

JUSTICE AND SECURITY (NORTHERN IRELAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Powers: supplementary

Section 33: Exercise of powers

84. This section provides that powers under sections 21 to 30 are additional to those already in common law, and should not be taken to affect the Royal prerogative. It also provides for the use of reasonable force by a constable or member of the armed forces in relation to those sections.
85. Anything seized may be retained for as long as is necessary and a power to search premises conferred by this Act includes the power to search a container. A member of HM Forces not in uniform must produce evidence that he is a member of HM Forces, if he is requested to do so when exercising the powers in sections 21 to 30.

Section 34: Code of practice

86. This section allows the Secretary of State to make codes of practice in relation to the seizure and retention of property by the police and in relation to the exercise of the powers conferred by the Act. The Secretary of State must publish a draft code of practice, consider any representations about the draft, and if he thinks it appropriate, modify the draft. The draft code must be laid before Parliament and may be brought into force by order. These procedures apply again where the whole or a part of the code is revised and it is re-issued.

Section 35: Code: effect

87. Failure by a police officer or a member of the armed forces to comply with any part of a code of practice does not make them liable to civil or criminal proceedings, with the exception for armed forces personnel of proceedings under the Army Act 1955, Air Forces Act 1955 and Naval Discipline Act 1957 (but not civil offences under those Acts). A code is admissible as evidence in criminal and civil proceedings, and must be taken into account by a court or tribunal where the code appears relevant.

Section 36: Code: procedure for order

88. This section sets out the procedure for bringing the code under section 34 into force. The order giving effect to the code must be laid in draft before Parliament and is subject to the affirmative resolution procedure before being made.
89. An order may be made without a draft having been approved if the Secretary of State believes there is an urgent reason for the code to be brought into force. Any order doing so must contain a declaration to that effect from the Secretary of State and will only last 40 days unless a resolution approving the order is passed by both Houses of Parliament

within that time. The end of an order (and the code brought into force by it) will not prejudice any actions previously taken or the making of a new order.

Section 37: Records

90. This section places a duty on the Chief Constable of the Police Service of Northern Ireland to make arrangements for constables to make records of the exercise of the powers in sections 21 to 26. This is only necessary where it is reasonably practicable for a record to be made, and a record is not already required by legislation.
91. These records will be used to produce statistics which will inform the independent reviews of this legislation provided for in section 40.

Section 38: Compensation

92. This section gives effect to Schedule 4, which is described below.

Section 39: Prosecution

93. With the exclusion of Schedule 4 (which has an offence of obtaining compensation by deception at [paragraph 12](#)), the prosecution of any offence created in sections 21 to 32 requires the consent of the DPP(NI). If it appears to the DPP(NI) that the offence is connected with the affairs of another country then the permission of the Attorney General for Northern Ireland is required. This is intended to provide a safeguard against malicious prosecution.
94. The section contemplates the Advocate General for Northern Ireland taking over the role of the Attorney General on the devolution of policing and justice functions to the Northern Ireland Assembly. The Advocate General will be responsible for various excepted and reserved matters in Northern Ireland.

Section 40: Review

95. This section provides for the Secretary of State to appoint a reviewer to consider the operation of sections 21 to 32 in this Act and the procedures adopted by the head of the armed forces in Northern Ireland for receiving, investigating and responding to complaints. The Secretary of State may also direct the reviewer to conduct a review into other specified matters, not necessarily related to powers in the Act or military complaints procedures.
96. Reviews will cover the period of a year, with the first report to be published as soon as is practical after 31 July 2008. The report of each review shall be laid before Parliament by the Secretary of State once he has received it from the reviewer. Provision is made for paying expenses and allowances to the reviewer.

Section 41: Duration

97. This section allows the Secretary of State to repeal sections 21 to 40 of the Act so that powers may be taken out of force as they become unnecessary. It is envisaged that this would be due to alternative powers becoming available or changes in operational need. Such orders would be subject to the affirmative resolution procedure.

Section 42: Interpretation

98. The section defines some of the terms used in sections 21 to 38 (and Schedules 3 and 4).