



Home Office

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

A response to the Home Office
consultation on PACE Codes C and H

Contents

1. Introduction.....	3
2. PACE Codes C and H	4
2.1 Rationale	4
2.2 Responses.....	4
2.2 Table of Responses.....	5
2.3 Main Themes and Home Office Responses	18
2.3.1 General.....	18
2.3.2 Article 6 – the right to information about the accusation.....	18
2.3.3 Article 7 – access to documents and materials essential to challenging arrest and detention	19
2.3.4 The Notice of Rights and Entitlements.....	19
3. Next Steps	20

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 set out the powers that the police have to combat crime and 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 him;
 - (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; and
 - 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) gives the power to issue codes of practice on the audio-recording and visual recording respectively of interviews with individuals suspected of committing a criminal offence.
- 1.3 Section 67(4) of PACE requires that where the Home Secretary wishes to amend the codes, a statutory consultation must first be carried out. This consultation must include:
 - 1.3.1 such persons who appear to her 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 Association of Chief Police Officers of England, Wales and Northern Ireland;
 - 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 such other persons as the Home Secretary thinks fit.
- 1.4 The Home Office has consulted over proposed revisions to PACE Code C (detention of suspects) and H (detention of terrorism suspects). The consultation ran from 24th March 2014 to 22nd April 2014. It sought views on proposed revisions which are necessary to transpose EU Directive 2012/13 on the right to information in criminal proceedings into UK law.
- 1.5 Statutory consultation is a critical element in the development of the PACE codes. It helps to ensure that the police continue to have the ability to exercise their powers effectively whilst at the same time ensuring the appropriate safeguards are in place. We are grateful to all those who took the time to consider the proposed revisions and to respond to the consultations.
- 1.6 This Government response to the consultation sets out the rationale for making the revisions to the codes, provides a summary of responses and outlines the Government's proposed next steps.

2. PACE Codes C and H

2.1 Rationale

- 2.1.1 The main changes to Codes C and H mirror each other and are required in order to implement the EU Directive on the right to information in criminal proceedings (see [EU Directive 2012/13](#)). This Directive lays down common minimum standards to be applied by Member States in the provision of information to persons suspected or accused of having committed a criminal offence about their rights. Its broad objectives are to enhance mutual trust and cooperation between Member States and to safeguard and enhance individual rights.
- 2.1.2 The changes required by the Directive apply to the investigation stage of proceedings. The revisions to Codes C and H clarify for the police and for the public the information which must be provided to suspects orally and in writing about their rights and entitlements under PACE. These include the right to be told what they are accused of before being interviewed and the right to have access to documents and materials which would undermine the grounds and reasons for their arrest and detention.
- 2.1.3 For each Code, there is an associated written Notice of Rights and Entitlements (referred to in the EU Directive as the 'letter of rights') which must be provided to detained suspects. This will also act as a prompt for suspects and their solicitors to seek information if necessary. The Notice must also be given to the appropriate adult who attends to support a vulnerable suspect.
- 2.1.4 The changes build on existing good practice within the PACE framework and promote the development of good professional practice on the part of the police.
- 2.1.5 There are some minor changes to the Codes which variously correct typographical and grammatical errors, update cross references and terminology and reflect current practice.

2.2 Responses

- 2.2.1 We received responses from 28 separate organisations. The majority (23) were from the National Policing Leads, police forces, and law enforcement agencies comprising the National Crime Agency, HM Revenue and Customs and Border Force. The remainder came from the legal representative bodies (Law Society and Bar Council), civil liberties groups (Justice and Fair Trials International by way of a joint response) and other representative bodies (National Appropriate Adult Network and the Independent Custody Visitors Association).
- 2.2.2 Of the total, five indicated acceptance of the changes and made no further comments. The remaining 23 provided over 100 comments and suggestions. These included general and specific questions and suggestions concerning the provisions in the Codes and the content of the two Notices of Rights and Entitlements. These questions, comments and suggestions and our responses, are summarised in the table below. As presented, the table has been pre-sorted according to the relevant paragraph of the Code(s) to which the response relates.

2.2 Table of Responses

Codes C and H: RESPONSES TO CONSULTATION – Summary

19 May 2014

To sort columns: Click on the table, use <Table Tools><Layout><Data> tabs then <Sort> as required.

*NOTE: The 'From' and Reason/Comment columns includes linked cross references to other responses – to update all, 'Select columns' & press F9.

* No	From – Organisation/ individual	ID No.	Code reference	Response & purpose	Accept Y/N or NR	*Reason/Comment NR= Comment/observation not requiring any general or specific revision to the draft.
1.	Bar Council	10	C General H General	The amendments seem to reflect accurately the requirements of the EU Directive on the Right to Information and on that basis there no further comments.	NR	
2.	Border Force	27	C General	These proposals do not cause operational difficulties. Concerns over safeguards for sensitive material are covered by Article 7(4).	NR	
3.	Police – City of London	11	C General H General	No comments to add to the draft papers. Request that Notices are available in time to be pre-printed for custody use.	NR	
4.	Police – Gwent	07	C General H General	No observations or objections in respect of the intended changes.	NR	
5.	Police – Leicestershire	04	C General	The drafts do not pose particular problems.	NR	
6.	Police – Metropolitan	21	C General H General	This consultation will result in a further set of revised Codes C and H within 12 months of the October 2013 revisions. Costs arising from requirement for the Codes to be readily available in police stations could be reduced if further EU Directives were included in a single revised Code.	NR	Timing of Code revisions depends on date of Directive Transposition.
7.	Police – National Policing Lead Custody	14	C General	1. Forces were encouraged to respond direct to the HO to allow issues to be raised more quickly and avoid the need to wait for one consolidated response. 2. All police responses into which the NPL has been copied indicate that main concerns revolve around organisational issues. 3. The usefulness of recommendations in respect of the wording of the legislation can be addressed by the HO, with reference to the NPL for further comment as necessary.	NR	
8.	Police – Nottinghamshire Head of Criminal Justice	05	C General	No objections or comments.	NR	
9.	Police – Warwickshire & West Mercia Learning & Development	02	C General	Concerned about lack of time to allow training before implementation.	NR	NPLs advised of EU Directive December 2013 & consulted informally with others over draft NoRE & Code C during 6 to 18 Feb 2014 identifying minimal change. The changes build on existing good practice within the PACE framework. Training need should be minimal.

* No	From – Organisation/ individual	ID No.	Code reference	Response & purpose	Accept Y/N or NR	*Reason/Comment NR= Comment/observation not requiring any general or specific revision to the draft.
10.	Police – Warwickshire & West Mercia Custody	03	C General	Amendments require minor changes to training course to emphasise & outline need to ensure that the suspect or their representative have prompt access to appropriate sections of the Custody Record and are served written translations and that the new NoRE is used and actions are fully recorded.	NR	
11.	Police Federation (Sergeants)	26	C General H General	Concerned that proposed changes go well beyond what is necessary to comply with the Directive.	N	Some provisions amended to clarify what is required.
12.	Police Federation (Sergeants)	26	C General H General	The Police Minister via the Home office must require all Chief Constables to provide appropriate, effective and suitable mandatory training for all officers prior to revised codes coming into effect.	NR	NPLs advised of EU Directive December 2013 & consulted informally with others over draft NoRE & Code C during 6 to 18 Feb 2014 identifying minimal change. The changes build on existing good practice within the PACE framework. Training need should be minimal.
13.	Border Force	27	C1.12	Clarify exclusion for immigration cases by referring to those “ <i>whose detention has been authorised under immigration act powers</i> ”. Ensures that persons detained under immigration powers outside the 1971 Act or other than by an IO are not within the scope of Code C (except for sections 8 and 9).	Y - insofar as providing clarification.	More specific reference to immigration powers added.
14.	Fair Trial International/ JUSTICE Joint (13)	24	C2.4 C3.4(a) C11.1A H2.5/H3.4/ H11.1	Revisions to C2.4(a), C3.4(a) and C11.1A (H2.5(a), H3.4(a) and H11.1) not sufficient to implement Article 6. Should make it clear that required information should be provided: (a) Before any interview to enable suspect and solicitor to prepare for the interview; and (b) Irrespective of whether a solicitor and/or appropriate adult is present.	Y	Amended to clarify that information about the offence to be provided before interview and whether or not suspect is represented.
15.	Law Society Criminal Law Committee	09	C2.4 H2.5	The first paragraph of C2.4/H2.5 sets out a right to inspect the entire custody record at any time. The reference to specific information in sub-paragraphs (a) and (b) might create confusion by being construed as restricting inspection to only the records in sub-paragraph (a) and (b). These new paragraphs are not necessary and suggest they be removed.	Y - insofar as providing clarification	Sub paras. (a) & (b) retained, with amendments to make it clear that they do not restrict inspection of the whole record. See NAAN (ID 25) No. 16
16.	National Appropriate Adult Network (NAAN)	25	C2.4 H2.5	Support change to clarify that both AA and solicitor can inspect the custody record. Also suggest starting second sentence with ‘In addition’ to make it clear that the right in the first sentence to inspect the record is entirely distinct from that in subsections (a) and (b).	Y - insofar as providing clarification.	Amend to make it clear that sub paras. (a) & (b) do not restrict inspection of the whole. See Law Soc (ID 9) No. 15

* No	From – Organisation/ individual	ID No.	Code reference	Response & purpose	Accept Y/N or NR	*Reason/Comment NR= Comment/observation not requiring any general or specific revision to the draft.
17.	Police – Derbyshire	20	C2.4 C3.2(v) C3.4(b) C3.1(a)(vi) C3.2(a)(i) NoRE - 7	<p>The amendments suggested to Code C 2.4 explain in more detail the rights to have access to the Custody Record and should have no practical impact on policing.</p> <p>Code C3.2(v) refers to <i>seeing records and documents about arrest and detention allowing access to documents and materials essential to effectively challenging the lawfulness of your arrest and detention.</i> ' may lead to disclosure of more information than is necessary. There are concerns that the police will be expected to produce evidence to the defence as part of their primary disclosure. We would argue that at this point the only disclosure required in every case remains the custody record as per C2.4. As the investigation continues the officer in the case may deem it appropriate to make further disclosures. Greater disclosure at this early stage is likely to prejudice the police investigation.</p> <p>Since C3.4(b) specifies that it is the responsibility of the Custody Officer with the Investigating Officer to decide what documents should be disclosed, it may be worthwhile to include this information in NoRE Point 7 to avoid confusion.</p>	Y - insofar as providing clarification.	<p>Amended to clarify difference between C2.4 & C3.4 (concern Articles 6 & 7) & that the right to inspect in C2.4 is in addition to pre-interview disclosure (C11.1A) & access to essential documents etc. in C3.4(b).</p> <p>NoRE item 7 is a brief summary covering access to documents and right to see records in C2.4. See NPL Interviewing (ID 16) No. 18</p>
18.	Police – National Policing Lead – Investigative Interviewing & Chair of National Investigative Interviewing Strategic Steering Group (NISSG).	16	C2.4	<p>C2.4 final paragraph states that access to the Custody Record is in addition to the requirements of paragraphs 3.4(b), 11.1A and 15. However, there may be occasions when the Custody Officer or Investigating Officer decides that the only information required to be given to satisfy the requirements of these paragraphs is the information contained in the Custody Record. By specifying that this is in addition it may result in confusion and incorrect disclosure of too much information which may harm the investigation. This part of the paragraph should be removed.</p>	Y - insofar as providing clarification.	<p>Amended to clarify difference between C2.4 & C3.4 (concern Articles 6 & 7) & that the right to inspect in C2.4 is in addition to pre-interview disclosure (C11.1A) & access to essential documents etc. in C3.4(b).</p>
19.	Police – National Policing Lead Custody	14	C2.4 C3.4 H2.4 H3.4	<p>Central concern about the requirement to provide documents justifying detention and relationship between C2.4 & 3.4 and paragraph 7 of the Notice. See response no. 58 from the NPL (ID 16) for investigations. As the NPL for Investigations points out the wording lends itself to a belief that other documentation must be provided as well as the Custody record, which may well not be the case. Request clarification in the Codes or in Notes for Guidance, in particular does this documentation only have to be produced on demand? Are physical copies required? and how does this requirement blend with disclosure during detention?</p>	Y - insofar as providing clarification.	<p>Amended to clarify difference between C2.4 & C3.4 (concern Articles 6 & 7) & that the right to inspect in C2.4 is in addition to pre-interview disclosure (C11.1A) & access to essential documents etc. in C3.4(b).</p> <p>New <i>Note C3ZA</i> added to clarify documentation required and how it should be made available.</p> <p>NoRE item 7 is a brief summary covering access to documents and right to see records in C2.4. See NPL II (ID 16) No. 58.</p>
20.	Police – South Yorkshire Head of Corporate Services	01	C2.4 H2.5	<p>Concerned about requirement in Code G4.3 for the custody officer to make a record of the "circumstances and reasons for arrest" as relayed by the arresting officer which comprises C2.4. This involves duplication of work in cases where electronic custody systems do not allow officer's record to be appended to the custody record.</p>	NR	<p>Requirement established when Code G was introduced in January 2006. Forces are responsible for IT functionality.</p>

* No	From – Organisation/ individual	ID No.	Code reference	Response & purpose	Accept Y/N or NR	*Reason/Comment NR= Comment/observation not requiring any general or specific revision to the draft.
21.	Police – North Yorkshire	23	C3.1 NoRE	Do not expect all eleven items to be read out verbatim. Concerned about the extent to which the custody officer is required to go further than at present. For example to advise the suspect of the caution. Appears a little over officious and there are concerns that the booking in process could become more bureaucratic and time consuming despite need for fairness & impartiality.	Y	Requirement to inform the detainee orally applies to rights listed in C3.1, not the whole of the front-page. C3.1 amended - medical help & right to silence omitted from oral list.
22.	Police Federation (Sergeants)	26	C3.1 C3.2 NoRE – General	There only needs to be a total of 6 – 8 bullet points on the front page of the notice/letter of rights and entitlements which are told to the detained person when detention is authorised. Those are 1 - 4, 8 and 9, 6 is questionable as that is already a requirement on the custody officer when authorising detention.	N	Requirement to tell detainee applies to rights listed in C3.1 not the whole front-page. C3.1 amended - medical help & right to silence omitted from list.
23.	Police – Thames Valley Head of Criminal Justice	17	C3.1(a)	There may be some need for clarity around introducing the right to remain silent during the booking in procedure. Whilst it clearly relates to any questioning and it relates to this right as set out within the caution, introducing this concept during the booking in procedure could raise issues of persons remaining silent over and above the caution and therefore not disclose important matters as part of risk assessment.	NR	Caution has always been set out in the Notice. Onus on police to explain in 'own words'. Not appropriate for Notice to create a standard form of 'own words' which must be specific to the case. C3.1 amended - medical help & right to silence omitted.
24.	Police – West Yorkshire	06	C3.1(a)	Request clarification about the right to medical assistance. Is it a right which detainees need to be told about or can it just be included in the NoRE. Suggest that it is best left to risk assessment	Y	Requirement to tell detainee applies to rights listed in C3.1 not the whole front-page. C3.1 amended - medical help & right to silence omitted from list.
25.	National Crime Agency (NCA)	19	C3.1(b)	Amend C3.1(b) to read as follows: "their right to be informed about the offence and (as the case may be) any further offences for which they are arrested whilst in custody , and why they have been arrested and detained in accordance with <i>paragraphs 2.4</i> and <i>11.1A</i> of this Code and <i>paragraph 3.3</i> of <i>Code G</i> ."	N	Emphasis not necessary.
26.	Police – Thames Valley Head of Criminal Justice	17	C3.1(b)	There has been call nationally for clarity around necessity to arrest and necessity to detain. It may be prudent to ensure that clarity is available before any implementation of these codes, especially Code G and how it relates when someone is already in custody.	NR	Relationship between need to arrest & need to detain not changed since Jan 2006 when Code G came in (see G 2.6); the need to arrest is a matter for the arresting officer and the need to detain at the station is for the custody officer.

* No	From – Organisation/ individual	ID No.	Code reference	Response & purpose	Accept Y/N or NR	*Reason/Comment NR= Comment/observation not requiring any general or specific revision to the draft.
27.	Fair Trial International/ JUSTICE Joint (5)	24	C3.2 H3.2 NoRE	C3.2 & H3.2 lack “basic information about any possibility, under national law, of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release” required by Article 4(3). Should be included in C/H 3.1 & C3.2 and the respective NoREs.	N	Article 4(3) requires this to be in the Notice. Para. 10 of the NoRE is sufficient.
28.	Fair Trial International/ JUSTICE Joint (8)	24	C3.2 NoRE - 5	The right to silence as informed currently does not comply with the Directive. Suspects are not cautioned upon arrival at the police station and are therefore not notified of their right to silence. This is only provided at the point of arrest and at the commencement of interview. This right should be notified during the booking in procedure.	N	Codes G & C require caution prior to arrest/interview. No requirement in Directive to inform orally on arrival at station. Omitted from C3.1.
29.	Fair Trial International/ JUSTICE Joint (8)	24	C3.2 NoRE - 5	The NoREs simply sets out the caution. The caution must be explained in simple and accessible language and is not sufficient to simply state the caution as this embodies the right to silence and it must be possible for suspects to exercise it effectively	N	Onus on police to explain in ‘own words’. Not appropriate for Notice to create a standard form of ‘own words’ which must be specific to the case
30.	National Appropriate Adult Network (NAAN)	25	C3.2 Note 3B H3.2 Note 3B	Not renewing the audio versions for foreign languages is a reasonable step, subject to the continued availability and use of translation over the telephone. Rather than being deleted, Note 3B might be amended to indicate usage of this service.	NR	
31.	Police – British Transport Police	13	C3.2 NoRE - 4	In item 4, getting medical help, it would be appropriate to make reference to the fact that a custody officer cannot give the detainee any medication until a doctor’s authorisation has been obtained.	N	Not appropriate in the Notice.
32.	Police – Hertfordshire	22	C3.2 NoRE - General	The Notice should be included in the Codes as an introduction page.	N	Not necessary to incorporate Notice in Code.
33.	Police – Hertfordshire	22	C3.2 NoRE - 1	Access to solicitor should have caveat to take account of violent detainee & clarify who will contact the solicitor. Information about less serious matters & CDS Direct needs to be at the end of the section on legal advice. Not appropriate to describe Drink Drive as a “less serious matter”.	N	Notice is accurate summary of current arrangements for free legal advice – Code C Note 6B
34.	Police – Hertfordshire	22	C3.2 NoRE -3	Amend “broken the law” to “committed an offence”.	N	Supports understanding.
35.	Police – Hertfordshire	22	C3.2 NoRE -4	Delete ‘doctor or nurse’	N	Support understanding.
36.	Police – Hertfordshire	22	C3.2 NoRE - 5	Explanation of the caution here is very poor.	N	Onus on police to explain in ‘own words’. Not appropriate for Notice to create a standard form of ‘own words’ which must be specific to the case.
37.	Police – Hertfordshire	22	C3.2 NoRE - 6	Replace ‘Think you have committed’ with ‘suspect you have committed’.	N	Simple language used.

* No	From – Organisation/ individual	ID No.	Code reference	Response & purpose	Accept Y/N or NR	*Reason/Comment NR= Comment/observation not requiring any general or specific revision to the draft.
38.	Police – Hertfordshire	22	C3.2 NoRE - 9	Right to contact embassy should include mandatory notification under the consular agreements.	N	Item 9 concerns the detainee's <i>right</i> . Mandatory notification is separate issue.
39.	Police – Hertfordshire	22	C3.2 NoRE - 10	The police must tell you how long they can detain you for: Concern that this requirement may put some detainees into an anxious state which may adversely affect the detainee's health situation. Reference to 'or asleep' should be included in relation to representations. Should include some reference to virtual courts.	N	Notice provides a summary of main points for all detainees. Health is a separate matter.
40.	Police – Hertfordshire	22	C3.2 NoRE - 11	Right to see the prosecution evidence before the court hearing is not relevant to this page as it refers to rights whilst detained.	N	Inclusion required by Article 4
41.	Police – Hertfordshire	22	C3.2 NoRE - 8.	Not all signing is BSL. Explanation of Annex M not clear and ought to be revisited.	NR	
42.	Police – National Policing Lead – Investigative Interviewing & Chair of National Investigative Interviewing Strategic Steering Group (NISSG).	16	C3.2	In C3.2(v) and (xi) differentiate between information provided at an early stage of the investigation regarding reason and grounds for arrest, materials and documents necessary to challenge arrest and detention and evidence which is provided in accordance with CPIA.	NR	Amended to clarify content of the NoRE, C3.2(viii) now covers Article 7(2) & C3.1(b) & C3.2(v) deal with Articles 6 & 7
43.	Police – South Yorkshire Head of Corporate Services	01	C3.2 Note 3A	Helpful to have all the documents in one place, but the easy read document is not fit for purpose - poorly written and illustrated.	NR	Easy read version being revised according to established standards for such publications.
44.	Police – West Yorkshire	06	C3.2	Are the Home Office providing translated copies of the new rights and entitlement sheets or are individual forces required to provide their own?	NR	
45.	Fair Trial International/ JUSTICE Joint (18)	24	C3.2(a) (viii)	There is no further obligation set out in Code C which implements the broad disclosure requirements of Article 7(2) to disclose "all material evidence". The Home Office should ensure that these obligations are implemented effectively.	N	Not appropriate for Code C to deal further with the substantive post charge pre-trial disclosure obligations.
46.	Police – Thames Valley Head of Criminal Justice	17	C3.2A	Request some direction on when & where the detainee must be given an opportunity to read the notice. Concerned about potential to delay the booking in procedure. The notice is a 10 page document.	N	Understanding of rights fundamental. Matter for custody officers to manage. See WYP (ID) No. 47
47.	Police – West Yorkshire	06	C3.2A	Request for clarification as to whether the requirement that the detainee must be given an opportunity to read the notice and shall be asked to sign the custody record to acknowledge receipt of such notice could be used to delay certain procedures, particularly the drink/drive evidential breath testing process?	N	Understanding of rights fundamental. Matter for custody officers to manage. See TVP (ID 17) No. 46
48.	Police – Devon and Cornwall	08	C3.3A	Agree that both the Codes C and H together with the NoRE forms, are in line with the EU directive and are the minimum that could be expected. Although audio versions are currently provided, the preferred option is to use telephone interpreting to support a hard copy of the Notice to read whilst in custody. The need for a high cost audio service that will rarely if ever, be used is questioned.	NR	

* No	From – Organisation/ individual	ID No.	Code reference	Response & purpose	Accept Y/N or NR	*Reason/Comment NR= Comment/observation not requiring any general or specific revision to the draft.
49.	Police – National Policing Lead – Investigative Interviewing & Chair of National Investigative Interviewing Strategic Steering Group (NISSG).	16	C3.3A	Specifies that an audio version and an ‘easy read’ version should be provided if available. These will not be required in every case and it therefore may be worthwhile to show that they are only supplied if necessary to assist the understanding of the detainee.	N	Decision for custody officer. Survey found that audio versions are not used, the preferred option being to use telephone interpret service to assist in explaining the NoRE
50.	Police – Thames Valley Head of Criminal Justice	17	C3.3A	Refers to audio & easy read versions of the Notice - What will be made available?	NR	Easy read version will be available. Audio version not being used.
51.	Border Force	27	C3.4(b) C11.1A H3.4(b)/ H11.1	The amendments to Code C and Code H are mainly with regard to actions that a custody officer will be required to carry out and information to be given to arrested persons which do not affect enforcement staff. Area that will affect us and may require amendments to guidance are C3.4(b) and 11.1A which can be reflected in guidance once the revisions are published.	NR	
52.	HMRC	18	C3.4(b)	Request clarification on role of the Officer in the Case to bring documents & materials to the Custody Officer’s attention. Suggest additional wording emphasising that essential documents and materials are those in the knowledge and possession of the OIC at the time of detention (and only those relevant to detention) that might cause the Custody Officer to decide that the detention no longer appropriate. Should mitigate arguments about disclosure of evidential material.	Y - insofar as providing clarification.	Amended to clarify role of the investigating officer
53.	National Crime Agency (NCA)	19	C3.4(b)	Recommend the removal of the word 'available'. If an essential document exists then it should be provided to the detained person. In accordance with the EU Directive, there should be <u>no discretion</u> regarding the sharing of the document based upon its availability.	N	‘Available’ applies to documents etc. secured by police. Amended.
54.	Police – Hertfordshire	22	C3.4(b) NoRE - 7.	Request clarification - It is our reading that this section relates to challenges to detention post release therefore this is not a right / entitlement whilst in custody otherwise this could be used to delay progress of the case or obtain details in advance of disclosure?	N	Article 7(1) concerns detention & applies as & when essential documents come to light during detention.
55.	Police – Hertfordshire Head of Criminal Justice	22	C3.4(b) H3.4(b)	Not clear when such challenges, and hence provision of required documents, can be made. The role of the custody officer in such a challenge is to "police" and justify his/her own decision to detain which concerns me. Code H: This section, being a direct lift from code C, is clear enough, but arrest / detention challenges should really sit with the Inspector rank in such cases, especially given the Inspector ranks initial involvement in the arrests / detention and immediate review nature of terrorism detention.	Y - insofar as providing clarification	Amended to point out role of custody officer, review officer & superintendent to determine need for detention. Similar approach applies under Sch. 8 Terrorism Act 2000 where review officers are responsible.
56.	Police – Metropolitan	21	C3.4(b) H3.4(b)	Suspect’s access to information/documentation about detention would appear to be met by inspection of the custody record in C2.4 (H2.5) and the entitlement to a copy of the custody record.	N	C2.4 & C3.4 concern Articles 6 & 7 of the Directive. C2.4 - inspection of the record is not sufficient & is in addition to C3.4(b) access to documents & C11.1A interview disclosure.

* No	From – Organisation/ individual	ID No.	Code reference	Response & purpose	Accept Y/N or NR	*Reason/Comment NR= Comment/observation not requiring any general or specific revision to the draft.
57.	Police – Metropolitan	21	C3.4(b) H3.4(b)	Making the custody officer responsible for the decision concerning documents and materials that must be made available to the detainee or their solicitor, albeit in consultation with the investigating officer, appears to be verging on disclosure which is an investigative decision. They are likely to receive such information as to enable them to challenge the arrest as part of initial disclosure subject to public interest immunity considerations. This should be the responsibility of the investigating officer, as in C11.1A with regards to pre-interview disclosure. Arrests under s.41 Terrorism Act 2000 are based on intelligence and the custody officer is given only enough information to consider the need to detain.	N	C3.4 amended with new Note to point out role of the custody officer, review officer & superintendent to determine need for detention. Similar approach applies under Sch 8 Terrorism Act 2000 where review officers are responsible. Article 7(1) concerns detention & applies as & when essential documents come to light during detention.
58.	Police – National Policing Lead – Investigative Interviewing & Chair of National Investigative Interviewing Strategic Steering Group (NISSG).	16	C3.4(b)	C3.4(b) makes it clear that it is for the police to decide what documents are disclosed to the detainee/solicitor. Suggest it would be worthwhile to include a phrase which prevents the detainee or their solicitor from ‘going on a fishing trip’ and asking for everything from the police. If the custody officer’s decision was to be made in response to a request from the defence based on a specific point or argument this would be less likely to undermine the investigation.	Y - insofar as providing clarification	Amended to clarify role of custody/ investigating officers in identifying documents. Provision is not conditional upon request. See NPL Custody (ID 14) No. 19
59.	Police – South Yorkshire Head of Corporate Services	01	C3.4(b)	Should there also be a reference in this section to making documents and materials available to the detainee's appropriate adult where relevant?	N	C3.17 requires AA to be present to help the detainee.
60.	Police – Thames Valley Head of Criminal Justice	17	C3.4(b) C15.0	Documents which undermine the reasons for arrest/detention prompts the potential for some clarity around necessity criteria for both and a clarification between detention and arrest.	NR	Position has not changed since Code G on 1 January 2006
61.	Police – West Yorkshire	06	C3.4(b)	Concerned about exactly what documentation or material is to be disclosed at this stage. Is there a danger of the Custody Officer becoming too involved in the investigation?	NR	Amended to clarify role of custody/ investigating officers. Applies as & when documents & materials come to light.
62.	Police Federation (Sergeants)	26	C3.4(b) C15.0	The new additions to C3.4(b) and 15.0 address paragraphs 1, 2 and 4 of Article 7 but completely ignore paragraph three which has equal importance and should be reflected in the changes.	N	Article 7(3) is not relevant to C3.4(b).
63.	National Crime Agency (NCA)	19	C3.12 et seq.	Suggest consideration be given to special groups (language, hearing or speech impediment) being introduced earlier on in the code.	N	Variations from the normal process need to come first.
64.	Police – South Yorkshire Head of Corporate Services	01	C3.12	The alterations appear to allow the transfer of responsibility for actually calling an interpreter from the custody officer to any other person, but retain the responsibility for ensuring this is done with the custody officer. Clarity is needed on whether this requires an interpreter to attend in person ASAP or if solutions such as language line are still appropriate. If the latter, at what point does a transfer to "in person" translation become a requirement?	NR	No change to current practice for telephone interpreter services to explain rights & entitlements & seek & give information. ‘In person’ stays the norm for interviews.

* No	From – Organisation/ individual	ID No.	Code reference	Response & purpose	Accept Y/N or NR	*Reason/Comment NR= Comment/observation not requiring any general or specific revision to the draft.
65.	Police – Thames Valley Head of Criminal Justice	17	C3.12(c) C3.12(d)	Enquires as to whether sufficient languages will be available. Concerns about impact on forces of translating the Notice on release.	NR	Translations will be available
66.	Police –North Yorkshire	23	C3.12A	Request that translations of the Notice will be available in time for 2 nd June to enable police to comply with the new guidance.	NR	Translations will be available
67.	Fair Trial International/ JUSTICE Joint (7)	24	C3.17 H3.18	C3.17 & H3.18 should make it mandatory for appropriate adults to be given a copy of the Notice provide that “appropriate adults” to be in line with Article 3(2). Necessary to prevent certain “appropriate adults” from neglecting to obtain a copy of the notice of rights which may result in the suspect not being informed of their rights in contravention of the Directive.	Y	Not an express requirement in Article 3(2) but C3.17/H3.18 amended in the interests of promoting good practice and consistency.
68.	Police – Thames Valley Head of Criminal Justice	17	C3.17	Requires appropriate adult to be given a copy of the NoRE if they want one. Suggest they are offered copy & asked to sign to say whether they wish them or not.	N	Amended to require copy to be given & fact recorded. Offer/sign etc. unnecessary bureaucracy
69.	Law Society Criminal Law Committee	09	C3.2(a) H3.2(a)	In C3.2(a)/H3.2(a) simplify the wording to read 'The detainee must also be given a written notice, (a) setting out:', and omit the words from 'to...' to '...by'.	Y	Amended.
70.	Fair Trial International/ JUSTICE Joint (11)	24	C3.21	C3.21 ensures that the same information is provided to suspects who are cautioned but not arrested. The same requirement should be added to Code H as it is currently omitted.	N	Voluntary interview in Code C linked to Code G & arrest for an offence. Not an option in Code H where arrest under s.41 TA 2000 is not for an offence.
71.	Police – South Yorkshire Head of Corporate Services	01	C3.21	Will require the introduction of a risk assessment to the voluntary attendance procedure and training for investigating officers.	NR	The changes build on existing good practice within the PACE framework. Training need (if any) should be minimal.
72.	Police – Surrey	15	C3.21(b)	Consideration should be given to providing a standardised notice for provision to "non arrested" suspects to avoid police forces are having to produce own versions of an amended notice when "non arrested" suspects are interviewed.	N	Amended to point out that an additional standalone notice is not required. See TVP (ID 17) No. 73.
73.	Police – Thames Valley Head of Criminal Justice	17	C3.21(b)	There should be a national template for the Notice given to suspects who have not been arrested. which includes references to the other rights. This would avoid police forces are having to produce own versions of an amended notice when such suspects are interviewed.	N	Amended to remove any requirement for an additional standalone notice. See Surrey (ID 15) No.72.
74.	Fair Trial International/ JUSTICE Joint (5)	24	C3.26 H3.25	Codes C and H and the NoREs do not set out the right to challenge any refusal to afford a suspect a right that they have requested, nor what that process is, as required by Article 8(2) of the Directive.	N	Provided for in C3.26 - treated as a complaint. Not necessary to include in NoRE.

* No	From – Organisation/ individual	ID No.	Code reference	Response & purpose	Accept Y/N or NR	*Reason/Comment NR= Comment/observation not requiring any general or specific revision to the draft.
75.	Police – Metropolitan	21	C3.26 H3.24	C3.26 and H3.24 require that if a complaint is made in relation to access to records relating to the arrest and detention of the person then an inspector will deal with it as a complaint - what action is expected to be taken by inspector? What action is expected of the police in the event that the suspect and/or their legal representative question the lawfulness of the arrest?	NR	Same action as required now if a complaint is made about the arrest or detention or the inspector identifies failure to comply with the code & directs remedial action.
76.	Fair Trial International/ JUSTICE Joint (15)	24	C11.1A	C11.1A & H11.1 give the investigating officer a broad discretion to withhold information whenever he/she considers that disclosure might prejudice the criminal investigation. Article 6 does not provide for any such derogations and this discretion should be removed.	N	Text reviewed. Satisfies Art. 6 requirement to provide 'such detail as is necessary to safeguard the fairness of the proceedings'. Supported by new Note 11ZA. See No. 102
77.	Law Society Criminal Law Committee	09	C11.1A H11.1	Code should make it clear that information about the offence etc. must be provided before the interview and irrespective of whether a person has exercised their right to a solicitor. Suggest C11.1A refer to the suspect 'and, if represented, their solicitor'.	Y	Amend to clarify that the information must be provided before interview and whether or not suspect is represented.
78.	Law Society Criminal Law Committee	09	C11.1A H11.1	C11.1A gives the officer concerned a large degree of discretion which could mean that very little is disclosed. Suggest Note to clarify this, for example; 'Information to be disclosed under paragraph should normally include, as a minimum, a description of the facts concerning the suspected offence that are known to the officer, including the time and place of the alleged facts.'	Y	Note for Guidance added to cover minimum information required & purpose.
79.	National Crime Agency (NCA)	19	C11.1A	Suggest that 'appropriate adult' should be added.	N	Would prevent urgent interview if AA not present for disclosure.
80.	Police – National Policing Lead – Investigative Interviewing & Chair of National Investigative Interviewing Strategic Steering Group (NISSG).	16	C11.1A	C11.1A makes clear that the disclosure of information must not prejudice the investigation and it is for the investigating officer to decide on this disclosure. It may be useful to refer extract from Code G Note 3 so that officers understand their obligations with regard to disclosure of information. Potential for confusion and misunderstanding by operational officers with regard to the information which must be disclosed at the early stage of the investigation. It may be worthwhile to provide some examples in the PACE guidance notes.	Y- insofar as providing clarification	Amended to clarify that sufficient information must be disclosed before interview, irrespective of whether suspect is legally represented with supporting new Note to cover minimum information & purpose. Code G concerns arrest, C11.1A cover pre-interview disclosure.
81.	Police – Thames Valley	17	C11.1A	This appears to suggest but stops short of requiring that pre interview briefings (pre interview disclosure) be either written or recorded. There is a possible opportunity to require this in order that any debate on what information was provided can be totally removed. The current wording does not necessarily direct one way or the other and is open to interpretation.	N	Operational matter for police & guidance from the NPL for investigation (ID 16) see No. 80. Code deals with need to record in Article 8(1).

* No	From – Organisation/ individual	ID No.	Code reference	Response & purpose	Accept Y/N or NR	*Reason/Comment NR= Comment/observation not requiring any general or specific revision to the draft.
82.	Police – Warwickshire & West Mercia	02	C13.1 Annex M	Training for the previous (2013) changes not completed. Forces have still not been provided with the ability to comply with the October 2013 requirement to provide certain written material in differing languages.	NR	In October 2013 HO, agreed to fund template translations designed/ commissioned & supplied by the NPL once NPL had consulted with forces for input on template requirements. See Derbyshire (ID 20) No. 85
83.	Fair Trial International/ JUSTICE Joint (19)	24	C13.2 & H13.5	C13.2 & H13.5 of Codes C and H permit interviews to take place without an interpreter in certain circumstances & contravene Article 2 of the Interpretation and Translation Directive 2010/64 which establishes a non-derogable right to interpretation. The exceptions for urgent interviews should therefore be deleted from both.	N	The limited exemptions avert urgent & real risks of one or more serious consequences. These would apply only in exceptional circumstances. The questioning must be by an officer who speaks the suspect's language or is able to communicate effectively and must cease once the risk is mitigated. Furthermore, anything said by the suspect at that time would need to be repeated for verification in a subsequent audio recorded interview with interpreter present.
84.	Fair Trial International/ JUSTICE Joint (21)	24	C13.3	C13.3 C requires that interpreters are given sufficient time to make a written record of questions and answers during interviews, no such requirement is included in Code H.	N	Not applicable - omitted in 2012 when audio-video recording became mandatory.
85.	Police – Derbyshire	20	C13.10B Annex M Para. 3	Requirement to provide written translation of essential documents appears to introduce a right where the 'opt-out' is the route taken in most cases as it simply is not feasible to provide records in any one of a number of languages. It may be worthwhile to include a phrase such as 'if practicable' or similar so that the police are not expected to invest large sums of money in providing translations into all possible languages. Annex M para. 3 creates a very high standard for the Custody Officer to reach when they may not have all of the information necessary to effectively make that decision.	N	See Warwickshire/West Mercia Custody (ID 02) No. 82.
86.	National Crime Agency (NCA)	19	C15.0	Suggest that 'appropriate adult' should be added.	N	Would prevent urgent interview if AA not present .
87.	Police – Metropolitan	21	C15.7A	Extensions of Detention: The information required in the draft C15.7A does not appear to present any issues as many of these are already requirements of s.43 PACE. The point re the general nature of the evidence is a matter for the investigating officer and the court to determine.	NR	

* No	From – Organisation/ individual	ID No.	Code reference	Response & purpose	Accept Y/N or NR	*Reason/Comment NR= Comment/observation not requiring any general or specific revision to the draft.
88.	Independent Custody Visitors Association (ICVA)	28	H11.1	In line 3, after solicitor should “appropriate adult” be added?	N	Established role of appropriate adult to assist communication is sufficient.
89.	Fair Trial International/ JUSTICE Joint (21)	24	H13.10	C13.10 bullet point which refers to an interpreter being present at the magistrates’ court for the hearing of an application for a warrant of further detention or any extension of further detention, applies equally to H13.10 but no such requirement is included.	Y	H13.10 amended.
90.	Independent Custody Visitors Association (ICVA)	28	H14.0	In line 3 after solicitor should “appropriate Adult” be added?	N	Established role of appropriate adult to assist communication is sufficient.
91.	National Appropriate Adult Network (NAAN)	25	NoRE People who need help	Make section title more positive, such as “Advice and assistance” or “Support and advice”. The phrase “...or you have learning difficulties or mental health problems” does not capture the full range of mental vulnerability that triggers the requirement for an AA.	N Y	NoRE amended.
92.	National Appropriate Adult Network (NAAN)	25	NoRE People who need help	NoRE should make it clear that an AA can make representations by phone when not actually at the police station to avoid police proceeding routinely if the AA is not physically available and present.	Y	NoRE amended to reflect the Code provisions which allow representations by phone.
93.	National Appropriate Adult Network (NAAN)	25	NoRE People who need help	Using all capital letters in the information boxes and sub headings may make the document more difficult to read. Consideration should be given to changing to normal sentence case, using bold for emphasis, rather than capitals.	Y	NoRE amended to remove capitalised text.
94.	Police – Hertfordshire	22	NoRE Other things	Breath Tests - The solicitor aspect here is confusing and needs clarity.	N	Items unchanged since 2008 No evidence of problems
95.	Police – Hertfordshire	22	NoRE People who need help	Appropriate adult "MUST" creates a legal anomaly which is at odds with other PACE requirements and will delay progress. Most appropriate adults attend custody after an hour or so of detention.	NR	Does not override provisions of the Code. Amended to refer to ‘a right’ with qualification concerning availability.
96.	Police – Hertfordshire	22	NoRE Other things	Cell - Warm is not defined and is subjective. Reference to 3 meals is inaccurate should say two light and one main.	NR	Items unchanged since 2008, provide accurate summary.
97.	Police – Hertfordshire	22	NoRE Other things	Faith needs as referred to for terrorist Notice should be included.	Y	Faith needs added. See TVP (ID 17) No. 98 & Nth Yorks (ID 23) No. 99
98.	Police – Thames Valley	17	NoRE Other things	Information for suspects who wish to practice their faith and that blankets, female hygiene products and reading material are available on request should be added.	Y	Faith needs added. See Nth Yorks (ID 23) No. 99 & TVP (ID 17) No. 98
99.	Police –North Yorkshire	23	NoRE Other things	Suggest ‘Faith Needs’ in the TACT NoRE should be included in the ordinary non-TACT NoRE.	Y	Faith needs added See TVP (ID 17) No. 98 & Herts (ID 22) No.97

* No	From – Organisation/ individual	ID No.	Code reference	Response & purpose	Accept Y/N or NR	*Reason/Comment NR= Comment/observation not requiring any general or specific revision to the draft.
100	HMRC	18	NoRE - 2	Suggest adding reference to possibility of delaying notification of arrest & detention.	N	The exception is on page 9 of the notice. See Merseyside (ID 12) No. 101
101	Police – Merseyside	12	NoRE – 2	Suggest adding reference to possibility of delaying notification of arrest & detention.	N	The exception is on page 9 of the notice. See HMRC (ID18) No. 100
102	Fair Trial International/ JUSTICE Joint (9(a))	24	NoRE - 6	Para. 6 of the NoREs inaccurately describes right of access to information about the accusation in Article 6. The right applies irrespective of whether a solicitor is present and reference to “harming the police investigation” should be deleted since the Directive does not allow any derogation.	Y - insofar as providing clarification.	NoRE para 6 amended for consistency to follow C11.1A/H11.1. See No. 76
103	Fair Trial International/ JUSTICE Joint (9)(b))	24	NoRE - 8	1. Item 8 on the first page omits reference to the right to translation as required in Article 3. 2. Para. 8 description of “special reasons” whereby a translation is not required is not clear and may lead to the right being waived without the consequences being fully understood. Article 3(7) of the I& T Directive makes it clear that the exception to the rule applies only in limited circumstances.	1. Y 2. N	1. Right to translation added. 2. NoRE is only intended to be a summary.
104	Police – Thames Valley	17	NoRE - 10	Information in the NoRE about detention time and when the detention should be reviewed should cover the actual 6/9/9 hour timing of reviews.	N	Detail not appropriate for NoRE. Custody Officer should explain.
105	Fair Trial International/ JUSTICE Joint (9)(d))	24	NoRE - 11	Para. 11 could be made clearer with regard to the evidence which must be provided in compliance with Article 7 of the Right to Information Directive. Suggest it should say “the evidence against you as well as the evidence which may assist your defence”.	Y	NoREs para. 11 concerns Article 7(2) - amended to clarify.
106	Police – Hertfordshire	22	NoRE – 6 C3.2	Specific information can be withheld and this needs clarification here.	Y	NoRE amend to reflect C11.1A
107	Police – Warwickshire & West Mercia	02	NoRE - General	Suggest that new NoRE be produced to fit A3, not more than one sheet to avoid need for staples which are a risk issue within custody.	NR	Published as A4 version but Forces may print/redesign own A3 versions. HO will assist if NPL supports this.

2.3 Main Themes and Home Office Responses

2.3.1 General

- (a) The majority of comments related to the revisions to the Codes which implement Articles 6 and 7 of the Directive and about the details in the Notices of Rights and Entitlements.
- (b) Article 6 concerns the information which an arrested person must be given about what they are suspected of doing. It applies whether or not they have been arrested and whether or not they are legally represented.
- (c) Article 7 for the purposes of the Codes, concerns access to documents and materials essential to effectively challenging the suspect's arrest and detention. The Codes define these as items which undermine the grounds and reasons for the arrest and detention, and provide that any such documents must be made available to the suspect or their solicitor. The investigating officer is responsible, with the officer responsible for authorising detention, for checking and identifying whether such items exist and if they do, for making them available.
- (d) Comments on the Notices concerned the way in which certain rights and entitlements reflect and summarise the more detailed provisions of the Code on which they are based, as well as how the Notices would be used in practice.
- (e) After analysing the responses, changes were made to the Code C and Code H consultation drafts and Notices for the purpose of clarifying the proposals and their application in practice.

2.3.2 Article 6 – the right to information about the accusation

- (a) The National Policing Lead (Investigations) wanted to ensure that the provisions of Codes C and H which implement Article 6 and govern pre-interview disclosure (particularly paragraphs C2.4 and 11.1A and H2.5 and 11.1) did not undermine the interview and so prejudice the investigation.
- (b) The Law Society wanted the minimum information envisaged by the directive to be made clear and to ensure that it is disclosed whether or not the suspect is represented and *before* the interview, not during the interview.
- (c) Fair Trials International/JUSTICE expressed similar views to the Law Society and pointed out that Article 6 did not support any specific exception based on harm to the investigation.

Home Office Response:

We have amended Codes C and H to clarify that information given about the suspected offence or offences must be given before interview, must be sufficient for the suspect and their solicitor to understand the nature of any offence but without disclosing details of the case at a time which might prejudice the criminal investigation. A new Note for Guidance (11ZA) supports this by outlining the minimum requirements and the purpose of the disclosure. We are satisfied that these revised provisions are sufficient to implement the Directive.

2.3.3 Article 7 – access to documents and materials essential to challenging arrest and detention

- (a) The National Policing Leads (Custody & Investigations) wanted to ensure that the provisions of Codes C and H which implement Article 7 by requiring access to documents and materials for the purposes of challenging arrest and detention (paragraphs C3.4 and 15.0 and H3.4 and 14.0) are not used to pre-empt the pre trial disclosure of evidence and so prejudice the investigation.
- (b) The National Policing Leads also wanted the Codes to state clearly the different roles and responsibilities of custody officers and other officers who authorise detention, and the investigating officers who have knowledge of the cases, documents and materials.

Home Office response:

We have amended Codes C & H and added a Note for Guidance to clarify the responsibilities of the officer who authorises a suspect's detention and separate these from the investigating officer's responsibilities for the documents and materials in the case. This reflects the current position under PACE whereby the custody officer monitors the grounds for detention and must release a detainee if the grounds for detention cease to exist, and the investigating officer is expected to keep the custody officer informed of the progress of the investigation. A Note for Guidance (3ZA) supports this and outlines how such items may be made available.

2.3.4 The Notice of Rights and Entitlements

- (a) Several police forces and the Police Federation commented on how many of the 11 items required by the Directive to be included in the Notice would have to be explained orally to a suspect when they arrive at a police station after arrest. Currently there are three such items. The consultation draft proposed three extra items in all cases with a further two for foreign nationals.
- (b) The National Association of Appropriate Adults wanted the Notice to better reflect the provisions of the code by referring to mental vulnerability and the ability to make representations about detention by telephone if unable to attend in person.
- (c) Other responses suggested minor changes to ensure the Notice was consistent with the provisions of the Codes.

Home Office response:

We have amended Codes C & H so that only one extra item has to be explained orally in all cases which is the right to information about the offence and reasons for arrest and detention. The actual information would normally have been given in all cases. The two items for foreign nationals, i.e. their right to interpretation and translation and right to contact their embassy/consulate, are retained as being essential in these cases.

3. Next Steps

- 3.1 Following careful consideration of the consultation responses, the Home Office has finalised revisions to the Codes C & H. The revised codes were laid before Parliament, on 14 May 2014 along with a statutory instrument which brings them into operation on 2 June 2014. Copies are available online as follows:
Code C at <https://www.gov.uk/government/publications/pace-code-c-2013>
Code H at <https://www.gov.uk/government/publications/pace-code-h-2013>
- 3.2 The updated Notices of Rights and Entitlements will be available in English and Welsh on the GOV.UK website for use by all police forces. Translations of these Notices into 53 other languages and an easy read version, are also being prepared for publication on the GOV.UK website. These will be available for when the revised Codes come into force.