



Northern  
Ireland  
Office

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

**GOVERNMENT PROPOSALS IN RESPONSE  
TO A REVIEW OF POLICE & CRIMINAL  
EVIDENCE (PACE) IN NORTHERN IRELAND**

Northern Ireland Office  
January 2009

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Copies are also available free of charge on request. See Page 41 for contact details.

## **1. Foreword**

This latest review of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) is aimed at further developing police powers to meet the needs and expectations of the criminal justice system in the 21<sup>st</sup> century. The proposals within this paper build on the significant progress brought about by the changes to PACE in the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007.

There were no calls within the responses to the preceding public consultation paper entitled 'Modernising Police Powers - Your PACE, Your Say' for changes to the structure of PACE that has been in existence in Northern Ireland for close on two decades. The 1989 Order has shown its robustness yet versatility to meet the demands of a modern police service and I believe there are strong grounds to justify retaining the present framework.

PACE by its very nature must be sufficiently flexible and adaptable to the changing demands and needs of the criminal justice system. It is vital that legislation as important as PACE, which sets out the basic human rights of the individual when coming into contact with the police, provides clarity and consistency for stakeholders, practitioners and, importantly, the public. Whilst recognising the changing operational needs of police, our fundamental approach has, and continues to be, striking the correct balance between their powers and the rights of the individual.

Tackling crime and the perception of crime, and dealing with offenders, remain of paramount concern in our communities and neighbourhoods. The proposals in this paper aim to advance the provisions of PACE to ensure that we are better able to meet our objectives on law and order whilst improving the effectiveness and efficiency of the investigative and enforcement processes available to the police.

In commending these proposals for consideration, I am confident that they will benefit the police, the law-abiding citizen and society generally, whilst maintaining the safeguards and protections for those suspected of involvement in crime.

PAUL GOGGINS MP  
Minister of State  
Northern Ireland Office

## 2 Summary of Proposals

### PACE – the Order and Codes of Practice

- Maintain PACE and existing structure of framework powers.
- PACE Codes to continue to be subject to the current consultation and Parliamentary processes.
- Improved accessibility, formatting and presentation of the Codes.
- Codes to be available electronically with appropriate search engines and navigational aids.
- Support material for practitioners and stakeholders to be provided and complementary to national guidance.
- Regular engagement with the regional custody network on PACE developments and issues.

### Stop and Search

- Replace the requirement for a written record to be provided for stop and searches at the point of contact with a receipt, provided that the person exercising the power is using mobile data technology.

### Arrest

- Amend PACE so that the police have the power to enter premises to arrest for summary offences previously deemed arrestable.
- Remove the requirement for an officer to be in “immediate pursuit” in order to enter premises to arrest a person who is unlawfully at large.
- Remove the requirement for officers to be in uniform when entering premises for the purpose of an arrest.
- Clarify the status of voluntary interviews at the police station.
- Expand the current necessity criteria to deal with so-called ‘ongoing offences’.

### Entry, Search and Seizure

- Clarify the existing common law powers on seizure and removal of vehicles and “entire premises”.

### Warrants - Entry & Search for Evidence

- A single power under PACE for the issue of a warrant to search for evidence of any offences based on necessity to replace all such powers in other enactments.
- Consider ways to raise police accountability and minimise the bureaucratic burdens on the police and courts in relation to search warrants.
- Enable an endorsed redacted copy of an all premises or multiple premises search warrant to be given to the owner or occupier.
- Combine police powers under Article 20 and 34 of PACE to enter premises after arrest to search for evidence of an offence.
- Enable an Inspector to authorise entry and search of a suspect’s premises where no arrest takes place but grounds for arrest exist.

- Power for police to enter premises to search for missing persons or any information or material that could assist in locating the person in question.

### Detention

- Maintain existing periods of pre-charge detention.
- Enable authorisations of extensions of detention to be carried out remotely.
- Transfer responsibility for considering and granting extensions of detention from superintendent to inspector level.
- Repeal existing provisions enabling use of non-designated police stations for detention through the use of remote video links.
- Require custody officer formal review of detention at 6 hours and first Inspector review at 10 hours.

### Bail

- Provide police with the power to impose conditions when issuing on street bail and a power of arrest for breach of conditions.
- Create two new offences of failing to comply with conditions attached to bail issued on the street or issued pre-charge at the police station.
- Provide the police with the power to enter premises in any circumstance where reasonable suspicion exists and it is necessary for the enforcement of bail or conditions of bail.
- New power to arrest when failure to answer police bail to attend a police station is anticipated.
- Re-commencement of the detention clock on answering bail only when the investigation can continue or when the person arrives at the police station where the investigation is being conducted.
- Extend the discretionary power to attach conditions to police bail before charge.

### Biometric Data & Identification Procedures

- Require all video identification procedures to be video recorded and remove the entitlement for the suspect's legal advisor or representative to be present when the victim or witness views the images.
- Provide the ability for a court to draw adverse inferences from a person's refusal to cooperate in an ID procedure.

### Questioning after Charge

- Consider providing police with the ability to question after charge and the appropriateness of courts to draw inferences in the event of silence or no comment.

## Workforce Modernisation

- Enable the Chief Constable to employ Designated Identification Officers to undertake the Identification Officer role.
- Create Designated Crime Scene Investigator under Schedule 2 to the Police (Northern Ireland) Act 2003.
- Administrative arrest within a police station by Investigating Officers.

## Foreign National Prisoners in Transit

- Provide a police power of supervision and where required, detention of persons in the custody of a foreign jurisdiction travelling in transit through the United Kingdom.

## UK Cross Border Provisions

- Improve the effectiveness of UK cross border powers to enable:
  - an officer to arrest without warrant in any jurisdiction for an offence committed in one of the other jurisdictions,
  - the detention and questioning of a suspect in another jurisdiction for an offence committed in the officer's own jurisdiction,
  - the suspect to be transferred to an appropriate location in the jurisdiction where the offence was committed,
  - the ability for police to grant bail to a detainee to appear at a police station or court in another jurisdiction.

### 3 PACE – the Order and Codes of Practice

3.1 There were no calls in the initial consultation paper entitled ‘Modernising Police Powers - Your PACE, Your Say’ for the existing structure and framework of PACE to be changed.

3.2 We acknowledge that the length, legalistic format and style of the Codes of Practice can be unhelpful in terms of accessibility by police and members of the public. We are not proposing any change to the existing statutory requirements concerning the provision of the codes of practice but we do intend to look at ways to improve their usability and making them more understandable to detainees and members of the public.

3.3 We also recognise the need to raise the levels of accessibility of the Codes for all users. This includes making the codes available in electronic format with a suitable search engine providing linkage to guidance, circulars etc. We will look at making available condensed and more accessible formats for the public and detainees. We are also looking at alternative printed formats which enable simple updating when revisions are made between printing cycles.

3.4 The process of reviewing PACE is constant and ongoing. We are proposing an annual review date to take account of required statutory changes and to consider format or style changes where we are aware that difficulties arise either on interpretation or on understanding. The development work will be carried out with the closer co-operation of the regional custody network, the National Custody Forum chaired by ACPO (Association of Chief Police Officers) and with colleagues in the Home Office.

#### Proposals

- Maintain PACE and existing structure of framework powers.
- PACE Codes to continue to be subject to the current consultation and Parliamentary processes.
- Improved accessibility, formatting and presentation of the Codes.
- Codes to be available electronically with appropriate search engines and navigational aids.
- Material for the public, including detainees, to be made available in condensed and more accessible formats.
- Support material for practitioners and stakeholders to be provided and complementary to national guidance.
- Annual review for suggested updates to the Codes and closer engagement with the regional/national custody networks and the Home Office on format and content proposals.

## 4 Stop and Search

4.1 Part 1 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) sets out the provisions concerning the exercise of stop and search powers. PACE Code A, Annex A summarises the main stop and search powers.

4.2 There are two main concerns about stop and search -disproportionality and bureaucracy.

- disproportionality results from the exercise of the powers at operational level rather than from the powers themselves. PACE Code A sets out clearly how these powers should be exercised.
- On bureaucracy, there are issues on the completion and use of the stop and search form.

4.3 Last year, there was in excess of 18,000 stop and searches in Northern Ireland. The completion of paperwork associated with this by police officers is significant notwithstanding the back office time spent electronically recording the information. The benefits of the use of technology by the police, and for the person stopped, in this process cannot be underestimated. The use of hand held technology may provide the capacity for an officer to identify or confirm identity of the person(s) in front of them and there may be opportunities for the administrative element of the recording requirements to be completed electronically.

4.4 Where mobile data technology is in operation, we are proposing to remove the requirement for a written record to be provided at the scene of a stop and search and a receipt issued instead.

### Proposals

- Replace the requirement for a written record to be provided for stop and searches at the point of contact with a receipt, provided that the person exercising the power is using mobile data technology.

### Entry to arrest for an offence

5.1 When the new power of arrest based on the necessity criteria was introduced by the Police and Criminal Evidence (Amendment) (NI) Order 2007, it provided for the application of the so-called trigger powers following arrest to be applied to all indictable offences. A consequence of the change was that a number of summary offences contained in various enactments previously listed as arrestable offences under PACE no longer attracted the application of the trigger powers, most notably the power of entry to arrest. The power of entry for a number of these offences has since been reinstated in the Criminal Justice (Northern Ireland) Order 2008 but we will look at re-introducing the trigger power for the remainder of the offences.

5.2 Consideration was given to applying the power of entry to all offences and applying the necessity criteria to the exercise of that power. Applying the power of entry for all offences would enable a constable to enter a person's house in relation to, for example, an offence of dropping litter. It would be extraordinarily difficult for an officer to justify exercising the power in that circumstance. We do not therefore propose any extension from the current threshold of indictable offences to all offences.

### Immediate Pursuit

5.3 Article 19(1)(d) of PACE requires that before entry can be made to recapture someone who is unlawfully at large, the officer must be in immediate pursuit of that person at the time of the person's entry to the premises. The requirement for 'immediate pursuit' does not apply to the "unlawfully at large" categories in Article 19(1)(ca) (e.g. prison escapees) and potential for delay it can cause seems unreasonable and unnecessary and can raise the level of public risk.

5.4 For example, an officer who sees a dangerous patient, absent without leave from a secure healthcare facility, enter premises, or sees that person at the window of the premises would not be in immediate pursuit and could not rely on Article 19(1)(d) to enter and search the premises to retake the person using the power of arrest under the Mental Health (Northern Ireland) Order 1986. In the absence of grounds to suspect the absconder was harming occupants or causing damage or otherwise committing offences or causing or likely to cause a breach of the peace, the only option would be to obtain a warrant under Article 129 of the Mental Health (Northern Ireland) Order 1986.

5.5 We propose that PACE is amended to allow the power of entry for the purpose of arrest in any situation where a person is unlawfully at large without the need for a constable to be in 'immediate pursuit'.

## Entry for Arrest – Uniform

5.6 Requirements for an officer to wear uniform when exercising certain powers stem from concern to ensure that the public know that the person exercising these powers is a constable. Clearly there are circumstances where the constable must be clearly recognisable, for example when requiring a person to stop their vehicle under Article 180(1) of the Road Traffic (NI) Order 1981.

5.7 The requirement for the arresting officer to be in uniform, which applies to some offences, places constraints on officers who are operating in a ‘plain clothes’. The need to wait outside the premises for a uniformed colleague to arrive in order to enter and arrest which would not otherwise apply to other offences has the potential of providing the suspect with the opportunity to destroy or conceal evidence, collude with or warn other suspects or make good their escape.

5.8 To ensure a consistent approach and remove operational barriers for police we propose that this requirement for officers to be in uniform when entering premises for the purpose of an arrest be removed.

5.9 Police Service guidelines govern the conduct of officers operating in ‘plain clothes’ and stress the importance of officers identifying their status when exercising their powers. PACE Code B already sets out safeguards requiring the officer in question to identify him or herself and show their warrant card (if not in uniform) as proof of their status prior to exercising any power of entry.

## Voluntary Interviews at a police station

5.10 We propose to clarify the relationship between Article 31 of PACE, “voluntary” interviews and the requirement under PACE Code C10.2 that a suspect who is cautioned prior to interview and has not been arrested must be informed that they are free to leave. The aim is to make clear that the requirement to caution and liability to arrest does not arise if the person concerned is not suspected of involvement in an offence. This is to remove any opportunity for placing pressure on the person to remain to be questioned, either with or without the issue of the caution, because they believe that the moment they try to leave they will be arrested. It would be contrary to Article 31 to do otherwise and is likely to compromise the admissibility and fairness of such a “voluntary” interview.

5.11. Code C paragraph 3.16 states that anyone attending a police station voluntarily to assist with an investigation may leave at will unless arrested.. There is some concern over the relationship between the requirements of Article 26(4), Article 31(1) and Code of Practice G paragraphs 2.4 to 2.9. In effect, many officers feel they cannot comply with the spirit of a voluntary attendance under Article 31 as the power of arrest is held in reserve in the event of the suspect deciding to leave before all questions can be put to him. This can lead to a false impression by the person attending voluntarily that they are free to leave when clearly this is not the case. We

would like to clarify the relationship between an arrest under Article 31(1) and the arrest necessity criteria under Article 26(4) and (5)

### Clarifying the necessity criteria

5.12 The criteria in Article 26(5) PACE, excluding the need to investigate, are similar to those in Article 39 PACE (detention after charge). Both focus on the need to prevent harm or to protect other persons or property. The necessity criteria on arrest is not sufficiently clear when dealing with the prevention of injury and loss of/damage to property to deal with continuing offences; and certain types of antisocial behaviour and low-level disorder, including non-compliance with directions designed to prevent the consequences of such behaviour.

5.13 The relationship between the routine powers to take, check and retain fingerprints and DNA of arrested persons at the station and the necessity criteria would also benefit from clarification. For example, the necessity criteria would be satisfied if the effective investigation of the offence requires taking and comparing fingerprints and DNA for evidence or where it is reasonably believed that fingerprints would resolve a properly founded doubt as to the arrested person's identity. However, the criteria are not meant to support arrest solely for the purposes of routinely taking fingerprints and DNA to add to the national databases.

5.14 We propose to clarify the application of necessity criteria by:

- providing a more straightforward connection between the effect of the suspect's behaviour on others and the need to arrest to prevent that effect. An example might be, where the constable reasonably believes that a person present is likely to fear for the safety of themselves and/or their property and that the suspect's arrest is necessary to allay that fear; and
- making it clear that the taking of fingerprints and DNA to carry out a speculative search & collect biometric data is not sufficient grounds on its own to make an arrest.

#### Proposals

- Amend PACE so that the police have the power to enter premises to arrest for summary offences previously deemed arrestable.
- Remove the requirement for an officer to be in "immediate pursuit" in order to enter premises to arrest a person who is unlawfully at large.
- Remove the requirement for officers to be in uniform when entering premises for the purpose of an arrest.
- Clarify the status of voluntary interviews at the police station.
- Expand the current necessity criteria to deal with so-called 'ongoing offences'.

## 6 Entry, Search and Seizure

### Vehicles - powers of entry, search and seizure by a constable

6.1 Article 25 PACE extends the meaning of premises for the purposes of the powers of entry, search and seizure under PACE to include vehicles but does not include public streets, highways and similar places to which the public has unrestricted access and for which police do not require a power to enter and remain. The Court of Appeal judgment in *Cowan v Commissioner of Police of the Metropolis* [2000] 1 WLR 254 found that there was a power for the police under the common law to search and seize the car in question. The enactment of PACE had not revoked the common law power.

6.2 The Court considered that there was no reason why the word “anything” contained in the entry and search provisions of PACE should not include “everything” where the nature of the premises made it physically possible for the whole of the premises to be seized and retained by the police, and where practical considerations made that desirable. The legislation was to be interpreted so as to enable the police to carry out effective investigations, which would normally involve, in the case of premises which could easily be removed to a police station, the removal of such premises to the police station so that evidence might be preserved. Part of this judgment is currently reflected in PACE Code B *Note 7B*:

*“The powers of seizure conferred by PACE, Articles 20(2) and 21(3) of the Police and Criminal Evidence (Northern Ireland) Order 1989 extend to the seizure of the whole premises when it is physically possible to seize and retain the premises in their totality and practical considerations make seizure desirable. For example, police may remove premises such as tents, vehicles or caravans to a police station for the purpose of preserving evidence.”*

6.3 We are proposing to place this provision on a statutory footing. That will make clear that when powers to enter, search and seize (including the operation of the extended seizure powers under Part 2 of the Criminal Justice And Police Act 2001) are exercised in respect of any premises (as defined by Article 25 PACE) that comprise a vehicle situated in:

- the street or
- similar location or
- a structure that makes it physically possible for the entire premises to be seized and removed from its site for examination, for example, a "portable office", caravan, tent or similar structure,

then the entire premises with contents may be removed if this is reasonable, and necessary for the purposes of searching for, and seizing anything that is believed to be relevant evidence.

6.4 In circumstances where the vehicle or removable structure is within the boundary of particular premises to which the powers apply, that vehicle or structure would be liable to be searched and it and/or its contents, seized in the same way as any other part of those premises.

**Proposal**

- Clarify the existing common law powers on seizure and removal of vehicles and “entire premises”.

## 7 Warrants - Entry & Search for Evidence

7.1 The police have a range of powers to enter and search premises to find evidence of offences. The exercise of these powers depends on a combination of factors, namely; the nature of the offence, the nature of the evidence sought and whether a suspect has been arrested, and the connection between the suspect and the premises.

### Search Warrants

7.2 Article 10 of PACE provides a general power to issue a search warrant to find material that is evidence of any indictable offence. There are other enactments in addition to PACE, under which search warrants may be issued to the police by the courts. These include the Explosives Act 1875, the Firearms (Northern Ireland) Order 2004 and the Misuse of Drugs Act 1971 where the majority of offences are indictable and therefore also within the scope of Article 10 of PACE. These other enactments include summary as well as indictable offences but unlike warrants under Article 10 of PACE, which may authorise entry to more than one set of premises on more than one occasion, warrants issued under these other enactments can authorise entry to one set of premises on one occasion only. Article 10 also includes safeguards that are not found in most other enactments around why the warrant is needed to gain entry.

7.3 Following the changes to the arrest framework made in 2007, we propose that PACE should provide the framework for the issue of a search warrant for all offences and subject to a test of necessity. This would replace the search warrant provisions in all other individual enactments.

7.4 The necessity criteria could include:

- the likelihood that an offence had been committed
- the need to secure specific (i.e. defined) evidence that is likely to be of substantial value to an investigation and / or prosecution; and
- immediate entry to premises is necessary to prevent an investigation from being hindered by evidence being moved or concealed or to prevent evidence of an offence from being tampered with, altered, damaged or destroyed.

7.5 Removing the arbitrary threshold would enable rationalisation of all other warrant powers found in statute. All offences would be covered by the single statutory framework under PACE and the accompanying safeguards, enabling the repeal of the other specific warrants that are found in other statute. This would provide clarity to the provisions governing search warrants. We are not proposing that all non-police investigative agencies powers should apply to all offences. Their warrant powers would remain focussed on specific offences and these would be set out in a Schedule to the Order.

## Authority for Search Warrants

7.6 The proposed shift towards necessity means that the decision to issue a search warrant is focussed on the needs of the investigation, the evidential value of the material sought and, additionally, justification why the search warrant is necessary. We should also examine the scope for increasing accountability and reducing, where possible, administrative and bureaucratic process on the police and on the courts.

7.7 Article 8 of the ECHR provides safeguards around independent oversight of the issue and execution of search warrants. Prior judicial authorisation provides an independent oversight that the interference of entry and search is justified and that the process of issuing search warrants is not abused. Additionally, under PACE, warrants are required to be returned to the court suitably endorsed by the officer who has made use of the powers granted under the warrant.

7.8 The existing process represents a significant oversight protecting the individual from arbitrary interference. The role of the judiciary is seen as integral to ensuring compliance with Article 8 of the ECHR. The key issue is whether there are appropriate safeguards in place to ensure that any interference with the individual's right are justified. We are of the view that judicial involvement in the issuing of warrants is necessary and should remain in place. Therefore, we do not propose to make changes to the existing process.

7.9 In the longer term, we will work with colleagues in the Court Service on how best to draw together this information to enable the effective scrutiny of the issue, execution, or non-execution of search warrants.

## Copies of Search Warrants / Authorisation

7.10 Where search warrants or authorisations relate to entry to more than one set of premises, the occupier of each premise is entitled to be satisfied that the warrant/authorisation does in fact authorise entry to those premises. However, the occupier is not entitled to be given any information about other premises that may be searched under that warrant/authorisation. It may not be possible for the police to search all premises at exactly the same time. Only requiring the copy of the warrant to specify / identify the individual premises in question would protect the integrity of the investigation by preventing the occupier of the premises in question from tipping off or notifying the occupiers of other premises contained in the warrant.

7.11 We are proposing that Article 18 of PACE is amended to clarify that the copy of the warrant can be redacted to show only the address of the relevant premises. The officer in charge of the search would be required to endorse the copy as being a true copy of the warrant in relation to those premises.

## Entry and Search after Arrest without a search warrant

7.12 Currently, Articles 20 and 34 of PACE give police powers to enter and search premises to find evidence after a suspect has been arrested for an offence. Although the powers both apply to indictable offences and are similar in purpose, namely to find evidence of an offence, there are inconsistencies between the two powers around the premises that can be searched, the objects that can be seized, the authority required and the time the power can be exercised.

7.13 We envisage that search warrants as proposed above will still be needed to enter premises not occupied or controlled by an arrested person or premises where the suspect was when arrested or immediately before arrest. What we are proposing is that these powers should be merged into a single power enabling the police to search premises after arrest for any offence subject to necessity. The need to search would be determined by the officer who, at the time that it is proposed to carry out the search, is in charge of the investigation of the offence in question. The powers could only be exercised whilst the person is held in custody following arrest.

7.14 In many cases, the necessity to arrest supports the need to search, for example, when arrest is necessary to allow the prompt and effective investigation of the offence and premises need to be searched to seize the evidence of the offence. This would ensure that the arrest and search powers are mutually supportive and can be exercised effectively.

## Authorisation of entry without arrest

7.15 An arrest is made at the discretion of a constable and accepted as sufficient to avoid the need to apply to a court for a warrant to search the suspect's premises. In cases where there are grounds to make an arrest but (a) the suspect has not been traced or (b) arrest would only be made to enable the search to take place, the facts considered by the court in an application for a search warrant would be the same as those considered by the police officer.

7.16 In these circumstances, we are proposing that the need to make application to a court for a search warrant should be replaced by an officer of Inspector rank or above being empowered to authorise a search of the suspect's premises for evidence of the offence(s) in question without the suspect having to be arrested.

7.17 Such a power would reduce the workload of the courts and reduce the administrative and bureaucratic warrant application procedures for police. It would also remove delay and allow the search to be authorised when considered necessary and operationally beneficial.

## Entry to Search for Information in Relation to Missing Persons

7.18 Police have a duty to investigate reports of missing persons, primarily to identify whether there is any connection to a criminal offence or where there may be concerns about the safety or welfare of the person concerned.

7.19 Where an offence is suspected the police have appropriate powers under PACE to investigate that offence. However, there are cases where there are no grounds to suspect that an offence has been or is being committed but the police still have concerns about the safety or welfare of the person and need to find them.

7.20 In these cases, police have no statutory power to enter and search premises to find missing persons, or to obtain any information or material that could assist in locating them and must rely entirely on the owner or occupier's consent and co-operation. Where access is denied, and no other statutory power exists, police are powerless to act.

7.21 Therefore, we are proposing to create a separate power for police to enter premises to search for missing persons or any information or material that could assist them in locating the person. The power could only be exercised with the prior authority of a Superintendent not involved in the missing person investigation who is satisfied that (a) the person's safety or welfare is at risk, and (b) there is reason to believe that the missing person may be on the premises or that relevant information or material may be found.

7.22 The police should also have the power to retain any information or material seized in relation to a missing person investigation. That information or material should be retained for so long as is necessary for the purposes of the missing person inquiry in question.

### Proposals

- A single power under PACE for the issue of a warrant to search for evidence of any offences based on necessity to replace all such powers in other enactments.
- Consider ways to raise police accountability and minimise the bureaucratic burdens on the police and courts in relation to search warrants.
- Enable an endorsed redacted copy of an all premises or multiple premises search warrant to be given to the owner or occupier.
- Combine police powers under Article 20 and 34 of PACE to enter premises after arrest to search for evidence of an offence.
- Ability of an Inspector to authorise entry and search of a suspect's premises where no arrest takes place but grounds for arrest exist.
- Power for police to enter premises to search for missing persons or any information or material that could assist in locating the person in question.

## 8 Detention

8.1 The 'detention clock' governs how long a person may be detained in custody and the safeguards and protections that must be afforded to that person whilst held at the police station. This section deals with making best use of the detention periods permitted under PACE and ensuring that suspects are not detained unnecessarily in custody.

### 'Stopping and starting' the detention clock

8.2 PACE provides that whilst in detention a person must have suitable refreshment breaks, rest and sleep periods, access to solicitors, healthcare professionals, appropriate adults and interpreters. These are and remain key rights.

8.3 The investigation may continue whilst these rights are being exercised but questioning cannot take place whilst the person is being afforded these rights and rightly so. However, it does mean the process of arranging for people to attend, waiting times for people to arrive and the essential rest and refreshment breaks can significantly delay when an interview can take place. The potential effect is that police officers may be unnecessarily delayed at the police station whilst waiting to carry out interviews. Additionally, others attending such as solicitors and appropriate adults may be similarly left sitting around at the police station until such time as the interview can get underway. The driving factor is the detention clock and the need to either charge or release the person within the period of authorised detention.

8.4 The existing detention clock process under PACE is straightforward and understood and is geared to a finite time in detention rather than to the needs of the investigation. There will be occasions when an investigation cannot proceed whilst a person is not available for interview/investigation processes at the police station. This can restrict the efficient and effective use of a person's period in detention.

8.5 Whilst we recognise the impact and frustration of delays in custody, we also recognise that these may be in part due to local management issues rather than legislative requirements. As a number of proposals in this consultation paper indicate, we are looking at ways to help speed up the process at the police station whilst maintaining safeguards through developments in healthcare provision, accessing interpreters/ translators, appropriate adult provision and the greater use of street bail to help better plan investigations.

### Reviews of Detention and Extension up to 36 hours

8.6 Article 43 of PACE provides that an officer of the rank of Superintendent or above may authorise the keeping of a person in police detention for up to 36 hours after the relevant time (i.e. the time at which the person was first brought to the station). The officer must carry out such an authorisation in person at the relevant custody suite.

8.7 The involvement and attendance of a superintendent can place significant demands on the officer, particularly if there is a need to travel to a custody suite to carry out the review. It does not always represent the most effective use of their time. The inspector's review of detention, under Article 41 of PACE, enables the more efficient approach of allowing an Inspector with the discretion to carry out a review in person or by telephone or video-conferencing and, in the case of the latter two options, to terminate the remote review at any time and continue with the review in person. We are proposing that similar arrangements should be in place for a Superintendent to authorise continued detention of up to 36 hours.

8.8 We also consider that the decision to consider extensions of detention should be carried out by an Inspector rather than a Superintendent. We believe that the Superintendent in his or her role as the arbiter of disputes within custody under PACE, should no longer maintain a direct role in the decision-making process of determining further detention. It would also follow from the revised review process set out in paragraph 8.11 below that the Inspector would take on a more substantive monitoring role on the expediency of the custody process, risk assessment and progress of the investigation. We believe that this would provide an important level of scrutiny at ground level and help raise standards by helping achieve compliance with PACE and the Safer Detention Guidance.

### **Reviews of Detention**

8.9 Article 41 of PACE requires that reviews are carried out at stipulated periods whilst a person is in police detention. This is to determine whether the person's detention remains necessary, that the investigation is being progressed and that they are being dealt with in accordance with PACE. There is currently a requirement that the outcome of the review is completed in writing in the presence of the suspect.

8.10 There are practical problems, particularly at stations where the custody record is computerised. The suspect will have to be taken from their cell to the computer terminal. This can create potential safety risks and will require custody staff engagement. A more practical approach would be in informing the detainee of the grounds for their continued detention and, as soon as it is practicable to do so, allow them to inspect the custody record. The detainee, subject to safety considerations, would be given a printed copy of the review form setting out the reason given by the review officer for their continued detention. The reasons for the continued detention would additionally be read to the suspect by custody staff. All these actions can be conducted with the suspect remaining in the cell and remove the need for adding any additional risk factors to the safety and security of the wider custody suite. These functions could be carried out by detention staff.

8.11 We have also looked at the detention clock. Although we do not consider that there is sufficient evidence to either extend pre-charge detention nor to allow the detention clock to be stopped whilst awaiting the compliance with the detainee's

safeguards and protections, we do however, consider that the existing review timeline could be improved. We are proposing that the custody officer should carry out the first review at 6 hours from the point of authorisation of detention. The next review would be carried out by an Inspector at 10 hours, then at 18 hours from the time of authorisation of detention. The next review after any authorised extension of detention would be at 32 hours. After any period of authorised detention by the court, the Inspector would carry out reviews at 8-hourly intervals.

8.12 The purpose is three-fold. First, the custody officer would have a formal timeline to assess progress on the investigation and the continuing detention of the person. Second, the Inspector's first review at 10 hours is a more appropriate period for the review officer to consider both the booking-in process, and resulting actions and to make the assessment on the progress of the investigative process. Third, the Inspector's review would not overlap with the decision to extend detention and would provide an early opportunity for the reviewing officer and investigators to consider the need for any requirement for extensions of detention.

8.13 Any issues concerning access to legal advice would remain for consideration by a Superintendent as part of their role of dealing with disputes or any departures from access to safeguards and protections under PACE.

#### **Custody Officer – Video Links to non-designated police stations**

8.14 Non-designated police stations are not required to have appointed custody officers to oversee the person's detention. The functions of the custody officer at these stations must be performed by an officer (of any rank) who is not involved in the investigation, but if no such officer is available, the role may be carried out by the arresting officer on the condition that he/she informs an inspector at a designated police station of the situation as soon as practicable.

8.15 Article 46A of PACE was introduced to utilise technology and raise oversight by a custody officer at non-designated police stations by enabling a custody officer in a designated police station to use video-conferencing facilities to carry out the functions in relation to a person detained at a non-designated police station. Article 46A remains subject to commencement. The option provides potential benefits for minimising risks associated with the transportation of suspects, the needs of the investigation and the ability for front-line officers to remain in their operational area rather than travelling distances to the nearest designated police station.

8.16 However, it may also place undue responsibilities on the custody officer located in another station and therefore distant from responding to and directing control of the needs of the detainee. It is questionable whether such remote monitoring would be consistent with the objectives let alone the principles of the Safer Detention guidance. There have been no calls to commence this provision since its enactment and whilst we recognise the benefits, the issue is one of care and placing that responsibility on a custody officer in a different location with his or her

own responsibilities for the custody suite in which they are working. Therefore, we are proposing to repeal this provision.

#### Proposals

- Maintain existing periods of pre-charge detention.
- Enable authorisations of extensions of detention to be carried out remotely.
- Transfer responsibility for considering and granting extensions of detention from superintendent to inspector.
- Require custody officer formal review of detention at 6 hours and first Inspector review at 10 hours.
- Repeal existing provisions enabling use of non-designated police stations for detention through the use of remote video links.

## 9 Bail

9.1 Bail plays an important part in the investigative process by enabling the police to continue the investigation without the need either to take the person into custody (“street bail”) or to keep the suspect in detention. This allows more effective use of the detention period allowed under PACE. Placing conditions on bail enables the police (and courts) to place restrictions on individuals that protect victims, witnesses and communities from interference and further offending.

### **Power to impose conditions on granting street bail and power of arrest for breach of conditions**

9.2 Bail elsewhere than a police station (commonly referred to as street bail) was introduced by the Criminal Justice (Northern Ireland) Order 2004 to give an officer the ability to release an arrested person on bail at the scene of an offence without the need to take the person back to a police station in order to issue bail. Street bail can only be used if a number of set criteria are met. This includes whether the officer is satisfied that the arrested person has given a correct name and address; the nature and seriousness of the offence; the vulnerability and awareness of the suspect; the possibility of further offences being committed and the preservation of evidence before making their decision.

9.3 Currently, police may only attach conditions to bail before or after charge. We are proposing that police should have the power to attach conditions on granting street bail as is currently available to officers in England and Wales. For example, under the new power, police would be able to restrict someone they had arrested for shoplifting from returning to a shopping centre. The conditions imposed by police will only be to the extent necessary to secure the person’s surrender to custody; to prevent the person committing a further offence while on street bail; to prevent the interference with witnesses or obstruction of justice; or for the person’s own protection.

9.4 It is important that the need for bail conditions is relevant and proportionate to the offence, the circumstances of the offender and the needs of the victim. Attaching conditions is about minimising the potential for any further offending or harm or the ability to influence or interfere with witnesses or victims. It will also increase police confidence in using street bail as an effective way of managing and organising casework.

9.5 We are proposing that the person who has been granted street bail subject to conditions will have the right to apply to a custody officer for the conditions to be varied with a further option for review by a court.

9.6 Police have power under Article 48(5) of PACE to arrest a person released on bail before charge if there are reasonable grounds for believing that the person is likely to break or has broken any of the conditions of his bail. We are proposing that there is a corresponding power of arrest for breach of street bail conditions.

#### **New offences of failure to answer street bail and failure to comply with conditions of police bail**

9.7 Failure to answer bail issued at a police station without reasonable excuse is an offence. Failure to comply with conditions of bail is not an offence. A failure to comply with conditions currently (a) requires the person to be arrested on the basis of the original offence in order for any new conditions to be imposed or (b) for the investigation to continue with the person being detained following that arrest. We propose to achieve this by creating two new offences:

- (a) failure to comply with conditions attached to police bail; and
- (b) failure to attend a police station in respect to street bail.

9.8 Depending on the circumstances of the breach, charging and prosecution of the breach would be considered either as a stand-alone offence or in tandem with the original offence suspected of having been committed. We need to ensure that the suspect and also, victims and witnesses, know that where a breach occurs, the police can take direct action to deal with it. It does not serve the criminal justice system nor support building public confidence if effective enforcement action cannot be taken against a person who chooses to breach bail conditions. Some may argue that this approach is unacceptable as a person who commits a breach may be convicted for the breach but acquitted for the original offence. It will be a matter for the police and the PPS in the first instance to determine whether they wish to prosecute for the breach and a matter for the court to determine whether a conviction should be applied.

#### **Powers of entry to enforce bail**

9.9 At present, the police do not have the power to enter and search premises to affect an arrest *without warrant* of:

- a person who fails to answer police bail before charge,
- a person who fails to comply with conditions attached to police or court bail,
- a person who it is believed unlikely to answer bail or likely to breach conditions of bail to appear at court granted by the police or a court,
- a person who fails to comply with a court order to surrender when bail is withheld by the court.

9.10 For example, the police may be aware of a person to whom any one of the above circumstances applies and who they know is present at a specified address but they have no power to enter the premises to arrest them. Instead the officers would

have to wait outside until the individual leaves the premises. This is a waste of valuable police resources.

9.11 We are proposing that the police should have the power to enter premises in any circumstance where reasonable suspicion exists and it is necessary for the enforcement of bail. This will enable the police to deal more effectively with failure to attend and with breach of conditions or anticipated breaches and failure to attend.

#### **New power to arrest when failure to answer police bail to attend a police station is anticipated**

9.12 Police have power under Article 6(3) of the Criminal Justice (Northern Ireland) Order 2003 to arrest a person released on bail to attend court if it is believed that they are not likely to answer bail or that they are likely to break any conditions attached to that bail. However, there is no corresponding power under Article 47A PACE to arrest a suspect when failure to answer bail to attend a police station is anticipated. This means that currently the police cannot arrest the suspect until the bail return date has passed.

9.13 We therefore propose to further strengthen bail enforcement powers by extending the arrest powers under Article 47A PACE so that a suspect can be arrested in these circumstances. No offence would be committed but the arrest would allow police to bring forward any action planned for when the suspect answered bail. If the suspect's behaviour indicated a potential risk to the public, police would also be able to exercise any other preventative powers that are available at that time. There would also be a power of entry to effect this arrest (see paragraph 9.11 above).

#### **Failure to answer bail at the specified police station**

9.14 Where a person is arrested under Article 47A of PACE after failing to answer bail, that person's 'PACE *detention clock*' resumes from where it stopped when the person was released on bail. The clock resumes whether the person arrives at the station specified on the bail notice or at any other police station.

9.15 This can significantly disadvantage the investigation if the suspect deliberately arrives at, or for operational reasons after arrest is taken to, a police station which is not the station where the investigation is being conducted. In these situations, the detention clock resumes but the investigation cannot continue. This means that investigative time can be lost from the detention period.

9.16 We are proposing to amend PACE so that the detention clock for the original offence only resumes at the point that the investigation can continue or when the person arrives at the police station where the investigation is being conducted. As with any function under PACE, all aspects of the detention and investigative processes must be carried out as soon as practicable and justification provided for any delays or failure to act expeditiously. Safeguards need to be applied around noting

custody records and justification being provided for any period in which the suspect is held in custody that does not count towards the detention period.

#### Extension of Conditional Police bail before charge to cover bail under Article 35 PACE & bail at pre-charge reviews

9.17 Amendments made to PACE by the Criminal Justice (Northern Ireland) Order 2008 extended the discretionary power of police to attach conditions to bail before charge. They apply only to pre-charge bail granted under Article 38 of PACE. As a result, conditions cannot be attached either to bail granted by a custody officer under Article 35(6) PACE or to bail granted by a review officer (inspector or above) when reviewing detention before charge in accordance with Article 41 PACE, even though the circumstances which require release on bail in both cases would be the same as those applicable to Article 38(2) PACE.

9.18 We therefore propose to extend the discretionary power to attach conditions to police bail before charge to cover:-

- bail granted by a custody officer under Article 35 PACE; and
- bail granted by a review officer (inspector or above) as at Article 41 PACE review of detention before charge.

#### Proposals:

- Provide police with the power to impose conditions when issuing on street bail and a power of arrest for breach of conditions.
- Create two new offences of failing to comply with conditions attached to bail issued on the street or issued pre-charge at the police station.
- Provide the police with the power to enter premises in any circumstance where reasonable suspicion exists and it is necessary for the enforcement of bail or conditions of bail.
- New power to arrest when failure to answer police bail to attend a police station is anticipated.
- Re-commencement of the detention clock on answering bail only when the investigation can continue or when the person arrives at the police station where the investigation is being conducted.
- Extend the discretionary power to attach conditions to police bail before charge.

## 10 Healthcare

10.1 The police are the first point of contact with the Criminal Justice System for members of the public. Last year over 25,000 people were arrested and taken to police custody suites in Northern Ireland. Others come into contact with the police in other ways, for example, during a stop and search or the issue of a fixed penalty notice, or more generally during the course of an officer's day to day duties..

10.2 Many of those people have chronic or acute healthcare needs. The police have to face, or deal with situations requiring assessment and intervention by healthcare professionals. It is important that the police service has accessibility to enable provision of appropriate, effective, efficient and affordable healthcare for those detained in police custody suites.

10.3 Currently, the police have a statutory requirement under PACE Code C to provide access to medical services for a person held in police custody. Additionally, a police station is a designated place of safety under Article 130 of the Mental Health (Northern Ireland) Order 1986. At present, the Police Service of Northern Ireland (PSNI) meets its statutory requirements through the use of Forensic Medical Officers (FMOs) who are registered medical practitioners carrying out work on an on-call basis.

10.4 The Corporate Manslaughter and Homicide Act 2007 created a new offence of corporate manslaughter. The majority of the Act was implemented on 6 April 2008, with the exception of section 2(1)(d) which sets out the relevant duties of care placed on organisations including duties related to holding a person in custody. The Government has indicated that it will work to implement Section 2(1)(d) within the next 3-5 years.

10.5 The PSNI has adopted the ACPO Guidance on the Safer Detention and Handling of Persons in Police Custody as the cornerstone of its custodial standards across Northern Ireland. It has a work programme in place aimed at ensuring full compliance with the guidance. A key element of readiness for the application of the Corporate Manslaughter Act is the provision of effective healthcare available to detainees in police custody.

10.6 A Northern Ireland Office led review of healthcare provision for detainees within PSNI custody suites is currently being carried out to facilitate timely implementation of accepted recommendations in readiness for the future application of the Act to police custody. It is expected that the healthcare review will include exploring opportunities for a more flexible needs-based approach to healthcare provision with greater use of other healthcare professionals and partnership working arrangements between the police and the Health and Social Care system.

## 11 Appropriate Adults

11.1 PACE Code C makes provision for an appropriate adult to attend a police station to support, advise and assist juvenile, mentally disordered or otherwise mentally vulnerable detainees in order that they understand what is happening to them, and why, during the custody process. The code specifies that an appropriate adult may be a parent, relative, guardian, social worker, person responsible for the detainee's care, or some other responsible person aged 18 or over asked to perform the role.

11.2 Police often experience difficulty and/or delays in identifying a suitable person to attend the police station to act as an appropriate adult and this can often delay investigations and result in the person spending longer than necessary in police detention. On such occasions, it is currently common for the police to call on social workers to act as an appropriate adult, albeit this may be outside their statutory responsibilities.

11.3 This has placed a burden on the resources of Social Services and it is recognised that there is a clear need to have in place a structured appropriate adult scheme to deliver this important service. The Northern Ireland Office has been actively seeking to procure such a service. The proposed scheme will not replace parent/guardian responsibility in the role of the appropriate adult nor will it remove the statutory responsibility for Social Services to provide for people in their care.

11.4 Currently under PACE in Northern Ireland, a 'juvenile' is defined as anyone under the age of 17 years. Article 18 of the Police and Criminal Evidence (Amendment) (Northern Ireland) Order 2007 makes provision to amend PACE to change the definition of a juvenile from anyone under the age of 17 years to anyone under the age of 18 years. This is an important change aimed at aligning PACE with other domestic legislation and international conventions. Although yet to be commenced we expect to do so by late 2009. The Appropriate Adult Scheme will be expected to facilitate the resulting increase in appropriate adult representation.

## 12 Biometric Data & Identification Procedures

12.1 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.

12.2 In the case of the first group, the Government does not intend to make any proposals at this time until an assessment is made of the implications of the judgement by the European Court of Human Rights on 4 December 2008 in the case of S and Marper

12.3 In the second group, we are looking to promote and encourage the protections for victims and other witnesses during a video identification procedure. At present, a suspect can have a representative present at the time and place a witness is asked to make a video identification of the suspect. We propose that this should be replaced with a visual record being made of the process and remove both the need and requirement for a physical presence of the suspect's representative. The aim is to reduce any potential intimidation of the victim or witness as well as enabling the procedure to be carried out as early as possible after the incident.

### Procedures for the Identification of Suspects by Witnesses

12.4 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 witness is asked to make a video identification. This can have an adverse affect on the ability of some witnesses to make a fair and accurate identification. It also places an additional burden on the police and demands on legal advisors which, if the witness viewing is itself videoed, adds little to the safeguards. For the identification officer, it creates particular problems when a witness is unable to travel and the officer considers it appropriate to arrange the viewing at the witness's home.

12.5 Therefore we propose to remove the requirement for a suspect to be able to have a representative present during a video identification procedure showing to a victim or witness. Instead, the showing itself will be video recorded and the suspect and their solicitor will be informed that a video identification process is being held and that they will be allowed supervised access or provided with a video recording of the showing. This will also remove the need to inform the suspect or the suspect's representative when such a process is taking place and eliminate any potential intimidation at the venue before or after the video identification.

12.6 This will help speed up the identification process and reduce the call on solicitor's time. To protect witnesses further, it should also be permissible for the identity of the witness to be concealed on any recording of the viewing that may be

shown or given to the suspect/solicitor using pixilation or other digital imaging techniques.

12.7 Section 14 of this paper sets out proposals in respect of the post of Identification Officer.

12.8 Although the ability to capture images where a suspect does not consent to participate in an identification procedure enables the police to carry out the procedure in the suspect's absence, there have been calls to create an offence of failing to consent. There is unlikely to be much achieved in an unwilling suspect being forced to participate in capturing their image. Instead, we are proposing that there should be the ability for a court to draw adverse inferences from a person's refusal to co-operate.

#### Proposals

- Require all video identification procedures to be video recorded and remove the entitlement for the suspect's legal advisor or representative to be present when the victim or witness views the images.
- Provide the ability for a court to draw adverse inferences from a person's refusal to co-operate in an ID procedure.

### 13 Questioning After Charge

13.1 A detainee must not be interviewed about an offence after they have been charged with, or informed that they may be prosecuted for it, unless: the interview is necessary to prevent or minimise harm or loss to a person or the public; to clear up an ambiguity in a previous statement or answer; or in the interests of justice for information to be put to them which has come to light about the offence since they were charged or informed they might be prosecuted.

13.2 It is important that we help minimise the potential for cases to proceed to prosecution when further relevant information may not become known until the court. That approach is ineffective and counter productive to building public confidence in the Criminal Justice System.

13.3 Therefore, we would like views on the questioning of the suspect following charge up to the trial hearing.

#### The Caution

13.4 The Royal Commission on Criminal Justice (Runciman, 1993) recommended that the caution to be given in relation to questioning after charge or when a detainee is informed that they may be prosecuted should be limited. However if merit is found in introducing questioning after charge, it is proposed that the person subject to this would be subject to the full caution under the Criminal Evidence (Northern Ireland) Order 1988 and PACE Code C (paragraph 10.5b) which states:

*“You do not have to say any anything, but I must caution you that if you do not mention when questioned something which you later rely on in court, it may harm your defence. If you do say anything it may be given in evidence.”*

13.5 We believe it is inappropriate for the suspect to have questions put to him or her and for the court not to have the ability to take into account any silences or no comment in response to those questions. Additionally, the person would be subject to the special warning procedure and required to account for any items in their possession. This would provide for adverse inferences to be drawn from the accused's silence in the face of post-charge questioning.

13.6 We would welcome views on the appropriateness of the person being subject to the full caution.

13.7 It is important to emphasise that we are not raising the possibility of questioning after charge as a means of promoting incomplete/poor investigations by the police or used as a means of enabling early charging of a detainee. This is about ensuring that the police have the ability to examine fresh or additional evidence that becomes available during the course of an investigation and before trial and to give the suspect the opportunity to explain or comment on this.

- Comments on any aspect of post charge questioning, as part of this consultation process, will help us to examine the merits of devising a new regime for questioning after charge that is balanced with appropriate safeguards and oversight.

## 14 Workforce Modernisation

14.1 Workforce modernisation has seen the policing family develop to enable the Chief Constable to decide on the right mix of staff with appropriate skills and knowledge to deliver high quality services to the public. As a result more police officers are being freed up from largely administrative roles for operational duty. Further consideration should be given to other roles that could be undertaken by designated staff.

### Designated Identification Officer

14.2 PACE Code D governs the identification of suspects by police. The Code applies to all forms of identification including fingerprints, photographs and other samples as well as witness identification procedures, such as video, live and group identification parades. Code D requires an 'Identification Officer' to be responsible for the conduct and circumstances in which witness identification procedures are conducted. The identification officer must be inspector rank or above and independent of the investigation in question.

14.3 Apart from the responsibility for agreeing the procedure to be used, considering any objections raised by the suspect, issuing the notice to suspects and making arrangements where the suspect is not available, the majority of responsibilities or tasks may be delegated to another officer or member of police staff. The significant range of tasks that can be delegated mean that frequently civilian staff administer the process with the Identification Officer providing management oversight.

14.4 Key issues in considering whether designated staff could take on the role are the authority, accountability, standards and knowledge/expertise required to carry out role.

14.5 Creating a new role of Designated Identification Officers under the Police (Northern Ireland) Act 2003 would ensure that staff appointed to undertake the role would be subject to the existing disciplinary and liability provisions that apply to all police officers and designated police staff. Importantly the provisions in the Police (Northern Ireland) Act 2003 require the Chief Constable to be satisfied that staff are suitable, capable and trained.

14.6 The authority and the independence of the role is already enshrined in the PACE Codes and using police staff has the potential to increase, rather than reduce, the independence of the post holder. The Codes will provide the Identification Officer with recourse to a Superintendent in the event that his or her authority or decision is questioned.

14.7 Given the expertise many existing civilian staff have developed and the need for designated staff to be suitable, capable and trained the skills and knowledge they

possess will see the post holders develop as specialists within their field. Designation will also provide a career pathway enabling police staff to be retained and take on new responsibilities.

14.8 Unlike other identification powers, witness identification procedures are not based in primary legislation. Amending PACE to place witness identification procedures on the same statutory footing as other identification powers will enable designation to take place. It is expected that such an amendment would be relatively straightforward, setting out the broad framework for the powers with more prescriptive statutory guidance being issued by the Secretary of State.

14.9 The Designated Identification Officer could also be empowered to exercise other complementary identification powers and duties under PACE, such as the taking of fingerprints, photographs, samples and footwear impressions currently assigned to designated detention officers.

14.10 Alternatively police staff could be authorised to act as Identification Officers without primary legislation by simply amending the requirements in PACE Code D. Although this would be a simpler option the Codes could not carry the same weight as legislation in requiring designated staff to be suitable, capable and trained. In order to maintain and even raise standards we are proposing that Designated Identification Officers be created within Schedule 2 to the Police (Northern Ireland) Act 2003.

#### Designated Crime Scene Investigators

14.11 Crime scene investigators (CSIs), previously known as scenes of crime officers (SOCOs), attend crime scenes to record and examine evidence. The evidence they discover is then used to investigate crimes.

14.12 Schedule 2 to the Police (Northern Ireland) Act 2003 already makes provision for police staff to exercise powers in the areas of investigation and detention.

- Investigating Officer – These powers relate to crime scene based work and include powers of seizure, sift, entry and search of premises.
- Detention Officer – These powers relate specifically to forensic processes and retrievals in custody. These can be most effectively carried out by forensic staff and include taking fingerprints, samples and photographs of suspects.

14.13 We are proposing to create a new role of Designated Crime Scene Investigator under Schedule 2 of the Police (Northern Ireland) Act 2003 which will:

- encompass all powers currently available to Designated Investigation and Detention Officers that are relevant to the role of the CSI;

- Include powers to take photographs and fingerprints under the Terrorism Act 2000;
- include a power of seizure of any munitions found in a search carried out under Schedule 3 of the Justice and Security (NI) Act 2007;
- enable the Chief Constable to direct Designated CSIs to carry out all their functions in plain clothes.

14.14 The Designated CSI role will enable suitable, capable and appropriately trained designated staff to undertake the full range of forensic tasks at the crime scene, releasing police officers to other front line duties and adding significant value to the investigative process and developing broader levels of forensic expertise within forces. Current legislative constraints mean that there are occasions where a police officer completes a forensic process under the direction of a forensic professional, simply because the constable has the statutory power but the CSI has the knowledge and expertise. Clearly this is a waste of police resources and adds nothing to the quality of the retrieval of evidence. On balance we can identify no benefits to be gained from using police officers simply because of restrictions in legislation.

#### Staff Custody Officer

14.15 The Home Office recently announced their intention to repeal provisions in section 120 of the Serious Organised Crime and Police Act 2005 that would have enabled civilian staff to carry out the role of custody officer. Similar provision was introduced in Northern Ireland by Article 6 and Schedule 4 of the Policing (Miscellaneous Provisions) (NI) Order 2007. It is our intention to repeal these provisions in line with England and Wales. We will be discussing with relevant parties ways in which the range of process-driven tasks which are currently ascribed to the custody officer could be carried out by trained and suitable civilian staff in support of the custody sergeant.

#### Administrative arrest within a police station

14.16 Currently, Investigating Officers can be designated with the power to arrest for further offences under paragraph 7 of Schedule 2 to the Police (Northern Ireland) Act 2003. This is an “administrative” arrest, as the individual is already in custody, and does not require the use of coercive powers. Operational experience indicates that on many occasions, individuals who know they are to be arrested will agree to voluntarily surrender themselves at the police station, rather than be subjected to a coercive arrest. On these occasions, provided it is within the controlled environment of a police station, it is proposed that an Investigating Officer be given power to conduct the arrest of that individual, under the authorisation of a constable.

### Proposals

- Enable the Chief Constable to employ Designated Identification Officers to undertake the Identification Officer role.
- Create Designated Crime Scene Investigator under Schedule 2 to the Police (Northern Ireland) Act 2003.
- Administrative arrest within a police station by Investigating Officers.

## 15 Foreign National Prisoners in Transit

15.1 There is currently a gap in our law in relation to persons being transited through the UK. Transit occurs in three different scenarios where a person is being transferred from one country to another through the UK. It can happen as a result of an extradition request, a prisoner transfer or an immigration removal. This occurs relatively frequently as the UK is an important transport hub, particularly in relation to aircraft.

15.2 In the case of extradition or prisoner transfer the person will normally be accompanied by foreign law enforcement officers. However, these officers will have no powers beyond those of a normal citizen while they are in the UK.

15.3 UK law enforcement officers will have limited powers but will be unable to act to restrain or arrest a person unless an offence has been, is being or is about to be committed by the prisoner in the UK. In any other circumstance the detention or physical restraint of a person in transit may amount to an assault.

15.4 In some cases, the person may be known to be potentially dangerous and they may come into close proximity to members of the public present in the airport. The police have expressed concern at their lack of powers in these circumstances.

15.5 The UK has also signed a number of international agreements which contain transit provisions. We currently have no domestic legislation that implements these.

15.6 The Framework Decision on the European Arrest Warrant came into effect on 1 January 2004 and removes the discretion to refuse any transit requests from other EU member states who are signatories to this international agreement.

15.7 This means that if the UK receives a request from another Member State to allow the transit of an extradition prisoner through a UK port, by foreign police officers, to refuse such a request would place us in breach of our EU obligations under the Framework Decision. There are currently further European instruments under negotiation which contain similar, obligatory, transit provisions.

15.8 Likewise, a number of our multi-lateral and bilateral extradition treaties contain provisions relating to transit that have not been implemented in our domestic law.

15.9 There are a number of problems that may arise as a result of the lack of police powers in transit cases:

- Neither foreign escorting officers nor UK police officers have either the jurisdiction or power to use handcuffs or other restraint on a prisoner who has not committed a crime in the UK. Many prisoners may be suspected of, or

may have been convicted of, committing serious offences and could be considered to pose a risk to the public.

- If the prisoner insists on simply walking away from the officers, they have no power to detain him. The only power that may be available could be an arrest under s.24 of the Immigration Act 1971, however, this could not be used if the prisoner was a British national.
- Any attempts to use force to detain a prisoner who has not committed an offence in the UK could be subject to challenge. Detention of a prisoner in these circumstances could lead to allegations of assault or false imprisonment by those officers.
- If the prisoner assaults someone, UK officers do have the power to deal with that domestic matter. This would halt and add delay to the extradition process which could not be continued until the domestic charges are dispensed with.

15.10 For the reasons above, it is essential to address the lack of police powers in relation to the transit of prisoners through the UK. We wish to consider providing additional powers to UK police officers which would allow them to supervise the transit of prisoners through the UK and, where appropriate, allow them to hold them in custody until they are able to continue their journey.

15.11 Consequences of holding prisoners in custody and relevant PACE issues will need to be considered in more detail. Nevertheless UK police officers would undoubtedly benefit from additional powers that extend to the transit of prisoners through the UK in order to ensure that they are able to meet the duty of care to the travelling public and others.

Comments on this recommendation, as part of the consultation process, would be particularly welcome.

## 16 UK Cross Border Provisions

16.1 Effective handling of offenders and sufficient powers to investigate crime in other UK jurisdictions are key requirements in dealing with suspects who reside or are located outside Northern Ireland. This section considers providing a constable with the necessary powers to help achieve these outcomes in relation to cross border powers with England and Wales and Scotland.

16.2 The proposed measures are aimed at enhancing the effectiveness of officers from all these jurisdictions in tackling crime.

### UK Cross Border Powers

16.3 Powers of the police from one jurisdiction (England and Wales, Scotland and Northern Ireland) apply only in the jurisdiction in which they are based. The difficulties have become more apparent with the growing sophistication and mobility of criminals. Offences can be committed in one country and the culprits can be in another jurisdiction very quickly, hindering police ability to arrest them.

16.4 The existing governance of cross border powers between the three jurisdictions is set out in Part X of the Criminal Justice and Public Order Act 1994 and agreed protocols. While this has done much to address issues in relation to the execution of warrants, arrest and detention and aiding of one police force by another, the operation of the legislation and the protocol has highlighted a number of areas in which additional powers would bring substantial benefit to officers from all jurisdictions. The proposed new powers focus on the ability to arrest, detain and grant bail, specifically:

#### Arrest without warrant

- A suspect for an offence committed in Northern Ireland who is found in Scotland, England or Wales can only be arrested without a warrant for that offence by an officer from Northern Ireland. The power for an officer to arrest without a warrant in their own jurisdiction for an offence committed in another jurisdiction will help allay the need for officers to travel long distances only to be unable to locate the offender when they arrive.
- A constable would need to be satisfied that there would have been a power to arrest for the offence in the jurisdiction where it was committed. This may be a problem given variations between arrest powers in Scotland compared to that in England, Wales and Northern Ireland.

### Powers of detention

- To complement the arrest powers, there would also need to be provision for officers from one jurisdiction to detain, in their own jurisdiction, a person arrested for an offence committed in another jurisdiction. This would in effect, be a power of interim detention or a holding power, that would need to take into account the rights of the detainee. This is necessary to:
  - await the arrival of an escort to return the detainee to the jurisdiction where the offence was committed; or
  - await the arrival of officers from the home force to deal with the suspect in the other jurisdiction.
- This power of interim detention should exclude any questioning of the suspect in relation to the alleged offence by officers from the holding jurisdiction. Consideration will need to be given for timescales for detention and any variation between existing powers of detention in England and Wales, Scotland and Northern Ireland.

### Transportation

- We would also envisage creating a power to take a person or arrange for them to be taken to an appropriate location in the jurisdiction where the offence was committed.

### Bail

- As this paper has already highlighted, bail is a useful tool for allowing flexibility in an investigation and an important way of dealing with offenders who do not need to stay in custody. We would like to explore the possibility of providing a power for an officer from one jurisdiction to bail a detainee to appear at a police station or at court in another jurisdiction. Similarly, the police should be given a power to arrest without warrant, in a different jurisdiction, a person who has failed to answer bail to attend a police station.
- We would welcome views on how this can best be achieved given the existing anomalies, variances and constraints of bail regimes across jurisdictions.

### Proposals

- Improve the effectiveness of cross border powers to enable:
  - an officer to *arrest* without warrant in any jurisdiction for an offence committed in one of the other jurisdictions,
  - enable the *detention and questioning* of a suspect in another jurisdiction for an offence committed in the officer's own jurisdiction,
  - the suspect to be *transferred* to an appropriate location in the jurisdiction where the offence was committed,
  - the ability for police to *grant bail* to a detainee to appear at a police station or court in another jurisdiction.

## 17 How to Respond

This paper is available to view and download from the Public Consultation link within the Northern Ireland Office website ([www.nio.gov.uk](http://www.nio.gov.uk)). An e-mail link is also provided to submit a response. Hard copies will be posted on request.

Alternatively, you may wish to respond to: [policepowers@nio.x.gsi.gov.uk](mailto:policepowers@nio.x.gsi.gov.uk)

If you wish to respond by post, please send to:

Northern Ireland Office  
Policing Powers and Custody Branch  
Block A, Level 4  
Castle Buildings  
Stormont Estate  
Belfast  
BT4 3SG

Telephone number: 028 90528375

Fax number: 028 90520063

Text Phone: 028 90527668

Respondents should indicate clearly whether they are responding on behalf of a group or organisation.

### Alternative formats

The text phone contact details are provided above. Copies in various other formats, including large print, Braille, audio cassette, computer disk etc may be made available on request. If you wish to access the document in an alternative format or language, please let us know and we will do our best to assist you.

Unless confidentiality is explicitly requested, your response may be made available to others and may be published in a summary of responses to the consultation.

Responses to this paper should be submitted by 2 April 2009