

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

Response to Home Office consultation on  
PACE Codes C (Detention) 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 cover the following areas:
  - 1.1.1 The exercise by police officers of statutory powers—
    - (a) to search a person without first arresting them;
    - (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) and H (Detention — terrorism) ran from 21 August 2018 to 1 October 2018. In accordance with section 67(4) of PACE, the statutory consultees and others were invited to comment (see [www.gov.uk/government/consultations/revising-pace-codes-c-and-h](http://www.gov.uk/government/consultations/revising-pace-codes-c-and-h)).
- 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 and H, provides a summary overview of the responses, and outlines the Government's proposed next steps.

## 2. PACE Codes C and H

### 2.1 Summary of revisions

2.1.1 **The main revisions to PACE Code of Practice C and H concern safeguards for menstruating detainees.** Revisions have also been made concerning detainee dignity, health, hygiene and welfare more broadly. The new and amended provisions are summarised below:

- Each female detainee shall be asked if they require or are likely to require any menstrual products whilst they are in custody. If they do, they must be told that they will be provided free of charge and that replacement products are available.
- Custody officers must determine whether each detainee wishes to speak in private with a member of custody staff about any matter concerning their personal needs relating to health, hygiene and welfare; if the detainee wishes, this member of staff may be of the same sex. These changes provide an opportunity for female detainees to raise issues about their menstrual needs and also for male and female detainees to raise issues relating to other hygiene needs such as incontinence and colostomy.
- The notice given to detainees when they arrive at the police station that lists their entitlements is extended to include their entitlement to speak in private to a member of the custody staff about their personal needs relating to health, hygiene and welfare.
- The changes point out that the clothing and personal effects that detainees may retain, subject to a risk assessment, include menstrual and other health, hygiene and welfare products needed by the detainee. A decision to withhold any such products must be subject to a further specific risk assessment.
- Access to toilet and washing facilities must take account of the detainee's dignity. For example, in cells subject to CCTV monitoring, privacy in the toilet area should be ensured by any appropriate means and detainees should be made aware of this when they are placed in the cell.
- Strip searches and intimate searches of detainees must be conducted with proper regard to their dignity. This includes, in particular, the detainee's health, hygiene and welfare needs including menstruation.
- Annex L is amended to take account of the changes concerning menstrual and any other health, hygiene and welfare products to ensure that the possible needs of transgender individuals in respect of these matters are not overlooked.

## 2.2 Responses – summary

- 2.2.1 **We received 21 responses to the statutory consultation** (See Table of Respondents at paragraph 2.3).
- 2.2.2 **13 of the responses approved the changes without requesting further revisions to PACE Codes C & H.**
- 2.2.3 **The main suggestions raised from the following 8 consultation responses were:** ensuring that the needs of transgender detainees are explicit in the new revisions; considering the impact that not always telling detainees that their privacy will be ensured whilst they use the toilet could have, particularly on autistic detainees; that the Codes should mandate more pro-active provision for female detainees – for example, that a female detainee is always visited in their cell by a female member of staff as soon as is practicable; and changes to include more detail about the revisions at earlier points in the Codes.

## 2.3 Table of Respondents

No	Organisation/ individual
1.	Individual police officer
2.	The Police Visual Handbook
3.	Police and Crime Commissioner for Leicestershire
4.	Police and Crime Commissioner for North Wales
5.	Office of the Police and Crime Commissioner for Bedfordshire
6.	Deputy Police and Crime Commissioner for Merseyside
7.	Police and Crime Commissioner for Surrey
8.	Police and Crime Commissioner for West Yorkshire
9.	Police and Crime Commissioner for Kent
10.	Police and Crime Commissioner for Suffolk
11.	Police and Crime Commissioner for Northumbria
12.	School of Law and School of Psychology, University of Nottingham
13.	Her Majesty's Inspectorate of Prisons and Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services
14.	Police and Crime Commissioner for Dyfed-Powys
15.	Police and Crime Commissioner for Cumbria
16.	Deputy Mayor for Greater Manchester
17.	The Independent Custody Visiting Association
18.	Police and Crime Commissioner for Cheshire
19.	Prison Reform Trust
20.	The Association of Police and Crime Commissioners (signed by all Police and Crime Commissioners and deputy mayoral leads for policing)
21.	The Faculty of Forensic and Legal Medicine

## 3. Outcome

### 3.1 The outcome of the consultation prompted some revisions to the initial proposals.

In particular:

- (a) Strengthened wording to ensure that access to toilet and washing facilities take account of the detainee's dignity, and that detainees are always made aware that their privacy will be ensured whilst they use the toilet in cells subject to CCTV monitoring.
- (b) More explicitly setting out the needs of menstruating transgender detainees.
- (c) Further clarification of where detainee dignity/health, hygiene and welfare need to be considered by custody officers.

### 3.2 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. *Until the revised Codes have been laid before parliament and brought into force, the [Codes](#) which took effect on Tuesday 31 July 2018 remain in force.* When the revised Codes are laid before Parliament, information for police, practitioners and the public about the Parliamentary process and copies of the revised Codes and this updated response will also be available online.

### 3.3 The Home Office will continue to work with the police and other key organisations to keep the PACE codes of practice up to date with current operational matters.