

INTRODUCTION

In March 2006 the Northern Ireland Office issued the draft Police and Criminal Evidence (Amendment) (Northern Ireland) Order and associated Codes of Practice for public consultation.

2. The draft Order and Codes of Practice are the outcome of a review of Police and Criminal Evidence (PACE) in Northern Ireland announced by the Government in February 2004. The purpose of the review was to bring the PACE provisions in Northern Ireland more into line with those in England and Wales and to provide police officers in Northern Ireland with equivalent powers to those available to police officers in England and Wales.

3. Copies of the Order and Codes were sent to 150 interested and representative organisations, key stake-holders and individuals. A further 175 letters were issued informing the remaining groups on the statutory public consultation list that the documents were available on the NIO website.

4. A total of 19 responses were received however not all of these were substantive. A list of those who responded is attached at Annex A. The comments detailed in the summary of responses have not been attributed to any organisation, stake-holder or individual.

5. You can obtain copies of this report and the consultation documents from www.nio.gov.uk or from:

Police Powers Unit
Room B4.25
Castle Buildings
Stormont
Belfast
BT4 3SG

E-mail: policepowers@nio.x.gsi.gov.uk

SUMMARY OF VIEWS EXPRESSED IN RELATION TO SPECIFIC ISSUES

The consultation paper asked for comments in relation to the content of the draft Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2006 and associated Codes of Practice. The responses received are summarised below:

1. Seventeen year olds.

Seven of the nineteen respondents raised concerns relating to the position of 17 year olds under PACE. Their comments focused on the disparity between the extension of the youth justice system to 17 years olds under the Justice (NI) Act 2002 and their continued treatment as adults under PACE. Several responses stated that this was in contravention of both domestic law (Criminal Justice (Children) (NI) Order 1998 and Justice (NI) Act 2002) and international standards (e.g. United Nations Convention on the Rights of the child, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)) which define children as anyone up to the age of 18 years. It was generally felt that, in order to ensure 17 year olds are afforded the same protections provided to juveniles, the definition of a juvenile within the Order and Codes of Practice should be changed to state that a juvenile is anyone aged 18 or under.

This issue was also raised in relation to equality as it was felt that the policy could have a substantial direct adverse impact on young people aged 17 years, as they are currently excluded from the safeguards and protections afforded to children under PACE, including the presence of an appropriate adult during police interviews.

It was, however, recognised that defining 17 year olds as juveniles under PACE would have practical implications, particularly in relation to the need for more suitable police detention cells and access to appropriate adult provision.

2. Section 75 issues.

Six respondents were concerned that the initial Section 75 screening of the Order and Codes had indicated that a full Equality Impact Assessment was not required. They felt that the issues covered by the Order and Codes had the potential to have a negative adverse impact on a number of the groups specified in Section 75 of the Northern Ireland Act 1998, in particular, young males.

It was also suggested that the introduction of Article 35 of the Order, aimed at providing the Secretary of State with the power to carry out limited consultation before issuing a code of practice or any revision of a code, would result in a direct breach of the Department's equality scheme commitments.

3. Arrest Provisions

Three respondents commented on the proposals to change the current arrest provisions.

It was felt that the introduction of a power of arrest based on the concept of 'necessity' could give rise to uncertainty and inconsistency. Children's groups, in particular, were concerned that giving officers the power to arrest for a minor offence could lead to a higher number of arrests of children and young people and it was suggested that a system should be put in place to monitor and review the number of people arrested.

4. Appropriate Adults

Four respondents expressed a number of differing views and concerns in relation to Appropriate Adults. Code C has been amended to state that a solicitor cannot act as an appropriate adult where as previously, under PACE in Northern Ireland, they could do so. The amendment to the code seeks to bring it into line with England and Wales, where a solicitor is not permitted to take on this role. A number of respondents expressed support for this change however one group was concerned that it may result in some young persons (who previously had the legal adviser acting as the appropriate adult) failing to receive the protection that the legal adviser provides.

Other issues raised in relation to appropriate adult provision concerned clarification of their role, including who is best placed to take it on, and their training and appointment.

5. Stop and Search Powers

One respondent opposed the proposal to provide the police with an additional power to stop and search a person or vehicle to seize prohibited fireworks.

6. Lowering of Authorisation Levels

Two respondents were concerned at the proposal to lower the authorisation level for the taking of an intimate sample, a non-intimate sample without consent, and the carrying out of an intimate search from Superintendent to Inspector. One group felt the authorisation level should be increased while the other emphasised the importance of ensuring that Inspectors are given appropriate training on its application.

7. Fingerprints

Two respondents expressed concern that the power to take fingerprints from a detained person without their consent, for the purposes of confirming their identity, could be abused.

It was suggested that Article 27 of the Order, which provides for fingerprints to be taken at places other than a police station, had not been counterbalanced with adequate safeguards and guidelines to ensure that there was no contamination or misidentification in these cases.

8. Photographs

Two respondents commented on the proposal to provide police with the power to take photographs elsewhere than in a police station. One was opposed to the proposal while the other felt it undermined the safeguards which exist to protect the rights of suspects.

9. Search Warrants

Three of the responses highlighted concerns regarding the proposals to extend the range of search warrants available to the police. They were concerned at the seemingly open ended nature of the multiple entry and all premises warrants. The extension of the duration of a search warrant from one month to three months also gave cause for concern.

10. Detention Reviews

Two respondents felt that the introduction of telephone and video conferencing reviews of detention could lead to it becoming a mere administrative task rather than a considered process and that it would not provide the detainee with the same safeguards offered by the officer being there in person.

11. Other Comments

(a) Retention of Images – concern was expressed at the extension of provisions relating to the taking and retaining of visual images of suspects.

(b) Use of Force – one respondent expressed concern that the codes provided for the use of reasonable force.

(c) Names / Accountability – one group commented that, in the interests of accountability, the names of individual officers should be disclosed in all cases.

(d) Removal of face masks - whilst it was acknowledged that face coverings could be used as a method of disguise in both criminal and public disorder scenarios, there was concern that face and head coverings used for religious reasons may be perceived to fall into this category.

(e) Legal Advice – it was suggested that Code C should put greater emphasis on the need for the custody officer to strongly recommend to juveniles, in particular, their right to seek legal advice and that this can be quickly and efficiently arranged.

(f) Record of property - the Codes of Practice no longer require police officers to keep a record of all property a detainee has with them when they come into custody. It was suggested that this could lead to detainee's property going missing or false allegations of theft being made against a police officer.

CONCLUSION

As a result of the comments received during public consultation, a number of changes have been made to both the draft Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2006 and the associated Codes of Practice. Details of these changes are attached at Annex B.

A further Section 75 re-screening of the proposals has been carried out and the relevant documentation is available on the Northern Ireland Office website at www.nio.gov.uk.

List of Respondents

Ballymena Borough Council

British Irish Rights Watch

Equality Commission for Northern Ireland

Children's Law Centre

Committee on the Administration of Justice

Extern

Include Youth

Institute of Criminology and Criminal Justice, Queen's University Belfast

Legal Services Commission

Northern Health and Social Services Board

Northern Ireland Association for the Care and Rehabilitation of Offenders

Northern Ireland Commissioner for Children and Young People

Northern Ireland Lay Magistrates Association

Northern Ireland Policing Board

Police Ombudsman for Northern Ireland

Police Service of Northern Ireland

Police Service of Northern Ireland (Training)

Sinn Fein

Superintendents Association for Northern Ireland

PROPOSED AMENDMENTS TO THE DRAFT POLICE & CRIMINAL EVIDENCE (AMENDMENT) (NORTHERN IRELAND) ORDER 2006

<p>Powers to stop and search</p>	<p>Amendments to Article 4(4); 4(7) and 5(6)(b) of Police & Criminal Evidence (Northern Ireland) Order 1989 – change police number to police name.</p>
<p>Duties of custody officer before charge</p>	<p>Amend Article 38(14) of the 1989 to change the definition of an "arrested juvenile" from a person arrested with or without a warrant who appears to be under the age of 17 to a person who appears to be under the age of <u>18</u>.</p>
<p>Codes of Practice: Supplementary</p>	<p>Omit Article 35 of draft Amendment Order.</p>

**PROPOSED AMENDMENTS TO THE DRAFT PACE
CODES OF PRACTICE.**

Code A	Code of Practice for the exercise by police officers of the statutory powers of stop and search.
3.6	Amended to read 'Where on reasonable grounds it is considered necessary to conduct a more thorough search (e.g. by requiring a person to take off a T-shirt), this must be done out of public view, for example, in a police van unless paragraph 3.7 applies, or a police station if there is one nearby. (See Note 6). Any search involving the removal of more than an outer coat, jacket, gloves, headgear or, where the search is under section 45(3) of the Terrorism Act 2000, footwear, or any other item concealing identity, may only be made by an officer of the same sex as person searched and may not be made in the presence of anyone of the opposite sex unless the person being searched specifically requests it. See Notes 4, 7 & 8.
Note 16	At the end of the paragraph add 'In such cases a description of the vehicle should be given.'
Code B	Code of Practice for searches of premises by police officers and the seizure of property found by police officers on persons or premises.
1.3A	Add new paragraph, 1.3A 'When carrying out searches, police officers should be aware of the need to act without discrimination on the grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender, or disability'.
Code C	Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers.
Note 1AA	Add new Note for Guidance, 1AA 'On arrival at the police station, the appropriate adult should be provided with written guidance as to their role'.
Note 6J	Add new Note for Guidance, 6J 'Where the detainee is a juvenile, the Custody Officer should emphasise their right to and the importance of legal advice and that such legal advice can be made available quickly'.
11.1B	Add new paragraph, 11.1B 'A detained person may not be interviewed in connection with any offence(s) for which he has been arrested unless detention has authorised by the custody officer in respect of each offence'.
16.1A	Add new paragraph, 16.1A 'The nature of the charge to be preferred and the actual charging of the detained person shall be at the direction of the investigating officer. The custody officer's responsibility is to ensure that he has before him sufficient evidence for the person to be charged and that the investigating officer complies with the charging procedure'.
Annex E	First line of paragraph 11 amended to read: 'If the custody officer decides to charge...'
Code D	Code of Practice for the Identification of Persons by Police Officers.
1.1A	Add new paragraph, 1.1A 'This Code of Practice does not apply to persons arrested or detained under the Terrorism Act 2000.'
1.8	Add new paragraph, 1.8 'When conducting any of the identification procedures outlined in this Code of Practice, police officers should be aware of the need to act without discrimination on the grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender, or disability'.
2.1	Omit 'and other places designated for the detention of persons under Section 41 or Schedule 7 of the Terrorism Act 2000'.
2.17	Omit paragraph 2.17 (iii).
2.18	Amended to read 'Nothing in this Code requires the identity of officers or police staff to be recorded or disclosed if the officers or police staff reasonably believe recording or disclosing their names might put them in danger. In these cases, they shall use their police identification numbers and the name of their police

	station. See Note 2C'.
Code E	Code of Practice on Audio Recording of Interviews with Suspects.
1.2A	Add new paragraph 1.2A, 'When conducting interviews with suspects, police officers should be aware of the need to act without discrimination on the grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender, or disability'.
Code F	Code of Practice on Visual Recording with Sound of Interviews with Suspects.
1.8	Add new paragraph 1.8, 'When conducting interviews with suspects, police officers should be aware of the need to act without discrimination on the grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender, or disability'.
Code G	Code of Practice for the Statutory Power of Arrest by Police Officers.
1.2A	Add new paragraph 1.2A, 'When exercising the power of arrest, police officers should be aware of the need to act without discrimination on the grounds of religious belief or political opinion, racial group, age, marital status, sexual orientation, gender, or disability'.