.
75. *Subsection (6)* provides that a requirement to stay with the vehicle, or go to where it is taken, may only last as long as the search, or for four hours (extendable to eight hours in

certain circumstances), whichever is shorter. A record must be made and a copy given to the owner or driver of the vehicle.

Section 27: Examination of documents

76. This section provides that a member of the armed forces may examine documents found in a search under sections 24 to 26 in order to ascertain whether the information contained in them is likely to be useful for terrorism, and if necessary or expedient remove them to another place, for up to 48 hours. A person may not examine a document which he or she has reasonable cause to believe is subject to legal privilege.
77. It is an offence to obstruct a member of the armed forces in exercising this power.

Section 28: Examination of documents: procedure

78. This section provides that documents examined using the power at section 27 of the Act may not be photographed or copied. Written records of examinations must be made as soon as reasonably practicable and must include the information listed at *subsections (2) and (3)*. A copy of the records should be supplied to the person who had custody of the document or to the occupier of the building where the document was found.

Section 29: Taking possession of land, &c.

79. This section provides that the Secretary of State may authorise someone to take possession of land or property and carry out work on it. He may also authorise a person to place buildings and other structures in a state of defence, for instance through fortification. Property may be detained, destroyed or moved by authorised persons, and the Secretary of State may also authorise persons to take actions which interfere with public rights or private rights of property. These powers may only be exercised where it is necessary for the preservation of peace or the maintenance of order. It is intended that such powers will be used during the marching season in Northern Ireland and to allow the rapid creation of 'peace walls' at interfaces where there is community tension. These powers may be exercised at very short notice, hence they are exempt from normal planning processes.

Section 30: Road closure: immediate

80. A member of the armed forces, or someone authorised by the Secretary of State, may close roads, divert them and restrict and prohibit the use of rights of way or waterways where it is immediately necessary for the preservation of peace or the maintenance of order. These powers are also intended for the management of the marching season in Northern Ireland. For example, roads and public rights of way may be closed at short notice in reaction to events on the ground.

Section 31: Sections 29 and 30: supplementary

81. This section creates an offence of interfering with works and equipment used to take possession of land or close or divert roads, rights of way, etc, unless there is a reasonable excuse for doing so.
82. This section also provides that authorisations under sections 29 and 30 may authorise the exercise of all the powers, or only some of them, and that authorisations may relate to a person or to a group of people.

Section 32: Road closure: by order

83. This section provides the Secretary of State with a power to close, partially close, or divert roads if necessary for the preservation of the peace or the maintenance of order. An offence of interfering with road closure works or equipment is created. Offences of executing bypass works within 200 metres of road closure works, having materials and

*These notes refer to the Justice and Security (Northern Ireland)
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tools for executing such works within 200 metres and knowingly permitting either of these to take place on land are created. There is a defence of reasonable excuse.