

PROTECTION OF FREEDOMS ACT 2012

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 4: Counter-terrorism powers

Schedule 6: Stop and search powers: Northern Ireland

255. *Paragraph 1* amends paragraph 4 of Schedule 3 to the Justice and Security (Northern Ireland) Act 2007 (“the 2007 Act”) which provides, in subsection (1), that a constable or member of Her Majesty’s forces on duty (an “officer”) may stop a person in a public place in Northern Ireland to search that person for munitions held unlawfully and wireless apparatus. In exercising this power, the officer does not need to have reasonable suspicion for doing so.
256. *Paragraphs 1(2)* and *(3)* replace the word “officer” with “a member of Her Majesty’s forces who is on duty”. A constable can no longer stop and search a person in a public place without reasonable suspicion but the existing power for the military to stop and search a person remains unchanged.
257. *Paragraph 1(4)* inserts new sub-paragraph (4) into Schedule 3 to the 2007 Act so that a constable can search a person whom he or she reasonably suspects to have munitions unlawfully with him or her or to have wireless apparatus with him or her regardless of whether he or she is in a public place or not (currently the reasonable suspicion requirement only applies where the person is not in a public place).
258. *Paragraph 2* inserts a new paragraph 4A into Schedule 3. New paragraph 4A(1), read with the definitions in new paragraph 4A(8), provides that a senior officer of the Police Service of Northern Ireland of at least the rank assistant chief constable may authorise the use of the stop and search power without reasonable suspicion in a specified area if the senior police officer reasonably suspects that the safety of any person might be endangered by the use of munitions or wireless apparatus. The authorisation can be given only if the senior police officer reasonably considers that it is necessary to prevent that danger and the area or place specified in the authorisation is no greater than is necessary and the duration of the authorisation is not longer than is necessary.
259. New paragraph 4A(2) states that any constable is authorised to stop and search an individual in the area or place specified in the senior police officer’s authorisation.
260. New paragraph 4A(3) specifies that a constable may exercise the power conferred by the authorisation only for the purpose of ascertaining whether the person is carrying munitions unlawfully or wireless apparatus.
261. New paragraph 4A(4) provides that the power conferred by the authorisation may be exercised whether or not the constable reasonably suspects the person has such munitions or wireless apparatus.

*These notes refer to the Protection of Freedoms Act
2012 (c.9) which received Royal Assent on 1 May 2012*

262. New paragraph 4A(5) states that a constable searching a person in public under new paragraph 4A, cannot require that person to remove clothing with the exception of headgear, footwear, outer coat, jacket or gloves.
263. New paragraph 4A(6) provides that a person can be detained for as long as is reasonably required to carry out the search of the person at, or near to where he or she was stopped.
264. New paragraph 4A(7) places a duty on a senior police officer who has made an authorisation orally under new paragraph 4A, to confirm it in writing as soon as reasonably practicable.
265. New paragraph 4B states that an authorisation given under new paragraph 4A has effect from the time it is given and ends at the time or date specified in the authorisation subject to new paragraphs 4C to 4G of the Schedule.
266. New paragraph 4C provides that an authorisation cannot specify a date or time which is more than 14 days after the date the authorisation is made.
267. New paragraph 4D places a requirement on the senior officer who has made an authorisation under new paragraph 4A to inform the Secretary of State of it as soon as reasonably practicable (sub-paragraph (1)). If the Secretary of State does not confirm the authorisation within 48 hours of it having been made, it ceases to have effect (sub-paragraph (2)). If an authorisation is not confirmed and ceases to have effect by virtue of sub-paragraph (2), it does not affect the lawfulness of anything carried out under the authorisation before it ceased to have effect (sub-paragraph (3)). The Secretary of State may, when confirming an authorisation, shorten its duration or reduce its geographical extent (sub-paragraph (4)).
268. New paragraph 4E provides that the Secretary of State may cancel an authorisation at any time.
269. New paragraph 4F confers a power on a senior police officer to cancel an authorisation, shorten its duration or reduce its geographical extent (sub-paragraph (1)). If an authorisation has already been confirmed by the Secretary of State under paragraph 4D when a senior police officer cancels it or shortens its duration or reduces its geographical extent, the amended authorisation does not require further confirmation from the Secretary of State (sub-paragraph (2)).
270. New paragraph 4G provides that a new authorisation can be given regardless of whether a previous authorisation continues in force, has expired or has been cancelled.
271. New paragraph 4H provides that a senior police officer may give an authorisation which covers either the whole of or part of Northern Ireland or all or part of the internal waters adjacent to it or any combination of them (sub-paragraph (1)). ‘Internal waters’ are defined as waters in the United Kingdom that are adjacent to Northern Ireland (sub-paragraph (2)). Sub-paragraph (3) makes provision for authorisations which specify more than one area or place and provides that such an authorisation can specify more than one end date or time (consequently the powers of the Secretary of State or a senior officer to substitute earlier end dates or times also apply) and that the Secretary of State and a senior officer, when substituting a more restricted area or place under new paragraphs 4D(4)(b) and 4F(1)(c) respectively, may remove an area from the authorisation.
272. New paragraph 4I deals with circumstances in which a decision of a senior officer, or of the Secretary of State, to give, vary or cancel an authorisation is challenged in any legal proceedings. Under sub-paragraph (2) the Secretary of State may certify that the interests of national security are relevant to the decision and the decision was justified. Such a certificate can be appealed to the tribunal established under section 91 of the Northern Ireland Act 1998 (‘the National Security Certificates Appeals Tribunal’). The Tribunal has the power to uphold or quash a certificate. The procedural rules which are

*These notes refer to the Protection of Freedoms Act
2012 (c.9) which received Royal Assent on 1 May 2012*

currently used by the Tribunal make provision for sensitive material to be considered in closed session and for the appointment of special advocates.