

Have your say

The Department of Justice are amending the
Police and Criminal Evidence (Northern
Ireland) Order 1989 (PACE) Codes of Practice
We want your feedback!



This consultation begins on 25 July 2024.

This consultation ends on 16 October 2024.

Department of Justice
Safer Communities Directorate
10 May 2024

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1. Introduction

1.1 The Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE NI) is the legislation that gives the police the powers to investigate and tackle crime.

The legislation is supported by Codes of Practice (the Codes) which give police officers guidance on how to use those powers. The Codes also protect your rights if you are being investigated or are in police custody.

Background

1.2 The Department of Justice need to update the Codes because legislation has changed some of the police powers. The legislation was made in Westminster, in England and it applies across the United Kingdom. The legislation relates to terrorism and national security. Legislation such as:

- the Counter Terrorism and Border Security Act 2019 (CTBSA),
- the Police, Crime, Sentencing and Courts Act 2022 (PCSC Act) and
- the National Security Act 2023 (NSA).

Counter Terrorism and Border Security Act 2019 (CBTSA)

1.3 This legislation ensures that police have the powers they need to help keep us safe from the threat posed by terrorism and other countries that want to harm the United Kingdom. The Act introduced a change to Terrorism Act to ensure that the detention clock (the length of time you can be held in police custody before you are charged) should be suspended in the case of detainees who are admitted to hospital.

Police, Crime, Sentencing and Courts Act 2022 (PCSC)

1.4 This legislation introduced new police powers to improve the management of offenders who have been released on licence who have been convicted of terrorism or terrorism-connected offences.

National Security Act 2023 (NSA)



1.5 The NSA provides police with a set of tools and powers to tackle the threat from foreign countries may want to cause harm to the United Kingdom. Threats vary and can include offences like spying, disturbing political activity, spreading “fake news”, to more serious offences like kidnappings or murder.

The UK government wanted to ensure that the police had the following tools to assist with National Security investigations:

- Powers of search and seizure.
- Powers of arrest.
- Powers to help with financial and property investigations.
- The introduction of a state threats prevention and investigation measure.
- Ensuring the Detention clock requirements are similar to terrorism legislation.

1.6 The DOJ tries to keep as many changes it makes to the PACE Codes in NI as similar as possible to changes already made to the PACE codes in England and Wales. The DoJ has responsibility to update the Codes to support the Police in exercising those powers in Northern Ireland.

As part of this exercise, the DoJ has also taken the opportunity to ensure that the words and phrases contained within the Codes is up-to-date, consistent and reflects wider legislative changes.

2. Summary of Proposals

2.1 Codes A to H are being revised to reflect changes to the legislation made by Westminster. Code I is a new Code to support the National Security Act. The codes are as follows:

- Code A Stop and search
- Code B Search of premises and seizures
- Code C Detention, treatment and questioning of persons detained under PACE
- Code D Identification of persons
- Code E Audio recording of suspect interviews
- Code F Visual recording with sound of suspect interviews
- Code G Power of Arrest
- Code H Persons detained under terrorism provisions
- Code I Persons detained under national security provisions

2.2 At the front of each Code there is a table setting out the changes we plan to make to the Code. New text is shown in purple text highlighted in grey and deletions are shown as black text with lines through it and highlighted in green.

2.3 The following amendments have been made to all relevant Codes:

- the terms 'mentally disordered or otherwise mentally vulnerable' have been replaced with the term 'vulnerable person'.
- any reference to 'legal representative' has been replaced with 'solicitor'.
- terms relating to police number, police service number, or warrant or other identification number have been amended to 'police identification number'.
- the purpose of the 'Notes for Guidance' has been updated for consistency across the Codes.
- references to 'notebooks' have been extended to include 'electronic devices'.
- the list relating to who the Codes of Practice should be readily available for consultation at police stations has been updated for consistency across the Codes.

3. Policy Proposals

3.1 The DoJ proposes to make amendments to Codes A to H and introduce a new Code I. The power to make these amendments are contained in Section 65 of PACE NI. These drafts are being circulated for consultation in accordance with section 66(1) of PACE NI.

3.2 Code A (Stop and Search)



The National Security Act introduced a new measure called the ‘State Threats Prevention and Investigation Measure’ (STPIM). The changes made to Code A are similar to the changes made when the ‘Terrorism Prevention and Investigation Measures’ (TPIMs) were introduced.

The amendments provide guidance for police officers to ensure that officers must have a genuine and reasonable suspicion that if they search someone, they will find an object and that they can explain the basis for their suspicion.

The amendments outline that stop and search powers are based on the likelihood that the person is in possession of an item for which they may be searched, and not that the person concerned is suspected of committing an offence in relation to the object of the search.

The amendments detail that officers **must** have a description of the person to be searched and this cannot rely on protected characteristics for example race or religion. Searches based on recent accurate information are more likely to be successful. Searches based on reasonable grounds for suspicion based on behaviour, time and location may also be effective but must be justified.

A change to Code A means that an officer does not have to give their name in enquiries linked to national security. This is the same as terrorism investigations. This is to protect the officer in case the person they are investigating wants to do them harm.

The Code advises that if the conditions set out in the Code are not followed any evidence obtained from a search may be challenged.

Tell us what you think – Do you have any views on the proposed changes to Code A, Stop and Search? Please give reasons for your answer providing evidence where possible.

3.3 Code B (Search of premises and seizures)

The National Security Act has replaced parts of the Official Secrets Act 1911 to provide powers of search and seizure for the police where there is reasonable suspicion that a relevant act (set out in the National Security Act) has been, or is about to be, committed.

The police need to have the powers to effectively investigate national security threats. The search and seizure powers contain the same protections as other search powers, including greater protections around the searching of confidential material.

Code B offers guidance relating to powers contained within terrorism legislation, as there is an overlap between the search and seizure powers contained within the Terrorism Act and the National Security Act.

The amendments to Code B also reflect changes made by the National Security Act to the Terrorism Act. The Terrorism Act already lets a police officer of at least the rank of superintendent authorise an urgent premises search, which would normally require a court, to issue the search warrant when the case is one of great emergency and immediate action is necessary. However, the updates ensure that if the police want to keep confidential journalistic material that they seized as part of an urgent premises search in relation to a terrorist investigation they must get permission from a judge.

The Code also clarifies the appropriate judge who can authorise various search warrants.

Tell us what you think - 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.

3.4 Code C (Detention, treatment and questioning)

Code C does not apply if the person is detained under Section 27 of the National Security Act or under Schedule 3 to the Counter Terrorism and Border Security Act. They are protected by Code H for terrorism and Code I for national security.



The main changes to Code C, which have also been made to Code H, allow an interpreter to be based at a different location to the person being interviewed, unless the interpreter needs to be in the same room to protect the fairness of the proceedings. The interpreter and the person being interviewed can communicate by live link (a video call).

Additional information relating to voluntary suspect interviews has been added. The amendments set out the rights, entitlements and safeguards that apply and the procedure to be followed for a voluntary interview to take place.

The changes will help the suspect realise that a voluntary interview is just as serious and important as being interviewed after being arrested.

There are some general updates on the following rights and entitlements for detainees as set out below:

Gender

There is new guidance on establishing the gender of persons for the purposes of searching.

There is also guidance on the possible needs of transgender individuals requiring period products and other personal, health, hygiene and welfare support.

Appropriate Adults

The list of who can or cannot be an appropriate adult has been updated. There is guidance about informing the appropriate adult of their duties. There is also guidance on the removal of an appropriate adult if they prevent proper questioning.

Health, Hygiene and Welfare

Amendments to the Code include additional information that should be included on the notice of rights available to all detainees. This includes information on personal health, hygiene and welfare.

There is a requirement for female detainees to be asked if they require period products while they are in custody.

Clarification has been provided to ensure that if a detainee is required to remove their clothes as part of a search, there will be proper regard to their dignity, sensitivity and vulnerability.

A girl under the age of 18 should be under the care of a woman whilst detained in a police station (as far as is practicable).

Strip Searching

The guidance in relation to strip searching has been restructured to help clarify the requirements for appropriate adults to be present for strip searches of juveniles and vulnerable persons.

Tell us what you think - 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.

3.5 Code D (Identification of persons)

An amendment has been made to ensure that Code D does not apply to the taking of photographs, fingerprints, skin impressions, body samples or impressions from people arrested under Section 27 of the National Security Act. This is the same approach taken by terrorism legislation.

A change to Code D means that an officer does not have to give their name in enquiries linked to national security. This is the same as terrorism investigations. This is to protect the officer in case the person they are investigating wants to do them harm.

A new paragraph has been added to clarify the power to take fingerprints without consent when a constable reasonably suspects a person of committing or attempting to commit an offence and they don't know the suspect's name.

Eye-witness and witness identification procedures have been updated to take account of significant changes and developments in case law and police practice.

Revised provisions clarify that the Identification Officer can:

- use 'historic' images of the suspect.
- regulate the presence of solicitors at witness viewings.

- 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 also clarified.

Tell us what you think - 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.

3.6 Codes E and F (Audio and audio-visual recording of suspect interviews)



The content and format of Codes E and F have been changed to provide clearer guidance with the aim of achieving more effective and efficient recording of interviews, with improved protections for suspects and the police.

A new Annex has been added to Code E that defines the four indictable offence types which allow the interviewer, to decide to make a written note of a voluntary interview not held in a police station.

The changes to Code E have been replicated in Code F and set out the requirements that apply solely for the purpose of making a visual recording with sound.

Tell us what you think –

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.

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.

3.7 Code G (Power of Arrest)

Code G has been reviewed and updated for consistency with the other Codes. Two things have been updated. The first is that designated persons must have regard to any relevant provisions of the Codes and the second is that any references to notebooks also include electronic devices.

Tell us what you think - 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.

3.8 Code H (Detention – Terrorism)

The proposed changes to Code H are similar to those made in Code C with regards to the protections relating to vulnerable adults.

The other changes mainly reflect changes to legislation that have been made by the UK Government at Westminster. In summary these changes include:

Counter Terrorism and Border Security Act 2019 (CBTSA)

- an amendment to specify that on first being detained a detainee must be informed of their rights to inform a named person of their detention and consult a solicitor.
- the requirement in certain exceptional circumstances, to consult their solicitor in the sight and hearing of another officer, has been replaced with a requirement whereby a senior officer can, in exceptional circumstances, require the detainee to consult a different solicitor of the detainee's choosing.
- an amendment that the terrorism detention clock should be suspended if the detainee is admitted to hospital.
- the introduction of powers to stop, question, search and detain a person at UK ports and the Northern Ireland border area for the purpose of determining whether the person appears to be someone who is, or has been, engaged in hostile state activity.

PCSC Act

- Introduction of a new power of urgent arrest. The power enables the police to arrest a terrorist offender without a warrant, who is suspected to have breached their licence conditions, if it is considered necessary to detain them for the purposes of protecting the public from a terrorism risk until a licence recall decision can be made.
- Clarification for the police on the length of time for which the offender on licence can be detained and their rights when being detained, including to have one person (who they choose) informed of their whereabouts and their right to consult and communicate privately with a solicitor.
- A terrorist offender who is detained under this new power must be released if:

- a) a decision is made to not revoke the offender's licence (they are not recalled to prison), as soon as possible after the decision is made; or
- b) a recall decision has not been within 12 hours beginning with the time of the arrest.

Tell us what you think - 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.

3.9 New Code I (Detention, treatment and questioning by police of persons in detention - NSA)

New Code I supports the National Security Act and is based closely on Code H. It provides guidance for police on how suspects should be treated in custody, such as the rights that a suspect has and that they must be informed of them when they are arrested.

Under terrorism legislation, police have increased powers to enable early disruption and investigation of acts of terrorism and terrorist-related activity. PACE Code I reflects the same enhanced powers and tools that the police have been provided with for terrorism investigations.

- The National Security Act introduced new arrest and detention powers. A police officer may arrest and detain, without warrant, anyone who a police officer reasonably suspects is, or has been, involved in foreign power threat activity, as defined in the National Security Act. The new Code will govern the detention, treatment and questioning of individuals arrested under the new power.
- The National Security Act contains rules on the treatment and rights of individuals in detention. Longer detention periods are available to reflect the complex nature of these types of investigations. There are rules on the taking and holding of biometric data (fingerprints, DNA samples and physical data). Various protections are included to

ensure that there is oversight on the use of these powers, either by officers not involved in the investigation or by a judge.

- The National Security Act requires that any interview by a police officer, of a person detained under the legislation must be video recorded with sound in accordance with a code of practice (published by the Home Office).

Tell us what you think – Is the new Code I appropriate to cover investigations into state threats under the National Security Act? Please give reasons for your answers providing evidence where possible.

4. Responding to this consultation

4.1 This consultation is open to everyone and is particularly relevant to anyone who is involved in or interested in the operation of PACE NI. This consultation is about the guidance provided in the Codes on how the police can use their powers rather than the actual powers already passed in law.

4.2 The consultation will run for a 12 week period from **Thursday 25 July 2024**. All responses should be submitted **by midnight on Wednesday 16 October 2024**.

The Department asks that responses to this consultation are made through the Citizen Space portal:

<https://consultations.nidirect.gov.uk/doj/revision-of-pace-ni-codes-of-practice>

4.3 Please do not provide any personally identifiable information (for example, names, dates, and locations) in your answers.

5. Enquiries

5.1 Please submit any enquiries by email: PACEConsultation@justice-ni.gov.uk

5.2 If you have any concerns about the way this consultation process has been handled, you should send them to: Governance.Unit@justice-ni.gov.uk

6. Next steps

6.1 The consultation period will end on 16 October 2024. We will consider the responses to this consultation and modify the draft Codes if appropriate.

6.2 The Codes will be laid in the Northern Ireland Assembly following the negative resolution procedure.