



**Response of the Government of the  
United Kingdom to the report of the  
European Committee for the Prevention  
of Torture and Inhuman or Degrading  
Treatment or Punishment (CPT) on its visit  
to Northern Ireland from 20 to 29 July 1993**

The Government of the United Kingdom has agreed to the publication of the CPT's report on the visit to Northern Ireland from 20 to 29 July 1993 (see CPT/Inf (94) 17) and of its response. The Government's response is set out in this document.

Strasbourg, 17 November 1994

### INFORMATION TO INMATES

10. Inmates will be provided with such information as will enable them to avoid/minimise risk to themselves or other persons both during custody and on discharge back to the community.

### INMATES WHO DEVELOP AIDS

11. Prisoners who become ill as a direct result of HIV infection will be treated in accordance with the Medical Officer's instructions. This will normally mean treatment being given in the prison hospital although when special equipment or nursing is indicated the inmate may be transferred to a facility which can provide appropriate treatment.

### TERMINAL ILLNESS

12. When in the opinion of the Medical Officer an inmate with AIDS is unlikely to recover Prison Service Headquarters will consider whether the application of the Royal Prerogative of Mercy is appropriate.

### HIV MANAGEMENT IN PRISONS

13. Governors in each Prison Service establishment in consultation with the Medical Officer will appoint members to an HIV Management Committee if and when this is deemed appropriate. One possibility would be for this to be based on the Health and Safety Committee.

14. An HIV Management Committee should consist of:-

1. The Deputy Governor (Chair)
2. The Head of Residential Services
3. The Medical Officer

This is the response of the United Kingdom Government to the recommendations, comments and requests for information contained in the report on the visit to Northern Ireland by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, carried out from 20 to 29 July 1993.

The response deals with each point raised in the Committee's report in the order in which it appears. The text of the response, where possible, provides the information requested by the committee, supplemented in some cases by additional documentation. It also covers additional points raised by the Government. The response relates in all cases solely to the position in Northern Ireland.

The Government welcomes the Committee's remarks about terrorism and their recognition of the difficulties faced by the security forces in Northern Ireland (paragraph 10). The Government fully concurs with the Committee's remarks in the second part of that paragraph. Terrorism, from whichever extreme it comes, must be dealt with through the normal process of justice.

The Government attaches much importance to the work of the Committee, and wished to offer them every assistance in their visit to Northern Ireland. The Committee's remarks concerning the high degree of co-operation they received (paragraphs 13 and 14) are therefore particularly welcome.

In addition to their visits to police establishments the Committee visited two prisons in Northern Ireland; HMP Belfast and HMP Maghaberry (Mourne House). The Government was particularly pleased by the Committee's comments on Maghaberry Prison; it is pleasing to note so many positive remarks in relation to conditions of detention and regime activities.

## PART B

### INTERIM POLICY FOR THE TREATMENT OF PERSONS WITH HIV INFECTION AND AIDS IN NORTHERN IRELAND PRISONS

It is the policy of the Northern Ireland Prison Service that all prisoners are assumed to be potentially HIV positive. The policy recommends steps to provide maximum protection for both staff and prisoners against the transmission of HIV infection whilst preserving the rights of the individual staff and prisoners to confidentiality. The policy is based on the best available guidance and practice and is aimed at preventing the spread of the disease.

2. Since there are likely to be unknown HIV positive prisoners as well as known cases, the sensible policy is one of education against the dangers of risky behaviour and the application of sound hygiene practice. This means treating everybody as though they were potentially infected and therefore all spillages of blood and body fluids are treated as if they were infected.

#### TRAINING AND EQUIPMENT

3. All staff will be fully trained in the nature of the disease, its effects, methods of transmission, avoidance of risk and the use of decontamination and protective equipment. The Northern Ireland Prison Service will supply such equipment and updated information as is deemed necessary by medical advisers.

#### TESTING FOR HIV

4. Staff may ask to be tested by their own doctor, or if they prefer they can consult the occupational health physician based at Royston House.

5. No prisoner will be forced or pressurised to take a test against their will but testing will be available to inmates on

1. THE COMMITTEE ASKS THAT ITS REQUEST FOR A COPY OF THE R.U.C. CODE BE RECONSIDERED, HAVING REGARD TO THE PROVISIONS OF ARTICLES 3 AND 8 (2) (d) OF THE CONVENTION AND TO THE FACT THAT IT WOULD BE TREATED AS STRICTLY CONFIDENTIAL BY THE COMMITTEE (PARAGRAPH 15).

The RUC have reconsidered the CPT's request for a copy of the RUC Code but have advised that this is a 'confidential' document, and remains therefore for Police use only.

2. THE COMMITTEE HAVE REQUESTED INFORMATION ON THE REGULATIVE FRAMEWORK WHICH APPLIES TO THE POWER OF THE ARMY TO ARREST AND DETAIN UNDER SECTION 18 OF THE EPA (PARAGRAPH 16).

The Committee requested information surrounding the regulative framework which applies to the power given to members of Her Majesty's Forces to arrest and detain people without warrant under Section 18 of the EPA. This framework is set out in part 2 of the 'Guide to the Emergency Powers'. This publicly available guide aims to provide an explanation of how the Northern Ireland (Emergency Provisions) Act 1991 and the Prevention of Terrorism (Temporary Provisions) Act 1989 are exercised in Northern Ireland, and how these laws are implemented by the police and HM Forces. Part 2 of the Guide refers to Section 18 of the EPA and states that:

"An arrest [by members of HM Forces] should be effected as courteously and as quickly as the circumstances prevailing at the time permit. Only such force as is reasonable in the circumstances may be used either to effect a person's arrest or to retain them in custody following arrest.

The soldier making the arrest should, when possible, leave a card with any friend or relative (or other person likely to take an interest in the arrested person's welfare) who

**THE MANAGEMENT OF HIV/AIDS IN THE NORTHERN IRELAND PRISON SERVICE**

**PART A - BACKGROUND**

**THE HUMAN IMMUNISED DEFICIENCY VIRUS (HIV)**

1. The HIV is a virus which on entering the bloodstream attacks white blood cells - our normal defence mechanism to infections - and destroys them. Such an infection destroys the body's natural resistance to future infections and in doing so ultimately leads to the development of AIDS and death. There is no cure and no specific treatment. The only answer lies in prevention - avoiding settings affected by the HIV virus.

**HOW IS HIV CONTRACTED**

2. There are only 3 ways HIV can be obtained:-

A. Blood mixing from an infected person by:-

- (a) using needles and syringes already used by someone who has the disease;
- (b) being bitten by an infected person where there is blood to blood mixing;
- (c) using an infected person's razor;
- (d) using an infected person's toothbrush;
- (e) tattooing with infected needles;
- (f) ear piercing with infected needles.

Where someone is bitten, any blood flowing from the wound should be encouraged thereby washing out possible contamination. These and deeper wounds should receive prompt medical attention and advice.

Fingerprints of arrested persons will not be taken by members of HM Forces."

A copy of the Guide to the Emergency Powers is attached at Annex B.

3. **THE COMMITTEE HAVE REQUESTED INFORMATION ON THE REGULATIVE FRAMEWORK WHICH APPLIES TO THE GENERAL POWER OF THE POLICE TO ARREST UNDER SECTION 17 OF THE EPA (PARAGRAPH 20)**

The Committee's attention is again drawn to the Guide to the Emergency Powers, which explains the exercise by police officers of their arrest powers under the terrorism provisions:

"An arrest should be effected as courteously and quickly as the circumstances prevailing at the time permit. When arrested the prisoner should be taken to a Police Station or Police Office.

Only such force as is reasonable in the circumstances may be used either to effect the person's arrest or to retain them in custody following arrest.

In any case where force is used against a prisoner before, at, or following his arrest a record of the facts will be made or caused to be made as soon as possible by the senior police officer concerned.

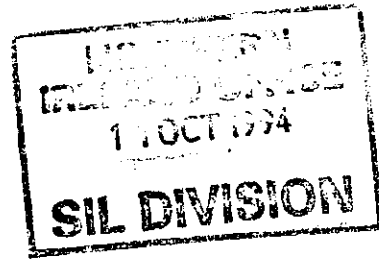
A police officer will not use torture, inhuman or degrading treatment or violence or the threat of violence against an arrested person.

Children who appear to be under 10 years of age cannot be arrested. A child or young person who appears to be between the ages of 10 and 17 years old may be arrested,

ANNEX D

CIRCULAR 30/93

TO: GOVERNING GOVERNORS  
PRINCIPAL, PSC



**HIV/AIDS POLICY**

At its meeting on 24 June, SPG considered the need for the implementation of the draft policy on HIV/AIDS drawn up by the Operational Assessment Team in 1989 and agreed that an interim policy should be issued under cover of a guidance note for Governors.

2. I now attach a document which sets out the Northern Ireland Prison Service's approach to the management of HIV/AIDS in the prison system. It falls into two parts:-

- (a) Part A - An explanation of HIV/AIDS, the means of infection and the present situation in Northern Ireland.
- (b) Part B - The Northern Ireland Prison Service interim policy. It is interim to the extent that further work, described in this guidance (paragraph 6), is being carried out to develop the HIV/Aids policy.

3. Governors are to take steps to implement the policy in their establishments.

**IMPLEMENTATION**

4. Successful implementation of the policy is largely dependent on an understanding of HIV/AIDS, of the means of transmission and of the steps to be taken to prevent the deliberate or accidental infection of staff and/or inmates. This in turn depends upon two factors:-

- (a) Staff Training - SPG agreed that Governors should examine ways of achieving a target of 100% staff training within the next 12 months, to be based on the existing HIV/AIDS package.



All police officers are made fully aware of the rigours of the criminal law and of the disciplinary procedures which exist should it be found that they have used more than reasonable force in effecting a lawful arrest. This is also a point that is continually stressed during the training of police personnel. The Government welcomes the Committee's recognition that arrests can be hazardous to police officers, particularly when dealing with armed and dangerous terrorists.

6. THE COMMITTEE ASK WHETHER THE ACT OF STANDING ON THE BACKS OF THE LEGS OF ARRESTED PERSONS ONCE THEY ARE IN A KNEELING POSITION WOULD CONSTITUTE AN AUTHORISED METHOD OF RESTRAINT (PARAGRAPH 30).

It is not standard practice by the security forces to stand on the backs of the legs of arrested persons once they are in a kneeling position. However, there could be certain situations in which such a practice might be permissible as a reasonable use of force, if, say, a soldier or police officer was attempting to handcuff somebody who was resisting arrest while other members of his patrol (who might otherwise be able to help overpower the suspect with less force) were fully engaged in keeping back a hostile crowd trying to free the suspect. Police officers, in dealing with armed or dangerous terrorists or other criminals, can adopt a recognised restraint technique in which officers direct suspects to a kneeling position with their legs crossed. Should the suspect become violent or struggle, the arresting officer can place his/her foot on the back of the suspects' legs as a method of restraint. Such a procedure, however, would be merely for the purposes of temporarily restraining the arrested person.

7. PSYCHOLOGICAL ILL-TREATMENT (PAGE 15 PARAGRAPH 34)  
(ADDITIONAL POINT RAISED BY HMG)

The United Kingdom Government would draw the Committee's attention to the fact that from 1 January 1993 there have been no specific

4. Timescale. Dismissal of this type should follow shortly on the first opportunity available to the Chief Constable to form a reasonable conclusion as to the nature of the officer's actions. It could not, for instance, be activated years later or if misconduct proceedings fail but would operate as an immediate but reasoned and considered response to an intolerable action.
  
5. Appeal. The decision would be taken by the Chief Constable personally and there would be no appeal, although it would be open to the dismissed officer to contest the decision via an Appeals Tribunal.

9. THE COMMITTEE RECOMMEND THAT CONDITIONS OF DETENTION AT CASTLEREAGH HOLDING CENTRE BE SUBSTANTIALLY IMPROVED WITHOUT DELAY. IF SUCH AN IMPROVEMENT WERE NOT TO PROVE POSSIBLE, THE HOLDING CENTRE TO BE RELOCATED ELSEWHERE, IN PREMISES CAPABLE OF OFFERING BETTER DETENTION FACILITIES (PARAGRAPH 45).

The United Kingdom Government accepts that the conditions at Castlereagh Police Office are unsatisfactory. This has also been highlighted by the Independent Commissioner for the Holding Centres. The RUC and the Police Authority for Northern Ireland are currently considering longer term plans for the relocation of the police office and the matter remains under active consideration.

10. THE COMMITTEE RECOMMEND THAT APPROPRIATE STEPS BE TAKEN TO PROVIDE ACCESS TO NATURAL LIGHT IN THE CELLS AND INTERVIEW ROOMS AT GOUGH BARRACKS (PARAGRAPH 47)

There are 10 interview rooms attached to the police office at Gough Barracks. Each interview room is fitted with one or two windows, however it has been found necessary to cover the windows with plywood to enable the closed circuit television monitor to be fully effective as it was discovered that the sunlight distorted the closed circuit television pictures. The top quarter-light windows can, however, be opened to allow fresh air into the interview room. The matter is currently under review by the RUC.

11. THE COMMITTEE HAVE ASKED FOR CONFIRMATION THAT DETAINEES HELD FOR LENGTHY PERIODS AT GOUGH BARRACKS ARE GIVEN ACCESS TO THE EXERCISE YARD AND DETAILS OF THE EXTENT OF ACCESS ALLOWED (PARAGRAPH 48)

The police office at Gough Barracks has an open, secure exercise yard. Detained persons are offered the facility of exercise

5.10 The hearing cannot proceed in the officer's absence if good reason for it has been given (RUC Reg 20, Reg 20 of PTR) equivalent.

Anxiety over the protracted proceedings may be at the root of a medical state which doctors will certify prevents the officer's attendance.

5.11 Punishment can range from dismissal to a caution, including demotion, reduction in salary, and fines (RUC Reg 21, Reg 21 PTR equivalent).

5.12 Appeal is available to the Secretary of State in all cases (RUC Reg 49).

Officers dealt with by the Deputy Chief Constable have an additional right of appeal to the Chief Constable.

## 6. COSTS

6.1 There are no special powers under which the costs of a police officer's legal representation in criminal or disciplinary proceedings against him or her can be met from public funds unless the officer is of chief officer rank (ie above chief superintendent), to which special considerations apply.

The Police Federation usually meets legal costs for officers below the rank of superintendent fearing dismissal etc.

informed by the custody officer of the following rights (as well as the fact that they need not be exercised immediately):

- the right to have someone informed of his/her arrest;
- the right to consult solicitors and to apply for legal aid;
- the right to read the custody record before release;
- the right to consult the relevant Codes of Practice.

Furthermore, a written notice is given to each detainee at initial processing at the Police Office setting out these rights. With regard to the question of medical examinations, the Independent Commissioner for the Holding Centres in his 1993 Report praised the high standard of medical services provided by the Medical Officers and said "no detainee has expressed to us any dissatisfaction with medical services provided in the holding centres. Our firm impression is that medical officers carry out their duty to a high standard and in a very professional and responsible manner. They greatly value, and jealously guard their clinical independence in the exercise of the service they provide for the detainees."

16. THE COMMITTEE REQUESTED INFORMATION ON THE PERCENTAGE OF CASES DURING 1993 IN WHICH RESORT HAS BEEN HAD TO THE POWER TO DELAY THE EXERCISE OF THE RIGHT TO HAVE SOMEONE NOTIFIED OF THE FACT OF CUSTODY, UNDER BOTH PACE (NI) AND THE EPA (PARAGRAPH 54).

In 1993, 1.6% of detainees in the holding centres had their right to have someone notified delayed. For PACE arrests, the percentage was 0.01%.

3. PROCEDURE

3.1 The chief officer appoints an investigating officer (IO).

An officer from outside the force can be appointed.

3.2 Personal explanation

The IO must tell the officer of the report, allegation or complaint and warn him in writing:

"As soon as practicable".

3.2.1 that they do not have to say anything but can if they wish.

Written or oral statement to IO or chief officer.

3.2.2 that if they do respond, any statement may be used in disciplinary proceedings.

3.3 Authority. Regulation 6 RUC (Discipline and Disciplinary Appeals) Regulations 1988. Regulation 5 of PTR equivalent.

4. CRIMINAL PROCEEDINGS

4.1 The IO reports to the chief officer.

4.2 The chief officer will deal with the report as he or she would with any other potential evidence of criminal behaviour ie

4.3 make a report to DPP, who will

4.4 consider prosecution.

5. DISCIPLINARY PROCEEDINGS

5.1 If there is not enough evidence to justify prosecution, the officers may still face disciplinary action in relation to how they have performed their duty eg charges of disobedience, neglect of duty, falsehood among others may apply, but not usually on the precise matter which would have formed the basis for the criminal charge.

justice through intimidation and other means. In any event, in Northern Ireland the reasons for delay of access to a suspect's lawyer would, in many cases, apply equally to an 'independent' lawyer.

19. THE COMMITTEE ASKED FOR CONCRETE EXAMPLES OF SITUATIONS IN WHICH RECOURSE TO THE POWER SET OUT IN SECTION 45 (6)(b) OF THE EPA WOULD BE CONSIDERED NECESSARY, AS WELL AS STATISTICS ON THE PERCENTAGE OF CASES DURING 1993 IN WHICH RESORT WAS MADE TO THAT POWER (PARAGRAPH 59).

The majority of deferrals of immediate access to lawyers are made under section 45(8)(b), (d) and (e) of the Emergency Provisions Act. These permit deferrals if:

- (b) there are grounds for believing that a consultation with a solicitor would lead to the alerting of any persons suspected of having committed a scheduled offence but not yet arrested for it; or,
- (d) it would lead to interference with the gathering of information about the commission, preparation or instigation of acts of terrorism; or,
- (e) by alerting any person, will make it more difficult to prevent an act of terrorism or to secure the apprehension, prosecution or conviction of any person in connection with the commission, preparation or instigation of an act of terrorism.

In 1993, 12.7% of detainees in the holding centres had access to their solicitor delayed.

## 11. CONCLUSION

11.1 The change from a system of personnel management identified negatively as "discipline" to one which sees its task as the improvement both of the service given by officers to the public and the service given to officers by management is a major one.

11.2 When changing from discipline to good management practices, the critical decision is not whether one individual proposal or the other is desirable, but whether the new approach as a whole is to be regarded as preferable to the old or not. Each part of the system would work effectively only if the underlying change is adopted in full and operated in the spirit in which it was designed.

11.3 The new approach should result in systems which better match the needs both of the police service and the public, without any significant impact on resources. It should seek to build on the strengths of the police service and the work which has already been done on quality of service and to achieve greater value for money.

11.4 The changes required would not take place overnight but their implementation would have significant effects. They would affect all officers at some stage in their career and involve changes not only in procedures but in attitudes. The Secretary of State recognises that the changes proposed must be supported by necessary changes elsewhere. Officers would need training in operating the new procedures; guidelines on their operation would have to be written, and seminars held to explain the rationale of this approach to staff management. In particular, the Police Staff Associations and those responsible for police training will be closely involved in the follow up to responses to this paper, to which the Secretary of State looks forward with keen anticipation.

Police Division  
Northern Ireland Office  
August 1993



terrorism provisions and is being held in police custody shall be entitled, if he so requests, to consult a solicitor privately". In the large majority of cases, detainees have early and regular access to a solicitor and some solicitors advise their clients to ask to see the solicitor again after any subsequent interview or within 2 to 3 hours of the initial interview. This can mean that the detainee can spend up to 3 to 4 hours per day in consultation with their solicitor. It is felt that the presence of a lawyer would inhibit interviews and lead to a reduction in information about serious terrorist crime given by detainees.

23. **CLARIFICATION OF THE REASONS FOR PROVIDING THAT A PTA DETAINEE'S ACCESS TO A MEDICAL PRACTITIONER FROM THE PRACTICE WITH WHICH HE IS REGISTERED MAY BE DELAYED FOR UP TO 48 HOURS (PARAGRAPH 67).**

The reasons for delay in having someone informed of their arrest or to defer access to a solicitor (under sections 44 and 45 of the EPA respectively) apply equally to the question of access to the detainee's medical practitioner. Such contact could lead (accidentally or intentionally) to interference with evidence or witnesses, or to the alerting of accomplices and hindering the recovery of property. This provision of the Act, however, has not been used in recent years but as terrorist organisations use every means at their disposal to thwart the investigation of acts of terrorism it has been deemed necessary for this power to remain in statute. The power does not of course apply to examinations by the medical officers.

24. **THE COMMITTEE HAVE ASKED WHETHER A STATEMENT BY A MEDICAL OFFICER THAT A DETAINEE IS NOT FIT TO BE DETAINED OR INTERVIEWED CAN BE OVERRIDDEN BY THE POLICE (PARAGRAPH 68)**

The instructions given by medical officers in regard to restrictions on interviews are strictly followed by CID interviewers and

## 9. OUTRIGHT DISMISSAL

9.1 The introduction of procedures to deal with unsatisfactory performance (including those to deal with misconduct) would provide chief officers with a flexible range of powers to deal with any failure of performance or conduct by police officers. But in other management situations those with the ultimate responsibility for a public service have the right to dismiss people immediately, without following any set procedure, in circumstances where they believe someone to have shown beyond doubt that they are not fit to remain in the relevant service. This right is subject only to the appropriate appeal procedures.

9.2 The Secretary of State believes that the Chief Constable should have a similar power for the occasional case in which an officer makes it clear by a single public action that his or her continuance in the service can only bring it into disrepute. It is therefore proposed that the RUC Chief Constable should have the power - to be exercised personally and not delegated - of outright dismissal, subject to appeal to an Appeals Tribunal. This would not only emphasise the Chief Constable's responsibility for the behaviour of his Force but would also enable instant action to be taken in the rare cases where this seems necessary for the good standing of the police. An outline of a possible procedure is set out at Appendix B.

Q19 Is it acceptable and reasonable for the Chief Constable to have a power of outright dismissal as suggested?

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<sup>1</sup> As paragraph 2.3 notes this consultation paper does not discuss arrangements for officers of rank above chief superintendent. For such senior officers it is possible that it might be appropriate to involve the Secretary of State.

**ADDITION, SPECIAL CARE TO BE TAKEN WHEN CONSIDERING WHETHER DETAINEES WHO ARE PARTICULARLY VULNERABLE (EG JUVENILES, THE MENTALLY ILL OR MENTALLY HANDICAPPED) ARE FIT TO BE INTERVIEWED (PARAGRAPH 75);**

The Government have no objection to the Committee's proposal. The Independent Commissioner for the Holding Centres in his annual report recommended additional in-service training concerning the psychological aspects of medical examination and the United Kingdom Government can confirm that this training has taken place.

**28. THE COMMITTEE RECOMMEND THAT A SOUND RELAY TO BE INTRODUCED BETWEEN THE INTERVIEW ROOMS AND THE MONITORING ROOM IN HOLDING CENTRES (PARAGRAPH 80);**

The primary duty of the uniformed Inspector in the monitoring room is to scan the monitors and to ensure that detainees are not made to stand or are physically ill-treated during interviews by CID officers. If a sound relay was introduced and, say, 20 interviews were in progress the subsequent additional responsibilities of listening could distract from the primary duty of the officer to scan 40 monitors to ensure that ill-treatment does not take place. A second Inspector, when available, patrols the interview room corridors and listens for raised voices with a view to investigating the causes if any are heard. In addition there would be practical problems in monitoring the sound relay for up to 20 simultaneous interviews. It is also strongly believed by the police that such a proposal would inhibit the gathering of information about serious terrorist crime and would make suspects less likely to co-operate.

**29. THE COMMITTEE RECOMMEND THAT THE POSSIBILITY OF INTRODUCING ELECTRONIC RECORDING OF INTERVIEWS WITH PERSONS DETAINED IN NORTHERN IRELAND UNDER THE PTA TO BE REVIEWED BY THE UNITED KINGDOM AUTHORITIES, TAKING INTO ACCOUNT THE COMMITTEE'S REMARKS IN PARAGRAPHS 76 TO 88 (PARAGRAPH 89);**

- Q13 Do the proposed procedures for misconduct hearings meet the requirement for more efficient management?
- Q14 Are the proposed procedures fair to the officer concerned?
- Q15 Are there any other comments on the procedures broadly described, or any suggestions for a different type of procedure?

#### Cases Originating from a Complaint

8.16 The misconduct procedures outlined above will apply to misconduct cases arising from a complaint as much as to misconduct identified by management. Where the ICPC and police management disagree on the need for a misconduct hearing, it would seem desirable for the ICPC (as at present) to have the power to insist on a misconduct hearing although the present tribunal structure consisting of two members of the ICPC and the Chief Constable may not be the best arrangement.

- Q16. Who should hear a misconduct case if the ICPC and police management disagree on the need for a hearing? Who should oversee the presentation of the case?

#### Outcomes

8.17 The range of outcomes where misconduct has been established could well be different from those in current discipline proceedings. A full list of outcomes could be as follows:

- (a) Dismissal - effective immediately;
- (b) Requirement to resign - effective immediately;
- (c) Demotion - effective immediately;
- (d) Loss of increment - one or more, depending on nature and seriousness of misconduct;
- (e) Monetary penalty;

hearings in these circumstances. The replies are currently being considered, and the Committee will be informed of any future developments.

32. THE COMMITTEE ASK WHETHER CONSIDERATION IS BEING GIVEN TO WAYS OF OVERCOMING THE PROBLEM OF A LARGE NUMBER OF INVESTIGATIONS CONCERNING COMPLAINTS ABOUT POLICE CONDUCT BEING DISCONTINUED AS A RESULT OF THE FAILURE OF THE COMPLAINANT TO COOPERATE; WHETHER AN INVESTIGATION WHICH HAS BEEN DISCONTINUED AS A RESULT OF A FAILURE TO COOPERATE CAN SUBSEQUENTLY BE RE-ACTIVATED, IN THE LIGHT OF THE OUTCOME OF CIVIL PROCEEDINGS (PARAGRAPH 96)

Complaints can be reactivated if the complainant makes it clear that he or she wishes to further the investigation following the completion of civil proceedings. However in the majority of cases complainants express no such desire.

In 1991, in order to address the problem of non co-operation with complaints, the ICPC initiated a survey of non-cooperating complainants but received replies from only 20% of the people concerned.

Where appropriate, changes are made to current practice to encourage complainants to cooperate. For example, in order to facilitate complainants the Government amended the "Guidance to the Chief Constable on Police Complaints and Discipline Procedures", on 6 January 1994. This amendment allows for meetings between complainants and the police officer whose conduct is the subject of complaint, to be held in a place other than a police station where there is an attempt to settle the issue by informal resolution. This should assist complainants who prefer not to enter a police station and means that the meeting can take place at, for example, a solicitor's office.

- (d) The officer appears to have behaved in an unacceptable way which falls within the description of misconduct. He or she should be required to appear at a misconduct hearing so that appropriate action may be decided.

#### The Hearing

8.9 A misconduct hearing would have similarities with the hearing described in paragraph 4.4(c) relating to allegations of unsatisfactory performance, with some significant differences. In misconduct cases there will quite often be conflicting factual accounts. The conflict would have to be resolved by the officer charged with deciding the case before the question of the future of the officer subject to the hearing would arise.

8.10 The Secretary of State wishes to enhance the power of senior officers to manage the Police Service efficiently, while always managing it fairly. It is suggested that a procedure such as is described below will achieve this aim.

8.11 An officer of chief officer rank (but not the Chief Constable of the Force) should conduct any misconduct proceedings, assisted by 2 assessors of at least superintendent rank.

8.12 The officer subject to the proceedings, of which he or she would have been given notice, should receive in advance a written statement of the matters complained of, explaining the reasons for the hearing. The officer would be invited to inform management if the written statement was agreed, or alternatively to identify any matters not agreed. Further inquiries might then be necessitated. The aim would be to compile, if possible, an agreed statement of the relevant facts, for advance consideration by the presiding officer and the assessors. Failing that, these persons would be presented with a clear statement of the two sides of the case.

1988 regarding the length of time a suspected terrorist can be detained in police custody, the United Kingdom Government lodged a derogation on the point under Article 15 of the European Convention on Human Rights. In March 1993 the European Court of Human Rights upheld the derogation under Article 15 on the grounds that public emergency in Northern Ireland made it necessary.

**36. ILL-TREATMENT OF DETAINEES (PAGE 36 PARA 109)  
(ADDITIONAL POINT RAISED BY HMG)**

The United Kingdom Government cannot accept the contention that the cumulative effect of the factors referred to by the CPT in Paragraph 109 of its report "places persons detained at the holding centres under a considerable degree of psychological pressure." It is because of the unique circumstances of Northern Ireland that it has become necessary to introduce legislation to deal with the investigation of terrorism in a way which effectively enables the police to pursue terrorist suspects, whilst equally safeguarding the rights of those who are in police custody in connection with serious terrorist crime.

**37. THE COMMITTEE SUGGEST THAT SENIOR RUC OFFICERS TO DELIVER THE CLEAR MESSAGE TO THEIR SUBORDINATES THAT RESORT TO ILL-TREATMENT, WHETHER PHYSICAL OR PSYCHOLOGICAL, IS NOT ACCEPTABLE AND WILL BE THE SUBJECT OF SEVERE SANCTIONS (PARAGRAPH 110)**

The United Kingdom Government would respectfully advise the Committee that all police officers in the RUC are fully aware of the rigours of the criminal law and of the RUC disciplinary regulations for unacceptable and unprofessional behaviour. Any breach of either would be the subject of a proper and impartial investigation.

8.5 In all cases, the officer responsible for taking the case forward must try to discover what actually happened on the occasion in question. (In criminal cases this stage may not be able to be reached until the point when an allegation involving a criminal offence has been through the DPP and, where relevant, the courts). Once the circumstances of an incident have been fully investigated the management decisions necessary may best be taken by those trained and engaged in personnel matters.

Q10. Are there any reasons why the RUC's complaints department cannot undertake the role assigned to it in paragraphs 8.4 and 8.5?

#### Enquiries

8.6 The investigating officer's first task would be to examine the information already available, which may range from an expression of misgiving to a full criminal file, possibly with a court report, and decide its relevance to misconduct issues and the extent to which there are gaps or inconsistencies, or any obvious way in which the truth can be tested. On the basis of this assessment of the situation, the investigating officer would then write a brief summary of the apparent misconduct and give it to the officer concerned, with an invitation to provide an account of what happened and to suggest any ways in which the investigating officer might test further the truth of what has been alleged. This would be an informal exchange designed to clear the ground before the possibility of formal misconduct proceedings is considered.

8.7 When the investigating officer has obtained all the information considered necessary for a decision on misconduct proceedings, a factual statement would be prepared giving an account of all the relevant information, including such verification of the account as had been obtained. The statement would be made available to the officer concerned for correction, within a given period, of any errors in the account, for comment on other people's accounts, and for further suggestions for verification if appropriate. A copy of the final statement would then be sent simultaneously to the officer



41. THE COMMITTEE RECOMMENDS STEPS BE TAKEN TO REMEDY THE SHORTCOMINGS CONCERNING MATERIAL CONDITIONS OF DETENTION IN THE BASEMENT OF D WING. (PARAGRAPH 123)

The Committee commented that some of the cells had no access to natural light. With the reduced numbers of prisoners in Belfast only 8 cells in the Punishment Unit are in use, all of which have access to natural light. It is accepted that conditions in the second yard are poor; however it is now only held in reserve as an overflow facility and is unlikely to be used in the foreseeable future.

42. THE COMMITTEE WELCOMES THE PROPOSALS SET OUT IN THE "BELFAST 2000" PLAN AND HOPES THAT THEIR IMPLEMENTATION WILL BE GIVEN A HIGH PRIORITY. (PARAGRAPH 127)

The United Kingdom Government would refer the Committee to the comments already made in paragraph 39

43. THE COMMITTEE RECOMMENDS THAT WAYS ARE EXPLORED OF INCREASING THE NUMBER OF EMPLOYMENT PLACES AVAILABLE TO REMAND PRISONERS WHO WISH TO WORK. (PARAGRAPH 128)

The recent transfer of remand prisoners from A and B wings in Belfast may give the opportunity to increase the number of employment places available.

44. THE COMMITTEE RECOMMENDS THAT ALL PRISONERS HELD IN THE ASSESSMENT UNIT ON LANDING D3 SHOULD BE GUARANTEED ONE HOUR EXERCISE EVERY DAY. (PARAGRAPH 131)

It is accepted that in the past some staff may have been over zealous in seeking to implement the Service's objective of offering prisoners the opportunity to serve their sentences free

provide a full explanation it must be reasonable to allow his supervisors to conclude that such a silence has adverse implications for that officer's standard of service, and to respond accordingly. Consultees are therefore invited to indicate:

- Q9. Are there any reasons why a police officer should not be expected to account for his or her actions when suspected of misconduct?

One of the prisoners in question has now been sentenced and transferred to another prison where he has integrated into the prison community. The other has been released.

47. IT IS IMPORTANT THAT THERE BE A GENERAL POLICY FOR COMBATING TRANSMISSIBLE DISEASES IN PRISONS, BASED ON THE PROVISION OF FULL INFORMATION ON THE MODES OF TRANSMISSION AND MEANS OF PROTECTION AND THE INTRODUCTION OF APPROPRIATE PREVENTIVE MEASURES. ( PARAGRAPH 135)

The general policy for combating transmissible diseases is that it is dealt with on an individual basis as between the person concerned and the Medical Officer who carries out the committal medical examination. Counselling is offered to those whose life style presents a significant risk either outside prison or within. Advice is based on clear guidelines established with the Department of Genito-urinary Medicine at the Royal Victoria Hospital, Belfast and their consultants who provide the Prison Service with professional services in prison establishments.

48. THE COMMITTEE RECOMMENDS THAT APPROPRIATE MEASURES BE TAKEN TO ENSURE THE CONFIDENTIALITY OF THE HIV STATUS OF PRISONERS. (PARAGRAPH 136)

Steps have been taken to ensure medical confidentiality, and prisoners' index cards are no longer endorsed.

The NI Prison Service published an interim circular on HIV/AIDS policy in August 1993 (copy attached at AnnexD) and plans to publish a more detailed policy document in the near future. It is accepted that the HIV + Inmate met by the CPT should not have been segregated and the reason for this was the inexperience of the service in dealing with this type of prisoner. He has since been sentenced and is living in the mainstream prison community.

7.4 The Government believes that this position is untenable when the focus is changed from quasi-judicial disciplinary procedures to proper management action in relation to staff. Notwithstanding that particular behaviour by an officer is found not to be a crime, it may still constitute unacceptable behaviour for a police officer. For example, a police officer who removes property from premises and fails to record having done so, may or may not be committing theft and may or may not be charged and found guilty - but he or she has clearly failed both to obey Force Orders and to fulfil his or her duty of care for the property of members of the public.

7.5 The implication of this is that whereas the DPP must reach a decision on the need to prosecute or the courts must examine whether an officer is guilty as charged, police managers have an interest in the matter which is quite different in character. The Secretary of State considers that there should in any event be available to police managers, management decisions ranging from taking no action (because the officer is considered entirely free from fault), to the imposition of further training or some form of warning, or the institution of proceedings for unsatisfactory performance or misconduct, depending on the nature of the case.

7.6 Views are sought on the following questions:

- Q7. Is it right in principle that management should be free to take appropriate action in respect of an officer who may have failed to meet police standards notwithstanding that he or she has been acquitted of a criminal offence?
- Q8. Should the possibility (or fact) of criminal proceedings be an automatic bar to misconduct hearings until a decision has been taken not to prosecute or criminal proceedings have been concluded?

## ANNEX A

### **BACKGROUND NOTE ON DISTURBANCES AT HM PRISON, BELFAST, DURING JULY 1994**

On the evening of 7 July loyalist prisoners exercising in A & B yards refused to return to their wings and requested to speak to the Governor about complaints regarding conditions. When the Governor refused the prisoners went on the rampage and the gate separating A and B yards was breached. Prisoners then using the roof of a wet-weather shelter, climbed onto the roof of A wing (103 prisoners in total) and began throwing roof slates. An Independent Unionist Councillor, Joe Coggle, offered his assistance to resolve the situation speedily and after dialogue between the Governor, Councillor and prisoners the prisoners returned to their wings. Subsequent discussions between Unionist Councillors and Prison Service HQ led to an undertaking by the Controller of Prisons to review conditions at HM Prison, Belfast, within 6 weeks.

However, the review was overtaken by events which occurred on 16 July. After evening lock-up on 16 July loyalist prisoners in A and B wings wrecked their cells and used broken bed ends to damage cell walls and floors. The action resulted in 68 cells being severely damaged while fittings and pipes in other cells were also destroyed. Republican prisoners had to be evacuated from their cells to the dining halls for their personal safety.

On examining the damage the Governor reported that A and B wings were insecure and unusable for paramilitary prisoners. As a result 116 loyalist and 71 republican prisoners were transferred to Maze where they are now held in segregated conditions.

## 6. INDEPENDENT OVERSIGHT OF POLICE COMPLAINT PROCEDURES

6.1 Whatever description is adopted for police misconduct, and whatever procedures are followed, there needs to be independent oversight of police misconduct procedures, in order to safeguard both the interests of police officers and those of the public. Current arrangements provide for such oversight:

- (a) whenever a complaint is made by a member of the public. These cases are reviewed by the Independent Commission for Police Complaints (ICPC).
- (b) whenever an allegation of criminal behaviour is made against a police officer. These cases are reviewed by the Director of Public Prosecutions (DPP).

Many cases are reviewed by both bodies.

6.2 The current legislation provides for oversight by the ICPC of the informal resolution procedure for dealing with less serious complaints. The ICPC is directly involved in supervising the investigation of more serious complaints and in decisions on whether police officers should be charged with offences against police discipline. The Government believes that there are strong arguments that the ICPC should continue to exercise these functions. Review by the DPP of any case where a police officer is accused of a crime will naturally continue as at present.

Q6 Is there any reason why external oversight by the ICPC should not continue for all complaints against police officers by members of the public?

ANNEX B

NORTHERN IRELAND OFFICE

# GUIDE TO THE EMERGENCY POWERS

A GUIDE TO THE EXERCISE BY POLICE OFFICERS AND  
MEMBERS OF HER MAJESTY'S FORCES OF CERTAIN POWERS  
CONFERRED BY THE NORTHERN IRELAND (EMERGENCY  
PROVISIONS) ACT 1991, AND THE PREVENTION OF  
TERRORISM (TEMPORARY PROVISIONS) ACT 1989

*February 1994*

BELFAST: HMSO

## 5. MISCONDUCT

5.1 The Secretary of State considers that the public interest in a well managed police service means that it is necessary to identify behaviour that will constitute police misconduct.

### The Discipline Code

5.2 In the past the problem has been resolved by setting out a detailed list of improper actions in the Police Discipline Code. This, however, has been shown to have flaws. First, the rigidity of the Code sometimes makes it difficult to fit a particular instance of bad conduct into the various tightly defined elements of the Code. Secondly, the practices built up around the Code have resulted in an excessively legalistic approach, creating inflexibility in dealing with particular instances of misconduct.

### Alternatives to a Formal Code

5.3 Accordingly it may be better to approach this matter by stipulating that it will be appropriate to implement misconduct procedures when there is an allegation or evidence, for example, that a police officer:

- (a) has abused one of his powers in relation to a member of the public (or wilfully omitted to observe a safeguard);
- (b) is or has been involved in any other action, including criminal action or action constituting a civil wrong, which casts doubt on his fitness to be a police officer; or
- (c) fails fully to account to his seniors for his actions while on duty when called on to do so.

5.4 A second, but narrower, formulation would stipulate that the matter should be treated as potentially one of misconduct when there is an allegation or evidence that the officer has:



## FOREWORD

In 1990 the Secretary of State issued a guide relating to the exercise, by the police and HM forces, of certain powers under emergency legislation in force in Northern Ireland. Since then the Northern Ireland (Emergency Provisions) Act 1978 and the Northern Ireland (Emergency Provisions) Act 1987 have been replaced by the Northern Ireland (Emergency Provisions) Act 1991. As a consequence of the changes made in that Act and the Codes of Practice that the Secretary of State is obliged to make under it the Secretary of State has decided to issue a revised edition of the guide.

The Guide is non-statutory and specifies certain powers conferred by the Northern Ireland (Emergency Provisions) Act 1991 and the Prevention of Terrorism (Temporary Provisions) Act 1989 and summarises how they are exercised in Northern Ireland. Passages which summarise the law are printed in italics (it is not quoted verbatim); those which provide an explanation of, and guidance about how the law is implemented, are printed in ordinary characters.

Those parts of the original Guide which dealt with matters in respect of which the Secretary of State is obliged to make a Code of Practice under Section 61 of the EPA 1991 are no longer included in the Guide. Similarly the provisions relating to the powers of Authorised Investigators (appointed under Section 57 EPA) which have been clarified in a Code of Practice made under Schedule 5 are not dealt with in the Guide.

The Guide will be amended from time to time to reflect changes in the law or practice.

This document is a guide only; it does not cover every situation that may occur.

officer's performance as satisfactory, no further action would be taken. If not, and the hearing decides that further action can be taken by management to help improve performance, this action would be specified and recommended. Where an officer's performance is unsatisfactory and the hearing considers nothing further could be done by management, the officer can be dismissed or transferred with reduced rank and, if necessary, with a written warning that failure to improve over a given period could still lead to dismissal. Any decision that the officer should leave the Force would take effect after 30 days, but the officer could be suspended from duty with pay with immediate effect.

- (d) Review The officer would have a right to seek a review by the Chief Constable of any decision made at an unsatisfactory performance hearing. Such a review would have to be sought quickly (eg within one week) and would be determined within the 30 days' notice period. The review would base its consideration on the case papers, coupled with written representations from the officer seeking the review. Written reasons for the review's decision would be given within 3 working days of the Chief Constable's consideration of the papers.

4.5 It would be open to the officer concerned to be accompanied by a friend at any relevant stage of the procedure described above. That friend could be another police officer, a personal friend or a relative. The role of the friend would be to support the officer concerned but not to represent him. Additionally, when attending an unsatisfactory performance hearing - the outcome of which may result in demotion or dismissal - it would be open to the officer to have an adviser present to provide assistance, including one who is legally qualified. Such an adviser would not take an active part in the proceedings, for example by presenting evidence, cross-examining or making submissions. He or she would, however, be able to offer the officer concerned advice and support.

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#### 4. PROCEDURES FOR DEALING WITH UNSATISFACTORY PERFORMANCE

##### Informal Action

4.1 One important job of management is to help and encourage all officers to meet and, where possible, exceed basic standards of performance. Management must also be able to deal with the relatively small number of officers who consistently fail to meet minimum standards. Welfare, training needs and the possibility of a change of duties must all be considered, together with the facility for medical advice where performance may be affected by a medical condition. The need for improvement must be pointed out, and officers warned that their performance is being monitored and that formal procedures will have to be instituted if it does not improve. Accurate record-keeping at each stage of the process is, of course, essential to ensure that procedures are fair. This may be particularly necessary where frequent minor failures to achieve acceptable standards cumulatively amount to a pattern of under-performance, or where the work of an under-performing officer suddenly improves when under scrutiny.

4.2 The key points for police managers are that there must be a reasonable and sustained managerial response to any problem of poor performance, and that the first objective of any action taken - whether formal or informal - must be to secure the necessary improvement in work performance. The object is to help the officer to meet the demands of the job. But if all efforts fail to achieve an adequate or sustained improvement, formal procedures to deal with the unsatisfactory performance will have to be set in train.

##### Formal Procedures

4.3 The proposed formal procedures involve a 4 stage process which largely reflects the procedures which apply to most other public servants. At each of the first 2 stages progress to the next stage would be avoided if the officer proved able to bring his or her standard of work up to what is required. (These procedures do not apply to probationary officers who fail to meet the required

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Section I:

20. Police and HM forces' power, under Sections 23 and 26 EPA, to stop and question	68	34
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## 2. SCOPE OF THE PAPER

2.1 This paper makes no proposals in relation to the management of the police support staff because they are employed by the Police Authority rather than directly by the Police Service.

2.2 Similarly, no reference is made to financial incentives or promotion prospects as ways of encouraging and enabling officers to give of their best. Recommendations on these issues were published on 30 June in the Report of the Inquiry into Police Responsibilities and Rewards, under the chairmanship of Sir Patrick Sheehy. The Secretary of State takes the view that it would be helpful to have a wide range of views on the fundamental disciplinary issues addressed here at the same time as the Sheehy recommendations are being considered.

2.3 This document is concerned with officers of chief superintendent level and below, including members of the Full-Time and Part-Time Reserve. The discipline arrangements for officers of chief officer rank, ie assistant chief constables, deputy chief constables and the Chief Constable, differ from those in the ranks below, primarily because the Police Authority has a role to play both in their appointment and, where appropriate, in disciplinary matters. Their position will be considered later in the light both of the responses to this paper and of the recommendations made by the Sheehy Inquiry.

## GUIDE TO THE EMERGENCY POWERS

### General

1. This Guide is publicly available at major police stations and offices for consultation by detained persons and members of the public. It is also available for persons who are taken to a base of HM forces following arrest.
2. This Guide is concerned with those powers exercised by the police and HM forces under the emergency legislation which are most relevant to their day-to-day dealings with the public; it does **not** seek to describe **all** the powers available to the police and members of HM forces. In particular, those powers regulated by a statutory Code of Practice made by the Secretary of State for Northern Ireland under the legislation are not explained in the Guide.
3. Where a police officer or soldier who is not in uniform exercises any of the powers conferred by the emergency legislation, he must, if so requested, produce documentary evidence that he is a police officer or member of HM forces. When a police officer or soldier is in uniform, he is not required to produce documentary evidence. A soldier may exercise any of the powers given to him under the emergency legislation whether or not a policeman is present.
4. If any person believes that a police officer or member of HM forces has used his or her powers incorrectly they may lodge a complaint (see Annex C).

### Reasonable Suspicion

5. Certain of the powers referred to in this Guide are exercised on the basis of reasonable suspicion (see Annex E). Whether reasonable grounds for suspicion exist will depend under the law on the circumstances in each case, but there must be some objective basis for it which could lead a police officer or member of the armed forces to form the reasonable suspicion in question. Reasonable suspicion may exist, for example, where information has been received or a person is seen acting suspiciously or attempting to hide something.
6. Reasonable suspicion can never be supported on the basis of stereotyped images of certain persons or groups (for example, those of a particular religious persuasion or who reside in a specific area) as being more likely to commit offences.
7. There is no requirement for a police officer or member of the armed forces to state what his reasonable suspicion is when exercising the relevant powers.

- Q15 Are there any other comments on the procedures broadly described, or any suggestions for a different type of procedure?
- Q16 Who should hear a misconduct case if the ICPC and police management disagree on the need for a hearing? Who should oversee the presentation of the case?
- Q17 Is the range of outcomes suggested appropriate?
- Q18 Is there any reason why the Secretary of State should be involved in any way in police disciplinary proceedings?
- Q19 Is it acceptable and reasonable for the Chief Constable to have a power of outright dismissal as suggested?
- Q20 To what extent should the description of misconduct (paragraphs 5.3 and 5.4), and the new procedures for handling unsatisfactory performance and misconduct be embodied in secondary legislation?

August 1993

Northern Ireland Office  
Police Division



## PART I

### THE EXERCISE BY POLICE OFFICERS OF THEIR ARREST POWERS UNDER THE TERRORISM PROVISIONS

#### General power of arrest

1. Under Section 14 PTA a constable in Northern Ireland may arrest without warrant a person whom he has reasonable grounds for suspecting to be:
  - (a) a person guilty of an offence under sections 2, 8, 9, 10 or 11 of the Act [see Notes 1 to 6, page 13-14];
  - (b) a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism to which this section applies [see Note 8, page 14]; or
  - (c) a person subject to an exclusion order.

#### Detention and Arrest in connection with exclusion orders

2. Under paragraph 7(1) of Schedule 2 PTA a person in respect of whom directions for removal from the territory may be given (see Note 7, page 14) may be detained pending the giving of such directions and pending removal in pursuance of the directions under the authority of the Secretary of State or an examining officer.
3. Under paragraph 7(2) of Schedule 2 PTA a constable, acting as an examining officer under the PTA, may arrest without warrant any person liable to be detained under paragraph 7(1) of Schedule 2 PTA (see paragraph 2 above).

#### Detention and arrest when entering or seeking to enter or leave Northern Ireland

4. Under Schedule 5 PTA a constable, acting as an examining officer under the Act, may examine any person who has arrived in, or is seeking to leave Northern Ireland by ship or aircraft, to determine:
  - (a) whether he appears to be a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism to which Schedule 5 applies [see Note 8, page 14];

6. Section 5 concludes that there is a need for a structured approach to police misconduct. It incorporates a possible description of misconduct. General comments will be welcome, but views are sought on the following specific questions:

Q4 Is either of the possible approaches set out in paragraphs 5.3 and 5.4 satisfactory to describe the areas in which the public interest requires failure of police performance to be treated as misconduct? Is there some other means of identifying them that would be preferable?

Q5 Would it be useful to provide an illustration of the sort of conduct which would be comprehended under the terms of paragraphs 5.3 or 5.4?

7. Section 6 describes the existing procedures for dealing with complaints against the police. It proposes that the ICPC should continue to have oversight over the entire complaints system.

Q6 Is there any reason why external oversight by the ICPC should not continue for all complaints against police officers by members of the public?

8. Section 7 proposes that police managers should be able to take management action in advance of a decision by the DPP or a court and that refusal by a police officer suspected of misconduct to give management an explanation of his or her actions once the DPP has finished with the case, should cast doubt on the officer's conduct and fitness for the service.

Q7 Is it right in principle that management should be free to take appropriate action in respect of an officer who may have failed to meet police standards notwithstanding that he or she has been acquitted of a criminal offence?

Q8 Should the possibility (or fact) of criminal proceedings be an automatic bar to misconduct hearings until a decision has been taken not to prosecute or criminal proceedings have been concluded?

*(c) a decision by the Director of Public Prosecutions or Attorney General for Northern Ireland whether proceedings for an offence should be instituted against him.*

8. *A person arrested under Section 14 or under Schedule 5 PTA may be detained for not more than 48 hours by the police; the Secretary of State may extend the period of detention by a further period or periods not exceeding five days in all. Where an application is made to the Secretary of State for extension of a period of detention the person detained shall, as soon as practicable, be given written notice of that fact and of the time when the application was made.*

#### Arrest for scheduled offences and offences under the EPA

9. *Under Section 17 EPA a constable may arrest without warrant a person who he has reasonable grounds to suspect is committing, has committed or is about to commit a scheduled offence or an offence under the EPA which is not a scheduled offence [see Note 9, page 14].*

#### Explanation and Guidance

10. An arrest should be effected as courteously and quickly as the circumstances prevailing at the time permit. When arrested the prisoner should be taken to a Police Station or Police Office.
11. Only such force as is reasonable in the circumstances may be used either to effect a person's arrest or to retain them in custody following arrest.
12. In any case where force is used against a prisoner before, at, or following his arrest a record of the facts will be made or caused to be made as soon as possible by the senior police officer concerned.
13. A police officer will not use torture, inhuman or degrading treatment, or violence or the threat of violence against an arrested person.
14. Children who appear to be under 10 years of age cannot be arrested. A child or young person who appears to be between the ages of 10 and 17 years old may be arrested but should, where possible, be kept separate from adult arrested persons. Parents or

POLICE DISCIPLINE PROCEDURES - CONSULTATION PAPER

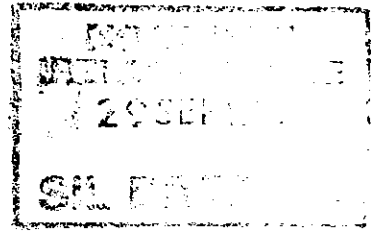
NORTHERN IRELAND OFFICE

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## Notes

1. Section 2 PTA creates offences associated with proscribed organisations.
2. Under Section 8 PTA a person is guilty of an offence -
  - (1) if he is subject to an exclusion order and fails to comply with the order at a time after he has been, or has become liable to be removed;
  - (2) if he is knowingly concerned in arrangements for securing or facilitating the entry into Great Britain, Northern Ireland or the United Kingdom of a person whom he knows, or has reasonable grounds for believing, to be an excluded person; or,
  - (3) if he knowingly harbours such a person in Great Britain, Northern Ireland or the United Kingdom.
3. Under Section 9(1) PTA a person is guilty of an offence if he -
  - (a) solicits or invites any other person to give, lend or otherwise make available, whether for consideration or not, any money or other property; or
  - (b) receives or accepts from any other person, whether for consideration or not, any money or other property; or
  - (c) uses or has possession of, whether for consideration or not, any money or other property.  
intending that it shall be applied or used for the commission, or in furtherance of, or in connection with, acts of terrorism to which Section 9 applies (See Note 8), or having reasonable cause to suspect that it may be so used or applied.
4. Under Section 9(2) PTA a person is guilty of an offence if he -
  - (a) gives, lends or otherwise makes available to any person, whether for consideration or not, any money or property; or
  - (b) enters into or is otherwise concerned in an arrangement whereby money or other property is or is to be made available to another person,  
knowing or having reasonable cause to suspect that it will or may be applied or used as mentioned in Note 3 above.
5. Under Section 10 PTA it is an offence if a person -
  - (a) solicits or invites any other person to give, lend or otherwise make available, whether for consideration or not any money or other property for the benefit of a proscribed organisation;



# **POLICE DISCIPLINE PROCEDURES**

## **A CONSULTATION PAPER**

**Northern Ireland Office  
Stormont  
Belfast  
August 1993**

## PART II

### THE EXERCISE BY MEMBERS OF HM FORCES OF THEIR POWER TO ARREST UNDER SECTION 18 OF THE NORTHERN IRELAND (EMERGENCY PROVISIONS) ACT 1991

1. *Under Section 18 EPA a member of HM forces on duty may arrest without warrant and detain for up to 4 hours any person who he has reasonable grounds for suspecting is committing, has committed or is about to commit any offence.*
2. *To ensure the legality of the arrest, the soldier should inform the suspect that he is making the arrest as a member of Her Majesty's forces.*

#### Explanation and Guidance

3. An arrest should be effected as courteously and quickly as the circumstances prevailing at the time permit. Only such force as is reasonable in the circumstances may be used either to effect a person's arrest or to retain them in custody following arrest.
4. The soldier making the arrest should, when possible, leave a card with any friend or relative (or other person likely to take an interest in the arrested person's welfare) who is present at that time. The card should contain guidance on how to obtain information about arrested persons. Where no relative or other person is present, and the person arrested requests that a named person be informed of his arrest and whereabouts, that request should be reported to the RUC when the arrested person is handed over to them.
5. Children who appear to be under 10 years of age cannot be arrested. A child or young person who appears to be between the ages of 10 and 17 years old may be arrested but should, where possible, be kept separate from arrested persons. Parents or guardians must be informed as soon as is practicable that a juvenile has been arrested and where the juvenile is being held.
6. The arrested person may not be questioned except for the purpose of establishing his identity and movements and what he knows concerning any recent explosion or other recent incident endangering life, or concerning any person killed or injured in such an explosion or incident. In order to establish identity it will normally be necessary to ask persons their name and address. It may also be necessary for this purpose to ask further questions, such as date of birth.

## **ANNEX D - INDEPENDENT ASSESSOR FOR MILITARY COMPLAINTS PROCEDURES**

The aim of the Army's complaints procedure is to ensure that complaints are investigated as fairly, as impartially and as fully as possible. To help in achieving this the Government has established under Section 60 of the EPA the post of Independent Assessor of Military Complaints Procedures.

The Assessor will examine and review the Army's system for dealing with non-criminal complaints and make an annual report to the Secretary of State for Northern Ireland.

The Assessor will not investigate the facts of individual cases, but will review the procedures followed in the investigation of complaints to ensure that they are as effective as possible. Where he is dissatisfied with the operation of the procedures in a particular case the Assessor may require a review of that case.

Changes in the complaints procedure may also be recommended if the Assessor believes that they are not working properly.

Members of the public may write to the Independent Assessor regarding the operation of the complaints procedures at The Office of the Independent Assessor for Military Complaints Procedures, Hampton House, 47-53 High Street, Belfast.



## PART III

### THE EXERCISE BY POLICE OFFICERS AND MEMBERS OF HM FORCES OF THEIR POWERS TO ENTER AND SEARCH PREMISES, AND VEHICLES, ETC.; TO RESTRICT THE MOVEMENTS OF PERSONS IN PREMISES OR WITH VEHICLES BEING SEARCHED; TO SEARCH PERSONS; TO SEIZE PROPERTY FOUND ON PERSONS OR PREMISES; AND TO STOP, SEARCH AND QUESTION PERSONS

#### SECTION A: POLICE AND HM FORCES' POWER TO ENTER AND SEARCH PREMISES FOR MUNITIONS, ETC. (UNDER SECTION 19 EPA)

##### Premises and places other than dwelling houses

1. Any constable or any member of HM forces on duty may enter and search any premises or other place (other than a dwelling house) for the purpose of ascertaining whether there are any munitions unlawfully present, or whether there is a transmitter or scanning receiver there. If it is necessary for the purpose of effectively carrying out a search, a constable or a member of HM forces on duty may be accompanied by other persons.

##### Dwelling houses

2. Any constable authorised by a police officer not below the rank of chief inspector, or any member of HM forces on duty authorised by a commissioned officer, may enter and search a dwelling house, and search any person found in that dwelling house or entering it while the search is in progress, for munitions, transmitters or scanning receivers. Before authorising any such search of a dwelling house, the officer must satisfy himself that there are reasonable grounds for suspecting that there are munitions unlawfully present, or that a transmitter or scanning receiver is present. If it is necessary for the purpose of effectively carrying out a search, a constable or a member of HM forces on duty may be accompanied by other persons.

##### Restriction of movements during search

3. A police officer or soldier carrying out a search of premises or places under Section 19 EPA may require any person who is found in the premises or places when the search begins, or enters those premises or places while the search is under way, to remain in a particular part of those premises or places; to refrain from entering a specified part of them; or to move from one part to another. He may also require any person who is not resident at those premises to refrain from entering them. These requirements may be imposed only where the police officer or soldier carrying out the search reasonably believes that they are

## **ANNEX C - COMPLAINTS AGAINST MEMBERS OF THE SECURITY FORCES**

### **(a) Complaints against the police**

A complaint about the conduct of a police officer can be made by going to any police station where an officer will take down details of what happened.

Alternatively a complaint may be made in writing to the Chief Constable indicating clearly what happened and giving the names and addresses of any witnesses. A person may also write to or call at the Independent Commission for Police Complaints on 1st Floor, Chamber of Commerce House, 22 Great Victoria Street, Belfast BT2 7LP, telephone Belfast 244821. The Commission will pass the complaint on to the Chief Constable, as will the Police Authority for Northern Ireland, River House, High Street, Belfast 1.

Finally, a person may complain on behalf of someone else by writing to the police or visiting a police station. In order to save time they should be in possession of a letter from the aggrieved party giving full details of the complaint and saying that they have permission to lodge the complaint.

### **(b) Complaints against members of HM Forces**

Members of HM Forces serving in Northern Ireland act in support of the RUC to uphold the law and to maintain the peace.

HM Forces recognise the importance of maintaining and improving the level of support and confidence in the security forces throughout the whole community. To this end, HM Forces aim to apply the law fairly and impartially. A high priority is therefore given to the prompt and thorough investigation of all genuine complaints from members of the public and their representatives. Where a complaint is substantiated, criminal proceedings or disciplinary action may be brought against the soldiers involved. In all cases, complainants will receive a reply explaining the result of the investigation.

If a member of the public feels that a member of HM Forces has behaved wrongly or badly in using the powers given to them under the emergency legislation then the complaint should normally be made in the first instance to the RUC. This should be done either by writing to the Chief Constable at RUC Headquarters, Brooklyn, Knock Road, Belfast BT5 6LE, or by calling at any police station. Where the complaint is one of a non-criminal nature (e.g. discourtesy or delay at a checkpoint) members of the public may ask soldiers

8. Searches should be conducted as courteously as possible with due consideration for the occupants. Care should be taken to avoid or minimise damage to property. Persons' movements should not be restricted more than is necessary for the purpose of the search. Searches should not continue for longer than is necessary to achieve their purpose. The time limits which apply to the restrictions of persons' movement (paragraph 4 above) do not apply to the conduct of the search itself.
9. The police officer or soldier in charge will make a record of the search where practicable. The record should contain information regarding:-
  - (a) location of premises;
  - (b) time of search;
  - (c) the occupier/owner of the premises;
  - (d) the police officers or soldiers conducting the search;
  - (e) damage caused during the search;
  - (f) a description of property seized.

A copy of the Search Damage Report form will be given to the occupant or left for the owner of the premises searched.

10. In the course of a search of premises, a police officer or soldier may arrest any person whom he finds in unlawful possession of munitions or in possession of other items such as a transmitter or scanning receiver which he believes to be for unlawful use. Munitions, transmitters and scanning receivers may be seized. If other items reasonably suspected of being evidence of other offences or involvement in terrorism are found on the premises, they may also be seized and taken away for further examination.
11. Unoccupied premises should be secured as effectively as possible at the end of the search.
12. The security forces may use the domestic electricity supply to power small items of equipment in the course of the search. In such circumstances compensation may be claimed. Enquiries connected with this or regarding damage caused by the security forces during the course of a search should be directed to the local Civil Representative, whose name and telephone number is available from police stations. The Civil Representative in turn will forward claims as necessary to the Compensation Agency.

## **PART IV**

### **OFFENCES CHARGED FOLLOWING TERRORIST FUNDS INVESTIGATIONS**

*Any offence, other than a summary offence, which an officer of the Royal Ulster Constabulary not below the rank of superintendent certifies is charged in consequence of a terrorist funds investigation, unless the Attorney General for Northern Ireland certifies that it is not to be treated as a scheduled offence; and in this Part of this Schedule -*

- (a) "summary offence" means an offence which, if committed by an adult, is punishable only on summary conviction; and*
- (b) "a terrorist funds investigation" means an investigation for the purposes of which a person has been authorised under section 57 of this Act to exercise the powers conferred by Schedule 5 of this Act.*

*and arrest a person liable to be arrested under paragraph 6(4) of Schedule 5 PTA (see Part I, paragraphs 4 to 7).*

### Explanation and Guidance

19. If the premises are occupied the police officer or soldier in charge should, if practicable, inform the occupants of the authority to make the search before the search begins. If the premises prove to be unoccupied the police officer or soldier in charge should subsequently notify the owner in the following circumstances:-

- (a) the building is normally occupied as a dwelling house but it is not occupied at the time of the search;
- (b) where damage has been caused to the building; or
- (c) in such other circumstances as the person in charge thinks fit.

Notification may be effected by leaving written notices in a prominent position within the premises, or such other method as may be convenient.

20. Searches should be conducted as courteously as possible and should not continue for longer than is necessary to achieve their purpose.

21. Unoccupied premises should be secured as effectively as possible at the end of the search.

22. In exercising the power under Section 18(3) EPA a soldier may detain other occupants of the premises until the arrest has been made, in order to ensure that the arrest is peaceable.

## **PART II**

### **INCHOATE AND RELATED OFFENCES**

*Each of the following offences, that is to say -*

- (a) aiding, abetting, counselling, procuring or inciting the commission of an offence specified in Part I of this Schedule (hereafter in this paragraph referred to as a "substantive offence");*
- (b) attempting or conspiring to commit a substantive offence;*
- (c) an offence under section 4 of the Criminal Law Act (Northern Ireland) 1967 of doing any act with intent to impede the arrest or prosecution of a person who has committed a substantive offence;*
- (d) an offence under section 5(1) of the Criminal Law Act (Northern Ireland) 1967 of failing to give information to a constable which is likely to secure, or to be of material assistance in securing, the apprehension, prosecution or conviction of a person for a substantive offence, shall be treated for the purposes of this Act as if it were the substantive offence.*

27. Wilful obstruction of a soldier or constable exercising the powers under section 22 constitutes an offence.

## *This Act*

### *22. Offences under the following provisions of this Act -*

- (a) section 19(12);*
- (b) section 27;*
- (c) section 28;*
- (d) section 29;*
- (e) section 30;*
- (f) section 31;*
- (g) section 32;*
- (h) section 33;*
- (i) section 35;*
- (j) section 53;*
- (k) section 54;*
- (kk) section 54A*
- (l) paragraph 13 of Schedule 3;*
- (m) paragraph 9 of Schedule 4;*
- (n) paragraph 4 of Schedule 5.*

## *Notes*

- 1. Any offence specified in this Part of this Schedule which is stated to be subject to this note is not a scheduled offence in any particular case in which the Attorney General for Northern Ireland certifies that it is not to be treated as a scheduled offence.*
- 2. An offence specified in paragraph 11(a), (c) or (e) is a scheduled offence only where it is charged that the offence was committed in relation to or by means of nuclear material within the meaning of the Nuclear Material (Offences) Act 1983; and the Attorney General for Northern Ireland shall not certify that the offence specified in paragraph 11(f) is not to be treated as a scheduled offence in a case where it is charged that the offence was so committed.*
- 3. An offence specified in paragraph 11(b) or (d) is a scheduled offence only where it is charged -*
  - (a) that an explosive, firearm, imitation firearm or weapon of offence was used to commit the offence; or*
  - (b) that the offence was committed in relation to or by means of nuclear material within the meaning of the Nuclear Material (Offences) Act 1983;**and expressions defined in section 10 of the Theft Act (Northern Ireland) 1969 have the same meaning when used in this note.*



*and 30 above). The Secretary of State must satisfy himself that the same criteria are met as would have been applied had a warrant been sought and it must also appear to him that it would prejudice the capability of the police to investigate offences under section 9, 10 or 11 PTA or the safety of Northern Ireland or persons in Northern Ireland if information which it would be necessary to produce in an application for a warrant were disclosed.*

Explanation and Guidance

33. See paragraphs 5 to 7, 11 and 12.

## *Hijacking*

13. *Offences under section 1 of the Aviation Security Act 1982 (aircraft).*

14. *Offences in Northern Ireland under section 2 of the Criminal Jurisdiction Act 1975 (vehicles).*

## *Criminal Damage (Northern Ireland) Order 1977*

15. *Offences under the following provisions of the Criminal Damage (Northern Ireland) Order 1977 subject to note 1 below -*

- (a) Article 3(1) and (3) or Article 3(2) and (3) (arson);*
- (b) Article 3(2) (destroying or damaging property with intent to endanger life);*
- (c) Article 4 (threats to destroy or damage property);*
- (d) Article 5 (possessing anything with intent to destroy or damage property);*

## *Criminal Law (Amendment) (Northern Ireland) Order 1977*

16. *Offences under Article 3 of the Criminal Law (Amendment) (Northern Ireland) Order 1977 (bomb hoaxes) subject to note 1 below.*

## *Firearms (Northern Ireland) Order 1981*

17. *Offences under the following provisions of the Firearms (Northern Ireland) Order 1981 -*

- (a) Article 3(1) (possessing, purchasing or acquiring firearm or ammunition without certificate) subject to note 1 below;*
- (b) Article 4(1), (2), (3) or (4) (manufacturing, dealing in, repairing, etc., firearm or ammunition without being registered) subject to note 1 below;*
- (c) Article 5 (shortening barrel of shot gun or converting imitation firearm into firearm) subject to note 1 below;*
- (d) Article 6(1) (manufacturing, dealing in or possessing machine gun, or weapon discharging, or ammunition containing, noxious substance) subject to note 1 below;*
- (e) Article 17 (possessing firearm or ammunition with intent to endanger life or cause serious damage to property);*
- (f) Article 18 (use or attempted use of firearm or imitation firearm to prevent arrest or self or another etc.);*

*be necessary to do so in order that the search may be carried out effectively or to prevent its object being frustrated. In any case, no requirement shall be imposed or have effect after the search has been completed.*

41. *A constable or soldier may use reasonable force to secure compliance with any requirement and it is an offence wilfully to fail to comply, or wilfully to obstruct or seek to frustrate the object of a search.*

#### Explanation and Guidance

42. Searches should be conducted as courteously as possible, with due consideration for the occupants of the vehicle, vessel, etc. Care should be taken to avoid or minimise damage to property. Searches should not continue or vehicles, etc. be detained for longer than is necessary for the purpose of the search. However, the time limits which apply to the restrictions of persons' movement (paragraph 40 above) do not apply to the conduct of the search itself.

43. In the case of search e.g. of vehicles at a Search Centre, the police officer or soldier in charge should make a record of the search. The record should contain information regarding:

- (a) the location where the vehicle was searched;
- (b) time of search;
- (c) vehicle registration number;
- (d) owner/driver of the vehicle;
- (e) police officer or soldier conducting the search;
- (f) damage caused during the search;
- (g) a description of the property seized.

A copy of the search damage report form will be given to the owner/driver.

44. In the course of searching a vehicle a police officer or soldier may search any person under Section 19 of the EPA to ascertain whether he has any munitions unlawfully with him or any transmitter or scanning receiver (see paragraph 50).

45. In the course of the search, a police officer or soldier may arrest any person whom he finds in unlawful possession of munitions or in possession of other items such as a transmitter or scanning receiver which he reasonably believes to be for unlawful use. Munitions,

## ANNEX A - SCHEDULED OFFENCES

### PART I

#### SUBSTANTIVE OFFENCES

##### *Common law offences*

1. *Murder subject to note 1 below.*
2. *Manslaughter subject to note 1 below.*
3. *The common law offence of riot.*
4. *Kidnapping subject to note 1 below.*
5. *False imprisonment subject to note 1 below.*
6. *Assault occasioning actual bodily harm subject to note 1 below.*

##### *Malicious Damage Act 1861*

7. *Offences under section 35 of the Malicious Damage Act 1861 (interference with railway) subject to note 1 below.*

##### *Offences against the Person Act 1861*

8. *Offences under the following provisions of the Offences against the Person Act 1861 -*
  - (a) *section 4 (conspiracy, etc. to murder) subject to note 1 below;*
  - (b) *section 16 (threats to kill) subject to note 1 below;*
  - (c) *section 18 (wounding with intent to cause grievous bodily harm) subject to note 1 below;*
  - (d) *section 20 (causing grievous bodily harm) subject to note 1 below;*
  - (e) *section 28 (causing grievous bodily harm by explosives);*
  - (f) *section 29 (causing explosion or sending explosive substance or throwing corrosive liquid with intent to cause grievous bodily harm);*
  - (g) *section 30 (placing explosive near building or ship with intent to do bodily injury).*

##### *Explosive Substances Act 1883*

9. *Offences under the following provisions of the Explosive Substances Act 1883 -*
  - (a) *section 2 (causing explosion likely to endanger life or damage property);*

SECTION F: OTHER POWERS TO ENTER AND SEARCH SHIPS,  
AIRCRAFT, ETC.

47. *Under paragraph 4(1) of Schedule 5 PTA a constable may, for the purpose of satisfying himself whether there are persons he may wish to examine in his capacity as an examining officer (see Part I, paragraphs 4 and 5), board and search any ship or aircraft and search anything on board it or anything taken off or about to be taken aboard a ship or aircraft.*
48. *Under paragraph 4(2) of Schedule 5 PTA a constable, who examines any person under paragraph 2 of Schedule 5 PTA (see Part I, paragraphs 4 and 5) may, for the purpose of determining whether he is such a person as is mentioned in paragraphs 2(1)(a) to (c) of Schedule 5 (see (a) to (c) in paragraph 4 in Part I) search that person and any baggage belonging to him, or any ship or aircraft and anything on board it, or anything taken off or about to be taken aboard a ship or aircraft. A search of a person may only be carried out by a person of the same sex.*

Explanation and Guidance

49. The length of time for which a ship or aircraft may be detained will depend on the circumstances but must not extend beyond the time taken for the search.

## Notes

1. Under Section 14(1)(b) PTA a constable may arrest without warrant anyone whom he has reasonable grounds for suspecting to be a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism to which that Section applies (see Note 8 in Part I).
2. Under paragraph 8(1) of Schedule 2 PTA a justice of the peace may grant a search warrant authorising any constable to enter premises to search for and arrest a person who, by virtue of paragraph 7(1) of Schedule 2 PTA, may be detained if directions for his removal from the territory may, are to be or have been given. He may grant the warrant only if he is satisfied that there are reasonable grounds for suspecting that such a person is to be found on the premises in question.
3. Under paragraph 7(1) of Schedule 5 PTA a justice of the peace may grant a search warrant authorising any constable to enter premises to search for and arrest a person who, by virtue of paragraph 6 of Schedule 5 PTA, may be detained for examination (see paragraphs 4 to 7 in Part I).
4. Under paragraph 2 of Schedule 7 PTA a justice of the peace may issue a warrant if he is satisfied that a terrorist investigation is being carried out and that there are reasonable grounds for believing -
  - (a) that there is material on the premises in question which is likely to be of substantial value (whether by itself or together with other material) to the investigation;
  - (b) that the material does not consist of or include items subject to legal privilege or excluded or special procedure material; and
  - (c) that any of the following conditions are fulfilled -
    - (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
    - (ii) 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 material;

56. The power to stop includes the power to stop a vehicle, etc., in order to search a person.

57. Munitions, transmitters and scanning receivers found in the course of the search may be seized. If other items reasonably suspected of being evidence of other offences or involvement in terrorism are found, they may also be seized and taken away for further examination.

*Section 15(3) PTA, for the purpose of ascertaining whether he has in his possession any document or other article which may constitute evidence that he is a person liable to arrest.*

*Search after arrest*

*63. Where a constable has arrested a person under Section 14 PTA for any reason other than the commission of a criminal offence (see Note 11, page 36) he, or any other constable may, under Section 15(4) PTA, search him for the purpose of ascertaining whether he has in his possession any document or other article which may constitute evidence that he is a person liable to arrest.*

*During examination*

*64. A constable who examines any person under paragraph 2 of Schedule 5 PTA (see paragraphs 4 to 7 of Part I) may, for the purpose of determining whether he is such a person as is mentioned in paragraphs 2(1)(a) to (c) of Schedule 5 (see (a) to (c) in paragraph 4 of Part I) search that person.*

*Explanation and Guidance*

*65. By law these searches in Section H may only be carried out by a person of the same sex.*

*66. Any search involving the removal of more than an outer coat, jacket, gloves, headgear or footwear should not be made in presence of anyone of the opposite sex.*

*67. See also paragraphs 52 to 54.*