



Home Office

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

Response to Home Office consultation on
PACE Code E (Audio recording of
interviews)

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1. Introduction

- 1.1. Section 60(1) of the Police and Criminal Evidence Act 1984 ('PACE') requires the Home Secretary:
 - (a) to issue a Code of Practice for the audio recording of interviews with suspects about criminal offences which take place at police stations; and
 - (b) to make an order to require such interviews with suspects about criminal offences specified in the order to be audio recorded.
- 1.2. By virtue of the Police and Criminal Evidence Act 1984 (Codes of Practice) Code E Order 2003 ([SI 2003/705](#)) interviews of suspects about indictable offences which take place at any police station in England and Wales must be audio recorded in accordance with the Code of Practice.
- 1.3. PACE Code E was last revised with effect from 27 October 2013. Before then, the audio recording requirement was confined to interviews for indictable offences carried out at police stations. From 27 October 2013, a revised Code E extended the requirement to voluntary interviews about indictable offences that take place *elsewhere* than at a police station. This was necessary to complement and support substantial revisions to Codes C and G in 2012. The latter clarified need to arrest and the former established that the right to legal advice applies when a suspect who not under arrest is interviewed by police in *any location*. The Code G changes promoted the wider use of voluntary interviews, particularly for low level offences.
- 1.4. For all voluntary interviews, the 2013 Code E changes also provided for the authority not to audio record the interview to be given by *any* sergeant, rather than the custody officer which applies to suspects who are detained.
- 1.5. 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:
 - 1.5.1. such persons who appear to her to represent the views of Police and Crime Commissioners;
 - 1.5.2. the Mayor's Office for Policing and Crime;
 - 1.5.3. the Common Council of the City of London
 - 1.5.4. the Association of Chief Police Officers of England, Wales and Northern Ireland;
 - 1.5.5. the General Council of the Bar;
 - 1.5.6. the Law Society of England and Wales
 - 1.5.7. the Institute of Legal Executives; and
 - 1.5.8. such other persons as the Home Secretary thinks fit.
- 1.6. The Home Office consultation over the proposed revisions to PACE Code E ran from 24 March to 5 May 2015.
(See <https://www.gov.uk/government/consultations/consultation-on-proposed-changes-to-pace-code-e-which-concerns-the-audio-recording-of-interviews-with-suspects>)
- 1.7. Statutory consultation is a critical element in the development of the PACE Codes. 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.
- 1.8. This Government response to the consultation sets out the rationale for making the revisions to Code E, provides a summary of responses and outlines the Government's proposed next steps.

2. PACE Code E

2.1 Rationale

- 2.1.1 The proposals support the operational policy which gives police in England and Wales options to use out of court disposals for the purpose of dealing with specified low level offences in a proportionate manner. This is achieved by way of a new exemption from the audio recording requirement which is established by the insertion of a new paragraph 3.1(a)(iii) of the Code and a new Annex to the Code.
- 2.1.2 Since the 2013 revision, the risk that the extended requirement for audio recording could jeopardise further developments to improve the effectiveness of out of court disposals and community resolutions has been recognised. This is apparent from an analysis of high volume low level offending focussing on four offence types. These are possession for personal use of cannabis and khat, low value retail theft and low value criminal damage for all of which, prior to October 2013, a written interview record would have sufficed and of which, few, if any, are ever dealt with by prosecution.
- 2.1.3 The four indictable offence types comprise the vast majority of such cases for which the out of court disposal policy provides a legitimate and proportionate outcome for offenders and victims at the same time, allows the police to allocate resources to tackling more serious crime. The breakdown of these offence types and outcome for the period April 2014 to March 2015 is summarised as follows

Offence type	Total disposed of without prosecution*
Drug possession Cannabis/Khat	63,447
Retail theft	45,646
Criminal Damage	19,677

* Comprises Community resolutions, Warnings & Penalty Notice for Disorder

- 2.1.4 If the criteria in the Annex to the Code are satisfied in respect of the suspect and the offence, the terms and conditions of the policy regarding out-of court disposals, together with the CPS charging standards and Code for Crown Prosecutors (Public Interest Test), make it most unlikely that the person would be prosecuted. For this reason, and having regard to volume of cases (see 2.1.3) the exemption which requires a written record of the interview rather than an audio recording is considered to be proportionate and appropriate.
- 2.1.5 The Annex also points out that if any of the conditions cease to apply, then this exemption will cease to apply and audio recording will be required unless separate authority from a sergeant is given.

2.2 Responses – summary

- 2.2.1 We received responses from 18 separate individuals and organisations (see Table at paragraph 2.3). These comprised ten police forces, the National Policing Lead for Charging and Out of Court Disposals, the Police Federation, legal representative bodies (Law Society, London Criminal Courts Solicitor's Association, Bar Council, Criminal Bar Association and the Chartered Institute of Legal Executives) and a member of the public.
- 2.2.2 In general terms, the police response asked for a broad general exemption to cover any indictable offence. It argued that the proposed revisions did not go far enough, and more was required to enable officers to dispose of low level offending elsewhere than at a police station. To achieve this, they wanted to remove the requirement for audio recording of voluntary interviews elsewhere than at a police stations for a much wider range of offences. However, in the absence of a firm evidence base, this could not be supported.

2.2.3 Conversely, the response from the legal profession and others indicated that they were not convinced that any exemption was necessary. They claimed that it would fundamentally change the audio recording rule and that it could be extended to other offences. However, this fails to acknowledge that prior to 2013, there was no requirement to audio record any interview that takes place elsewhere than at a police station as well as the clearly stated intention to limit the exemption to specified high volume, low level offending which would rarely, if ever, result in criminal proceedings.

2.3 Table of Respondents

No	Organisation/ individual
1.	Bar Council
2.	Chartered Institute of Legal Executives (CILEX)
3.	Criminal Bar Association
4.	Law Society
5.	London Criminal Courts Solicitors' Association (LCCSA)
6.	Member of the public
7.	POLICE – British Transport Police
8.	POLICE – Devon & Cornwall
9.	POLICE – Dyfed Powys
10.	POLICE – Greater Manchester
11.	POLICE – Merseyside
12.	POLICE – National Policing Lead for Charging and Out of Court Disposals
13.	POLICE – North Yorkshire
14.	POLICE – Northamptonshire
15.	POLICE – Sussex
16.	POLICE – Thames Valley
17.	POLICE – West Midlands
18.	Police Federation of England and Wales

3. Outcome

- 3.1 As a result of the consultation, the original proposal to establish a limited exemption based on four indictable offence types has been retained. The original draft has been amended to improve presentation and help understanding and some small changes have been made in the interests of clarity and legal accuracy.
- 3.2 The revised Code provides for a balanced approach to the concerns raised by the police following the change in 2013. For details of the changes made, see the Government's response to the consultation at www.gov.uk.
- 3.3 Work is also continuing with a view to enable portable audio recording equipment such as body worn video, to be issued to and used by individual officers to conduct and record interviews. However, further considerable work remains in order to prescribe the specific safeguards and specifications around propriety, confidentiality and access to information that are needed before it can be used to record formal interviews, in particular, those that take place outside a police station.
- 3.4 The revised Code was laid before Parliament on 9 October 2015, along with a draft statutory instrument which brings it into operation 21 days after the Order is made and explanatory memorandum. The revised Code E is available online at: <https://www.gov.uk/government/consultations/consultation-on-proposed-changes-to-pace-code-e-which-concerns-the-audio-recording-of-interviews-with-suspects>
- 3.5 A Home Office Circular will be published to inform police and practitioners of the revised Code and the date when it comes into operation.