



Northern  
Ireland  
Office

Draft Police and Criminal Evidence  
(Amendment) (Northern Ireland) Order  
2006 and associated Draft Codes of  
Practice.

## Summary of Responses to Public Consultation.

Comments on this document are invited and should  
be made to the following address by 13 November  
2006:

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## 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](http://www.nio.gov.uk) or from:

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## **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](http://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><b>Powers to stop and search</b></p>	<p>Amendments to Article 4(4); 4(7) and 5(6)(b) of Police &amp; Criminal Evidence (Northern Ireland) Order 1989 – change police number to police name.</p>
<p><b>Duties of custody officer before charge</b></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><b>Codes of Practice: Supplementary</b></p>	<p>Omit Article 35 of draft Amendment Order.</p>

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

<b>Code A</b>	<b>Code of Practice for the exercise by police officers of the statutory powers of stop and search.</b>
<b>3.6</b>	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.
<b>Note 16</b>	At the end of the paragraph add 'In such cases a description of the vehicle should be given.'
<b>Code B</b>	<b>Code of Practice for searches of premises by police officers and the seizure of property found by police officers on persons or premises.</b>
<b>1.3A</b>	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'.
<b>Code C</b>	<b>Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers.</b>
<b>Note 1AA</b>	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'.
<b>Note 6J</b>	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'.
<b>11.1B</b>	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'.
<b>16.1A</b>	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'.
<b>Annex E</b>	First line of paragraph 11 amended to read: 'If the custody officer decides to charge...'
<b>Code D</b>	<b>Code of Practice for the Identification of Persons by Police Officers.</b>
<b>1.1A</b>	Add new paragraph, 1.1A 'This Code of Practice does not apply to persons arrested or detained under the Terrorism Act 2000.'
<b>1.8</b>	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'.
<b>2.1</b>	Omit 'and other places designated for the detention of persons under Section 41 or Schedule 7 of the Terrorism Act 2000'.
<b>2.17</b>	Omit paragraph 2.17 (iii).
<b>2.18</b>	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'.
<b>Code E</b>	<b>Code of Practice on Audio Recording of Interviews with Suspects.</b>
<b>1.2A</b>	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'.
<b>Code F</b>	<b>Code of Practice on Visual Recording with Sound of Interviews with Suspects.</b>
<b>1.8</b>	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'.
<b>Code G</b>	<b>Code of Practice for the Statutory Power of Arrest by Police Officers.</b>
<b>1.2A</b>	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'.



Northern  
Ireland  
Office

**Section 75 screening of the  
proposed amendments to the  
Draft Police and Criminal  
Evidence (Amendment)  
(Northern Ireland) Order  
2006 and associated Draft  
Codes of Practice.**

Comments on this document are invited and should  
be made to the following address by 13 November  
2006:

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# PACE SCREENING FORM

## Background

Under Section 75 of the Northern Ireland Act 1998, the organisation is required to have due regard to the need to promote equality of opportunity:

- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- between men and women generally;
- between persons with a disability and persons without; and,
- between persons with dependants and persons without.

Without prejudice to the obligations set out above, the organisation is also required to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

## Screening

The screening procedure should lead to one of two conclusions:

- The policy being screened does not have a significant impact on equality of opportunity and therefore does not require an EQIA
- The policy being screened has (or is likely to have) a significant impact on equality of opportunity and may require an EQIA.

## **Scoping the Policy**

### **Title of Policy:**

Draft Police & Criminal Evidence (Amendment) (Northern Ireland) Order 2006 and Revised Codes of Practice.

### **Brief Description:**

In February 2004, the then Security Minister announced a review of the Police and Criminal Evidence (PACE) legislation and Codes of Practice aimed at bringing police powers in Northern Ireland more into line with those already available to police officers in England and Wales. The review involved detailed analysis of the Police and Criminal Evidence (Northern Ireland) Order 1989 against the current provisions within the PACE Act 1984, in addition to a line by line review and revision of the associated Codes of Practice. This review was conducted in conjunction with representatives from the Police Service of Northern Ireland. The draft Order and Codes were then issued for a 12 week public consultation on 23 March 2006, based on a preliminary screening of the policy which indicated that a full Equality Impact

Assessment was not required. A total of 19 responses were received from consultees, and a number of issues were raised. These included specific concerns with regard to, amongst other things, the new arrest provisions and the continued treatment of seventeen year olds as adults under PACE. In addition, a number of respondents raised concerns that a full Equality Impact Assessment had not been carried out on the proposals. In response to comments received, a number of revisions have now been made to the draft Order and Codes of Practice to address the section 75 concerns raised. Consequently, it will be necessary to re-screen the policy taking into consideration the changes made as well as the feedback received during the initial period of consultation.

**Policy Aim:**

To review and revise, where appropriate, the draft Police & Criminal Evidence (Amendment) (Northern Ireland) Order 2006 and Codes of Practice in response to specific concerns raised during public consultation.

**Who defines or defined the policy?**

PACE in Northern Ireland broadly mirrors PACE in England and Wales. When the Police and Criminal Evidence (Northern Ireland) Order 1989 was first introduced it replicated, in the main, the provisions in England and Wales brought in some years earlier by the PACE Act 1984. Since then, PACE in Northern Ireland has traditionally replicated changes to PACE in England and Wales. Following a fundamental review of PACE carried out jointly by the Home Office and Cabinet Office in May 2002 and a further consultation paper entitled "Modernising police powers" in August 2004, significant changes were made to the PACE legislation in England & Wales, primarily by the Criminal Justice Act 2003 and the Serious Organised Crime and Police Act 2005. This also necessitated the revision of the codes of practice by the Home Office in April 2003, August 2004 and January 2006. The draft Order and Codes are the result of a review of PACE in Northern Ireland aimed at introducing corresponding changes to the 1989 Order and codes to provide police officers in Northern Ireland with the same powers as those available to their counterparts in England and Wales.

**Who implements the policy?**

The Police Service of Northern Ireland, Her Majesty's Revenue and Customs, and other agencies / organisations authorised to use the powers under PACE.

**[Answer only if applicable] Is the policy applied uniformly throughout the organisation? If NO, what are the consequences****Who are the main stakeholders in relation to the policy?**

The Northern Ireland community, those suspected of having committed an offence, Police Service of Northern Ireland, Public Prosecution Service, Northern Ireland Court Service, and the legal profession.

**What factors/forces could contribute/detract from the aim or implementation of the policy?**

Possible devolution of policing and justice functions in Northern Ireland. Further developments on PACE in England and Wales.

**How do we interface with other bodies in relation to implementation of this policy?**

Ongoing discussion and detailed consultations with the Police Service of Northern Ireland and other stakeholders with regard to the content of the legislation and codes of practice, including consideration of the implications for police training. In addition, there is regular communication with the Home Office in order to keep abreast of changes and developments in PACE in England and Wales.

**Which other policies are related to this policy?**

Any policies related to the criminal justice system.

**What data are currently available to facilitate the screening of this policy?**

Home Office / Cabinet Office PACE review 2002

Home Office Consultation Paper entitled 'Modernising police powers to meet community needs' August 2004.

Parliamentary debates/Home Office papers on introduction of changes to PACE provisions in England and Wales.

Report by Katie Quinn and John Jackson (Queen's University, Belfast) entitled "The detention and questioning of young persons by the police in Northern Ireland."

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## Screening the Policy

### **Answering the Four Screening Questions**

The four questions ask for evidence in relation to the Section 75 dimensions. You should not think of the “don’t know” column in the form as the easy option to respond to any of the questions. In cases where you don’t know and you don’t have data, you will need to make a judgement based on experience as to whether the policy you are screening may have an impact on any of the nine dimensions. If your judgement is that the policy may have a differential adverse impact in relation to any of the Section 75 dimensions (i.e. it affects some groups differently and less favourably than other groups), you should seek to obtain evidence. You should note that evidence can be qualitative – i.e. drawn from the experience of individuals from their perspective - as well as quantitative. Officers must give consideration to steps that they could reasonably be expected to take to obtain evidence and thereby inform their decision-making. Such steps could include meeting with a representative group or selective consultation.

**Where there is little or no evidence, and common sense indicates that a differential impact may be expected, you should discuss this with the Equality Officer.**

### **1. Is there any evidence of higher or lower participation or uptake by different groups?**

	Yes	No	Not known
Religious belief	√		
Political opinion	√		
Racial group	√		
Age	√		
Marital status	√		
Sexual orientation			√
Gender	√		
Disability		√	
Dependancy	√		

Please comment:

Data suggest that those who become involved with the Criminal Justice system have certain demographic features associated with seven of the nine s.75 categories. In particular, the policy is more likely to affect young, single men without dependents although the government cannot be held directly accountable for demographic trends and crime patterns. In relation to those aspects of the code which relate to individuals suspected of involvement in the commission of a terrorist offence, those affected are, by definition, likely to have particular political opinions and religious beliefs. However, we are confident at this time that the procedures associated with

PACE, as outlined, will ensure that those detained will be treated in a fair and equitable manner.

**2. Do different groups have different needs, experiences, issues and priorities in relation to this policy issue?**

	Yes	No	Not known
Religious belief	√		
Political opinion	√		
Racial group	√		
Age	√		
Marital status	√		
Sexual orientation			√
Gender	√		
Disability	√		
Dependancy	√		

Please comment:

The nature of the policy requires that it deals with people with widely varying needs and circumstances including those who may have physical disabilities, be mentally disordered or otherwise mentally vulnerable, unable to read or speak, have difficulty with written English, or those who have yet to reach the age of majority. In reviewing and revising the Order and Codes of Practice, careful consideration has been given to ensuring that all police powers are used fairly, responsibly, and without discrimination on the grounds of any of the Section 75 categories. The Government recognises that vulnerable groups, particularly children, require additional safeguards and protections when police exercise their powers with regard to the detention, treatment and questioning under PACE and has put in place specific provisions to deal with such situations.

**3. Have consultations with relevant groups, organisations or individuals indicated that policies of this type create problems that are specific to them?**

	Yes	No
Religious belief		
Political opinion		
Racial group		
Age	√	
Marital status		
Sexual orientation		

Gender		
Disability		
Dependancy		

Please comment:

At an earlier stage we consulted with over 300 individuals and groups on a preliminary screening of the policy. A total of nineteen responses were received, with some suggesting that the policy had an adverse impact on 17 year olds because of the Government's intention to continue to treat this age group as adults under PACE.

**4. In relation to implementing this policy, is there an opportunity to better promote equality of opportunity or good relations by altering the policy or by working with others in Government or in the larger community?**

**Yes**

**No**

**Please elaborate:**

The draft Order will now contain a provision that will amend PACE to treat 17 year olds as children and thereby afford the additional safeguards and protections that this group requires. This is a clear statement of intent by the Government to align PACE with the current treatment of 17 years under the Youth Justice system in Northern Ireland and international conventions which define children as anyone under the age of 18 years. Commencement of this provision and consequential changes to the codes of practice will be dependent on having the infrastructure in place to afford the necessary safeguards and protections that the treatment of children under PACE requires. The Government is committed to taking a programme of work forward that will allow the implementation of this change at the earliest opportunity.

Furthermore, the Government accepts that proposals within the draft Order to limit the extent of consultation required when considering the issue or revision of codes of practice is in breach of our s.75 commitment to consult widely. The revised Order will remove these provisions.

**5. With reference to Questions 1 to 4 please summarise how you believe the policy may impact on the organisation's obligation to have due regard to the need to promote equality of opportunity.**

The PACE Order and Codes will apply equally to all members of the community. By considering the section 75 groups throughout the policy development process and again following the initial consultation, we are confident that we have met the organisation's obligation to have due regard to the need to promote equality of opportunity.

**6. What data do you believe will be required to ensure effective monitoring of the policy following implementation?**

It will be necessary to collate data relating to the nine s.75 categories for all those who are subject to specific provisions in PACE (e.g. those searched, those who are arrested, and individuals detained in police custody). An Equity Monitoring policy is currently being developed and following on from this, a system will be put in place to monitor the impact of the policy in relation to the nine s.75 categories.

**7. In the context of Question 3 are there any relevant groups which you believe should be consulted at this time? Please specify**

A number of responses were received to the initial consultation however, as stated previously, the only s.75 category raised was 'Age', specifically in relation to the impact of the policy on young people. As a result, we felt it would be prudent to consult again with all of the groups invited to comment during the initial public consultation exercise.

**8. Any other comments on the policy and/or screening exercise?**

The majority of the amendments which have been made to the PACE Order and Codes replicate those made to the equivalent legislation and codes in England and Wales. However, much consideration was given to the changes and how they would apply in the Northern Ireland context, and as a result a number of amendments were made. The policy was initially screened and issued for public consultation. Based on the responses received from consultees, a number of further amendments were made and it was felt that it would be appropriate to re-screen the proposals at this stage in order to address some of the concerns raised. The PACE legislation and

codes of practice will be the subject of an ongoing process of policy development, with section 75 issues being considered throughout this process.

**9. On the basis of answers to Questions 1 to 4 above (and in particular positive answers), do you recommend that the policy should be subjected to a full impact assessment?**

**Yes**

**No**

Please elaborate

This re-screening of the policy aims to address the s.75 concerns raised during the initial consultation. We believe the changes proposed by the Government to the draft Order and codes will negate the need for a full equality impact assessment. The impact of the policy will be monitored and reviewed and if it becomes apparent that there are adverse impacts we will commit to a full equality impact assessment at that time.

**N.B. If an EQIA is recommended, please continue overleaf.**

**If an EQIA is not recommended, please sign and date this form and ensure that the reason for not recommending is made clear.**

**Screened by: Orla Wiegleb**

**Date: 10/09/2006**

**Screened by: Gary Dodds**

**Date: 10/09/2006**

**Screened by: Wallace Thompson**

**Date: 10/09/2006**