



DISCLOSURE: CODES OF PRACTICE A CONSULTATION DOCUMENT

Introduction

This consultation document invites views from interested parties on two Codes of Practice on Disclosure. The texts and accompanying material can be downloaded from www.nio.gov.uk. The consultation exercise particularly affects criminal investigators and prosecutors, but will also be of interest to persons representing the interests of defendants and witnesses, and those involved more generally in the investigation or prosecution of criminal offences.

Annexes

This consultation document should be read in conjunction with the annexes, as follows:

- Annex A: Text of a revised Code of Practice under section 23(1) of the Criminal Procedure and Investigations Act 1996, showing proposed changes from the existing version;
- Annex B: Commentary on the proposed changes to the existing Code of Practice under section 23(1) of the Criminal Procedure and Investigations Act 1996;
- Annex C: Text of, and commentary on a new Defence Witness Interview Code under section 21A(1) of the Criminal Procedure and Investigations Act 1996.

Revision of the “General Code”

The arrangements for prosecution and defence disclosure in advance of criminal proceedings are set out in the Criminal Procedure and Investigations Act 1996. This legislation is supported by a Code of Practice, which sets out the manner in which police officers are to record, retain and reveal to the prosecutor material obtained in a criminal investigation and which may be relevant to the investigation. In this consultation paper, the Code of Practice under the 1996 Act, and the amended version of it proposed in this paper, is referred to as the “General Code”.

Part 5 of the Criminal Justice Act 2003, when implemented, will amend the disclosure provisions of the Criminal Procedure and Investigations Act 1996. As a result of those changes, it will be necessary to make certain technical amendments to the General Code. For example, some of the terminology in the

existing General Code will no longer be apt when the 2003 Act is in force. The 2003 Act abolishes the concepts of “primary” and “secondary” prosecution disclosure, both of which feature in the General Code. Amendments to the Code are proposed to take account of this. In addition, it is intended to make a number of other amendments to the General Code, whether to clarify its meaning, address difficulties encountered by the practitioners in its operation, take account of technological change, or otherwise.

For ease of reference, a copy of the revised General Code, showing additions to the current version of this Code in **underlined bold text** and deletions in **~~striketrough bold text~~**, is to be found at Annex A.

All the proposed changes to the General Code are listed and discussed separately in the commentary at Annex B, which identifies the relevant paragraphs of the existing version of the Code to be amended, the proposed amendments, and the reasons for them.

The “Defence Witness Interview Code”

Section 34 of the Criminal Justice Act 2003 inserts a new section 6C into the Criminal Procedure and Investigations Act 1996 which requires the defence to disclose, in advance of the trial, all witnesses it intends to call at the trial. It was agreed during the passage of the 2003 Act that interviews conducted by police officers with defence witnesses disclosed under the new arrangements should be governed by a Code of Practice (in this consultation, referred to as the “Defence Witness Interview Code”). The enabling powers for the new Code of Practice are found in section 23A(1) of the Criminal Procedure and Investigations Act 1996, as added by section 40 of the Criminal Justice Act 2003.

The draft of this new Code of Practice attached at Annex C builds on an earlier indicative version produced for Parliament during the passage of the 2003 Act. Additions to the earlier indicative draft of the Code are shown in **underlined bold text** and deletions in **~~striketrough bold text~~**.

The purpose of each paragraph of the Defence Witness Interview Code, and any changes made to the earlier indicative version are explained in a commentary, which is also to be found in the document at Annex C.

Purpose of the consultation

The purpose of this consultation exercise is to obtain the views of interested parties on the proposed changes to the General Code, and on the new Defence Witness Interview Code.

Consultation is a statutory requirement before either of these Codes of Practice can be made or amended. Under section 25 of the Criminal Procedure and Investigations Act 1996, before a revised General Code is laid before Parliament, the Secretary of State must publish it in the form of a draft and consider any representations made to him about it. He may modify the draft accordingly. Furthermore, under section 21A(4) of the Criminal Procedure and Investigations

Act 1996, before the new Defence Witness Interview Code is laid before Parliament, the Secretary of State must consult, in relation to Northern Ireland, the Chief Constable of the Police Service of Northern Ireland, the General Council of the Bar of Northern Ireland, and the Law Society of Northern Ireland.

The two Codes of Practice are subject to slightly different statutory consultation procedures. The legislation specifies certain persons whom the Secretary of State must consult before laying the Defence Witness Interview Code before Parliament. The enabling powers for the General Code are not prescriptive in this way. It has been decided that, despite these differences, the subject matter of the two Codes of Practice affects the same interests and the same persons and bodies are being consulted about both.

Summary of main questions on which views are invited

Views on any aspect of the proposed changes to the General Code, and on the new Defence Witness Interview Code, are welcome, particularly if it is considered that any ground which should have been covered in the drafts has been overlooked. More specifically, views are sought on the questions highlighted in the commentaries on the codes at [Annexes B and C](#) and listed below.

General Code Questions

Questions on paragraph 2 of the code

- Question 1: Do you consider that the new wording of paragraph 2 indent 8 of the code will achieve the objective of enabling the police to retain only material which may be relevant to an investigation?
- Question 2: Do you consider that there is another way of ensuring that only material which may be relevant to an investigation is retained and, if so, what is it?

Question on paragraph 5 of the code

- Question 3: Do you consider that the safeguard of giving notice to the accused or convicted person before material is retained in the form of a copy and the original is disposed of is sufficient and, if not, in what should the safeguard consist?

Defence Witness Interview Code Question

Question on paragraph 2 of the code

- Question 1: Do you agree with the assessment that it is acceptable for a defendant who is otherwise unrepresented to be represented solely for the purpose of being represented at a police interview with a defence witness?

The consultation process

This consultation exercise is being conducted in line with the Cabinet Office Code of Practice on written consultation. The main criteria are set out at the end of this paper. A consultation process such as this normally allows twelve weeks for comment and in this instance the standard period is being adhered to. Comments are invited by **5 November 2004**; time constraints may mean that it is not possible to take account of representations received after that date. It is intended to publish a summary of responses on the website mentioned in the first paragraph above by **31 December 2004**].

The information you send to us will be published in a summary of responses received in response to this consultation. We will assume that you are content for us to do this, and that if you are replying by e-mail, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system, unless you specifically include a request to the contrary in the main text of your submission to us.

Those being consulted

In accordance with the statutory requirements relating to the Defence Witness Interview Code, the following persons or bodies are being consulted:

- The Chief Constable of the Police Service of Northern Ireland
- General Council of the Bar of Northern Ireland
- Law Society of Northern Ireland.

The following interested persons or bodies are additionally being consulted:

- Criminal Bar Association
- Lord Chief Justice of Northern Ireland
- Attorney General of Northern Ireland
- Director Northern Ireland Court Service
- Northern Ireland Resident Magistrates Association
- Professional Judiciary
- Council of HM County Court Judges in Northern Ireland
- Northern Ireland Juvenile Courts Association
- Director of Public Prosecutions
- Department of Enterprise Trade and Investment
- Criminal Cases Review Commission
- Department of the Environment
- Department of Health, Social Services and Public Safety
- Probation Board for Northern Ireland
- PSNI Superintendents' Association
- Police Federation
- Victim Support Northern Ireland
- Northern Ireland Human Rights Commissioner
- Northern Ireland Policing Board

Consultation Coordinator

If you have any complaints or comments about the consultation process, you should contact the NIO consultation coordinator Julie Wilson by email at:

clbranch@nio.x.gsi.gov.uk

Alternatively, you may wish to write to:

Julie Wilson
Consultation Coordinator
Criminal Law Branch
Northern Ireland Office
G41 Massey House
Stoney Road
Belfast BT4 3SX

Responses

Comments should be sent (preferably by e-mail) by **5 November 2004** to:

Julie Wilson - Criminal Law Branch
Northern Ireland Office
G41 Massey House
Belfast BT4 3SX
Tel: 028 9052 7520
Fax: 028 9052 7507
E-mail: clbranch@nio.x.gsi.gov.uk

The consultation criteria

The Code of Practice on Written Consultation issued by the Cabinet Office recommends the following criteria:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.

5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full code of practice is available at: <http://www.cabinet-office.gov.uk/regulation/Consultation/introduction.htm>

**CRIMINAL PROCEDURE AND
INVESTIGATIONS ACT 1996**

(S.23(1))

**CODE OF PRACTICE (SHOWING
PROPOSED AMENDMENTS)**

Criminal Procedure and Investigations Act 1996

CODE OF PRACTICE UNDER PART II

Preamble

This code of practice is issued under Part II of the Criminal Procedure and Investigations Act 1996 ('the Act'). It sets out the manner in which police officers are to record, retain and reveal to the prosecutor material obtained in a criminal investigation and which may be relevant to the investigation, and related matters.

Introduction

- 1.1 This code of practice applies in respect of criminal investigations conducted by police officers which begin on or after the day on which this code comes into effect. Persons other than police officers who are charged with the duty of conducting an investigation as defined in the Act are to have regard to the relevant provisions of the code, and should take these into account in applying their own operating procedures.
- 1.2 This code does not apply to persons who are not charged with the duty of conducting an investigation as defined in the Act.
- 1.3 Nothing in this code applies to material intercepted in obedience to a warrant issued under section 2 of the Interception of Communications Act 1985 or section 5 of the Regulation of Investigatory Powers Act 2000, or to any copy of that material as defined in section 10 of the 1985 Act or section 15 of the 2000 Act.
- 1.4 This code extends only to Northern Ireland.

Definitions

2.1 In this code:

- a ***criminal investigation*** is an investigation conducted by police officers with a view to it being ascertained whether a person should be charged with an offence, or whether a person charged with an offence is guilty of it. This will include
 - investigations into crimes that have been committed;
 - investigations whose purpose is to ascertain whether a crime has been committed, with a view to the possible institution of criminal proceedings; and
 - investigations which being in the belief that a crime may have been committed, for example, when the police keep premises or

people under observation for a period of time, with a view to the possible institution of criminal proceedings;

- charging a person with an offence includes prosecution by way of a summons;
- an **investigator** is any police officer involved in the conduct of a criminal investigation, and includes any person designated as an investigating officer under section 30 of the Police (Northern Ireland) Act 2003. All investigators have a responsibility for carrying out the duties imposed on them under this code, including in particular recording information, and retaining records of information and other material;
- the **officer in charge of an investigation** is the police officer responsible for directing a criminal investigation. He is also responsible for ensuring that proper procedures are in place for recording information, and retaining records of information and other material, in the investigation;
- the **disclosure officer** is the person responsible for examining material retained by the police during the investigation; revealing material to the prosecutor during the investigation and any criminal proceedings resulting from it, and certifying that he has done this; and disclosing material to the accused at the request of the prosecutor;
- the **prosecutor** is the authority responsible for the conduct, on behalf of the Crown, of criminal proceedings resulting from a specific criminal investigation. Particular duties may in practice fall to individuals acting on behalf of the prosecuting authority;
- **material** is material of any kind, including information and objects, which is obtained in the course of a criminal investigation and which may be relevant to the investigation. This includes not only material coming into the possession of the investigator (such as documents seized in the course of searching premises) but also material generated by him (such as interview records);
- material may be **relevant to an investigation** if it appears to an investigator, or to the officer in charge of an investigation, or to the disclosure officer, that it has some bearing on any offence under investigation or any person being investigated;
- **sensitive material** is material, the disclosure of which, in the opinion of the disclosure officer, would give rise to a real risk of serious prejudice to an important public interest;
- references to **prosecution disclosure** are to the duty of the prosecutor under sections 3 and 7A of the Act to disclose material which is in his possession or which he has inspected in pursuance of this code, and which might reasonably be considered capable of undermining the case against the accused, or of assisting the case for the accused;

- references to the disclosure of material to a person accused of an offence includes references to the disclosure of material to his legal representative;
- references to a **police officer** are to a member of the Police Service of Northern Ireland or of the Police Service of Northern Ireland Reserve.

General Responsibilities

3.1 The functions of the investigator, the officer in charge of an investigation and the disclosure officer are separate. Whether they are undertaken by one, two or more persons will depend on the complexity of the case. Where they are undertaken by more than one person, close consultation between them is essential to the effective performance of the duties imposed by this code.

3.1A In any criminal investigation, one or more deputy disclosure officers may be appointed to assist the disclosure officer, and a deputy disclosure officer may perform any function of a disclosure officer as defined in paragraph 2.1.

3.2 The Chief Constable of the Police Service of Northern Ireland is responsible for putting in place arrangements to ensure that in every investigation the identity of the officer in charge of an investigation and the disclosure officer is recorded. The Chief Constable shall ensure that disclosure officers and deputy disclosure officers have sufficient skills and authority, commensurate with the complexity of the investigation, to discharge their functions effectively. An individual must not be appointed as a disclosure officer, or continue in that role, if it is likely to result in a conflict of interest, for instance, if the disclosure officer is the victim of the alleged crime which is the subject of the investigation. The advice of a more senior officer must always be sought if there is doubt as to whether a conflict of interest precludes an individual acting as the disclosure officer.

3.3 The officer in charge of an investigation may delegate tasks to another investigator, to civilians employed by the police force, or to other persons participating in the investigation under arrangements for joint investigations, but he remains responsible for ensuring that these have been carried out and for accounting for any general policies followed in the investigation. In particular, it is an essential part of his duties to ensure that all material which may be relevant to an investigation is retained, and either made available to the disclosure officer or (in exceptional circumstances) revealed directly to the prosecutor.

3.4 In conducting an investigation, the investigator should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect. What is reasonable in each case will depend on the particular circumstances. Where material is held on computer, it is a matter for the investigator to decide how many files on the computer it is reasonable to inquire into, and in what manner.

3.5 If the officer in charge of an investigation believes that the other persons may be in possession of material that may be relevant to the investigation,

and if this has not been obtained under paragraph 3.4 above, he should ask the disclosure officer to inform them of the existence of the investigation and invite them to retain the material in case they receive a request for its disclosure. The disclosure officer should inform the prosecutor that they may have such material. However, the officer in charge of an investigation is not required to make speculative enquiries of other persons: there must be some reason to believe that they may have relevant material. That reason may come from information provided to the police by the accused or from inquiries made or from some other source.

- 3.6 If, during a criminal investigation, the officer in charge of an investigation or disclosure officer for any reason no longer has responsibility for the functions falling to him, either his supervisor or the police officer in charge of criminal investigations must assign someone else to assume that responsibility. That person's identity must be recorded, as with those initially responsible for these functions in each investigation.

Recording of Information

- 4.1 If material which may be relevant to the investigation consists of information which is not recorded in any form, the officer in charge of an investigation must ensure that it is recorded in a durable, retrievable or readable form (whether in writing, on video or audio tape, or on computer disk).
- 4.2 Where it is not practicable to retain the initial record of information because it forms part of a larger record which is to be destroyed, its contents should be transferred as a true record to a durable and more easily-stored form before that happens.
- 4.3 Negative information is often relevant to an investigation. If it may be relevant, it must be recorded. An example might be a number of people present in a particular place at a particular time who state that they saw nothing unusual.
- 4.4 Where information which may be relevant is obtained, it must be recorded at the time it is obtained or as soon as practicable after that time. This includes, for example, information obtained in house-to-house enquiries, although the requirement to record information promptly does not require an investigator from a potential witness where it could not otherwise be taken.

Retention of material

(a) Duty to retain material

- 5.1 The investigator must retain material obtained in a criminal investigation which may be relevant to the investigation. Material may be photographed, video-recorded, captured digitally or otherwise retained in the form of a copy rather than the original, if the original is perishable; the

original was supplied to the investigator rather than generated by him and is to be returned to its owner; or the retention of a copy rather than the original is reasonable in all the circumstances.

5.1A Where it is proposed to retain material in the form of a copy on the grounds that to do so is reasonable in all the circumstances, the accused or convicted person must be afforded reasonable notice of the disposal of the original.

5.2 Where material has been seized in the exercise of the powers of seizure conferred by the Police and Criminal Evidence (Northern Ireland) Order 1989, the duty to retain it under this code is subject to the provisions on the retention of seized material in Article 24 of that Order.

5.3 If the officer in charge of an investigation becomes aware as a result of developments in the case that material previously examined but not retained (because it was not thought to be relevant) may now be relevant to the investigation, he should, wherever practicable, take steps to obtain it or ensure that it is retained for further inspection or for production in court if required.

5.4 The duty to retain material includes in particular the duty to retain material falling into the following categories, where it may be relevant to the investigation:

- crime reports (including crime report forms, relevant parts of incident report books or police officers' notebooks);
- custody records;
- records which are derived from tapes of telephone messages (for example 999 calls) containing descriptions of an alleged offence or offender;
- final versions of witness statements (and draft versions where their contents differ from the final version), including any exhibits mentioned (unless these have been returned to their owner on the understanding that they will be produced in court if required);
- interview records (written records, or audio or video tapes, of interviews with actual or potential witnesses or suspects);
- communications between the police and experts such as forensic scientists, and reports of work carried out by experts for the purposes of criminal proceedings;
- records of the first description of a suspect by each potential witness who purports to identify or describe the suspect, whether or not the description differs from that of subsequent descriptions by that or other witnesses.

5,4A The duty to retain material which may be relevant to the investigation also includes in particular the duty to retain the following categories of material which may satisfy the test for prosecution disclosure in the Act:

- information provided by an accused person which indicates an explanation for the offence with which he has been charged;
- any material casting doubt on the reliability of a confession;
- any material casting doubt on the reliability of a prosecution witness.
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5.5 The duty to retain material falling into these categories does not extend to items which are purely ancillary to such material and possess no independent significance (for example, duplicate copies of records and reports).

(b) *Length of time for which material is to be retained*

5.6 All material which may be relevant to the investigation must be retained until a decision is taken whether to institute proceedings against a person for an offence.

5.7 If a criminal investigation results in proceedings being instituted, all material which may be relevant must be retained at least until the accused is acquitted or convicted or the prosecutor decides not to proceed with the case.

5.8 Where the accused is convicted, all material which may be relevant must be retained until:

- the convicted person is released from custody, or discharged from hospital, in cases where the court imposes a custodial sentence or a hospital order;
- six months from the date of conviction, in all other cases.

If the court imposes a custodial sentence or hospital order and the convicted person is released from custody or discharged from hospital earlier than six months from the date of conviction, all material which may be relevant must be retained at least until six months from the date of conviction.

5.9 If an appeal against conviction is in progress when the release or discharge occurs, or at the end of the period of six months specified in paragraph 5.8, all material which may be relevant must be retained until the appeal is determined. Similarly, if the Criminal Cases Review Commission is considering an application at that point in time, all material which may be relevant must be retained at least until the Commission decides not to refer the case to the Court of Appeal, or until the Court determines the appeal resulting from the reference by the Commission.

5.10 Material need not be retained by the police as required in paragraph 5.8 if it is perishable, or is to be returned to its owner, or the disposal of the original is reasonable in all the circumstances..

Preparation of Material for Prosecutor

(a) Introduction

6.1 The officer in charge of the investigation, the disclosure officer or an investigator may seek advice from the prosecutor about whether any particular item of material may be relevant to the investigation.

6.2 Material which may be relevant to an investigation, which has been retained in accordance with this code, must be listed on a schedule.

6.3 Material which the disclosure officer does not believe is sensitive must be listed on a schedule of non-sensitive material. The schedule must include a statement that the disclosure officer does not believe the material is sensitive.

6.4 Any material which is believed to be sensitive must be either listed on a schedule of sensitive material or, in exceptional circumstances, revealed to the prosecutor separately. If there is no sensitive material, the disclosure officer must record this fact on a schedule of sensitive material.

6.5 Paragraphs 6.6 to 6.11 below apply to both sensitive and non-sensitive material. Paragraphs 6.12 to 6.14 apply to sensitive material only.

(b) Circumstances in which a schedule is to be prepared

6.6 The disclosure officer must ensure that a schedule is prepared in the following circumstances:

- the accused is the subject of a prosecution file in respect of an offence to be reported to the Director of Public Prosecutions;
- the accused is the subject of a prosecution file in respect of an offence which is not to be reported to the Director of Public Prosecutions and it is considered likely that the accused is likely to plead not guilty at a summary trial.

6.7 In respect of offences which are not to be reported to the Director of Public Prosecutions, a schedule may not be needed if a person has admitted the offence, or if a police officer witnessed the offence and that person has not denied it.

6.8 If it is believed that the accused is likely to plead guilty at a summary trial to an offence which is not to be reported to the Director of Public Prosecutions, it is not necessary to prepare a schedule in advance. If, contrary to this belief, the accused pleads not guilty at a summary trial, or the offence is to

be reported to the Director of Public Prosecutions, the disclosure officer must ensure that a schedule is prepared as soon as is reasonably practicable.

(b) *Way in which material is to be listed on schedule*

6.9 The disclosure officer should ensure that each item of material is listed separately on the schedule, and is numbered consecutively. The description of each item should make clear the nature of the item and should contain sufficient detail to enable the prosecutor to decide whether he needs to inspect the material before deciding whether or not it should be disclosed.

6.10 In some enquiries it may not be practicable to list each item of material separately. For example, there may be many items of a similar or repetitive nature. These may be listed in a block and described by quantity and generic title.

6.11 Even if some material is listed in a block, the disclosure officer must ensure that any items among that material which might meet the test for primary prosecution disclosure are listed and described individually.

(c) *Treatment of sensitive material*

6.12 Subject to paragraph 6.13 below, the disclosure officer must list on a sensitive schedule any material, the disclosure of which he believes would give rise to a real risk of serious prejudice to an important public interest, and the reason for that belief. The schedule must include a statement that the disclosure officer believes the material is sensitive. Depending on the circumstances, examples of such material may include the following among others:

- material relating to national security;
- material received from the intelligence and security agencies;
- material relating to intelligence from foreign sources which reveals sensitive intelligence gathering methods;
- material given in confidence;
- ;
- material relating to the identity or activities of informants, or under-cover police officers, or other persons supplying information to the police who may be in danger if their identities are revealed;
- material revealing the location of any premises or other place used for police surveillance, or the identity of any person allowing a police officer to use them for surveillance;

- material revealing, either directly or indirectly, techniques and methods relied upon by a police officer in the course of a criminal investigation, for example covert surveillance techniques, or other methods of detecting crime;
- material whose disclosure might facilitate the commission of other offences or hinder the prevention and detection of crime;
- ;
- material upon the strength of which search warrants were obtained;
- material containing details of persons taking part in identification parades;
- material supplied to an investigator during a criminal investigation which has been generated by an official of a body concerned with the regulation or supervision of bodies corporate or of persons engaged in financial activities, or which has been generated by a person retained by such a body;
- material supplied to an investigator during a criminal investigation which relates to a child or young person and which has been generated by a Health and Social Services Trust, an Area Child Protection Committee or other party contacted by an investigator during the investigation.

6.13 In exceptional circumstances, where an investigator considers that material is so sensitive that its revelation to the prosecutor by means of an entry on the sensitive schedule is inappropriate, the existence of the material must be revealed to the prosecutor separately. This will apply only where compromising the material would be likely to lead directly to the loss of life, or directly threaten national security.

6.14 In such circumstances, the responsibility for informing the prosecutor lies with the investigator who knows the detail of the sensitive material. The investigator should act as soon as is reasonably practicable after the file containing the prosecution case is sent to the prosecutor. The investigator must also ensure that the prosecutor is able to inspect the material so that he can assess whether it is disclosable and as such needs to be brought before a court for a ruling on disclosure.

Revelation of Material to Prosecutor

7.1 The disclosure officer must send the schedules to the prosecutor. Wherever practicable, this should be at the same time as he sends the file containing the material for the prosecution case (or as soon as is reasonably practicable after the decision on mode of trial or the plea, in cases to which paragraph 6.8 applies).

7.2 The disclosure officer should draw the attention of the prosecutor to any material an investigator has retained (including material not listed on a schedule and to which paragraph 6.13 applies) which may fall within the test for prosecution disclosure in the Act, and should explain why he has come to that view.

7.3 At the same time as complying with the duties in paragraphs 7.1 and 7.2, the disclosure officer must give the prosecutor a copy of any material which falls into the following categories (unless such material has already been given to the prosecutor as part of the file containing the material for the prosecution case):

-
- information provided by an accused person which indicates an explanation for the offences with which he has been charged;
- any material casting doubt on the reliability of a confession;
- any material casting doubt on the reliability of a prosecution witness;
- any other material which the investigator believes may fall within the test for prosecution disclosure in the Act.

7.4 If the prosecutor asks to inspect material which has not already been copied to him, the disclosure officer must allow him to inspect it. If the prosecutor asks for a copy of material which has not already been copied to him, the disclosure officer must give him a copy. However, this does not apply where the disclosure officer believes, having consulted the officer in charge of an investigation, that the material is too sensitive to be copied and can only be inspected.

7.5 If material consists of information which is recorded other than in writing, whether it should be given to the prosecutor in its original form as a whole, or by way of relevant extracts recorded in the same form, or in the form of a transcript, is a matter for agreement between the disclosure officer and the prosecutor.

Subsequent Action by Disclosure Officer

8.1 At the time a schedule of non-sensitive material is prepared, the prosecutor may not have given advice about the likely relevance of particular items of material. Once these matters have been determined, the disclosure officer must give the prosecutor, where necessary, an amended schedule ;listing any additional material:

- which may be relevant to the investigation,
- which is not already listed on the schedule, and
- which he believes is not sensitive,

unless he is informed in writing by the prosecutor that the prosecutor intends to disclose the material to the defence.

8.2 After a defence statement has been given, the disclosure officer must look again at the material which has been retained and must draw the attention of the prosecutor to any material which might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the accused; and he must reveal it to him in accordance with paragraphs 7.4 and 7.5 above.

8.3 Section 7A of the Act imposes a continuing duty on the prosecutor, for the duration of criminal proceedings against the accused, to disclose material which meets the tests for disclosure (subject to public interest considerations). To enable him to do this, any new material coming to light should be treated in the same way as earlier material.

Certification by Disclosure Officer

9.1 The disclosure officer must certify to the prosecutor that to the best of his knowledge and belief, all material which has been retained and made available to him has been revealed to the prosecutor in accordance with this code. He must sign and date the certificate. It will be necessary to certify not only at the time when the schedule and accompanying material is submitted to the prosecutor, and when material which has been retained is reconsidered after the accused has given a defence statement, but also whenever a schedule is otherwise given or material is otherwise revealed to the prosecutor.

Disclosure of Material to Accused

10.1 If material is not already been copied to the prosecutor, and he requests its disclosure to the accused on the grounds that:

- it falls within the test for prosecution disclosure, or
- the court has ordered its disclosure after considering an application from the accused,

the disclosure officer must disclose it to the accused.

10.2 If material has been copied to the prosecutor, and it is to be disclosed, whether it is disclosed by the prosecutor or the disclosure officer is a matter for agreement between the two of them.

10.3 The disclosure officer must disclose material to the accused, wither by giving him a copy or by allowing him to inspect it. If the accused person asks for a copy of any material which he has been allowed to inspect, the disclosure officer must give it to him, unless in the opinion of the

disclosure officer that is either not practicable (for example because the material consists of an object which cannot be copied, or because the volume of material is so great), or not desirable (for example because the material is a statement by a child witness in relation to a sexual offence).

- 10.4 If material which the accused has been allowed to inspect consists of information which is recorded other than in writing, whether it should be given to the accused in its original form or in the form of a transcript is a matter for the discretion of the disclosure officer. If the material is transcribed, the disclosure officer must ensure that the transcript is certified to the accused as a true record of the material which has been transcribed.
- 10.5 If a court concludes that an item of sensitive material satisfies the prosecution disclosure test and that the interests of the defence outweigh the public interest in withholding disclosure, it will be necessary to disclose the material if the case is to proceed. This does not mean that sensitive documents must always be disclosed in their original form: for example, the court may agree that sensitive details still requiring protection should be blocked out, or that documents may be summarised, or that the prosecutor may make an admission about the substance of the material under section 2 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968

ANNEX B

CRIMINAL PROCEDURE AND INVESTIGATIONS ACT 1996

REVISION OF “GENERAL CODE”

PROPOSED AMENDMENTS

<u>Paragraph</u>	<u>Proposed amendment</u>	<u>Reason</u>
Preamble	Add Preamble as follows: “This code of practice is issued under Part II of the Criminal Procedure and Investigations Act 1996 (‘the Act’). It sets out the manner in which police officers are to record, retain and reveal to the prosecutor material obtained in a criminal investigation and which may be relevant to the investigation, and related matters.	Practitioners in England and Wales have suggested a short Preamble on the purpose of the Code.
Introduction		
1.1	Omit first sentence and replace “It” at the beginning of the second sentence with: “This code of practice...”.	This change is consequential upon the Preamble.
1.3	After “1985” add “or section 5 of the Regulation of Investigatory Powers Act 2000” and for “that Act” substitute “the 1985 Act or section 15 of the 2000 Act”.	This amendment takes account of the enactment of the Regulation of Investigatory Powers Act 2000 since the code was issued.

Definitions		
2.1		
Indent 3	At the end of the first sentence, add “, and includes any person designated as an investigating officer under section 30 of the Police (Northern Ireland) Act 2003”.	This extension of the definition of an “investigator” takes account of the new power in the Police (Northern Ireland) Act 2003 for persons to be designated as “investigating officers”.
Indent 6	Amend the first sentence to read as follows. “— the <i>prosecutor</i> is the authority responsible for the conduct, on behalf of the Crown, of criminal proceedings resulting from a specific criminal investigation.”	To make it clear that “the prosecutor”, for the purposes of the code of practice, means a particular prosecuting authority. Problems have arisen in practice where “the prosecutor” has been interpreted by the courts as meaning all authorities conducting prosecutions on behalf of the Crown and as a result, one prosecuting authority has been held to be in constructive possession of, and has been asked to produce material in the possession of another. However, in reality, and under the code of practice as amended by this new wording, one authority prosecuting offences on behalf of the Crown is a third party to another and normally has no knowledge of the other’s activities. It is not reasonable, therefore, for courts to order the Director of Public Prosecutions, for example, to produce material which is in the possession of HM Customs but not the DPP. In this situation, the order should be addressed to Customs direct. The change makes this clear.
Indent 7	Add at end: “This includes not only material coming into the possession of the investigator (such as documents seized in the course of searching premises) but also material generated by him (such as interview records).”	This further gloss on the word “material” sits more comfortably here in the definitional paragraph 2 than in paragraph 5.1 of the code, where it is currently located. The gloss makes it clear that material “obtained” in an investigation includes material generated by investigators.
Indent 8	Remove the words from “or to the surrounding circumstances” on.	The removal of the words specified is intended to clarify the wording of this definition and, more importantly, to reduce the amount of material which investigators are required to retain under the code of practice.

	<p>In essence, the current definition contains two elements. The first requires material to be retained if it appears to have some bearing on an offence or person under investigation or a case in general. The second allows material to be discarded only where it is incapable of having any impact on a case. Together, these add up to an overall obligation to retain all material other than that which is incapable of having any impact on a case – which could cover anything. In practice, the definition is interpreted as requiring virtually all material generated by an investigation to be retained.</p> <p>This requirement represents a growing burden for investigators, particularly in an age of investigations of ever increasing complexity. One also needs to bear in mind that material must be retained until, for example, any prison sentence imposed on a suspect’s eventual conviction has been served, which may be years after the investigation has come to an end. The basic question that needs to be addressed, therefore, is – how much material should investigators be required to retain?</p> <p>The answer, as proposed in the new definition, is that material should be retained only where it appears to the investigator, officer in charge or disclosure officer that it has some bearing on an offence or person under investigation, rather than where it is not incapable of having any impact on a case. This will ensure that material which may be relevant is still retained, whereas the large amount of extraneous material required to be retained by the present definition can be discarded.</p> <p>Question 1: Do you consider that the new wording of paragraph 2 indent 8 of the code will achieve the objective of enabling the police to retain only material which may be relevant to an investigation?</p> <p>Question 2: Do you consider that there is another way of ensuring that only material which may be relevant to an investigation is retained and, if so, what</p>
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		is it?
Indent 9	Replace with: “— sensitive material is material, the disclosure of which, in the opinion of the disclosure officer, would give rise to a real risk of serious prejudice to an important public interest”.	This change takes account of the House of Lords case of <i>R v. H & C</i> [2004] 2 W.L.R. 335, which places strict limitations on the kind of material that may be withheld from the defence on public interest grounds. In addition, a requirement in the present code to consult the officer in charge of an investigation about sensitive material has been removed. Disclosure officers can routinely make decisions on sensitive material without the need to consult the officer in charge.
Indent 10	Replace with: “— references to <i>prosecution disclosure</i> are to the duty of the prosecutor under sections 3 and 7A of the Act to disclose material which is in his possession or which he has inspected in pursuance of this code, and which might reasonably be considered capable of undermining the case against the accused, or of assisting the case for the accused;”.	This change takes account of the Criminal Justice Act 2003, which replaces the current, differently defined, primary and secondary prosecution disclosure tests with a single combined test.
Indent 11	Delete.	This change also takes account of the replacement of the different primary and secondary prosecution disclosure tests with a single test.
General responsibilities		
3.1	Add new paragraph 3.1A: “In any criminal investigation, one or more deputy disclosure officers may be appointed to assist the disclosure officer, and a deputy disclosure officer may perform any function of a disclosure officer as defined in paragraph 2.1.”	Owing to the increasingly international nature of crime, technological advances, and other factors, some criminal investigations are becoming so complex that it is impossible for a single individual to examine and consider all the material generated. This amendment will allow deputy disclosure officers to be appointed, who may, for example, examine parts of the material generated and reveal it to the prosecutor.

3.2	<p>Add new second, third and fourth sentences: “The Chief Constable shall ensure that disclosure officers and deputy disclosure officers have sufficient skills and authority, commensurate with the complexity of the investigation, to discharge their functions effectively. An individual must not be appointed as disclosure officer, or continue in that role, if that is likely to result in a conflict of interest, for instance, if the disclosure officer is the victim of the alleged crime which is the subject of the investigation. The advice of a more senior officer must always be sought if there is doubt as to whether a conflict of interest precludes an individual acting as disclosure officer.”</p>	<p>Concerns have been expressed that disclosure officers do not always have the skills and authority necessary to discharge their functions effectively. See Plotnikoff and Woolfson, “‘A Fair Balance’? –Evaluation of the operation of disclosure law” (independent Home Office commissioned research, 2001), Chapter 3 (available online at http://www.homeoffice.gov.uk/rds/adhocpubs1.html). The new second sentence addresses the point. The new third and fourth sentences, which make it clear that disclosure officers must not be appointed where there is a conflict of interest, are based on the Attorney General’s Guidelines on disclosure, paragraph 7 (available online at www.lslo.gov.uk/guidelines.htm).</p>
3.3	<p>Amend first sentence to read: “The officer in charge of an investigation may delegate tasks to another investigator, to civilians employed by the police force, or to other persons participating in the investigation under arrangements for joint investigations, but he remains responsible...”.</p>	<p>This amendment takes account of the participation of officers from other agencies and countries in criminal investigations conducted by the police under “joint investigation” arrangements. The amendment places the onus of ensuring that the requirements of the code of practice are followed in a joint investigation, as in any other, on the officer in charge of the investigation.</p>
3.4	<p>Add new third sentence: “Where material is held on computer, it is a</p>	<p>This amendment provides guidance to practitioners as to what is a reasonable line of enquiry, where material is held on computer. It makes it clear that an</p>

	<p>matter for the investigator to decide how many of the files on the computer it is reasonable to inquire into, and in what manner.”</p>	<p>investigator is under no obligation to examine more files on a computer than is reasonable in the circumstances of the case. A modern personal computer can easily contain at least 100,000 files. Like a library, it is not to be regarded as one item of material, but as a receptacle for potentially hundreds of thousands of items. It may be neither necessary nor practicable for the investigator to examine more than a tiny proportion of this number.</p>
Retention of material		
5.1	Delete second sentence.	This sentence sits more comfortably in the definitional paragraph 2.1 and it is proposed to move it there. See comments on paragraph 2.1 above.
5.1	Replace last sentence with: “Material may be photographed, video-recorded, captured digitally or otherwise retained in the form of a copy rather than the original, if the original is perishable; the original was supplied to the investigator rather than generated by him and is to be returned to its owner; or the retention of a copy rather than the original is reasonable in all the circumstances.”	This amendment makes it possible for a copy, as opposed to original material, to be retained where it is “reasonable in all the circumstances”. Under the present code, original material has to be retained, regardless of cost, unless it is perishable, or to be given back to its owner. However, it will be reasonable to retain many objects by means of a copy. The purpose of the new provision is to remove the general obligation to store original material for what, in the case of a long prison sentence, may be a considerable time after the end of the proceedings, and at great unnecessary expense in the case of items such as ships and aircraft.
5.1	Add new paragraph 5.1A after the above: “Where it is proposed to retain material in the form of a copy on the grounds that to do so is reasonable in all the circumstances, the accused or convicted person must be afforded reasonable notice of the disposal of the original .”	<p>This amendment elaborates on the amendment proposed to the last sentence of paragraph 5.1. Where it is proposed to dispose of original material on the grounds that to do so is reasonable in all the circumstances, new paragraph 5.1A provides a safeguard. The accused or convicted person must have reasonable notice of the disposal, and so will be afforded the opportunity to garner any necessary evidential material from the original.</p> <p>Question 3: Do you consider that the safeguard of giving notice to the accused</p>

		<p>or convicted person before material is retained in the form of a copy and the original is disposed of is sufficient and, if not, in what should the safeguard consist?</p>
<p>5.4</p>	<p>After the 6th indent add the following 7th indent: “—records of the first description of a suspect by each potential witness who purports to identify or describe the suspect, whether or not the description differs from that of subsequent descriptions by that or other witnesses.”</p> <p>Delete existing indents 7 to 9 and add at the end of paragraph 5.4 a new paragraph 5.4A as follows: “The duty to retain material which may be relevant to the investigation also includes in particular the duty to retain the following categories of material which may satisfy the test for prosecution disclosure in the Act:</p> <ul style="list-style-type: none"> — information provided by an accused person which indicates an explanation for the offence with which he has been charged; — any material casting doubt on the reliability of a confession; 	<p>This amendment is designed to clarify paragraph 5.4 of the code. As the paragraph is currently drafted, indent 9 reads “any <u>other</u> material which may fall within the test for primary prosecution disclosure”. This indicates that all the material listed in the previous indents of paragraph 5.4 is liable to fall within the primary prosecution disclosure test. However, this is not the case. For example, there is no reason why a custody record, in itself, may be likely to meet the test. It is apparent that the current paragraph 5.4 is designed for two different purposes. Firstly, it aims to encourage investigators to retain material which is by its very nature likely to be relevant to an investigation. Secondly, it aims to encourage them to retain material which may be liable to prosecution disclosure. The amendments separate these two purposes. Paragraph 5.4 as amended deals only with material which is inherently likely to be relevant to an investigation (the reference to witnesses’ descriptions of suspects which is currently in paragraph 7.3 indent 1 of the code has been moved to paragraph 5.4, where it sits more appropriately, and given more detail). New paragraph 5.4A deals with material that may be liable to prosecution disclosure. The drafting of new paragraph 5.4A is more consistent with that of paragraph 7.3 of the code, which deals with the same issue, than the current paragraph 5.4. Please see below for a discussion of related paragraph 7.3 of the code.</p>

	— any material casting doubt on the reliability of a prosecution witness.”	
5.10	Amend to read: “Material need not be retained by the police as required in paragraph 5.8 if it is perishable, or is to be returned to its owner, or the disposal of the original is reasonable in all the circumstances.”	This is consequential upon the proposed amendment to paragraph 5.1.
Preparation of material for prosecutor		
6.4	Add a second sentence at end: “If there is no sensitive material, the disclosure officer must record this fact on a schedule of sensitive material.”.	This amendment requires disclosure officers to make out a nil return of sensitive material, and thus acts as a safeguard to ensure that they do not overlook such material.
6.12		
Chapeau	Replace words from “any material which” on in the first sentence with: “...any material, the disclosure of which he believes would give rise to a real risk of serious prejudice to an important public interest, and the reason for that belief.”	This amendment takes account of the House of Lords case of <i>R v. H & C</i> [2004] 2 W.L.R. 335.
Indent 5	Delete.	The present code identifies material supplied about the use of a telephone system as particularly likely to be sensitive. It is not necessary to do so.
Indent 10	Delete.	The present code flags up internal police communications such as management minutes as particularly likely to be sensitive. However, they are not usually relevant to an investigation and as such do not require special mention.
6.13	In the second sentence, add “only”	The procedure set out in this paragraph of the code has sometimes been employed

	between “apply” and “where”.	by police officers where the material has not been exceptionally sensitive. Whilst not changing the meaning of the paragraph substantively, the amendment makes it clearer that this procedure should only be used in exceptional circumstances.
6.14	In the third sentence, add “is disclosable and as such” between “whether it” and “needs”.	This amendment takes account of the House of Lords case of <i>R v. H & C</i> [2004] 2 W.L.R. 335, which makes it clear that prosecutors should approach the court for decisions on the disclosure of sensitive material only after they have considered the disclosability of the material and decided that it meets the statutory disclosure tests.
7.2	Replace the passage in brackets with “including material not listed on a schedule and to which paragraph 6.13 applies”. Omit “primary”.	These amendments are for clarification and to reflect the Criminal Justice Act 2003, which abolishes the concept of “primary” prosecution disclosure.
7.3		
Indent 1	Delete.	Please see the commentary on paragraph 5.4 above. Paragraph 7.3 of the code requires the police to reveal to the prosecutor material which may satisfy the prosecution disclosure tests and thus be disclosed to the defendant. The 5 th indent of paragraph 7.3 refers to “other” material, indicating that the material referred to in the 1 st to 4 th indents of that paragraph may all satisfy the prosecution disclosure tests. However, a first description of a suspect which accords with that of the alleged offender, as mentioned in the 1 st indent, is likely to support the prosecution case rather than undermine it, and as such it is not likely to be disclosable as unused prosecution material (though it would no doubt be disclosed as part of the prosecution case against the defendant). There is therefore an internal inconsistency in paragraph 7.3 of the code, just as there is in paragraph 5.4. This amendment, which removes the 1 st indent of paragraph 7.3, makes it clear that paragraph 7.3 only relates to material which may satisfy the prosecution disclosure tests.
Indent 4	Insert “prosecution” before “witness”.	Material casting doubt on the reliability of a defence witness is unlikely to meet the test for disclosure of unused prosecution material.

Indent 5	Omit “primary”.	This amendment takes account of the abolition of the concept of “primary” prosecution disclosure in the Criminal Justice Act 2003.
Subsequent action by disclosure officer		
8.2	Insert “considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused” in place of “expected to assist the defence disclosed by the accused”.	These amendments take account of the abolition of the concept of a “primary” and “secondary” prosecution disclosure test in the Criminal Justice Act 2003.
8.3	Insert “Section 7A” in place of “Section 9”.	The Criminal Justice Act 2003 repeals section 9 of the Criminal Procedure and Investigations Act 1996 and inserts a new section 7A into the 1996 Act which deals with the continuing prosecution duty to disclose. This amendment to the code is consequential upon that change.
Certification by disclosure officer		
9.1	In the third sentence, replace “but also” with “and”, and add at the end “, but also whenever a schedule is otherwise given or material is otherwise revealed to the prosecutor.”	This amendment takes greater account of the continuing prosecution duty of disclosure than the present wording of the code does. It requires the disclosure officer (or a deputy, where there is one) to provide certification whenever a schedule is given, or material is otherwise revealed to the prosecutor, not only, as in the present code, when material is first revealed to the prosecutor or when it is reconsidered after the accused has given a defence statement.
Disclosure of material to accused		
10.1	Omit “primary or secondary”.	This amendment takes account of the amalgamation and modification, in the

		Criminal Justice Act 2003, of the primary and secondary prosecution disclosure tests.
10.5	Replace the first sentence with the following: “If a court concludes that an item of sensitive material satisfies the prosecution disclosure test and that the interests of the defence outweigh the public interest in withholding disclosure, it will be necessary to disclose the material if the case is to proceed.”	This change reflects the language of the House of Lords judgement in the case of H & C, mentioned above.

ANNEX C

CODE OF PRACTICE FOR INVESTIGATORS' INTERVIEWS WITH DEFENCE WITNESSES IN NORTHERN IRELAND

<u>Text of the code</u>	<u>Commentary</u>
<p>1. Where a police officer or other investigator wishes to interview a witness identified by the accused in a statement given in accordance with section 6A(2), or a notice served under section 6C of the Criminal Procedure and Investigations Act 1996, he must:</p> <ul style="list-style-type: none">(a) notify the accused's solicitor of the proposed interview;(b) unless the witness indicates before the interview that he does not wish the accused's solicitor to be present, invite the accused's solicitor to be present at the proposed interview;(c) notify the witness that he may, if he wishes, invite his own solicitor to be present at the proposed interview;(d) make an accurate record of the interview, it takes place at a police station or elsewhere. A record may be made in writing or by audio-recording where this is appropriate and practicable;(e) at the beginning of the interview, advise the witness that a record will be made of the interview that will be copied to both the witness and the accused, unless the	<p>This Defence Witness Interview Code will ensure that all interviews conducted by the police and other investigators with defence witnesses disclosed under the applicable legal provisions are notified to the defence and recorded. The process will accordingly be transparent, thus ensuring both that undue pressure is not brought to bear on witnesses and that undue allegations of impropriety are not leveled against investigators as to the conduct of such interviews.</p> <p>Paragraph 1 indent (d) requires the police or other investigator to make an accurate record of the interview, wherever it takes place. It will not always be possible for these interviews to be tape recorded, as they may sometimes necessarily take place away from tape recording facilities.</p>

<p>witness has indicated that he does not wish the accused's solicitor to be present, in which case the witness should be asked if he would consent to a copy being supplied to the accused; and if such consent is not given, the witness should be advised that the record will be copied to him alone but may be disclosed later to the accused and any co-accused.</p> <p>(f) at the conclusion of, or following the interview provide a copy of the record taken to the witness or, as the case may be, the witness and the accused.</p>	
<p>2. Where an accused is not legally represented, the police officer or other investigator must:</p> <p>(a) inform the accused that he intends to interview a witness identified in a statement given in accordance with section 6A(2), or a notice served under section 6C of the Criminal Procedure and Investigations Act 1996; and</p> <p>(b) Invite the accused to appoint a solicitor to be present at the interview, unless the witness indicates before the interview that he does not wish the accused's solicitor to be present.</p>	<p>This paragraph gives unrepresented defendants the right to have a solicitor appointed for the sole purpose of attending the interview on their behalf. This is necessary because defendants will not be entitled to attend the interview themselves.</p> <p>Question1: Do you agree with the assessment that it is acceptable for a defendant who is otherwise unrepresented to be represented solely for the purpose of being represented at a police interview with a defence witness?</p>
<p>3. In the case of a witness who is a juvenile or a person who is mentally disordered or otherwise mentally vulnerable, it is recommended that arrangements should be made for an appropriate adult to be present during the interview.</p>	

DRAFT DISCLOSURE CODES OF PRACTICE

Government response to public consultation on Disclosure Codes of Practice

Introduction

1. This paper provides an overview of the responses made during the public consultation exercise on the Government's proposals for changes to the practice of disclosure in Northern Ireland. The consultation period ran from 16 August 2004 to 5 November. It resulted in a total of 6 responses. In overall terms, there was widespread support for the draft proposed legislation. A full list of those responding to the proposals who are content for their names or organisations to be identified is attached at Annex A.

2. The first change involved amending the Code of Practice issued under the Criminal Procedure and Investigations Act 1996 which sets out the manner in which police officers are to record, retain and reveal to the prosecutor material obtained in a criminal investigation and which must be relevant to the investigation. This paper is referred to as the 'General Code'. These changes were in part necessitated by amendments made to the disclosure provisions in the 1996 Act by Part 5 of the Criminal Justice Act 2003.

3. The Criminal Justice Act 2003 also included a section which requires the defence to disclose, in advance of the trial, all witnesses it intends to call at the trial. During passage of the Act, it was agreed that interviews conducted by police officers with defence witnesses disclosed under the new arrangements should also be governed by a Code of Practice. This new 'Defence Witness Interview Code' formed the second part of this public consultation.

4. The consultation posed a number of questions concerning the two Codes of Practice. This report will deal with responses to each of these questions in turn. Beyond the specific questions, comments were also made on what could be collectively referred to as "general matters" these will also be addressed by the report.

'General Code'

Q1. Do you consider that the new wording of paragraph 2 indent 8 of the code will achieve the objective of enabling the police to retain only material which may be relevant to an investigation.

Most responses that addressed this question indicated that they were satisfied that the new wording achieved the stated objective.

Q2. Do you consider that there is another way of ensuring that only material which may be relevant to an investigation is retained and, if so, what is it?

No alternative suggestions were made as to other ways of ensuring that only material which may be relevant to an investigation is retained.

Q3. Do you consider that the safeguard of giving notice to the accused or convicted person before material is retained in the form of a copy and the original is disposed of is sufficient and, if not, in what should the safeguard consist?

A mostly positive response was received to this question indicating the general consensus that the provision was both proportionate and reasonable. A suggestion was made that the safeguard could be made more meaningful and effective if there were adequate timescales for the accused to take appropriate steps, and as a consequence, for the investigating officer to respond. Although this intention is not explicit in the text of the Code, the commentary at Annex B makes it clear that the accused or convicted person is given reasonable notice of the disposal in order that he can garner any necessary evidential material from the original.

'Defence Witness Code'

Q1. Do you agree with the assessment that it is acceptable for a defendant who is otherwise unrepresented to be represented solely for the purpose of being represented at a police interview with a defence witness?

Some limited concerns were raised about the potential problems facing a solicitor who may find it difficult to represent the interests of the defendant without proper instructions from the individual. However, it was generally accepted that the accused should be offered the facility of representation at defence witness interviews, whether or not he is represented himself.

General Matters

1. A number of general suggestions were made by respondents of possible alterations to the code. The first concerned paragraph 6.12 of the

'General Code'. The classification as sensitive of material generated during a criminal investigation relating to a child or young person was supported, but a suggestion was made that this protection should be extended to include vulnerable adults as well. However, it is the Government's view that although vulnerable adults are not specified in paragraph 6.12, the list is not exhaustive and exemptions can be made in other cases such as this where the disclosure officer believes the material should be considered as sensitive.

2. A second comment noted that the provisions of the 'General Code' apply only to police officers and suggested that given the particular role and authority invested in the Police Ombudsman for Northern Ireland by the Police (Northern Ireland) Act 1998, the Code should also extend to them. However, there is no power in the Criminal Procedure and Investigations Act 1996 to expand the meaning of police officers to include such bodies and therefore the code will not apply to members of the ombudsman.

Annex A

Respondents content that their names are published:

Social Services Inspectorate, DHSSPS

Office of the Permanent Secretary, DHSSPS

Police Service of Northern Ireland

Deputy Chief Inspector, Department of Enterprise, Trade and Investment

The Honorary Secretary, Superintendents Association

**Northern Ireland Office
February 2005**