



Department of
Justice

An Roinn Dlí agus Cirt

Männystrie O tha Laa

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A Consultation on the revision of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) Codes of Practice (A to H) and New PACE Code of Practice I

Consultation Report, summary of responses and next steps

4 February 2025

1. Introduction

1.1. This document provides a summary of responses to the public consultation on the revision of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) Codes of Practice (A to H) and new PACE Code of Practice I. The purpose of the consultation was to seek the views of the public, key stakeholders and other interested parties regarding proposed changes to the revised draft Codes and the introduction of new Code I.

1.2. Consultation is a critical part of the development of the PACE Codes of Practice. It helps 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.

1.3. This response sets out the rationale for making the revisions to the Codes, provides a summary overview of the responses and outlines the Department of Justice's (the Department) next steps.

1.4. The Department is grateful to those who took the time to consider the proposals and to respond to the consultation.

2. Background

2.1 The Department needs to update the Codes because Westminster legislation has changed or introduced some new police powers. The legislation relates to terrorism and national security, such as:

- the Counter Terrorism and Border Security Act 2019,
- the Police, Crime, Sentencing and Courts Act 2022, and
- the National Security Act 2023.

2.2 The Department engaged with the Northern Ireland Human Rights Commission and the Police Service of Northern Ireland (PSNI) prior to issuing this consultation and amendments were made to the Codes to take account of their feedback.

2.3 The consultation ran for a 12 week period from 25 July to 16 October 2024. It was extended for a further week to 23 October to allow time for a number of respondents to submit their responses. The consultation documents, which include a detailed background on the proposed changes, and the draft Codes can be viewed on the Department's website at the following link:

2.4 The consultation was conducted using the Citizen Space platform. However, some respondents replied via email. The analysis presented in this summary report is based on the feedback received from Citizen Space and email responses.

3 Overview of responses

3.1 A total of 36 responses were received, 20 via Citizen Space and 16 via email. Responses were received from a range of individuals and organisations. There was a total of seven responses from organisations (see Annex A) and 29 who registered as individuals. Two responses were unknown but are included as individuals for the purposes of this report.

3.2 The consultation focused on the changes within the Codes of Practice. The changes were set out in each Code. Additions were shown as purple text highlighted in grey and deletions were shown as black text struck through and highlighted in green. Respondents were asked to give their views on the proposed changes rather than the actual powers already passed in law and were asked to provide reasons and evidence to support answers.

3.3 The following questions were asked:

- 3.3.1 Do you have any views on the proposed changes to draft Code A, Stop and Search?
- 3.3.2 Do you have any views on the proposed changes to draft Code B, Search of premises and seizures?
- 3.3.3 Do you have any views on the proposed changes to draft Code C, Detention, treatment and questioning of persons detained under PACE?
- 3.3.4 Do you have any views on the proposed changes to draft Code D, Identification of persons?
- 3.3.5 Do you have any views on the proposed changes to draft Code E, Audio recording of suspect interviews?
- 3.3.6 Do you have any views on the proposed changes to draft Code F, Visual recording with sound of suspect interviews?
- 3.3.7 Do you have any views on the proposed changes to draft Code G, Power of Arrest?
- 3.3.8 Do you have any views on the proposed changes to draft Code H, Persons detained under terrorism provisions?

3.3.9 Is the new draft Code I appropriate to cover investigations into state threats under the National Security Act (NSA)?

3.4 The table below shows the total number of respondents and responses received for each of the questions asked on the Codes of Practice.

Total number of respondents		36
Total number of respondents who completed questions		34
Total number of responses received which were not relevant to the consultation		2
Total responses where views were provided on each Code	Yes	No
Code A	30	4
Code B	26	8
Code C	31	3
Code D	28	6
Code E	27	7
Code F	26	8
Code G	26	8
Code H	29	5
Code I	25	9

3.5 There were a number of individual responses that offered similar narrative to each of the questions, 15 in total. These responses may have come from a number of different interest or campaign groups. The responses have been considered in this report.

3.6 Of the responses received, 11 of the individuals provided no rationale for their response or their response was outside the scope of the consultation. For example, some of the responses appeared to refer to the Justice Bill currently being scrutinised by the Justice Committee, other individuals objected to the changes but did not provide any response or rationale for their objection.

4 Summary of Consultation Responses

4.1 As a summary, this does not reflect each view on every issue but seeks to highlight both the support for and any opposition to the proposals, as well as comments and suggestions put forward for the Department to consider and explore further.

CODE A

4.2 Code A question asked: *Do you have any views on the proposed changes to draft Code A, Stop and Search? Please give reasons for your answers providing evidence where possible.*

4.2.1 There was a total of 30 responses with views to this question. Of those 16 responses were similar in nature, six respondents did not provide any rationale and seven were outside the scope. One respondent provided a response to Code A only in great detail, which is summarised in point 4.2.6.

4.2.2 The Department considered a response which recommended that Code A should be amended in line with the Justice and Security Act (JSA) 2007 where legislation refers to 'wireless apparatus' and can be interpreted as an ordinary mobile phone. This recommendation falls outside the scope of this particular consultation. The JSA is a UK wide Act and currently it is not referred to within Code A in either the Northern Ireland or England and Wales versions. However, the Department is aware that the independent reviewer of the JSA has made recommendations for amendments to be made to the PACE NI Codes and these will be considered as part of a separate exercise in collaboration with the Northern Ireland Office in due course.

4.2.3 One respondent welcomed the introduction of consideration for neurodiverse people when assessing their behaviour when considering grounds for stop and search.

4.2.4 The Department reviewed a response in relation to paragraph 3.11 of Code A and the use of the wording 'reasonable steps'. There has been no suggested change to this paragraph as a result of this consultation exercise. Therefore, it is outside the scope of this particular consultation. The respondent asked if more specific guidance can be issued to police to direct them as to what reasonable steps might be to support a child or vulnerable person to understand what is happening, why it is happening and their rights.

- 4.2.5 One respondent was broadly supportive of the new proposals. However, the majority of their response was outside the scope of this particular consultation. The response recommended changes to the record keeping and statistics provided by the PSNI in relation to stop and search powers. They welcomed the new provision to challenge evidence from a stop and search [paragraph 1.7 of Code A] encounter but wondered how it would work in practice. They also welcomed the updating of the definition and meaning of reasonable grounds for suspicion. The response advised that the child-friendly information card relating to stop and search had not been available to PSNI officers for a number of years, making it difficult to see how practical challenges to stop and search can be made.
- 4.2.6 The interest/campaign groups suggested that Code A was targeting organised protest groups, that the threshold for reasonable suspicion had been diluted, and that safeguards had been removed from the Code. The responses indicated that there was a belief that the changes exceed those in England and Wales by increasing stop and search powers without sufficient justification.

Department's response

- 4.2.7 The Department has considered the request from the respondent in point 4.2.4. Whilst the comments were outside the scope, the Department has asked the PSNI if they have any guidance on what reasonable steps might be considered to support a child or vulnerable person to understand what is happening in the custody process. The PSNI has advised that whilst there is no bespoke local guidance available, there is a "guide to custody for young people" available online via the following link:
https://assets.publishing.service.gov.uk/media/5f2c098b8fa8f57acba2bd83/Rights_and_entitlements_-_leaflet_for_young_people_web_.pdf. Copies can be printed as and when required.

The PSNI acknowledge that their resources may not fully meet the needs of all vulnerable persons. However, they have advised that effective communication and neurodiversity awareness is part of the training provided at the PSNI training college and covers all police interactions not just stop and search.

If a police officer or member of police staff cannot effectively communicate with any person, in whatever circumstances, the services of an appropriate interpreter must be provided. In event of a stop and search of an individual whose language is not English, the telephone interpretation service will likely be the most effective service.

4.2.8 Whilst it fell outside the scope of this particular consultation the Department did explore with the PSNI what information was publicly available regarding stop and search and if the child friendly information card was available to officers. The PSNI website has a section on stop and search which includes a guide for children and young people. The PSNI has an information card available for adults who are stopped and searched. However, at the time of this consultation the respondent was accurate in their assessment that the children and young person's card was unavailable. The PSNI has confirmed that an updated card for children and young people has been approved and put into circulation from 14 January 2025.

4.2.9 The Department rejects the comments from the interest/campaign groups in relation to divergence from the England and Wales Code A. The changes made to Code A reflect the changes made in England and Wales since 2015. The amendments do include details on searching organised protest groups to search for items that may be used to cause criminal damage and/or injury, based on intelligence that the protest group has been known to have used such items previously to cause damage or injury.

The amendments in Code A link to public order legislation in the same way as England and Wales.

The amendments also set out in more detail the grounds for reasonable suspicion, for example, if they search someone, they expect to find something, and the officer(s) can explain the basis for their suspicion.

CODE B

4.3 Code B question asked: *Do you have any views on the proposed changes to draft Code B, Search of premises and seizures? Please give reasons for your answers providing evidence where possible.*

4.3.1 There was a total of 26 responses with views to this question. Of these, 16 responses were similar in nature, four respondents did not provide rationale and five were outside the scope. One response required follow up.

4.3.2 One respondent suggested that authority to search a solicitor's and journalist's office/home should only be decided by a judge.

4.3.3 The interest/campaign groups mentioned that, in their opinion, the Code B changes reduce the procedural requirements for obtaining a warrant to enter and search premises. The changes expand search powers under the NSA allowing more frequent searches without warrants. The interest/campaign groups suggest that England and Wales maintain stricter requirements for

search warrants and that the powers in Northern Ireland Code B go further than in England and Wales Code B.

Some respondents referred to the removal of the term warrant card.

Department's response

4.3.4 The Department sought legal advice in relation to the suggestion in point 4.3.2. As a result, the following text will be added to Note 2A of Code B "*If there are reasonable grounds to believe the occupation of the residents / subject in control of the premises could lead to legal privilege material, excluded material or special procedure material being or likely to be present during the PACE search a Schedule 1 application should be used*" (Schedule 1 applications are considered by County Court Judges). A cross reference to Note 2A will also be added to paragraph 6.15.

4.3.5 The Department rejects the comments from the interest/campaign groups, as the changes made to Code B reflect the changes made in England and Wales since 2015. It may be that the respondents have concerns about powers contained within the NSA itself. However, the NSA is primary legislation introduced at Westminster and as a result concerns should be brought to the attention of the Home Office.

The changes clarify the judicial tiers that can authorise search warrants, as the current text has caused some confusion in the past.

The amendments also reflect changes already made in England and Wales as a result of the introduction of the NSA 2023. The NSA is a UK wide piece of legislation which means the Northern Ireland changes reflect those already made in England and Wales.

There have been no suggested changes as a result of this consultation exercise, to section 4 of Code B which covers entry without a warrant.

There has been no proposal to remove the requirement for a warrant card. There may be some confusion because of the change of references from 'police service number' to 'police identification number'.

CODE C

4.4 Code C question asked: *Do you have any views on the proposed changes to draft Code C, Detention, treatment and questioning of persons detained under PACE? Please give reasons for your answers providing evidence where possible.*

- 4.4.1 There was a total of 31 responses with views to this question. Six responses provided research and follow up. 15 responses were similar in nature, five responses did not provide any rationale and five were outside the scope.
- 4.4.2 One respondent made a recommendation regarding the use of the Northern Ireland Appropriate Adult Scheme (NIAAS) for voluntary interviews. They requested if the wording in Note 1G could be amended, including text that “... *the investigating officer may use the support of the Northern Ireland Appropriate Adult Scheme.*”
- 4.4.3 One respondent asked for wording to be inserted in paragraphs 13.13 and Annex N, part 2(e) to include ‘*by live link or secure email*’.
- They also proposed changes to Code C that relate to children’s bail provisions contained within the Justice Bill that was introduced to the Northern Ireland Assembly in September and is currently being scrutinised by the Justice Committee.
- 4.4.4 A respondent suggested that changes recently consulted on in England and Wales in relation to Strip Searching, should also be taken into consideration by the Department. They suggested amending text in Annex A, paragraph 11c and 12(a), under ‘The conduct of strip searches’.
- 4.4.5 One respondent made a few suggestions to improve the experience for young and vulnerable people, e.g. by providing interview rooms that are adapted for children, young or vulnerable suspects; provision of literature or guidance suitable for young or vulnerable suspects on what to expect in custody; providing distraction activities/reading material; and provision for a separate, secure area where a child and the appropriate adult (AA) /solicitor can wait until the child is interviewed or released.
- 4.4.6 One respondent objected to the change of terminology from ‘legal representative’ to ‘solicitor’.
- 4.4.7 A respondent proposed that the automatic right to immediate legal advice in a confidential/ private setting should be clearly emphasised and outlined to the suspect, unless the specific circumstances authorised by a Superintendent are evident.
- 4.4.8 The interest/campaign groups highlighted that Code C extends detention periods under NSA allowing suspects to be held for longer without charge. The respondents expressed concern that there is a risk of prolonged detention without oversight. The respondents expressed further concern that there is a risk of coerced confessions as a result of lengthy detention and without

immediate access to legal advice. They suggest that the England and Wales Code C provides stricter timelines and provides greater oversight particularly in non-terrorism cases.

Department's response

- 4.4.9 The suggestion by the respondent in point 4.4.2 to add a reference to the NIAAS has been rejected by the Department. The NIAAS is not a statutory scheme and it would not be appropriate to reference it within the Codes.

The concern regarding AA support during voluntary interviews has been noted and the issues have been addressed as part of the new NIAAS contract, no further update is required to the Code.

- 4.4.10 The Department accepts the suggestion to amend the wording in paragraphs 13.13 and Annex N, part 2, 9(e) in relation to use of live links for interpreters.

The request to make amendments in relation to children's bail has been rejected as the impact of the Justice Bill provisions will be considered once the Bill has received Royal Assent.

- 4.4.11 The recommendations in relation to strip searching have been rejected at this stage. The Department previously engaged with the respondent to advise that their strip search concerns would not be addressed as part of this consultation exercise. However, they were given an assurance that they will be addressed as part of a later exercise which will require a separate consultation exercise. The Department recognises the importance and sensitivity of this particular area and want to ensure that appropriate consideration is given to any future amendments. The Department is working with the Home Office in relation to the proposed amendments on strip search.

The suggestion to add some additional text to provide clarification in relation to strip searching in the absence of an AA, has been accepted. Suggested text has been reviewed and amendments made to Code C Annex A, paragraphs 11(c) and 13.

Additionally, the *Davies v CC Merseyside Police* [2015] EWCA Civ114 judgment tested the interpretation of PACE Code C, Annex A in the context of a 'clothes swap' within police custody.

Following the updating of national guidance by the College of Policing in the Authorised Professional Practice (the APP), the PSNI updated procedures for all strip searches, to be applied in conjunction with new strip search guidance for children, young people and vulnerable adults in police custody.

4.4.12 The suggestions in point 4.4.5 have been given consideration. While these are outside the scope of the consultation, the PSNI has advised that currently there are no interview rooms that have been adapted for children or vulnerable suspects within the PSNI Custody Estate. Work is ongoing regarding provisions within custody cells for children and young people. With regards to distraction activities etc. the PSNI have conducted a scoping exercise with other police forces in relation to what resources they provide. A paper has been drafted by the PSNI and options are being considered.

4.4.13 The term 'legal representative' was changed to 'solicitor' purely for consistent use of language. There were more references to solicitor than legal representative throughout the Codes. There has been no change of the meaning or practice. The Department sought legal advice and it was confirmed that it was not unreasonable or unlawful and there was no diminution of rights, to change the reference to solicitor and that the PACE (NI) Order 1989 supports this.

4.4.14 Suggestions in point 4.4.7 have been rejected. The Department considered this suggestion but concluded that paragraphs 3.1(ii), 6.4 and 6.5 (a) and (b) of PACE Code C already set out sufficient guidance on this matter. The Department corresponded with the respondent on this matter and it was agreed that no further action was required.

4.4.15 The Department rejects the comments from the interest/campaign groups as the changes made to Code C broadly reflect the changes made in England and Wales since 2015.

With regards to longer detention periods, it is unclear what the respondents meant. The NSA has its own Code of Practice – Code I, the only reference to the NSA within Code C is to advise that if a person is detained under section 28 of the NSA, then Code I applies.

The NSA is a UK wide piece of legislation passed at Westminster which means all UK jurisdictions must be consistent. Any objections to the content of the NSA should be made to the Home Office.

The PACE (NI) Order 1989 sets out clear timeframes for when continued detention is reviewed and considered for extension. England and Wales Codes and legislation have the same procedures in place.

CODE D

4.5 Code D asked: *Do you have any views on the proposed changes to draft Code D, Identification of Persons? Please give reasons for your answers providing evidence where possible.*

- 4.5.1 There was a total of 28 responses with views to this question. Two respondents provided helpful suggestions regarding updates required to wording in relation to Registered Intermediaries (RIs), AAs and 'over the age of ten'. 15 responses were similar in nature, four responses did not provide any rationale and seven were outside the scope.
- 4.5.2 One respondent identified an amendment omission to a paragraph in Code D. They highlighted that paragraph 3.4 wording has been amended to 'over the age of ten' but the same change was not made to paragraph 4.17. They also suggested that the term 'appropriate adult' was missing from Annex D paragraph 4.
- The same respondent also commented that "the PACE Codes should protect vulnerable eyewitnesses just as it does suspects, both may be vulnerable and engaging with the judicial process, yet one is supported by an AA while the other is not."
- 4.5.3 One respondent recommended that where an AA is referred to, a reference to RIs may also be required.
- 4.5.4 The interest/campaign groups suggest that Code D lacks judicial oversight in the Northern Ireland biometric data processes. They consider that the Code D amendments expand data retention practices including digital and facial recognition methods. They further suggest that England and Wales have a more cautious approach within their Code D and that digital identification methods go beyond the current provisions in England and Wales by extending data collection powers.
- 4.5.5 The interest/campaign groups also raised an objection to the replacement of the term 'legal representative' with 'solicitor'.

Department's response

- 4.5.6 The Department accepts the recommendation put forward by the respondent in point 4.5.2. Paragraph 4.17 has been updated to state 'aged ten or over' and the term 'appropriate adult' has been added to Annex D paragraph 4. The Codes were re-checked for consistency on these areas and no further updates were required.

In response to the vulnerable eyewitness comment, this is outside the scope of the PACE Codes. Eyewitnesses are not detained in custody and are therefore not entitled to an AA under PACE. However, appropriate support can be considered under the victims and witness strategy.

4.5.7 The Department accepted and investigated the recommendation to consider if additional references to RIs were required in the Codes. The Department sought advice from the RI scheme administrators and amendments have been made to several of the Codes (Code C - 16B, Annex E (1)(c); Code D - 2.6, 2.14; Code E – 1.5, 3.4, 4.3, note 5; Code F – 2.2, 2.5; Code H – Annex E (A)(c); Code H - Annex E(1)(c); Code I - Annex E(1)(c).

4.5.8 The Department rejects the comments from the interest/campaign groups as the changes made to Code D reflect changes made in England and Wales since 2015. The changes do not introduce any new powers. Biometric taking powers are included in the NSA, and as previously mentioned this is primary legislation introduced at Westminster, any concerns about the additional powers should be brought to the attention of the Home Office.

References to 'digital devices' within Code D extends the use to electronic notebooks and are not related to the taking of biometric material. Facial recognition is not referred to in any of the PACE Codes.

Code D in Northern is significantly different from Code D in England and Wales, this is because the primary PACE legislation is different. Legislation creating a new fingerprint and DNA retention regime was introduced to the Northern Ireland Assembly in September 2024 and is currently being scrutinised by the Justice Committee.

Additionally, the Department is being scrutinised by the European Court of Human Rights, Committee of Ministers with regards to action taken in response to the Marper and Gaughran court judgments. Associated Code D updates will be required once the Justice Bill has been approved by the Assembly.

4.5.9 The Department rejects the comments in relation to the change of the term 'legal representative' to 'solicitor'. The change was made to ensure a consistent use of language; there were more references to solicitors than legal representatives throughout the Codes and there has been no change of meaning or practice (See 4.4.12).

CODE E

4.6 Code E question asked: *Do you have any views on the proposed changes to draft Code E, Audio recording of suspect interviews? Please give reasons for your answers providing evidence where possible.*

- 4.6.1 There was a total of 27 responses with views to this question. Of these, 15 responses were similar in nature, five responses did not provide any rationale and seven were outside the scope.
- 4.6.2 One response included recommendations that were mostly out of the scope of this consultation. They related to providing specialist interview rooms for young and vulnerable suspects, similar to those in use for Achieving Best Evidence interview rooms for vulnerable victims and witnesses.
- 4.6.3 The interest/campaign groups highlighted that Code E in Northern Ireland broadens the use of audio recording in terrorism related cases. Some welcome the addition of recordings as it may help protect against coerced confessions. They raised concern that the introduction of remote monitoring could lead to potential abuse. They advised that they believe that England and Wales have similar provisions but impose tighter controls on remote monitoring and data management. They recommend that stronger oversight and data protection should be included. They have also expressed concerns about Artificial Intelligence manipulation.

Department's response

- 4.6.4 The Department notes the recommendation regarding interview rooms. It sits outside the scope of this consultation but the Department will bring the feedback to the attention of the PSNI.
- 4.6.5 The Department rejects the interest/campaign groups comments as any changes made to Code E broadly reflect the changes made in England and Wales since 2015.

The changes included the addition of wording to paragraph 1.4 to clarify that Code E **does not apply** to suspects interviewed under the Terrorism Act or National Security Act. Individuals arrested under terrorism or national security legislation must be video recorded with sound in accordance with provisions under separate codes of practice for each piece of legislation.

The amendments reflect safeguards to be followed in the event that an interview room has a remote monitoring facility.

With regards to the concerns raised around master recording security and data management, no substantive changes have been made to the Code in relation to master recording security.

Furthermore, the Chief Constable must be satisfied as to the integrity and security of the devices, records and forms that are being used and the use of those devices, records and forms satisfies relevant data protection legislation.

The Chief Constable will be reminded of his obligations and to ensure that staff are appropriately trained before the Codes are commenced.

CODE F

4.7 Code F question asked: *Do you have any views on the proposed changes to draft Code F, Visual recording with sound of suspect interviews? Please give reasons for your answers providing evidence where possible.*

- 4.7.1 There was a total of 26 responses with views to this question. Of these, two responses provided supporting comments and suggestions, one of which requires consideration. 15 responses were similar in nature. Six of the responses did not provide any rationale and two were outside the scope of this particular consultation.
- 4.7.2 One respondent supports the changes to Code F in principle. However, they suggest that professionals supporting interviews such as AAs, Social Workers or Care Staff acting as legal guardians, may object to having their image recorded. They may request police not to use this method, unless suitable seating can be agreed offering similar protection to police at Code F, paragraph 2.7(a) whereby police can have their back to the camera.
- 4.7.3 One individual suggested that a visual recording offered better safeguards than the audio only version and that caution was needed to ensure protection of personal data.
- 4.7.4 The interest/campaign groups suggest that Code F for England and Wales includes visual recording with more detailed data protection measures and ensures limited use outside terrorism cases. They recommend that stronger data protection and access rights for defence teams are needed in Northern Ireland to prevent abuse and ensure trial fairness. They infer that Northern Ireland's provisions for remote monitoring raise concerns about potential manipulation or misuse of data.

Department's response

- 4.7.5 The Department has considered the comments made by the respondent in point 4.7.2 and have been unable to identify any provision in the Codes that would enable an AA to object to video recording for their own reasons, such as not wanting their image recorded. However, an AA can object on behalf of the person they are supporting. The Department engaged with the National Appropriate Adult Network regarding the recording of AA images, who advised

that this was not a concern that had ever been raised with them. The PSNI has advised that it is not normal practice to release copies of visual interviews, only audio recordings, which would remove the risk raised by the respondent.

- 4.7.6 In response to the interest/campaign groups comments, any changes made to Code F broadly reflect the changes made in England and Wales since 2015. The amendments to the Code make it clear that suspects interviewed under the Terrorism Act or National Security Act, must be video recorded with sound, in accordance with provisions under separate codes for each piece of legislation.
- 4.7.7 With regards to concerns over the management of data, the Chief Constable must be satisfied as to the integrity and security of the devices, records and forms that are being used and that the use of those devices, records and forms satisfies relevant data protection legislation. The Chief Constable is also responsible for ensuring adequate training is provided on the use of any new device or form. Furthermore, the Data Protection Act is a UK wide Act, where the Information Commissioner is responsible for ensuring compliance.
- 4.7.8 The only reference to remote monitoring in Code F is advice that the safeguards introduced to Code E also apply to Code F in the event that an interview room has a remote monitoring facility.

CODE G

4.8 Code G question asked: *Do you have any views on the proposed changes to draft Code G, Power of Arrest? Please give reasons for your answers providing evidence where possible.*

- 4.8.1 There was a total of 26 responses with views to this question. Of these, 14 were similar responses of interest/campaign groups; four of the responses did not provide any rationale and eight were outside the scope of the consultation.
- 4.8.2 The interest/campaign groups advised that they were opposed to changes to Northern Ireland's Code G as it expands arrest powers under the NSA and that powers in England and Wales maintain stricter conditions.

Department's response

- 4.8.3 The amendments to Code G are minimal and relate to updating of terminology to be consistent across the Codes. There is no expansion of arrest powers or reference to the National Security Act in Code G. It may be that the

respondents have concerns about powers contained within the NSA itself. However, the NSA is primary legislation introduced at Westminster and as a result concerns should be brought to the attention of the Home Office.

CODE H

4.9 Code H question asked: *Do you have any views on the proposed changes to draft Code H, Persons detained under terrorism provisions? Please give reasons for your answers providing evidence where possible.*

- 4.9.1 There was a total of 29 responses with views to this question. Of these, 15 were similar responses of interest/campaign groups; Five of the responses did not provide any rationale and five were outside the scope of the consultation. A further four respondents provided comments similar to those expressed and addressed in Code C, as Code C, H and I broadly mirror each other.
- 4.9.2 One respondent welcomes the new provisions in paragraph 1.13(a) and 3.18A clarifying the role of AAs and they are also in support of the changes to Note 11C which provides guidance on when an interview may proceed under a superintendent's authority in the absence of an AA.
- 4.9.3 Similar to Code C (point 4.4.3), the respondent wishes to add the text 'by live link or secure email' to paragraph 13.12A.
- 4.9.4 One respondent recommended that a change should be made to Code H in relation to Independent Custody Visitors (ICVs), to follow the procedure set out in the Home Office's Code of Practice for Custody Visitors in England and Wales.
- 4.9.5 A respondent provided the same comment as in Code C (point 4.4.7) with regards to clarifying the automatic right to immediate legal advice in a confidential/ private setting.
- 4.9.6 The interest/campaign groups highlighted that they were opposed to changes to Northern Ireland's Code H as they extend detention periods for terrorism suspects under NSA. They object to any proposal to extend of detention without charge without sufficient judicial oversight as it could result in inhuman or degrading treatment. They suggest that England and Wales codes impose stricter time limits on detention without charge under terrorism provisions, ensuring better protection against indefinite detention. They suggest that the proposed changes could undermine the protection for the right to a fair trial,

particularly in cases where detainees are held without charge for extended periods.

Department's response

- 4.9.7 The Department accepts the suggestion to amend the wording in paragraph 13.12A in relation to use of live links for interpreters.
- 4.9.8 The suggestion regarding procedures for ICVs was considered and legal advice sought. Code H for England and Wales was checked and it does not contain equivalent text. Legal advice confirmed that it would not be appropriate for the text to be added to Code H but should instead be included in the Northern Ireland Policing Board's Code of Practice for ICVs.
- 4.9.9 The Department rejects the comments from the interest/campaign groups, any changes made to Code H reflect the changes made in England and Wales since 2015. It may be that respondents have concerns about powers contained within the Terrorism Act 2000 or NSA. However, they are both Acts introduced at Westminster and as a result concerns should be brought to the attention of the Home Office. There is no further evidence to support the comments made.

CODE I

4.10 Code I question asked: Is the new draft Code I appropriate to cover investigations into state threats under the National Security Act (NSA)? Please give reasons for your answer providing evidence where possible.

- 4.10.1 Of the 34 responses to this question, 25 answered 'yes' the Code was appropriate and nine answered 'no' the Code was not appropriate. Of these, 16 were similar responses of interest/campaign groups; eight of the responses did not provide any rationale and six were outside the scope of the consultation. A further, four respondents provided comments, some of which have already been considered as part of the Code C and H analysis.
- 4.10.2 One respondent welcomes the guidance in Code I, Note 1H (regarding vulnerable persons). They recognise that people can be vulnerable and require support from an AA.
- 4.10.3 Similar to Code C (point 4.4.3) and Code H (point 4.9.3), the respondent wishes to add the text 'by live link or secure email' to paragraph 13.18.

4.10.4 One respondent provided the same comment in relation to the automatic right to immediate legal advice in a confidential/ private setting as in Code C (point 4.4.7) and the response in point 4.4.14.

4.10.5 The interest/campaign groups highlighted that they were opposed to changes to Northern Ireland's Code I, stating that it introduces expansive powers for investigating state threats under the NSA. The changes introduce a risk of human rights violations, particularly regarding arbitrary detention, privacy and the right to a fair trial. They state that no comparable Code exists in England and Wales.

4.10.6 The objection to the change in 'legal representative' to 'solicitor' has also been referenced in Code I.

Department's response

4.10.7 As per Code C and H, the Department accepts the change proposed and will update paragraph 13.18 in relation to use of live links for interpreters.

4.10.8 The Department rejects the comments from the interest/campaign groups as this new Code reflects Code I that was introduced in England and Wales in December 2023. It was introduced to support the provisions of the NSA and is broadly similar to Code H. It may be that respondents have concerns about powers contained within the NSA. However, the NSA is primary legislation introduced at Westminster and as a result concerns should be brought to the attention of the Home Office. There is no further evidence to support the comments made to the objection of the introduction of Code I.

General Comments

4.11 The Information Commissioner's Office (ICO) provided a general response, welcoming the opportunity to respond to the consultation. Their response advises that the consultation questions fall outside the ICO's regulatory role and the comments provided focus solely on the information rights elements of the document such as: protected characteristics (stop and search); introduction of live link technology; power to take fingerprints and revised approaches to the audio and visual recording of interviews.

4.11.1 The ICO made comments on General Data Protection Regulation (GDPR), Data Protection Impact Assessment (DPIA) and the Department's obligations under data protection.

Department's response

- 4.11.2 The Department is grateful to the ICO for providing some general advice in relation to the proposed changes.
- 4.11.3 Live links for interpretation has been introduced to support the rights of individuals and requirements to safeguard the fairness of proceedings. The right / requirement originally stemmed from Article 2(6) of EU directive 2010/64. The Chief Constable will be reminded of the requirement to ensure that all equipment meets the required standards and that staff are adequately trained in both their obligations and on the use of the equipment.
- 4.11.4 The Department will remind law enforcement agencies of their obligations under data protection in relation to changes to the Codes and ensure that the appropriate training is in place to ensure that Codes that require the handling of personal information are implemented appropriately.
- 4.11.5 The Department has taken on board comments regarding the processing of personal information and are undertaking a review of the impact assessment before the Codes are published.
- 4.11.6 Law enforcement agencies will be made aware of their obligations under Articles 25 and 35(1) of the UK GDPR and the Department will continue to seek advice from the Data Protection Officer.

5 Way Forward – Next Steps

- 5.1 The Department now proposes to finalise the Codes, taking account of the suggestions made as part of this consultation exercise. The updated Codes will be considered and approved by the Justice Minister. The Department has shared this consultation response document with the Justice Committee. The Codes will be laid in the Assembly under the negative resolution procedure.
- 5.2 Once finalised updated Codes will be published on the Department's website. The current PACE Codes of Practice will remain unchanged until the revised Codes are made and brought into force [PACE Codes of Practice | Department of Justice](#)
- 5.3 If you require further information in relation to this consultation of summary of responses please contact: paceconsultation@justice-ni.gov.uk

List of organisations who provided a response to the consultation:

- Information Commissioner's Office
- Law Society of Northern Ireland
- MindWise
- Northern Ireland Policing Board
- Open University
- Police Service of Northern Ireland
- Southern Health and Social Care Trust