

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

Response to Home Office consultation on
PACE Codes C (Detention) and E (Audio
recording of suspects)

Contents

1. Introduction	2
2. PACE Codes C and E	3
2.1 Summary of revisions	3
2.2 Responses – summary	4
2.3 Table of Respondents.....	4
3. Outcome	4

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 (including temporary amendments), 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 temporary revisions to Codes of Practice C (Detention) and E (Audio recording of suspects) ran from 17 June 2020 to 3 July 2020. 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-and-e>).
- 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 temporary revisions to Codes C and E, provides a summary overview of the responses, and outlines the Government's proposed next steps.

2. PACE Codes C and E

2.1 Summary of revisions

2.1.1 The temporary revisions to PACE Codes of Practice C and E on which we consulted concern the provision of remote legal representation by solicitors rather than personal attendance at custody suites in order to reduce transmission of COVID-19.

2.1.2 The driver for the proposed temporary changes was to support the continued operation of the Interview Protocol ([click here](#)) between the National Police Chiefs Council, Crown Prosecution Service, Law Society, the Criminal Law Solicitors' Association and the London Criminal Courts Solicitors' Association. The Protocol, which is addressed to investigators and prosecutors and includes the Interim CPS Charging Protocol between the National Police Chiefs' Council and Crown Prosecution Service, was first published for operational implementation in England and Wales on 2 April 2020 and updated on 24 April 2020. It applies when suspects who have not been arrested are interviewed as well as to detained suspects.

2.1.3 The temporary changes to Code C would if implemented, modify the existing provisions which allow a suspect to have their solicitor present during their interview. They would specifically allow for legal advice during interview to be provided by a live link or a telephone conference link and for the latter, the interview must be visually recorded.

2.1.4 These modifications include as safeguards, requirements that:

- the custody officer, in consultation with the appropriate adult (if applicable), is satisfied that using a live link or telephone conference link would not adversely affect the suspect's ability to communicate confidently and effectively with the solicitor;
- the suspect, solicitor and (if applicable) appropriate adult, consent to the live link or telephone conference link being used;
- the Notice of Rights and Entitlements and other information given to suspects and appropriate adults (if required) includes information about the modifications;
- the operation of the live link or telephone conference arrangements is demonstrated to the suspect, appropriate adult (if applicable) and solicitor before the interview.

2.1.5 The temporary changes to Code E would if implemented, modify the existing provisions by introducing additional requirements for the interviewer when the solicitor uses a live link or telephone conference link to advise the suspect during the interview. These relate to confirmation that consent to the link being used has been given and to visual recording and remote monitoring of an interview when a telephone conference link is used and to matters to be recorded in the interview record.

2.2 Responses – summary

- 2.2.1 We received 29 responses to the statutory consultation (See Table of Respondents at paragraph 2.3).
- 2.2.2 7 of the responses approved the changes without requesting further revisions.
- 2.2.3 The main suggestions raised from the remaining 22 consultation responses were; keeping the amendments in place for as short a period as possible along with regular reviews; remote legal advice should not be the default option; concerns that detainees will not understand the process for providing informed consent; inability of the solicitor to gain a rapport with the detainee when acting remotely; telephone option is inadequate; lack of research on the effectiveness of remote legal advice; and a preference for emphasis on keeping custody suites COVID safe.

2.3 Table of Respondents

No	Organisation/ individual
1.	Individual custody visitor
2.	Police and Crime Commissioner for Derbyshire
3.	Safer Communities Directorate, Department of Justice
4.	Three individual solicitor responses
5.	Hampshire Police Monitoring Group
6.	Police and Crime Commissioner for Merseyside
7.	The Independent Custody Visiting Association
8.	Police Superintendents Association
9.	Police and Crime Commissioner for Northumbria
10.	Kent Law School
11.	Police and Crime Commissioner for Bedfordshire
12.	Deputy Mayor for Greater Manchester
13.	The Law Society
14.	Police and Crime Commissioner for West Yorkshire
15.	Prison Reform Trust
16.	London School of Economics
17.	Police and Crime Commissioner for Dyfed-Powys
18.	British Transport Police
19.	National Crime Agency
20.	National Appropriate Adult Network
21.	Transform Justice
22.	The Bar Council
23.	Her Majesty's Inspectorate of Constabulary, Fire and Rescue Services
24.	Serious Fraud Office
25.	School of Law, University of Nottingham
26.	Ministerial Council on Deaths in Custody
27.	Legal Director (UK & International), Fair Trials

3. Outcome

- 3.1** The consultation responses highlighted significant issues arising from the initial proposals and the need for further consideration relating to:
- (a) Strengthening the wording regarding the options for telephone advice, noting that it should only be used when other options are not available and requiring the custody officer to be able to demonstrate this.
 - (b) Clarifying the role of the appropriate adult regarding consent to remote legal advice and noting that the consent of a parent or guardian of a child aged 14 or under overrides consent of other parties as per existing legislation.
 - (c) Introducing an informal monitoring process for the Home Office to assess the impact of the temporary amendments, noting that it is not possible to introduce a formal review mechanism within the legislative framework.
 - (d) Developing clearer communications regarding rights and entitlements along with informed consent for all parties concerned.
- 3.2** Following the consultation, further concerns were raised by operational stakeholders that the implementation and awareness of the existing interview protocol in practice is inconsistent and that this should be addressed in revised operational guidance before legislative change is made. Specifically, concerns were raised in relation to the requirement to obtain informed consent from the detainee to a solicitor attending remotely and the lack of clear agreement of the process for arranging in-person attendance for solicitors should a detainee or appropriate adult request it. It was considered that increased operational compliance with the protocol through means of clearer guidance will assist in resolving such inconsistencies.
- 3.3** Further detailed consideration with key stakeholders, including the signatories to the Interview Protocol, determined that instead of progressing the temporary revisions to the Codes which would reflect the protocol, it would be much more beneficial to increase compliance with the existing interview protocol requirements. This would be by providing simplified guidance by means of a flow chart for both operational officers and partners to improve understanding and compliance and to commence the preparation of an exit plan back to normality.
- 3.4** The Home Office will now work with the police and other signatories to the Interview Protocol, as well as wider stakeholders to develop improved guidance on the use of the protocol.