Draft Legislation: *This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, The Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 ISBN 0-11-080059-1*

Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2006 No. (N.I.)

NORTHERN IRELAND

The Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2006

Made - - - - 2006
Coming into operation in accordance with Article 1(2) to (4)

At the Court at Buckingham Palace, the ** day of ** 2006

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:–

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2006.

(2) This Part comes into operation one week after the day on which this Order is made.

(3) The remaining provisions of this Order come into operation on such day or days as the Secretary of State may by order appoint.

(4) An order under paragraph (3) may contain such transitional or saving provisions as the Secretary of State thinks appropriate.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order "PACE" means the Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12).

PART II

POWERS TO STOP AND SEARCH

Power to stop and search for prohibited fireworks

3.—(1) Article 3 of PACE (powers of constables to stop and search) is amended as follows.

(2) In paragraph (2), for "or any article to which paragraph (9) applies" substitute ", any article to which paragraph (9) applies or any firework to which paragraph (9A) applies".

(3) In paragraph (3), for "or any article to which paragraph (9) applies" substitute ", any article to which paragraph (9) applies or any firework to which paragraph (9A) applies".

(4) In paragraph (6), for "or an article to which paragraph (9) applies" substitute ", an article to which paragraph (9) applies or a firework to which paragraph (9A) below applies".

(5) After paragraph (9) insert—

> "(9A) This paragraph applies to any firework within the meaning of the Explosives (Fireworks) Regulations (Northern Ireland) 2002 (SR 2002 No. 147) which a person possesses in contravention of a prohibition imposed by those Regulations.".

Road checks

4.—(1) Article 6 of PACE (road checks) is amended as follows.

(2) In paragraph (4) for "a serious arrestable offence" (wherever it occurs) substitute "an indictable offence".

(3) In paragraph (14) for "serious arrestable offence" substitute "indictable offence".

PART III

POWERS OF ENTRY, SEARCH AND SEIZURE

Search warrants

5.—(1) Article 10 of PACE (power of lay magistrate to authorise entry and search of premises) is amended as follows.

(2) In paragraph (1)(a) for "a serious arrestable offence" substitute "an indictable offence".

(3) In paragraph (1)—

(a) in sub-paragraph (b), for "specified in the application" substitute "mentioned in paragraph (1A)",

(b) in sub-paragraph (e), at the end add "in relation to each set of premises specified in the application".

(4) After paragraph (1) insert—

"(1A) The premises referred to in paragraph (1)(b) are—

(a) one or more sets of premises specified in the application (in which case the application is for a "specific premises warrant"); or

(b) any premises occupied or controlled by a person specified in the application, including such sets of premises as are so specified (in which case the application is for an "all premises warrant").

(1B) If the application is for an all premises warrant, the lay magistrate must also be satisfied—

(a) that because of the particulars of the offence referred to in sub-paragraph (a) of paragraph (1), there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application in order to find the material referred to in sub-paragraph (b) of that paragraph; and

(b) that it is not reasonably practicable to specify in the application all the premises which he occupies or controls and which might need to be searched.

(1C) The warrant may authorise entry to and search of premises on more than one occasion if, on the application, the lay magistrate is satisfied that it is necessary to authorise multiple entries in order to achieve the purpose for which he issues the warrant.

(1D) If it authorises multiple entries, the number of entries authorised may be unlimited, or limited to a maximum.".

(5) In paragraph (6) for "a serious arrestable offence" substitute "an indictable offence".

Special procedure material

6.—(1) Schedule 1 to PACE (special procedure for access to certain material) is amended as follows.

(2) In paragraph (2)(a) for "a serious arrestable offence" substitute "an indictable offence".

(3) In each of paragraphs 2(a)(ii) and 3(a), at the end add ", or on premises occupied or controlled by a person specified in the application (including all such premises on which there are reasonable grounds for believing that there is such material as it is reasonably practicable so to specify);".

(4) In paragraph 3(b), for "the premises" substitute "such premises".

(5) In paragraph 9—

(a) in sub-paragraph (a)(ii), after "fulfilled" insert "in relation to each set of premises specified in the application",

(b) at the end add "or (as the case may be) all premises occupied or controlled by the person referred to in paragraph 2(a)(ii) or 3(a), including such sets of premises as are specified in the application (an "all premises warrant")".

(6) After paragraph 9 insert—

"**9A.** The judge may not issue an all premises warrant unless he is satisfied—

(a) that there are reasonable grounds for believing that it is necessary to search premises occupied or controlled by the person in question which are not specified in the application, as well as those which are, in order to find the material in question; and

(b) that it is not reasonably practicable to specify all the premises which he occupies or controls which might need to be searched.".

(7) In paragraph 11(a), omit "to which the application relates".

Search warrants – safeguards

7.—(1) Article 17 of PACE (search warrants – safeguards) is amended as follows.

(2) In paragraph (2)(a)—

(a) omit "and" at the end of sub-paragraph (i),

(b) at the end of sub-paragraph (ii) insert "and",

(c) after that sub-paragraph insert—

"(iii) if the application is for a warrant authorising entry and search on more than one occasion, the ground on which he applies for such a warrant, and whether he seeks a warrant authorising an unlimited number of entries, or (if not) the maximum number of entries desired;".

(3) For paragraph (2)(b) substitute—

"(b) to specify the matters set out in paragraph (2A); and".

(4) After paragraph (2) insert—

"(2A) The matters which must be specified pursuant to paragraph (2)(b) are—

(a) if the application relates to one or more sets of premises specified in the application, each set of premises which it is desired to enter and search;

(b) if the application relates to any premises occupied or controlled by a person specified in the application,—

(i) as many sets of premises which it is desired to enter and search as it is reasonably practicable to specify;

(ii) the person who is in occupation or control of those premises and any others which it is desired to enter and search;

(iii) why it is necessary to search more premises than those specified under head (i); and

(iv) why it is not reasonably practicable to specify all the premises which it is desired to enter and search.".

(5) In paragraph (5), at the end add "unless it specifies that it authorises multiple entries".

(6) After paragraph (5) insert—

"(5A) If it specifies that it authorises multiple entries, it must also specify whether the number of entries authorised is unlimited, or limited to a specified maximum.".

(7) For paragraph (6)(a)(iv) substitute—

"(iv) each set of premises to be searched, or (in the case of an all premises warrant) the person who is in occupation or control of premises to be searched, together with any premises under his occupation or control which can be specified and which are to be searched; and".

(8) For paragraph (7) substitute—

"(7) Two copies shall be made of a warrant which specifies only one set of premises and does not authorise multiple entries; and as many copies as are reasonably required may be made of any other kind of warrant.".

Execution of warrants

8.—(1) Article 18 of PACE (execution of warrants) is amended as follows.

(2) After paragraph (2) insert—

"(2A) A person so authorised has the same powers as the constable whom he accompanies in respect of—

(a) the execution of the warrant; and

(b) the seizure of anything to which the warrant relates.

(2B) But he may exercise those powers only in the company of, and under the supervision of, a constable.".

(3) In paragraph (3) for "one month" substitute "3 months",

(4) After paragraph (3) insert—

"(3A) If the warrant is an all premises warrant, no premises which are not specified in it may be entered or searched unless a police officer of at least the rank of inspector has in writing authorised them to be entered.

(3B) No premises may be entered or searched for the second or any subsequent time under a warrant which authorises multiple entries unless a police officer of at least the rank of inspector has in writing authorised that entry to those premises.".

(5) In paragraph (9), after sub-paragraph (b) add "and, unless the warrant is a warrant specifying one set of premises only, he shall do so separately in respect of each set of premises entered and searched, which he shall in each case state in the endorsement.".

(6) For paragraph (10) substitute—

"(10) A warrant shall be returned to the appropriate person mentioned in paragraph (10A)—

(a) when it has been executed; or

(b) in the case of a specific premises warrant which has not been executed, or an all premises warrant, or any warrant authorising multiple entries, upon the expiry of the period of 3 months referred to in paragraph (3) or sooner.

(10A) The appropriate person is—

(a) if the warrant was issued by a lay magistrate, the clerk of petty sessions for the petty sessions district in which the magistrate was acting when he issued the warrant;

(b) if it was issued by a judge, the appropriate officer of the court from which he issued it.".

(7) In paragraph (12), for "the premises" substitute "premises".

Entry for purposes of arrest, etc.

9.—(1) Article 19 of PACE (entry for purposes of arrest, etc.) is amended as follows.

(2) In paragraph (1)(b) for "arrestable" substitute "indictable".

(3) After paragraph (1)(b) insert—

"(ba) of arresting a person for an offence under Article 15 of the Road Traffic (Northern Ireland) Order 1995 (driving while under influence of drink or drugs) or Article 180(1) of the Road Traffic (Northern Ireland) Order 1981 (NI 1);

(bb) of arresting a person for an offence to which Article 42(8) of the Diseases of Animals (Northern Ireland) Order1981 applies;".

Entry and search after arrest

10.—(1) Article 20 of PACE (entry and search after arrest) is amended as follows.