



Northern
Ireland
Office

**POLICE AND CRIMINAL EVIDENCE
(NORTHERN IRELAND) ORDER 1989**

**MODERNISING POLICE POWERS
YOUR PACE, YOUR SAY**

Northern Ireland Office
July 2007

INTRODUCTION

A review of Police & Criminal Evidence (PACE) in Northern Ireland, announced in February 2004 and aimed at bringing police powers more into line with those available to police officers in England & Wales, concluded earlier this year when the Police & Criminal Evidence (Amendment) (Northern Ireland) Order 2007 and revised PACE Codes of Practice came into operation on 1 March.

The 2007 Order amended and added to the Police & Criminal Evidence (Northern Ireland) Order 1989 (the Order) in a range of areas and, for the first time in many years, brought PACE in Northern Ireland close to the current provision in England & Wales. Some of the changes simplified the complicated myriad of arrest powers into a single power of arrest; introduced the ability to apply for multiple entry and all premises search warrants on a single application; and provided a clearer focus on reducing police and court bureaucracy and speeding up the investigative process.

It is of course important that these powers and procedures be kept under close review to ensure that they fully reflect what is needed in a fast changing world, and that every opportunity is taken to simplify and rationalise wherever possible.

It is for that reason that the Home Office has just announced a further review of the PACE Act 1984 aimed at building on the work of their reform and rationalisation programme. This will involve examining how best PACE and the PACE Codes of Practice serve the demands of a modern police service tasked with tackling so-called low level anti-social behaviour through to highly sophisticated and organised crime.

We acknowledge that our review of PACE in Northern Ireland has just been completed but it is important that we not only maintain the parity that we now have with the regime in England and Wales but bring our thinking and suggestions for change to the latest Home Office review.

We are therefore writing to stakeholders and practitioners of PACE in Northern Ireland seeking your ideas for change, what change would look like and what

barriers there are to success. Your views will help us develop a consultation paper that we hope to issue early in 2008.

The Review is not just about searching out areas with the potential for sweeping, radical change. It is also about day-to-day operational improvements and achieving both strategic and operational change.

The key aim is to maintain the framework approach to police powers. In doing so, we will look to provide greater clarity for partners, stakeholders and the public on the exercise of those powers; improve police efficiency and effectiveness; and focus on best serving the needs of the victim and the interests of the criminal justice system.

This document suggests how the Review can be taken forward and provides an opportunity for you to help drive change both at the strategic and operational level of policing. Your views will be welcome.

Robert Crawford
Assistant Director Policing
Northern Ireland Office

HOW TO RESPOND

The paper is available on the public consultation link of the NIO website at www.nio.gov.uk

A template for proposals is provided at Annex A. This may provide useful support in considering what your idea or suggestion would deliver.

You can respond to the PACE Review by e-mailing to policepowers@nio.gsi.gov.uk or by using the 'Make a Response' link provided with the document on the NIO webpage. Alternatively, if you wish to respond by post, you should address your comments to:

Northern Ireland Office
Police Powers Unit
Block B, Level 4
Castle Buildings
Stormont Estate
Belfast
BT4 3SG

Responses to the Paper should be submitted by **14 September 2007**.

You may find the following links useful:

PACE Codes of Practice

[http://www.nio.gov.uk/police-and-criminal-evidence-\(NI\)-Order-1989-Codes-of-Practice-2007-edition.pdf](http://www.nio.gov.uk/police-and-criminal-evidence-(NI)-Order-1989-Codes-of-Practice-2007-edition.pdf)

Police & Criminal Evidence (Amendment)(Northern Ireland)Order 2007

[http://www.nio.gov.uk/police-and-criminal-evidence-\(amendment\)-\(Northern-Ireland\)-Order-2007-Codes-of-Practice-2007-edition.pdf](http://www.nio.gov.uk/police-and-criminal-evidence-(amendment)-(Northern-Ireland)-Order-2007-Codes-of-Practice-2007-edition.pdf)

Table of Contents

Introduction	2
How to Respond	4
Criteria for Change	6
PACE and the PACE Codes	7
On the street	8
Entry, search and seizure	8
At the police station	9
Bail	10
Biometric Information & Identification procedures	11
Community Support and scrutiny at the police station	12
Framework for all enforcement agencies	13

1 CRITERIA FOR CHANGE

1.1 The salient elements which should be considered in determining whether or not a proposed change will have beneficial impact are set out below. The list is not exhaustive but we would look for respondents to consider whether one or more of the criteria are met.

1.2 A template is provided at Annex A incorporating the criteria. You can use the template or provide comments in the normal way.

1.3 Please do not feel restrained from submitting ideas and suggestions if you are unsure of the potential impact. If required, we will contact respondees direct to talk through or obtain clarification on what is proposed.

1.4 At the same time, we recognise that you may have identified a process or procedure which is either a barrier to success or which has features which inhibit success or cause undue or unnecessary use of capacity and resources. You may not have a solution but we very much welcome you raising such issues as part of the consultation.

Improving police efficiency and effectiveness through:

- promoting strategic change for both police and the way in which the police interact with the Criminal Justice System
- reducing bureaucracy;
- removing duplication and replication;
- identifying workforce modernisation opportunities;
- freeing up officers' time for operational activity on the street; and
- improving communication and raising community confidence.

Maintaining safeguards and enhancing accountability by:

- raising public understanding and awareness
- ensuring powers are proportionate
- encompassing technology to improve recording and monitoring processes
- raising levels of reporting and accountability
- protecting the balance between the rights of the individual and the needs of the criminal justice system

Increasing Usability and Accessibility by:

- simplifying legislation and guidance
- providing consistency of approach on procedures and processes
- customising publications/ materials for target groups
- engaging and empowering stakeholders, practitioners and training providers at development and implementation stages

2 REVIEWING PACE AND THE PACE CODES

2.1 The recent review of PACE in Northern Ireland has given rise to a range of changes to the 1989 PACE Order. These changes have focussed on achieving the following outcomes:

- providing police and other relevant agencies with appropriate and proportionate powers to tackle crime;
- removing barriers enabling more effective targeting of criminals;
- removing unnecessary bureaucracy
- freeing up more time for police officers to take up operational duties outside the confines of the police station;
- removing areas of complexity and providing clearer, more accessible powers for both practitioners and public; and
- promoting the needs of victims and witnesses.

2.2 However, the nature of the NI review meant that implementation of its recommendations focused on bringing Northern Ireland into line with PACE in England & Wales rather than undertaking a fundamental review of the legislation itself. Since PACE was introduced, there has been a plethora of changes and related legislation which has impacted on PACE. Some may say that PACE and the Codes have become unduly complex and cumbersome.

2.3 There is a need to consider how we can use the benefit of these changes whilst ensuring that PACE continues to provide the framework approach setting out police powers to investigate crime and the safeguards and protections for the public.

2.4 Using the outcomes listed in paragraph 1.4, we intend to examine how best that can be achieved. Above all, PACE is about the exercise of proportionate powers and maintaining the balance between the rights of the individual from arbitrary interference and the ability of the police to investigate crime. We are not looking to dilute safeguards. Instead we are looking to examine the ways in which these safeguards are delivered and the processes which support their application.

Next Steps

2.5 This exercise is aimed at asking those who use and work with PACE and the PACE Codes for their ideas for change, what change would look like and what barriers there are to success.

2.6 We will examine responses in consultation with the Home Office and police representatives.

2.7 Overseeing all this activity lies with the range of stakeholders and practitioners who use PACE on a regular and frequent basis. Whilst we do not wish to have an overly bureaucratic process, we will be seeking Northern Ireland

representation on the Home Office Review Group. The responses to this paper will help determine what we bring to the table.

3 SUGGESTED AREAS FOR CONSIDERATION

ON THE STREET

PACE Part IV, Code A & Street Disposals

3.1 We are looking to provide processes for dealing with the person on the street which minimises both the processes and procedures which an officer needs to complete and the level of contact and inconvenience for the individual.

3.2 Recent changes to PACE around street bail and providing a single power of arrest for all offences focus on improving the use and effectiveness of police time.

3.3 At the same time, we need to consider measures which can reduce the need to take a person into custody but provide the police officer with sufficient confidence that the person has been rightly identified and is satisfied that they will comply with the next stages of the process whether that is attending the police station, attending court or paying a fixed penalty notice.

3.4 We also have to consider how we can raise the individual's understanding of what their rights are, how they can be exercised and what to do if they are not satisfied.

3.5 Suggested approaches must provide a balance between these two distinct but not mutually exclusive interests in order to raise public access and understanding.

3.6 The police have a range of powers on the street. We would welcome proposals about if, and how, these should be rationalised or whether there is a gap which requires some new approach. This includes any need to strengthen enforcement powers in the event of breaches.

ENTRY, SEARCH AND SEIZURE

PACE Part III & Code B

3.7 When a person has been arrested, PACE provides a constable with powers to enter and search premises in pursuit of evidence relevant to the offences. That power is exercised at the discretion of a constable. In situations where arrest is not possible and entry is required, a constable will make application to the court for a warrant.

3.8 Provisions in the Police & Criminal Evidence (Amendment) (NI) Order 2007 amended PACE to enable the court to issue multiple or all premises warrants. The aim was to reduce the bureaucracy faced by the police and the courts in applications for and consideration of multiple individual applications for warrants.

It also focussed on reducing operational delay during the investigative process when entry to premises was required to protect and secure evidence.

3.9 We are keen to explore ways in which we can further rationalise the process of warrant application and execution from both a police and court perspective. Any proposals in this area must help raise the level of accountability and maintain protections for the individual.

3.10 We are also keen to consider the scope for the provisions of the Criminal Procedure and Investigations Act 1996 requiring all reasonable lines of inquiry to be pursued to be applied to pre-search powers under PACE; and to examine whether the special provisions to access under Articles 11- 16 of PACE require updating to meet 21st century challenges in tackling crime.

AT THE POLICE STATION

PACE Part V & Code C

3.11 PACE quite rightly makes the police station a place in which significant safeguards and rights must be made available to the detained person. Ensuring the detainee has access to these rights is important for the protection of the individual but, equally, it also provides a high degree of integrity and evidential status in respect of the investigative and interviewing processes.

3.12 But it is the procedural formalities which we need to examine. We know that computerised custody records and other electronic processes help raise the levels and quality of reporting, monitoring and accountability. We need to examine whether there are elements around detention and the custodial process which hinder or present barriers to achieving successful outcomes to investigations.

3.13 Recording what happens to a person at the police station enables effective monitoring and accountability. But there may be scope to look at existing processes. Particularly welcome are suggestions which help reduce bureaucracy and enable arresting officers in particular to spend less time at the police station.

3.14 The PACE 'detention clock' and the review process has been subject to relatively little change since its introduction in the 1989 Order. There has been some change around superintendent's authorisation and remote reviewing of detention. We are keen to examine if there are ways in which we can effect further change which results in reducing the burden on officer time, improving recording of reviews and, importantly, which can result in the detained person spending less time in police detention.

3.15 The person's period in detention can result in him or her being seen by several representatives – solicitor, healthcare professional, interpreter, appropriate adult and independent custody visitor. Whilst it is unlikely that every detainee will experience the full range, access to and waiting time for their attendance can have an impact on the handling of the investigation and the level of officer and staff time. It can also have a more serious impact on the nature and mood of the detained person. Suggestions are welcome from all

stakeholders around more integrated working and ability to better plan investigations in consultation with each of the agencies and collectively.

3.16 Healthcare provision – both mental and physical – is an area of growing interest and attention for the police service. The intervention of a healthcare professional and at what stage can be a crucial stage affecting the welfare of the detainee and the interests of the criminal justice system. We are keen to work with the Health Service and other stakeholders to identify how best clinical attention can be delivered for those who come into police contact. However, as part of this Review, we would like to examine the existing PACE provisions. In particular, whether the current legislative arrangements are best suited to enabling custody officers to make decisions based on the best information; whether medical staff are able to intervene at the most appropriate stages at the police station; and any competing demands between the investigative processes and the care and welfare of the detainee.

BAIL (Street Bail and Police Bail)

3.17 The presumption at the police station is for bail to be granted. From a policing perspective, bail is a key part of planning the investigation and making best use of the detention time allowed under PACE, officers time and custody accommodation.

3.18 Street bail (bail elsewhere than at a police station) was introduced under the Criminal Justice (NI) Order 2004. Again, the key focus of its introduction was to enable officers to better plan their investigation, to spend more time on operational activity on the streets and to place less pressure on the use of the custody suite.

3.19 Although we acknowledge that street bail is a relatively new initiative we would welcome views on how we can encourage more officers to make use of street bail. As with a fair proportion of street activity, concern lies around identification of the person; being satisfied that they will turn up at the requested place; confident that they will not commit further crime or return to the scene of the offence or the vicinity of victims or witnesses.

3.20 Possible options may revolve around being able to take biometric information at the scene and the ability to raise confidence in the use of street bail. We would welcome views on the benefits of these and other approaches and views on what safeguards should be in place and, in the event of a breach, what action should be possible.

3.21 Bail at the police station already has much of these elements in place. However, it is an area which may benefit from clarification. There are also concerns around the power to enter premises to enforce bail, how to deal with an anticipated breach of bail and detention clock issues around failure to answer bail at a specified police station.

3.22 There is the ability to provide consistency on how we approach street and 'station' bail and we are looking for proposals on how best this can be achieved.

BIOMETRIC INFORMATION & IDENTIFICATION PROCEDURES

3.23 A range of powers and procedures are available to enable the police to identify suspects for the purposes of investigating, detecting and preventing crime. These fall into two groups: first, taking, comparing and retaining fingerprints, DNA, footwear impressions and photographs; and second, identification by witnesses.

Biometric

3.24 Fingerprints, samples, footwear impressions and photographs (images) of an individual are used to confirm or disprove an individual's suspected involvement in a criminal offence and to establish identity. The current thresholds for taking and using fingerprints etc. create a number of inconsistencies. For example, fingerprints, samples and footwear impressions of a person arrested, reported, charged, summonsed or convicted for a non-recordable offence cannot be taken without consent to confirm or disprove their involvement in that offence or to create a record in a national searchable database that they have been arrested, reported, charged, summonsed or convicted. Furthermore, a person who refuses to give their true name and address or whose identity is doubted or cannot be verified cannot have these samples etc taken and checked to see if they have previously come to police notice.

3.25 The absence of the ability to take fingerprints etc in relation to all offences may be considered to undermine the value and purpose of having the ability to confirm or disprove identification and, importantly, to make checks on a searchable database aimed at detecting existing and future offending and protecting the public. There have been notable successes particularly through the use of the DNA database in bringing offenders to justice.

3.26 Is there scope to populate identification databases and remove unnecessary operational constraints on the extent to which police are able to use fingerprints etc. to prevent, detect and investigate crime?

3.27 There are benefits in simplifying the powers in terms of the potential for increased detections, removing arbitrary and bureaucratic processes and sending out a strong preventative message to offenders that, whatever level of offending they are involved in, they will be subject to identification processes that can and will be used for searching of the database in relation to other offences. An additional benefit should arise in reducing the number of people taken into police custody and the time that people spend in custody by raising the officer's confidence at the point of contact on the street in being able to verify the suspect's identification.

3.28 Removing the existing thresholds to achieve the potential benefits outlined above must be considered in the context of current capacity to gather identification information and accommodate these on databases. But technological developments are moving rapidly which should enable more effective and efficient methods of gathering, retaining and making use of identification material.

3.29 Importantly, there are issues around proportionality and whether there are sufficient safeguards to protect a person guilty of a so-called minor offence from being considered as part of an investigation into a more serious offence as a result of the outcome of speculative searches. There will be concerns that providing a uniform set of powers is disproportionate and an excessive approach to dealing particularly with low level offending.

3.30 We very much welcome debate on the content of this section and the proportionate development and use of criminal records and how best we meet the needs of victims and witnesses; safeguard the interests of the individual; and contribute effectively to crime reduction and crime prevention.

Identification procedures

3.31 Currently, PACE Code D stipulates that the suspect must be given a reasonable opportunity to have a solicitor or friend present at the time and place a victim or witness is asked to make a video identification. This is known to have an adverse affect on the ability of some victims or witnesses to make a fair and accurate identification. It also places an additional burden on the police and demands on legal advisers which, if the viewing by the victim or witness is itself videoed, adds little to the safeguards.

3.32 For the identification officer, it creates particular problems when a victim or witness is unable to travel and the officer considers it appropriate to arrange the viewing at the person's home. Therefore we want to look at ways in which we are able to remove or minimise any sense of fear or intimidation and encourage victims and witnesses to confidently participate in identification procedures.

3.33 We also want to examine how technology can be used to protect the identity of the victim and witness and the use of places other than the police station to carry out identification procedures. In all of this, we must ensure that sufficient safeguards are in place which ensures that any new processes are subject to scrutiny and accountability. More widely, current identification procedures and processes are exclusively contained in PACE Code D. Is there a need to consider provision in primary legislation?

COMMUNITY SUPPORT AND SCRUTINY AT THE POLICE STATION

3.34 Appropriate Adults (AAs) have an important statutory role to fulfil at the police station in terms of providing safeguards to detainees whilst in police custody.

3.35 We acknowledge that the appropriate adult provision in Northern Ireland is not as structured as that in England & Wales (where volunteer based schemes

and paid-for services are used). Social workers in Northern Ireland currently provide an invaluable role in terms of the discharge of the appropriate adult function in police custody suites but this provision is often variable and inconsistent.

3.36 We would like to receive comments on the impact of AAs on the investigative process and suggestions on how we improve the existing system to raise the input and improve the quality of contact with detained persons.

FRAMEWORK OF POWERS FOR ALL ENFORCEMENT AGENCIES

3.37 PACE clearly has focus on the provision of powers for police officers. Article 66(9)(b) of the Order requires that any person other than a police officer who is charged with the duty of investigating offences or charging offenders must have regard to any relevant provisions of the PACE Codes.

3.38 The status of agencies or civilian staff and the range of their powers are regulated by individual statute or statutes. Codification of all enforcement and investigative powers for all agencies into a single piece of legislation would be a significant task. However, it would provide a single source for identification of what those powers are and establish criteria applicable for each agency across the full range of the powers which applied to them. Additionally, there would be greater clarity and understanding for the public on what they could expect and what safeguards and protections applied to them.

3.39 The Review will look to consider whether such codification is an effective way forward and use the findings to establish whether the powers and procedures in place across the range of agencies are proportionate, suitable and relevant to 21st century needs. Providing a consistent and understandable framework of investigative and enforcement powers would provide both consistency of approach and recognition of the specific role and responsibilities of individual agencies.

PACE REVIEW 2007/08

Reference (NIO use only):

/ /

Name: _____ **Tel:** _____
Position: _____ **E-mail:** _____
Organisation (where applicable): _____
Address: _____

Confidentiality – If you wish for your response to be kept confidential please tick the following box

Strategic Focus – The aim of the PACE Review process is to improve police efficiency and effectiveness by:

- Reducing bureaucracy
- Removing duplication and replication
- Identifying workforce modernisation opportunities
- Freeing up officers time for operational activity on the street
- Improving communication and raising community confidence

- **Promoting areas of strategic change for the police and the way in which the police interact with the Criminal Justice System**

Area for change:

- Police and Criminal Evidence (NI) Order 1989**
Please identify relevant Part / Sections:
- PACE Codes of Practice**
Please identify relevant PACE Code/s and paragraph/s:
- Guidance**
Please identify title of guidance and relevant:
- Other**
Please identify:

Proposal / Issue Raised:

Aim:

Benefits of Change

Proposed Outcome (optional)

Consequential Impact / Costs / Savings (optional)

Criteria for change (*please tick one or more below which apply*):

Improving police efficiency and effectiveness

- promoting strategic change for both police and the way in which the police interact with the CJS
- reducing bureaucracy
- removing duplication and replication
- identifying workforce modernisation opportunities
- freeing up officers time for operational activity on the street
- improving communication and raising community confidence

Maintaining Safeguards and enhancing accountability

- raising public understanding and awareness
- ensuring powers are proportionate
- encompassing technology to improve recording and monitoring processes
- raising levels reporting and accountability
- protecting the balance between the rights of the individual and the needs of the Criminal Justice System

Increasing Usability and Accessibility by:

- simplifying legislation and guidance
- providing consistency of approach on procedures and processes
- customising publications/ materials for target groups
- engaging and empowering stakeholders, practitioners and training providers at development and implementation stages

