



Home Office

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

Response to Home Office consultation for
revising PACE Codes C (Detention),
D (Identification) and H (Detention –
terrorism)

Contents

1. Introduction.....	2
2. PACE Codes C, D and H.....	3
2.1 Rationale for revisions - General.....	3
2.2 Particular revisions – Codes C & H.....	3
2.3 Particular revisions – Code D.....	3
2.4 Responses.....	4
2.5 Table of Respondents.....	4
3. Outcome.....	5

1. Introduction

- 1.1. Section 66 of the Police and Criminal Evidence Act 1984 ('PACE') requires the Home Secretary to issue 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) provide for the Home Secretary 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 revise a Code of Practice, a statutory consultation must first be carried out. The consultation on the proposed revisions to PACE Codes C, D and H ran from 22 March to 17 May 2016 and the consultation documents can be found at:
<https://www.gov.uk/government/consultations/revising-pace-codes-c-d-and-h>.
- 1.4. Statutory consultation plays a critical part in the development of the PACE Codes of Practice. It helps to ensure that revisions are workable and reflective of operational policing, enabling the police to continue 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.
- 1.5. This Government response to the consultation sets out the rationale for making the revisions to the Codes of Practice, provides a brief summary of the responses and outlines the Government's proposed next steps.

2. PACE Codes C, D and H

2.1 Rationale for revisions - General

- 2.1.1 Code C governs the detention, treatment and questioning of person arrested and detained but not under terrorism legislation; Code H governs the detention, treatment and questioning of persons detained under terrorism legislation; and Code D governs the identification of suspects.
- 2.1.2 Codes C and H were previously revised in June 2014 and Code D was previously revised in May 2011. The revisions are necessary to bring these Codes in line with current legislation and to support operational policing practice.
- 2.1.3 Together, the revisions to the three Codes of Practice enable the use of live-link technology for interpreters and the use of electronic recording devices and records; update and extend the provisions and safeguards for the detention and care of juveniles at police stations before and after charge and the role of the appropriate adult for juvenile and mentally vulnerable suspects; and update procedures for obtaining eye-witness identification evidence and the provisions for taking and retaining fingerprints and DNA.

2.2 Particular revisions – Codes C & H

- 2.2.1 Revisions to Codes C and H enable the police to use live-link electronic communication systems to provide interpretation services for suspects which do not require the interpreter to be physically present at the police station. This provides for more efficient and cost-effective deployment of interpreters when the police need to interview non-English speaking suspects. Detailed conditions and safeguards aim to ensure that live-link interpretation does not impact unfairly on the suspect. This revision links to measures currently being introduced in the Policing and Crime Bill that will enable authorisations and warrants for further detention under PACE to be issued remotely via this technology.
- 2.2.2 Revisions to Code C also reflect the amendment to the Police and Criminal Evidence Act 1984 made by the Criminal Justice and Courts Act 2015 which defines a “juvenile” for the purpose of detention and the PACE Codes, as a person who is under the age of 18, rather than under the age of 17. Again, related to this, there are measures in the Policing and Crime Bill to ensure that the outstanding provisions of PACE that continue to treat 17 year olds as adults are amended. New provisions also support section 38(6) of PACE, which requires juveniles who are not released on bail after being charged to be moved to local authority accommodation pending appearance at court. The revised Code points out that the certificate given to the court must show why a juvenile is kept at the police station and requires these cases to be supervised/monitored by an inspector or above.
- 2.2.3 New provisions in Code C permit an appropriate adult to be removed from interview if they prevent proper questioning. These are consistent with the existing provisions in Code H and are modelled on Code C paragraph 6.9 (removal of solicitor). Additional safeguards include the need for an inspector to enquire into the circumstances before a particular adult can be excluded.

2.3 Particular revisions – Code D

- 2.3.1 In Code D, eye-witness and witness identification procedures are updated to take account of significant changes and developments in case law and police practice and to address operational concerns raised by the police. Revised video identification provisions clarify the identification officer’s discretion to use ‘historic’ images of the suspect, to regulate the presence of solicitors at witness viewings

and to direct others to implement any arrangements for identification procedures. The investigating officer's responsibility concerning the viewing of CCTV and similar images by a witness other than an eye-witness is clarified.

2.3.2 Revisions to Code D also reflect amendments to the Police and Criminal Evidence Act 1984 concerning the retention of fingerprints, DNA profiles and samples, made by the Anti-Social Behaviour, Crime and Policing Act 2014.

2.4 Responses

2.4.1 We received a total of 18 responses from separate individuals and organisations. These were from 5 police forces, the National Policing Lead for Language Services, the National Crime Agency, HM Inspectorate of Prisons and HM Inspectorate of Constabulary, the Police Federation of England and Wales, HM Revenue and Customs, Youth Justice Board, the Law Society, London Criminal Courts Solicitor's Association, the Bar Council and the Criminal Bar Association, Liberty, Police Action Lawyers, a University of London research group and one member of the public (see Table at paragraph 2.5).

2.4.2 In general terms, the police responses support the revisions, particularly the ability to use live-link for interpreters. A number asked for clarification and some proposed further changes to support operational implementation. Further changes were made in response to most of these.

2.4.3 Conversely, some responses from the legal profession generally argued that additional safeguards were needed and some contended that the changes concerning live-link interpretation, electronic recording devices and witness identification procedures should all be withdrawn or substantially amended to make them acceptable. Remedial amendments were also proposed. Changes were made to incorporate additional safeguards along the lines proposed, but the revisions to the Codes concerning live-link interpretation, electronic recording and witness identification were not withdrawn.

2.4.4 Other responses from the legal profession did not share these views, but made constructive suggestions to enhance the existing safeguards. These have been incorporated in the revisions.

2.5 Table of Respondents

No	Organisation/ individual
1.	Bar Council & Criminal Bar Association
2.	HM Inspectorate of Prisons and HM Inspectorate of Constabulary.
3.	HM Revenue and Customs
4.	Law Society
5.	London Criminal Courts Solicitors' Association (LCCSA)
6.	Member of the public
7.	Liberty
8.	National Crime Agency
9.	National Policing Lead for Language Services
10.	Police Action Lawyers Group
11.	Police Federation
12.	Police – Merseyside
13.	Police - Metropolitan
14.	Police – Northumbria
15.	Police – North Wales
16.	Police – North Yorkshire
17.	Royal Holloway University of London Psychology Department
18.	Youth Justice Board

3. Outcome

- 3.1 The responses to the consultation prompted a number of constructive changes to the original proposals. These are designed to improve the operational implementation of the Codes and provide a balanced approach to the points raised in the responses to the consultation.
- 3.2 The Codes of Practice have also been amended to improve presentation and help understanding and some small changes have been made in the interests of clarity and legal accuracy.
- 3.3 The revised Codes of Practice will be laid before Parliament, along with a draft statutory instrument which brings it into operation 21 days after the Order is made, and an explanatory memorandum. The revised Codes will be available online at:
<https://www.gov.uk/government/consultations/revising-pace-codes-c-d-and-h>
- 3.4 A Home Office Circular will be published to inform police and practitioners of the revised Code and the date they come into operation.