



Department of
Justice

An Roinn Dlí agus Cirt

Máinnystrie O tha Laa

www.justice-ni.gov.uk

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

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) and its associated Codes of Practice (the Codes) are vital parts of the framework of legislation providing the police with the powers they need to tackle and investigate crime. The Codes support PACE NI by providing guidance on the use of the powers it confers on the police and safeguards for the rights of individuals under investigation and/or detained in police custody. The Codes broadly mirror the PACE Codes in England and Wales. The Department of Justice (DoJ) is responsible for issuing new and revised Codes in Northern Ireland.

Background

1.2 The last major review of the Codes was carried out in 2015. Since then, police powers in Northern Ireland have been revised by various pieces of Westminster 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).

CBTSA

1.3 The CTBSA ensures that law enforcement and intelligence agencies have the powers they need to help keep the country safe from the threat posed by terrorism and hostile state activity. The Act introduced minor changes, including reflecting a change made to TACT that has given effect to a recommendation made by Lord Anderson, a former Independent Reviewer of Terrorism Legislation (IRTL), that the detention clock should be suspended in the case of detainees who are admitted to hospital.

PCSC Act

1.4 The PCSC Act introduced new police powers to improve the management of offenders on licence who have been convicted of terrorism or terrorism-connected offences. These powers were created in response to recommendations made by Jonathan Hall QC, the IRTL, following his independent review of the Multi-Agency Protection Arrangements used to supervise terrorist and terrorist-risk offenders on licence. The review was commissioned following the terrorist attack at Fishmongers' Hall in London in November 2019.

NSA

1.5 The NSA overhauls state threats legislation and provides law enforcement and intelligence agencies with an enhanced set of tools and powers to tackle the evolving threat of hostile activity by states. Threats vary and include espionage, foreign

interference in the political system, sabotage, disinformation, cyber operations and assassinations or kidnappings. The NSA obtained Royal Assent on 11 July 2023.

State threat actors are often highly trained operatives who seek to do harm to UK national security and in some circumstances even pose a threat to the life of those of who live in the UK.

The UK government wanted to ensure that the police have the tools required to:

- a) enable them to further investigate individual's behaviour and links to foreign powers;
- b) preserve evidence;
- c) analyse highly sophisticated behaviours (including the use of encrypted devices); and
- d) charge the individual.

During the passage of the national security legislation through Westminster, Parliament accepted the case for specific investigative powers and the NSA makes provision for:

- powers of search and seizure.
- powers of arrest.
- financial and property investigation powers.
- state threats prevention and investigation measures.
- updated references to the detention clock considering amendments in the NSA to specify that time initially detained under another arrest power will count towards the section 41 detention clock.
- updated references to the detention clock considering amendments in the NSA to make clear that the detention clock does not start to run when an individual is arrested in hospital, provided they are not being questioned for the purpose of obtaining relevant evidence.
- updates to references to detention under paragraphs 36 and 37 of Schedule 8 to TACT.
- the insertion of references to the temporary extension of total time permitted in detention under Schedule 8 to TACT if the emergency power in paragraph 38 of Schedule 8 to TACT is in force.

1.6 Many of the provisions within PACE NI replicate changes already made to the Police & Criminal Evidence Act 1984 (PACE E&W) and its supporting Codes, which provides the legislative framework in England & Wales.

Although most of the changes are a result of excepted policy matters (e.g. national security, including terrorism), which are the responsibility of the Westminster government, the onus is on the DoJ to update the Codes to support the Police Service of Northern Ireland (PSNI) in exercising those powers in Northern Ireland. As part of this exercise, the DoJ has also taken the opportunity to ensure terminology contained within the Codes is up-to-date, consistent and reflects wider legislative changes.

2. Summary of Proposals

2.1 This consultation provides details of the proposed changes to Codes A to H, and the introduction of new Code I (Detention, treatment and questioning by police of persons in detention under national security provisions).

Codes A to H are being revised broadly to reflect changes to primary legislation made by Westminster in the CTBSA and the PCSC Act. Code I is a new Code which is required to support the NSA.

- 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 detailed table setting out all the changes within the Code. For ease of reference, additions to the codes are purple text highlighted in grey and deletions are shown as black text struck through and highlighted in green.

2.3 The following amendments have been made throughout all Codes:

- the terms 'mentally disordered or otherwise mentally vulnerable' are 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 Article 65 of PACE NI. These drafts are being circulated for consultation in accordance with Article 66(1) of PACE NI.

3.2 Code A (Stop and Search)

Although the NSA does not include a statutory power of stop and search, changes to Code A are required to govern how searches of individuals subject to a State Threats Prevention and Investigation Measure (STPIM) should be carried out. These changes mirror the existing provisions in Code A for the equivalent terrorism measures, Terrorism Prevention and Investigation Measures (TPIMs).

The amendments include a new paragraph regarding searches under specified purposes relating to TPIM and STPIM provisions.

The amendments introduce new reasonable grounds for suspicion tests that stipulate that officers must have a genuine and reasonable suspicion that they will find an object and that they can explain the basis for their suspicion.

The amendments outline that stop and search powers depend 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 set out that officers must have a description of the person to be searched and this cannot rely on protected characteristics i.e. race or religion etc. Searches based on accurate and current intelligence or information are more likely to be effective. Reasonable grounds for suspicion based on behaviour, time and location may also be effective but must be justified.

The changes to PACE Code A also exempt an officer having to give their name in the case of enquiries linked to national security. This mirrors the approach currently taken towards terrorism investigations.

A new paragraph has been added that includes a stipulation that evidence obtained from a search to which this Code applies may be open to challenge if the provisions of this Code are not observed.

3.3 Code B (Search of premises and seizures)

This Code has been updated to reflect the introduction of the NSA and amendments made to the Terrorism Act 2000 (TACT).

The NSA has replaced Section 9 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 has been, or is about to be, committed. Relevant acts are defined as certain offences under the NSA as well as certain serious threats or acts.

It is vital, in creating a suite of new offences, that the police and other agencies have the powers to effectively investigate the harms the NSA is seeking to address. In creating the search and seizure powers, they needed to contain the same strong safeguards that apply to other modern search powers, including enhanced protections around the gathering of confidential material.

Code B offers guidance explicitly relating to powers contained within terrorism legislation, as there is a substantial overlap between search and seizure powers contained within TACT and the NSA. This Code has been updated to include references to the new search and seizure powers contained within the NSA. The revisions largely replicate those already contained in the Code for similar powers.

The amendments also reflect changes made by the NSA to Schedule 5 to TACT. Schedule 5 already allows a police officer of at least the rank of superintendent to give authorisation for an urgent premises search, which would otherwise require a search warrant issued by the court, where the case is one of great emergency and immediate action is necessary.

The updates reflect amendments, which require judicial authorisation through a warrant if the police wish to retain confidential journalistic material seized during an urgent premises search for the purposes of a terrorist investigation. This change to Schedule 5 ensures additional protection for sensitive journalistic material and is in line with equivalent provisions in the NSA.

The amendments also include clarification regarding the appropriate judicial tiers for authorising various search warrants.

3.4 Code C (Detention, treatment and questioning)

This Code has been updated to include references to the CTBSA and the NSA.

The changes to Code C make clear that the Code does not apply to a detained person if they are in custody as a result of being detained under Section 27 of the NSA or under Schedule 3 to the CTBSA. Individuals detained under these powers are dealt with in their own separate Codes of Practice (Codes H for terrorism and Code I for national security) and therefore are not covered by Code C.

The main changes to Code C, which are mirrored in Code H, concern live-link interpretation. The purpose is to enable interpretation services to be provided by interpreters based at remote locations using live-link communication technology. This mirrors amendments made in E&W on the right to interpretation and translation in

criminal proceedings, which allows live-link interpretation unless the interpreter's physical presence is necessary to safeguard the fairness of the proceedings.

The amendments also include additional information regarding voluntary suspect interviews. The amendments set out the rights, entitlements and safeguards that apply and the procedure to be followed when arranging for the voluntary interview to take place. The changes take account of concerns that suspects might not realise that a voluntary interview is just as serious and important as being interviewed after being arrested.

There is also a general updating of the rights and entitlements for detainees including the following:

Gender

There is new guidance on establishing the gender of persons for the purposes of searching. There is new guidance on the possible needs of transgender individuals requiring menstrual products and other personal, health, hygiene and welfare support.

Appropriate Adults

The list of who may or may not act as an appropriate adult has been updated. There is also new guidance regarding informing the appropriate adult of their duties and 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, including information on personal health, hygiene and welfare, and a requirement for female detainees to be asked if they require menstrual products while they are in custody.

Clarification has been added to ensure that when the removal of a detainee's clothes is required, there will be proper regard to their dignity, sensitivity and vulnerability and that 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 juveniles and vulnerable persons.

3.5 Code D (Identification of persons)

This Code has been updated to include references to the CTBSA and the NSA.

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 NSA. This mirrors the approach taken by the equivalent terrorism detention powers.

The changes to Code D also exempt an officer having to give their name in the case of enquiries linked to national security. This mirrors the approach currently taken towards terrorism investigations. This change is to protect police officers from being obliged to reveal their identity to highly trained state actors who may seek to use such knowledge against them.

A new paragraph has been added to clarify the position regarding the power to take fingerprints without consent when a police officer 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 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.

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

Significant changes to the content and format of Codes E and F are proposed which introduce a revised approach to the audio (Code E) and visual recording (Code F) of suspect interviews. These provide for clarity, consistency and more effective and efficient recording of interviews, with improved safeguards 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 as the 'relevant officer', to decide to make a written record of a voluntary interview elsewhere than a police station.

For Code F, the changes to Code E are mirrored by setting out the requirements that apply exclusively for the purpose of making a visual recording with sound.

3.7 Code G (Power of Arrest)

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

3.8 Code H (Detention – Terrorism)

The proposed changes to Code H mirror those in Code C regarding the safeguards relating to vulnerable adults described in Code C proposals.

Other changes primarily reflect changes to primary legislation that have been made by the CTBSA, the PCSC Act and the NSA. In summary these changes include:

CTBSA

- Section 17 of the CTBSA amended provisions in Schedule 8 to TACT 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.
- Section 17 also replaced provisions in Schedule 8, which would enable a senior officer, in certain exceptional circumstances, to direct that the detainee has to consult their solicitor in the sight and hearing of another officer with one whereby a senior officer can, in these exceptional circumstances, require the detainee to consult a different solicitor of the detainee's choosing.
- Section 18 of the CTBSA amended Section 41 of, and Schedule 7 to, TACT that the detention clock should be suspended in the case of detainees who are admitted to hospital.
- Section 22 of, and Schedule 3 to, the CTBSA created 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

- Section 184 of the PCSC Act created new Section 43B in TACT, which is a new power of urgent arrest. The power enables the police to arrest without warrant a terrorist (or terrorism-connected) offender, who is suspected to have breached their licence conditions, when it is considered necessary to detain them for the purposes connected with protecting the public from a terrorism risk until a recall decision is made.
- The updates to Code H ensure that there is clarity for the police on the length of time for which the offender on licence can be detained under Section 43B and their rights upon first being detained, including to have one named person

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, unless recalled or otherwise detained under any other power, be released if:
 - a) a recall decision is made not to revoke the offender's licence (and accordingly the offender is not recalled to prison), as soon as practicable after that decision is made; or
 - b) a recall decision has not been made by the end of the relevant period, at the end of that period, which in relation to terrorist offenders who have been released on licence under the law of Northern Ireland is 12 hours beginning with the time of the arrest.

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

New Code I supports the provisions of the NSA 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 upon arrest.

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

- The NSA introduces new arrest and detention powers (Section 27 and Schedule 6), whereby a police officer may arrest and detain, without warrant, anyone who the police officer reasonably suspects is, or has been, involved in foreign power threat activity, as defined in the NSA. The new Code will govern the detention, treatment and questioning of individuals arrested under that power.
- Schedule 6 of the NSA contains provisions regarding treatment of individuals in detention and the rights of individuals. It includes the availability of longer detention periods to reflect the complex nature of state threats investigations and the taking and retention of biometric data which covers fingerprints, DNA samples and physical data. Various safeguards are included to ensure that there is oversight on the use of these powers, including reviews of detention by officers independent of the investigation and the involvement of judicial authorities in authorising further detention.
- Paragraph 3 of Schedule 6 requires that any interview by a police officer, of a person detained under Section 27 must be video recorded with sound in accordance with a code of practice (published by the Home Office).

4. Impact Assessments

Equality

4.1 Section 75 of the Northern Ireland Act 1998 requires public authorities, in carrying out their functions relating to Northern Ireland, to have due regard to the need to promote equality between all the Section 75 groups. The Department has carried out an Equality Impact Assessment (EQIA) screening exercise prior to the launch of this consultation. The purpose of this screening was to identify those policies that are likely to have an impact on equality of opportunity and/or good relations impacts associated with updating the Codes.

4.2 The provisions of the Codes set out the safeguards and rights for those detained in custody and include provisions to meet the Section 75 needs across the various categories. While some proposed amendments have a minor impact on groups, these impacts are positive, as outlined in this document. Engagement with stakeholders to date has not identified any equality implications with the operation of the existing Codes.

4.3 The Equality Screening of the impact of the proposals in this consultation is available from the Department's website at [Consultation on Codes of Practice issued under the Police and Criminal Evidence Northern Ireland Order 1989 | Department of Justice \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk/consultation-on-codes-of-practice-issued-under-the-police-and-criminal-evidence-northern-ireland-order-1989)

At this point, we do not consider that a full EQIA is required. Following the conclusion of this consultation, we will review the screening exercise to assess the consultation responses to make sure the initial assessment of the proposals remains accurate.

Data Protection

4.4 The Department have carried out a Data Protection Impact Assessment (DPIA) screening when considering the drafting of these regulations. As these draft regulations do not require the Department to process individual's personal information a full DPIA has been screened out.

Rural Communities

4.5 The Department considered a Rural Needs Impact Assessment as part of the implementation of these proposed regulations. It identified that there would be no significant adverse or differential impact on people living in rural communities compared with those in an urban setting.

5. Responding to this consultation

5.1 This consultation is open to everyone and is particularly relevant to anyone who is involved in or interested in the operation of PACE NI. The consultation is in respect of the guidance provided in the Codes on the exercise of PACE powers rather than the actual powers already passed in law.

5.2 We would welcome answers to the following questions:

- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- Is the new draft Code I appropriate to cover investigations into state threats under the NSA? Please give reasons for your answers providing evidence where possible.

5.3 The consultation will run for a 12 week period from **Thursday 25 July 2024**. All responses should be submitted **by midnight 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>

5.4 The Department requests that you do not provide any personally identifiable information (for example, names, dates, and locations) in your answers.

Enquiries

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

5.6 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

Alternative Formats

5.7 An electronic version of this document is available from the Department's website:

[Consultation on Codes of Practice issued under the Police and Criminal Evidence Northern Ireland Order 1989 | Department of Justice \(justice-ni.gov.uk\)](#)

5.8 If it would assist you to access the document in an alternative format or language other than English, please contact PACEConsultation@justice-ni.gov.uk for assistance.

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.

7. Privacy, Confidentiality and Access to Consultation Responses

7.1 For this consultation, all responses may be published except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity may be published. Email addresses and telephone numbers will be removed from responses; but apart from this, they will be published in full. For more information about how personal data is handled please see the DoJ consultation privacy notice¹.

7.2 Your response, and all other responses to this consultation, may also be disclosed on request in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR); however, all disclosures will be in line with the requirements of the Data Protection Act 2018 (DPA) and the General Data Protection Regulation (GDPR) (EU) 2016/679.

7.3 If you want the information that you provide to be treated as confidential it would be helpful if you could explain why you regard the information you have provided as confidential. This will form part of the consideration if the Department should receive a request for the information under the FOIA or EIR.

¹ The DoJ Consultation Privacy Notice is attached at Annex A

Privacy Notice – Consultations (DoJ)

Data Controller Name: Department of Justice (DoJ)

Address: Knockview Buildings, Stormont, BELFAST, BT4 3SG

Email: PACEConsultation@justice-ni.gov.uk

Data Protection Officer Name: DoJ Data Protection Officer

Telephone: (028) 90378617

Email: DataProtectionOfficer@justice-ni.gov.uk

Being transparent and providing accessible information to individuals about how we may use personal data is a key element of the [Data Protection Act \(DPA\)](#) and the [EU General Data Protection Regulation](#) (GDPR). The Department of Justice (DoJ) is committed to building trust and confidence in our ability to process your personal information and protect your privacy.

Purpose for processing

We will process personal data provided in response to consultations for informing the development of our policy, guidance, or other regulatory work in the subject area of the request for views. We may publish a summary of the consultation responses and, in some cases, the responses themselves but these will not contain any personal data. We will not publish the names or contact details of respondents but will include the names of organisations responding.

If you have indicated that you would be interested in contributing to further Department work on the subject matter covered by the consultation, then we might process your contact details to get in touch with you.

Lawful basis for processing

The lawful basis we are relying on to process your personal data is Article 6(1) (e) of the GDPR, which allows us to process personal data when this is necessary for the performance of our public tasks in our capacity as a Government Department.

We will only process any special category personal data you provide, which reveals racial or ethnic origin, political opinions, religious belief, health, disability or sexual life/orientation when it is necessary for reasons of substantial public interest under Article 9(2) (g) of the GDPR, in the exercise of the function of the Department, and to monitor equality.

How will your information be used and shared?

We process the information internally for the above stated purpose. For the time that we are processing this data, it will be held on a secure IT system and access to it will be controlled. We do not intend to share your personal data with any third party. Any specific requests from a third party for us to share your personal data with them will be dealt with in accordance with the provisions of the data protection laws.

How long will we keep your information?

We will retain consultation response information until our work on the subject matter of the consultation is complete, and in line with the Department's approved Retention and Disposal Schedule [DoJ Retention & Disposal Schedule](#).

What are your rights?

- You have the right to obtain confirmation that your data is being [processed, and access to your personal data](#)
- You are entitled to have personal data [rectified if it is inaccurate or incomplete](#)
- You have a right to have personal data erased and to prevent processing, [in specific circumstances](#)
- You have the right to 'block' or suppress processing of personal data, [in specific circumstances](#)
- You have the right to data portability, [in specific circumstances](#)
- **You have rights in relation to [automated decision making and profiling](#)**

How to complain if you are not happy with how we process your personal information

If you wish to request access, object, or raise a complaint about how we have handled your data, you can contact our Data Protection Officer using the details above.

If you are not satisfied with our response or believe we are not processing your personal data in accordance with the law, you have the right to lodge a complaint with the Information Commissioner's Office (ICO):

Information Commissioner's Office

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 0303 123 1113

Email: casework@ico.org.uk

<https://ico.org.uk/global/contact-us/>