



Home Office

Police and Criminal Evidence Act 1984 (‘PACE’) Codes of Practice Consultation

Response to Home Office consultation on
PACE Codes C (Detention), E (Audio
recording of interviews with suspects), F
(Visual recording of interviews with
suspects) and H (Detention – terrorism)

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1. Introduction

- 1.1. Section 66 of the Police and Criminal Evidence Act 1984 ('PACE') requires the Home Secretary to establish a number of Codes of Practice which govern the use of police powers, including the associated rights and safeguards for suspects and the public in England and Wales. These must, in particular, cover the following areas:
 - 1.1.1 The exercise by police officers of statutory powers—
 - (a) to search a person without first arresting h/er;
 - (b) to search a vehicle without making an arrest; or
 - (c) to arrest a person.
 - 1.1.2 The detention, treatment, questioning and identification of persons by police officers.
 - 1.1.3 Searches of premises by police officers.
 - 1.1.4 The seizure of property found by police officers on persons or premises.
- 1.2. Additionally, sections 60(1)(a) and 60A(1)(a) provide for the Home Secretary to issue codes of practice on the audio recording and visual recording with sound (respectively) of interviews with individuals suspected of committing criminal offences.
- 1.3. Section 67(4) of PACE requires that where the Home Secretary wishes to revise a Code of Practice, a statutory consultation must first be carried out. This consultation must include:
 - 1.3.1. Persons who appear to represent the views of Police and Crime Commissioners;
 - 1.3.2. the Mayor's Office for Policing and Crime;
 - 1.3.3. the Common Council of the City of London;
 - 1.3.4. the National Police Chiefs' Council;
 - 1.3.5. the General Council of the Bar;
 - 1.3.6. the Law Society of England and Wales
 - 1.3.7. the Institute of Legal Executives; and
 - 1.3.8. other persons as the Home Secretary thinks fit.
- 1.4. The Home Office consultation on proposed revisions to Codes of Practice C (Detention), H (Detention — terrorism), E (Audio recording of suspect interviews) and F (Visual recording of suspect interviews) ran from 24th October 2017 to 6th December 2017. In accordance with section 67(4) of PACE, the statutory consultees and others were invited to comment (see <https://www.gov.uk/government/consultations/revising-pace-codes-c-h-e-and-f>).
- 1.5. Consultation is a critical element in the development of the PACE Codes of Practice. It helps to ensure that police continue to be able to exercise their powers effectively whilst at the same time ensuring that appropriate safeguards for suspects are in place. We are grateful to those who took the time to consider the proposals and to respond to the consultation.
- 1.6. This Government response to the consultation sets out the rationale for making the revisions to Codes C, H, E and F, provides a summary overview of the responses, and outlines the Government's proposed next steps.

2. PACE Codes C, H, E and F

2.1 Rationale

2.1.1 **The main revisions to PACE Code of Practice C concern safeguards for vulnerable suspects, voluntary interviews and the amendments to PACE introduced by the Policing and Crime Act 2017.** The changes comprise new and amended provisions which:

- (a) **introduce a new definition of ‘vulnerable’** which replaces references to ‘mentally vulnerable’. It describes a range of functional factors which, if there is any reason to suspect any may apply to any suspect, will require an appropriate adult to be called. It is implemented by a new requirement to take proactive steps to identify and record any factors which provide any reason to suspect that a person may be vulnerable and require help and support from an appropriate adult, and provisions which update the role description of the appropriate adult, including who may or may not act in this capacity. The requirement to identify factors that indicate vulnerability for the purposes of PACE applies to juveniles for whom, by virtue of their age, an appropriate adult must always be called. The record of those factors must also be made available to police officers, police staff and others who are required or entitled to communicate with the individual concerned to take into account. The proposals reflect what is essentially good operational police practice and take account of the work of the Home Office chaired Working Group on Vulnerable People and responses to the consultation.
- (b) **for voluntary suspect interviews**, set out in full the rights, entitlements and safeguards that apply and the procedure to be followed when arranging for the interview to take place. The changes take account of concerns that some suspects might not realise that a voluntary interview is just as serious and important as being interviewed after arrest. This applies particularly when the interview takes place in the suspect’s own home rather than at a police station. The approach mirrors that which applies to detained suspects on arrival at the police station with the interviewer standing in for the custody officer. In particular, it requires the suspect to be informed of all the rights, entitlements and safeguards that will apply before they are asked to consent to the interview and to be given a notice to explain those matters.
- (c) **reflect amendments to PACE made by the Policing and Crime Act 2017** which:
 - (i) insert new provisions to enable the use of a live link by:
 - a superintendent to authorise an extension of detention without charge under section 42 of PACE for up to 36 hours;
 - a magistrate’s court to hear an application under section 43 of PACE for a warrant of further detention without charge and to hear applications under section 44 to extend a warrant of further detention by up to 96 hours; and
 - an interviewing officer who is not present at the police station where a suspect is detained in order to interview that suspect.
 - (ii) amend previous provisions to ensure that 17-year-olds are treated as children for all purposes under PACE.

2.1.2 **The revisions to Code H mirror those in Code C but are confined to those described in paragraph 1(a) above.**

2.1.3 The revisions to Code E which are mirrored (as appropriate) in Code F, introduce substantial changes to the existing approach to audio recording of suspect interviews. The new and revised provisions cover all interviews for all types of offence, for all suspects – whether or not arrested and irrespective of the case disposal outcome. As a result, the format has been significantly changed with sections and paragraphs renumbered. In brief, the revised approach:

- (a) Specifies the types of devices which, if authorised by the chief officer, are to be used to audio record suspect interviews for any offence type. This specification extends the range of devices that may be used to record suspect interviews. It does not specifically refer to body worn video (BWV) but such devices may be used if they comply with the revised operating specifications and associated manufacturers' instructions and the interview is conducted in accordance with the Code.
- (b) Means that for any interview for any type of offence, whenever a suitably compliant authorised recording device is available and can be used, it must be used and a written interview record may be made only if a specified officer (the 'relevant officer') determines that such a device is not available/cannot be used and that the interview should not be delayed until such time that it can be audio recorded. Depending on the offence in question, whether the suspect has been arrested and where the interview takes place, the 'relevant officer' may be the custody officer, a sergeant or the interviewer.
- (c) Is mirrored in Code of Practice F by setting out the requirements and modifications that apply exclusively for the purposes of making a visual recording with sound. The aim of this approach is to:
 - make it clear that a visual recording with sound comprises an audio recording made in accordance with Code of Practice E together with a simultaneous visual recording;
 - avoid replication of the full Code of Practice E provisions that govern the conduct and recording of all audio recorded interviews; and
 - clarify and extend the circumstances under which police may make a visual recording which allows the use of BWV equipment that complies with the revised operating specifications and associated manufacturers' instructions.

2.1.4 Minor typographical and grammatical corrections have been made and out of date references updated.

2.2 Responses – summary

2.2.1 We received responses from 32 separate individuals and organisations. See Table of Respondents at paragraph 2.3).

2.2.2 The main concerns were that certain safeguards for juvenile and vulnerable suspects were not sufficient and respondents proposed a number of further changes to address these issues. These responses argued that:

- the police were not adequately trained to recognise when a suspect needed an appropriate adult;
- the proposal to raise the threshold for determining whether a suspect was vulnerable from 'suspicion' to 'belief' would exclude many who needed help and should not be implemented;
- greater safeguards are needed before a live link is used to interview any juvenile or vulnerable suspect or to extend their detention with a presumption in favour of not using live link; and
- additional safeguards for voluntary interviews were unlikely to be effective if it takes place elsewhere than at police station and without effective supervision.

2.2.3 Some responses proposed further changes to support operational implementation.

2.3 Table of Respondents

Responses from individual members of organisations which simply adopt the response of their representative organisation or that of others and add nothing original have not been counted in this table.

No	Organisation/ individual (alphabetical order)
1.	Cardiff University School of Law and Politics
2.	Crown Prosecution Service
3.	Environment Agency
4.	HM Inspectorate of Constabulary and Fire and Rescue Services & HM Inspectorate of Prisons (HMICFRS & HMIP)
5.	Independent Office for Police Conduct (IOPC)
6.	Information Commissioner's Office (ICO)
7.	Just for Kids Law
8.	Justice
9.	Key Ring
10.	London Criminal Courts Solicitors' Association (LCCSA)
11.	Member of the public – independent custody visitor.
12.	Michael Zander (Professor Emeritus of Law - London School of Economics and Political Science)
13.	National Appropriate Adult Network (NAAN)
14.	National Inshore Marine Enforcement Group
15.	POLICE – Force response - Dyfed Powys
16.	POLICE – Force response - Kent & Essex
17.	POLICE – Force response - North Yorkshire
18.	POLICE – Force response - West Yorkshire - Custody
19.	POLICE – Force response - West Yorkshire – interviewing
20.	POLICE – Individual officer
21.	POLICE – Individual officer
22.	POLICE – NPCC Lead - Body Worn Video
23.	POLICE – NPCC Lead - Charging and Out of Court Disposals
24.	POLICE – NPCC Lead - Drugs
25.	POLICE – NPCC Lead - Investigative Interviewing
26.	Police Federation of England and Wales
27.	Police Superintendents' Association of England and Wales
28.	Prison Reform Trust
29.	Revolving Doors
30.	Solicitors – Reeds
31.	Solicitors-Kingsley Napley LLP
32.	Standing Committee for Youth Justice

(NPCC = National Police Chiefs' Council)

3. Outcome

3.1 **The outcome of the consultation prompted a number of significant changes to the original proposals.** In particular:

- (a) the threshold for determining whether a suspect is vulnerable has been set at 'any reason to suspect' and has *not* been raised to 'reason to believe';
- (b) the safeguards for juvenile and vulnerable suspects have been strengthened; and
- (c) the safeguards for live link interviews have been strengthened and, in some cases, considerably extended.

3.2 The further revisions reflect what is essentially established good practice. They will improve the operational implementation of the changes and provide for a balanced

approach to the issues and concerns raised in the responses to the consultation. Some small changes have been made in the interests of clarity and legal accuracy.

- 3.3 We are working with the NPCC Leads and the College of Policing to develop further operational guidance and support material in light of the changes.
- 3.4 The revised Codes of Practice will be laid before Parliament together with a draft statutory instrument which brings them into operation 21 days after the Order is made and an Explanatory Memorandum. Information for police, practitioners and the public about the Parliamentary process and copies of the revised Codes and this response will be available online at:

<https://www.gov.uk/police-and-criminal-evidence-act-1984-pace-codes-of-practice>.