

# MODERN SLAVERY ACT 2015

## CODE OF PRACTICE

### MARITIME POWERS

#### CODE OF PRACTICE TO BE FOLLOWED BY NORTHERN IRELAND CONSTABLES AND ENFORCEMENT OFFICERS WHEN ARRESTING A PERSON UNDER THE POWER CONFERRED BY PARAGRAPH 22(2) OF SCHEDULE 2 TO THE MODERN SLAVERY ACT 2015

#### **Commencement – Transitional Arrangements**

This Code applies to any arrest made under the power conferred by paragraph 22(2) of the Modern Slavery Act 2015 after the commencement of Part 3 of, and Schedule 2 to, the Modern Slavery Act 2015

## 1 Introduction

- 1.1 This Code of Practice deals with the practice to be followed by Northern Ireland constables and enforcement officers when arresting a person under the power conferred by paragraph 22(2) in Part 3 of Schedule 2 to the Modern Slavery Act 2015 (“the MS Act”). That paragraph applies if the constable or enforcement officer has reasonable grounds to suspect that an offence under section 1 (slavery, servitude and forced or compulsory labour) or section 2 (human trafficking) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 has been, or is being, committed on a ship. Where it applies, the constable or enforcement officer may arrest without warrant anyone whom the constable or officer has reasonable grounds for suspecting to be guilty of the offence. *See Notes 1, 2,3, 4 and 6.*
- 1.2 The powers in Part 3 of Schedule 2 to the Act (which includes the paragraph 22(2) power of arrest) are exercisable on:
- a United Kingdom ship in Northern Ireland waters or foreign waters,
  - a United Kingdom ship in international waters where the intention is to take the arrested person to Northern Ireland,
  - a ship without nationality in Northern Ireland waters
  - a ship without nationality in international waters where the intention is to take the arrested person to Northern Ireland,
  - a foreign ship in Northern Ireland waters, and
  - a ship, registered under the law of a relevant territory (being the Isle of Man, any of the Channel Islands or a British overseas territory), in Northern Ireland waters.
- 1.2A The powers may also be used by Northern Ireland constables and enforcement officers in hot pursuit of ships into England and Wales waters, or into Scotland waters, on:
- a United Kingdom ship or a ship without nationality which was in Northern Ireland waters or international waters immediately beforehand, or
  - a foreign ship, or a ship registered under the law of a relevant territory (being the Isle of Man, any of the Channel Islands or a British overseas territory) which was in Northern Ireland waters immediately beforehand.
- 1.2B Before pursuit in these circumstances into England and Wales waters, or Scotland waters, a signal must be given for the ship to stop, and the pursuit of the ship must not have been interrupted.
- 1.3 These powers may only be exercised for the purpose of preventing, detecting, investigating or prosecuting an offence under section 1 or 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, in accordance with section 37(2)(a), 37(9), 38(7) and 38(8) of the MS Act.
- 1.4 The authority of the Chief Constable of the Police Service of Northern Ireland is required before an enforcement officer may exercise these

powers in Northern Ireland territorial waters, except where the enforcement officers are exercising powers of hot pursuit under section 38 of the MS Act. *See notes 5 and 7.*

- 1.5 The authority of the Secretary of State is required before a Northern Ireland constable or an enforcement officer may exercise these powers in relation to (i) a United Kingdom ship in foreign waters or (ii) a foreign ship, or a ship registered under the law of a relevant territory (defined as above), within the territorial sea adjacent to the United Kingdom. The consent of the Secretary of State may be required in order to prosecute a person who is not a United Kingdom national where the power of arrest has been exercised. *See note 8*
- 1.6 This Code of Practice must be readily available for arresting constables and enforcement officers and at all designated police stations and authorised places of detention for consultation by police and enforcement officers, members of the public, police staff, police force control rooms, Police Force Single Points of Contact and detained persons and police staff, detained persons and members of the public.
- 1.7 The Notes for Guidance at the end of this document are not provisions of this code.

## **2 Information to be given on Arrest**

- 2.1 A person who is arrested or further arrested for any offence mentioned in paragraph 1.1 must be informed as soon as it is practicable, or if not, as soon as it becomes practicable thereafter, that they are under arrest and the grounds and reasons for their arrest. *See note 9.*

### **Caution**

- 2.2 A person who is arrested or further arrested for any offence mentioned in paragraph 1.1 must be cautioned unless:
  - (a) it is impracticable to do so by reason of their condition or behaviour at the time;
  - (b) they have already been cautioned immediately prior to arrest.

### **Terms of the caution**

- 2.3 The caution, which must be given on arrest, should be in the following terms:

“You do not have to say anything, but I must caution you that if you do not mention when questioned something which you later rely on in Court, it may harm your defence. If you do say anything it may be given in evidence.”
- 2.4 Minor deviations from the words of any caution given in accordance with this Code do not constitute a breach of this Code, provided the sense of the caution is preserved. *See note 10.*

### **Other information**

2.5 The arresting constable or enforcement officer should ensure that, as soon as reasonably practicable after arrest, the person is informed that if they feel they need medical help, they should tell the constable or enforcement officer.

2.6 The constable or enforcement officer should inform the arrested person that on arrival at the designated police station or authorised place of detention they will be informed of their rights and entitlements in accordance with paragraph 3.1 of Code of Practice C issued under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE NI). This information must also be provided in a written notice, under paragraph 3.2 of PACE NI Code C. The notice may also include information about the offences mentioned in paragraph 1.1.

The arrested person must also be given a summary of the procedural rights that they will have access to in full at the police station or authorised place of detention in the following manner:

- (a) You will be asked if you want a lawyer to help you and if you want a lawyer, you should tell the officer in charge. They will arrange for you to obtain legal advice and this legal advice is free.
- (b) You will be asked if you want someone to be told where you are and if you want someone informed, you should tell the officer in charge. They will arrange this for you. This is free.
- (c) If you want to look at the police rules - they are called the Codes of Practice - you should tell the police who will provide them to you.
- (d) You will be asked if you need medical help. You should tell the officer in charge if you feel ill or have been injured. They will arrange medical help for you, and this help is free.
- (e) If you are asked questions about a suspected offence, you do not have to say anything. However, it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence.
- (f) You must be told about the offence you are suspected of committing and why you have been arrested and are being detained.
- (g) You or your solicitor must be allowed to see records and documents about why you have been arrested and detained and about your time at the police station or authorised place of detention.
- (h) If you need an interpreter, one must be provided. You can also have certain documents translated. This is free.
- (i) If you are not from the United Kingdom and you want to contact your embassy or consulate or want them to be told you are detained, tell the officer in charge. This is free.
- (j) You must be told how long you can be detained.

(k) If you are charged and your case goes to court, you or your solicitor will have a right to see the prosecution evidence before the court hearing.

- 2.7 The constable or enforcement officer must, as far as it is practicable, make arrangements to enable arrested persons whilst they are detained under arrest on board the ship, to communicate effectively with the arresting officers in the same way as a suspect who can read, speak and understand English. Effective communication includes the interpretation and translation of information which is provided by way of a written notice. The information which is provided orally or in writing must be in simple and accessible language, taking into account any particular needs of vulnerable suspects.
- 2.8 The constable or enforcement officer must inform the arrested person that they will be taken to a designated police station or authorised place of detention as soon as practicable after the arrest unless the arrested person's presence on the ship is necessary in order to carry out such investigations as it is reasonable to carry out immediately. The constable or enforcement officer must inform the arrested person if it appears that the period starting from the time of their arrest and ending on their arrival at the designated police station or authorised place of detention will exceed 24 hours. The arrested person must be reminded that the caution in paragraph 2.3 continues to apply whilst they are detained under arrest on board the ship and when they arrive at the designated police station or authorised place of detention. If the person was arrested outside of United Kingdom territorial waters, they should be reminded that he or she is still under arrest once inside the United Kingdom's territorial waters.
- 2.9 If at any time the constable or enforcement officer suspects that the arrested person may be a victim of human trafficking, and subject to the consent of the arrested person, the constable or enforcement officer should make arrangements for the arrested person's case to be referred to the National Referral Mechanism. *See note 12.*

### **3 Urgent Interviews**

- 3.1 For the purpose of this Code, the term 'interview' has the same meaning as in PACE NI Code C paragraph 11.1A. Following a decision to arrest a suspect, they must not be interviewed about the listed offence (ie. an offence under section 1 or 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015) except at a police station or other authorised place of detention, unless the consequent delay would be likely to:
- (a) lead to:
- interference with, or harm to, evidence connected with a listed offence of human trafficking or slavery, servitude and forced or compulsory labour;

- interference with, or physical harm to, other people; or
  - serious loss of, or damage to, property;
- (b) lead to alerting other people suspected of committing an offence but not yet arrested for it; or
- (c) hinder the recovery of property obtained in consequence of the commission of an offence.

Interviewing in any of these circumstances shall cease once the relevant risk has been averted or the necessary questions have been put in order to attempt to avert that risk.

- 3.2 If in accordance with paragraph 3.1 an urgent interview is carried out, the interviewer is responsible for ensuring that the interview is conducted and recorded in writing, in accordance with the relevant provisions of PACE NI Code C that would apply if the interview was carried out after the arrested person had disembarked and arrived on land in Northern Ireland.

#### **4. Power to obtain information**

- 4.1 Paragraph 21 of Part 3 of Schedule 2 to the Act includes a power to require a person on the ship to provide information about themselves and about anything on the ship. The purpose of this is to enable constables and enforcement officers to take control of the ship and to determine the need to search the ship and persons on the ship.
- 4.2 Paragraph 3.1 of this Code does not apply to, or in anyway restrict, the exercise of this power by constables and enforcement officers.

#### **5 Detention conditions - General**

- 5.1 The constable or enforcement officer must, as far as it is practicable, make arrangements to safeguard the health and welfare of the arrested persons, including provisions for refreshments, food and adequate rest, whilst they are detained under arrest on board the ship.

#### **6 Records of Arrest**

- 6.1 The arresting constable or enforcement officer is required to record in his or her pocket book or by other methods used for recording information:
- the nature and circumstances of the offence leading to the arrest;
  - the reason or reasons why arrest was necessary;
  - the giving of the caution; and
  - anything said by the person at the time of arrest.

- 6.2 Such a record should be made at the time of the arrest unless impracticable to do so. If not made at that time, the record should then be completed as soon as possible thereafter.
- 6.3 On arrival at the police station or authorised place of detention the arrested person must be brought before the custody officer as soon as practicable. At this point the PACE provisions apply, including the requirement that a custody record must be opened in accordance with Section 2 of PACE NI Code C (Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers). The information given by the arresting officer regarding the circumstances and reason or reasons for arrest shall be recorded as part of the custody record.

### Notes for guidance

- 1 *This Code only applies to the power of arrest under paragraph 22(2) of Part 3 of Schedule 2 to the MS Act 2015. There are however other powers contained within Schedule 2 to the MS Act 2015 which may be exercised by constables and enforcement officers. These are powers to stop, board, divert and detain (paragraph 20 of Schedule 2); powers to search and obtain information (paragraph 21 of Schedule 2); and powers of seizure (paragraph 22(3) of Schedule 2).*
  
- 2 *For the purposes of this Code, ‘offence’ means an offence under either section 1 or section 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. Under section 1 of that Act, a person commits an offence if the person holds another person (“B”) in slavery or servitude and the circumstances are such that the person knows or ought to know that B is held in slavery or servitude; or the person requires B to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that B is being required to perform forced or compulsory labour. The consent to B to any act which forms part of that offence is irrelevant. In the case of a human trafficking offence under section 2 of the Act, a person commits an offence if the person arranges or facilitates the travel of B with a view to B being exploited - it is irrelevant whether B (whether an adult or a child) consents to any act which forms part of that offence is irrelevant. The meaning of relevant exploitation for the purposes of human trafficking is set out at section 3 of the Act and includes:*
  - *Slavery, servitude and forced or compulsory labour;*
  - *Sexual exploitation;*
  - *Removal of organs etc.;*
  - *Securing services etc. by force, threats or deception; and*
  - *Securing services etc. from children and vulnerable persons.*
  
- 3 *The offence of human trafficking offence under section 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 has extra-territorial effect in respect of UK nationals; persons who at the time of the offence were habitually resident in Northern Ireland; and bodies incorporated under the law of a part of the United Kingdom. An offence is committed regardless of where the arranging or facilitating takes place, or where the travel takes place,. For example, a UK national who trafficks a person from Spain to France could be prosecuted in Northern Ireland for this offence. The offence does not have extra-territorial effect in relation to non-UK nationals. Such a person commits the offence if any part of the arranging or facilitating of travel takes place in the UK or if the UK is the country of arrival, entry, travel or departure of the trafficked person.*
  
- 4 *For the purposes of this Code, a “ship” includes every description of vessel (including a hovercraft) used in navigation. A United Kingdom ship is a ship which:*

- *is registered under Part 2 of the Merchant Shipping Act 1995 (i.e. registered on the central register of British ships, which is maintained by the Maritime and Coastguard Agency)*
  - *is a Government ship within the meaning of that Act (i.e. ships not forming part of Her Majesty's Navy which belong to Her Majesty, or are held by any person on behalf of or for the benefit of the Crown)*
  - *is not registered in any State or relevant territory but is wholly owned by persons each of whom has a United Kingdom connection*
  - *is registered under an Order in Council under section 1 of the Hovercraft Act 1968 (i.e. registered as a hovercraft)*
- 5 *“Northern Ireland waters” means the sea and other waters within the seaward limits of the territorial sea adjacent to Northern Ireland. In line with section 1 of the Territorial Sea Act 1987, the breadth of the territorial sea is twelve nautical miles, except where the median line provides the boundary between Northern Ireland and Scotland.*
- 6 *For the purposes of this Code, a ‘constable’ is a member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve.*
- 7 *For the purposes of this Code, an enforcement officer is a designated customs official (under Part 1 of the Borders, Citizenship and Immigration Act 2009), a commissioned officer of any of her Majesty's ships, or a person in command or charge of any aircraft or hovercraft of the Royal Navy, the Army or the Royal Air Force. Section 39 of the MS Act refers.*  
*In line with section 37(3) of the MS Act, the authority of the Chief Constable of the Police Service of Northern Ireland is required before an enforcement officer may exercise powers under Part 3 of Schedule 2 to the MS Act, including the paragraph 22(2) power of arrest. However, the authorisation of the Chief Constable is not required where the powers are exercised in accordance with section 38 of the MS Act (hot pursuit of ships in United Kingdom waters).*
- 8 *Section 3 of the Territorial Waters Jurisdiction Act 1878 provides that the Secretary of State's consent may be required before the prosecution of a person arrested at sea who is not a United Kingdom national.*
- 9 *An arrested person must be given sufficient information to enable them to understand they have been deprived of their liberty and the reason they have been arrested e.g. when a person is arrested on suspicion of committing an offence they must be informed of the nature of the suspected offence, and when and where it was committed. The suspect must also be informed of the reasons or reasons why arrest is considered necessary. Vague or technical language should be avoided.*
- 10 *If it appears that a person does not understand the caution, the person giving it should explain it in their own words.*

- 11 *Provisions of NI PACE Code C relevant to the conduct of an urgent interview carried out before the arrested person arrives at a police station or other authorised place of detention are: 11.5, 11.7 to 11.11, 11.13 to 11.15 and 13.2. In summary these paragraphs state that the interviewer may not obtain or elicit statements by use of oppression or indicate what action will be taken by the police if the person being questioned answers questions, makes a statement or refuses to do either. The constable or law enforcement officer shall ensure that an accurate record must be made of each interview regardless of the location. For a non-English speaking person an urgent interview can be conducted if the interviewer speaks the suspect's language.*
  
12. *The National Referral Mechanism (NRM) is a framework for identifying victims of human trafficking and ensuring they receive appropriate support. Where they consent, suspected victims of human trafficking - including persons arrested on ships - should have their cases referred to the NRM to ascertain whether or not they are victims of trafficking. In Northern Ireland, referrals to the NRM may be made by the PSNI or the Health and Social Care Trusts. United Kingdom wide bodies such as the National Crime Agency and the UK Border Force may also make NRM referrals. Northern Ireland constables and enforcement officers wishing to arrange a referral to the NRM may consult the PSNI Human Trafficking Unit for advice and guidance.*