

EXPLANATORY MEMORANDUM TO
THE POLICE AND CRIMINAL EVIDENCE ACT 1984 (CODES OF PRACTICE)
(REVISION OF CODES C, G AND H) ORDER 2012

2012 No.

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Order brings into operation revised Codes of Practice C, G and H issued under the Police and Criminal Evidence Act 1984 (PACE).

2.2 The revised Codes C and H come into operation on the day this Order comes into force and the revised Code G comes into operation on 12 November 2012.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Under section 67 of PACE, the Secretary of State may at any time, revise the whole or any part of a code of practice issued under that Act and by order, bring that revised code into operation. Many of the changes to Code C (Detention, Treatment and Questioning of persons by police officers) and the corresponding Code H which applies to persons detained for the purposes of a terrorist investigation whether before or after charge laid with the instrument are similar and provide further clarity on their application. They also reflect changes to legislation that apply to both these Codes. These include consequential changes to custody records as a result of the reduced stop and search recording requirements in section 3 of PACE introduced in March 2011.

4.2 Code H has been expanded in scope to incorporate provisions relating to the post-charge questioning of terrorist suspects. Part 2 of the Counter-Terrorism Act 2008 provides that a judge may authorise the questioning of a person by a constable after that person has been charged with a terrorism offence or an offence with a terrorist connection. Section 22(7) of that Act requires that Codes of Practice issued under section 66 of PACE must make provision about the questioning of a person by a constable in accordance with section 22. Accordingly, the provisions of Part 2 of the Counter-Terrorism Act 2008 will be commenced after the introduction of revisions to the PACE Codes of Practice. In addition a number of non-substantive drafting amendments have been made to the Code.

4.3 The post-charge questioning provisions of the CTA 2008 also require the issue of a new mandatory code for the video recording with sound of such questioning.

This new Code was consulted upon in parallel with these codes and is referred to in the revisions to PACE Codes C and H. Its commencement (which coincides with Codes C and H) is provided for in the Counter-Terrorism Act 2008 (Code of Practice for the Video Recording with Sound of Post Charge Questioning) Order 2012. The supporting explanatory memorandum to that Order should be read in conjunction with this memorandum.

4.4 The revisions to Code G update the provisions and guidance on the exercise by police of their statutory power under section 24 of PACE to arrest any person without warrant for any offence. The changes clarify and emphasise the application of the necessity criteria in section 24(5) of the Act and reflect a number of court judgments. Additional Notes for Guidance refer to the law on self defence including provisions specific to teachers which allow the use of reasonable force to prevent their pupils from committing any offence, injuring persons, damaging property or prejudicing the maintenance of good order and discipline. This may be particularly relevant to officers dealing with allegations of assault. The changes aim to reduce the need to arrest in these circumstances, in particular where the only investigative action required is to interview the suspect and victim.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Minister of State for Policing and Criminal Justice (Rt Hon Nick Herbert MP) has made the following statement regarding Human Rights:

In my view the provisions of the Police and Criminal Evidence Act 1984 (Codes of Practice) (Revisions of Codes C, G and H) Order 2012 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 Police powers are governed by PACE and the accompanying Codes of Practice, which set out the core framework of police powers and safeguards for individuals. Changes are being made to Code C (Detention), Code G (Arrest) and Code H (Detention in terrorism cases).

7.2 The changes to the PACE Codes are necessary to bring them in line with changes to legislation and policy, to take account of court judgments and to reflect developments and improvements in operational police working practices.

7.3 New provisions in PACE Code H on post-charge questioning need to be in place before the post-charge questioning provisions in the CTA 2008 can be implemented.

- ***Consolidation***

7.4 This instrument brings into operation revised PACE Codes of Practice C, G and H. PACE allows for the Codes to be revised at any time. The revised Codes being brought into operation by this Order will be available on the PACE Codes website from the day that they come into operation. The PACE codes website can be found at: <http://www.homeoffice.gov.uk/police/powers/pace-codes/>

8. Consultation outcome

8.1 Under section 67 of PACE, the Secretary of State is required to carry out a consultation before issuing a revised code. A twelve week public consultation was launched on 1 November 2011 in which drafts of the three PACE Codes and the new video recording Code were provided to the bodies that the Secretary of State is required to consult in accordance with section 67(4) of PACE. Also in accordance with that section, the Secretary of State invited comments from others including the Crown Prosecution Service (CPS) and a range of groups and organisations who have a specific role: in human rights issues (e.g. Liberty and Justice); in supporting young and vulnerable persons in custody (e.g. MENCAP, Prison Reform Trust and Children's Society); and in promoting the interests of transgender individuals. The drafts, together with an invitation to the public at large to respond, were also published on the Home Office website.

8.2 In general, the majority of the responses either supported the draft codes as circulated or made constructive suggestions which were accepted, in some cases, following further discussions with the respondents themselves. The responses are summarised at Annex A.

8.3 PACE Code G generated the greatest number of comments from the police. These expressed significant reservations about the operational impact of what the new proposals appeared to require of officers making a decision to arrest. The police asked that changes be made to address their concerns. This request was supported to a large extent by the CPS. The police also raised particular concerns about the new safeguards in Code C that apply when a suspect wants to change their mind about wanting to speak to a solicitor and what Inspectors were required to do. Both matters were discussed in detail at a special meeting of the PACE Strategy Board and, after further consideration, changes were made to the draft Code G and to paragraph 6.6(d) of Code C. These were circulated to the statutory consultees for further comment who indicated that the concerns had been addressed.

8.5 The changes to Codes C, G and H are listed in the tables at Annexes B, C and D.

9. Guidance

9.1 A significant amount of training is required before Code G is brought into operation. Therefore it is being brought into operation at a later date than Codes C and H to allow time for this training to be completed. The changes to Codes C and H are

relatively straightforward and no difficulties in bringing them into operation are anticipated.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Success criteria for the changes will be:

- Code C - Improved efficiency for custody officers, better detainee care for those requiring controlled drugs or under the influence of drink or drugs and better take up of legal advice.
- Code G - Fewer inappropriate arrests.
- Code H (together with the new video recording Code) - absence of serious difficulties in implementation of post charge questioning

12.2 The Association of Chief Police Officers, in conjunction with the National Policing Improvement Agency and the Home Office, will monitor the implementation and impact of the amendments on an ongoing basis.

13. Contact

13.1 Andrew Alexander, Home Office Police Transparency Unit, Andrew.Alexander@homeoffice.gsi.gov.uk (020 7035 0877) can answer any queries regarding the instrument.

ANNEXES

- A: Table Summarising Responses to the Consultation
- B: Table of changes to PACE Code C (Detention)
- C: Table of changes to PACE Code G (Arrest)
- D: Table of changes to PACE Code H (Detention – terrorism)

RESPONSES TO CONSULTATION REQUESTING CHANGES or RE-CONSIDERATION – Summary [19 April 2012]

To sort columns: Click on the table, use <Table Tools><Layout><Data> tabs then <Sort> as required.

*NOTE: Reason/comment column includes linked cross references to 1st column – to update ‘Select column’ & press F9.

* No.	From – Organisation	Code/para.	Response ¹ & purpose	Accept	*Reason/Comment N/R= Not relevant
1.	HMIP/HMIC	C General	Extend Code C to be specific about the need for pre release risk assessments and how they should be conducted.	N	Reference in C Note 8C [H Note 8E] to the Safer Detention Guidance is sufficient.
2.	Law Society	C General	Extend Code C to include requirements concerning police bail, particular concerning the making & recording of representations regarding bail and/or conditions.	N	Review of bail management & supervision is subject to separate consideration.
3.	Police - ACPO - Reducing Bureaucracy Practitioners Group (ACPO RBPG)	C General G General	Suggest clarification is required in relation to the legal responsibility of the custody officer in relation to the necessity test.	N	The necessity test is a matter for the arresting officer (Code G), not the custody officer. Custody officer training & case Law DPP v L and s.37 PACE.
4.	Police - ACPO - Reducing Bureaucracy Practitioners Group (ACPO RBPG)	C General – Training need	The HMIC report published 15 th December “Whose looking out for the Children?” indicates the potential need for further changes around the care and detention of children.	N	See 93
5.	Police - Lancashire (via ACPO)	C1.2 H1.8	Amend requirement for copies of the Code to be “readily available at all police stations for consultation ...” to be satisfied by making available electronic versions of the documents, or providing printed copies of the relevant sections downloaded direct from the relevant Home Office website.”	N	Not necessary. The Open Government Licence allows Forces to provide own versions in any format or medium. Add ‘Copyright’ notice.
6.	Law Society	C1.4 C1 Note 1G H1.10 H1 Note 1G	Amend definition <i>Note 1G</i> to reflect definition in s.1(2) of the Mental Health Act 1983, as amended by the Mental Health Act, 2007 - ‘any disorder or disability of the mind’.	Y	See 7

¹ Excluding minor typographical/style corrections/changes.

* No.	From – Organisation	Code/para.	Response ¹ & purpose	Accept	*Reason/Comment N/R= Not relevant
7.	MENCAP	C1.4 C1 Note 1G H1.10 H1 Note 1G	Term 'mental vulnerability' does not adequately portray a person with a learning disability. A suspect's learning disability and need for support often goes unidentified. Update the code to (i) amend definition of 'mental disorder' in the MHA 1983 which makes it clear that "a person with learning disability shall not be considered by reason of that disability to be...suffering from mental disorder." and (ii) the need to explicitly recognise not only 'mental vulnerability' but those in need of greater communication or other support.	Y	Only in respect of definition in MHA 1983. Current terminology is sufficient to cover learning disability. Proposal would add unnecessary technical/ medical terms. Better identification of individuals who need an AA is a training issue.
8.	National Appropriate Adult Network (NAAN)	C1.4 C1 Note 1G	Amend Note 1G to reflect definition in s 1(2) of the Mental Health Act 1983, as amended by the Mental Health Act, 2007 - 'any disorder or disability of the mind'.	Y	See 7
9.	HMIP/HMIC	C1.5 H1.11 & throughout.	Amend 'juvenile' to cover anyone under the age of 18 – in line with other legislation.	N	Age 16 set by section 37(15) PACE. Resource implications if age raised. Requires work with other Government Departments.
10.	MENCAP	C1.7(b)(iii) C1 Note 1D H1.13(b)(iii) H1 Note 1D	Amend definition of AA to place emphasis on the preference for adult being someone trained in care (i.e. a professional) or experienced in the care of that individual (e.g. family member) to minimise AA from outside one of these categories being called. E.g. if after all reasonable efforts are made to find adult from category (b)(i) or b(ii) then the adult may (iii) some other responsible adult aged 18 or over.	N	Existing emphasis is sufficient. Potential to restrict choice, cause delay or allow AA status to be challenged because of police lack of effort. Provision of AA services for other than juveniles requires work with other Government Departments
11.	Independent Police Complaints Commission (IPCC)	C1.9 C1.15 H1.15 H1.19	Consider clarification in the Codes &/or revised Safer Detention and Handling Guidance to ensure custody officer responsibilities are performed by designated staff and that custody officers and staff are clear about their individual roles and responsibilities & who may perform important tasks relating to detainee care.	Y	Designation concerns powers & is subject to the PRA 2002 Detainee care is a separate issue for suitably trained & competent staff whether or not designated. See 24 & 25
12.	Police - Avon & Somerset (via ACPO)	C1.9 H1.15	Appears to reduce options for who may perform the role of custody officer. Would it be better to state that it includes "any designated member of staff performing that role or police officer?"	N	Designation not relevant. Reflects s.36(4) of PACE which applies only to police officers.

* No.	From – Organisation	Code/para.	Response ¹ & purpose	Accept	*Reason/Comment N/R= Not relevant
13.	HMIP/HMIC	C1.10	Add reference to using a police station as a last resort as a place of safety for the purposes of section 136 along the same lines as in C3.16.	Y	See 21
14.	HMIP/HMIC	C1.15 H1.19	Clarify status of police staff designated under the Police Reform Act 2002 employed/contracted by the police authority.	N	Not necessary, C1.13 [H1.15] & C1.15 [H1.19] distinguishes between designated & non-designated staff. Deployment is matter for chief officers.
15.	HO PTU – Police Powers ACPO	C1.15 H1.19	Amend reference to police authorities.	Y	Amend to refer to police force.
16.	Law Society	C2.4 H2.5	Add Note for Guidance to indicate that the right of a solicitor or appropriate adult to 'consult' the custody record includes the right to read it. Resolves concern that 'consult' is being interpreted as meaning something less than being able to read it.	N	But change 'consult' to 'inspect' as in C2.5 [H2.7]
17.	Police - ACPO - Reducing Bureaucracy Practitioners Group (ACPO RBPG)	C2.3A H2.3A	Make clear that this refers to a person being entitled to a copy of the stop and search record as recorded on the custody record & not a separate record. Suggest in 4th line "a" should read "the".	Y	
18.	Police - Individual officer	C3 & C6 H3 & H6	Propose a mandatory requirement in the Codes for the appropriate adult to be present with a juvenile or a vulnerable suspect during a private consultation with a solicitor.	N	Not appropriate, this is a matter for the solicitor.
19.	Police - Avon & Somerset (via ACPO)	C3 Note 3E H3 Note 3F	Future proof reference to Safer Detention Guidance by inserting "or the latest subsequent version of this publication..."	Y	Qualify by adding "as amended/ revised from time to time" to take account of interim updates.
20.	HMIP/HMIC	C3.1 H3.1	Add a right to see a health professional.	N	See 28
21.	MENCAP	C3.2 H3.2	If requested or by or on behalf of the detainee, written notice should be provided in a format that is accessible to the detainee, for example 'easy read', audio or video.	Y	Add reference in Note 3B to these versions & point out that access is subject to availability.
22.	HMIP/HMIC	C3.2 Note 3B H3.2 Note 3B & throughout.	References to written information in other languages/forms etc should include reference to 'easy read' versions that are available.	Y	See 21
23.	Institute of Legal Executives (ILEX)	C3.4 H3.4	Under heading the "Custody Officer Shall" 2 nd bullet point, last sentence, after "must" delete "always"	Y	

* No.	From – Organisation	Code/para.	Response ¹ & purpose	Accept	*Reason/Comment N/R= Not relevant
24.	Independent Police Complaints Commission (IPCC)	C3.5 H3.5	Clarify changes which enable the custody officer to delegate tasks in the PACE codes or Safer Detention and Handling Guidance to make it clear that the custody officer retains overall responsibility for the care of detainee, even where specific tasks are delegated to others.	Y	C1.15 [H1.19] reflects s.39 PACE & points out the responsibility of the officer having custody to ensure compliance with Codes. See also 25
25.	MENCAP	C3.5 H3.5	Given that learning disability and other support needs are under identified, it is especially important that officers and staff to whom the custody officer delegates specified tasks are trained and experienced in recognising need for additional support.	Y	Insert new Note 3F [3I] for the custody officer to be satisfied that staff directed to carry out tasks are trained, suitable & competent.
26.	National Appropriate Adult Network (NAAN)	C3.5 H3.5	Delete the provisions which allow the custody officer to delegate the determination whether the detainee requires an appropriate adult to other custody staff. Evidence suggests that mental vulnerability is significantly under identified & delegation may exacerbate this situation unless the person has received equivalent or superior training in recognising a detainee who might need help from an appropriate adult..	N	See 25
27.	Police – Staffordshire (via ACPO)	C3.5 H3.5	Should be more prescriptive around delegation and what would be authorised to be requested and the limits with how far it could be taken.	N	See 25
28.	HMIP/HMIC	C3.5(a) H3.5(a)	Add requirement in (a) to ask detainees whether they would like to see an appropriate healthcare professional. C3.5(c) requires custody officer to determine need to call AHCP, but this should also be an opportunity for the detainee to ask for one.	N	The Notice of R & E, Risk assessment enquiry questions & C9.8 are sufficient. See 20
29.	Law Society	C3.5(c) 3 rd bullet point C13.1 C13.2 C13.11 H3.5(c) H13.1 H13.2 H13.11	Revise to comply with EU Directive 2010/64/EU of on the right to information and translation in criminal proceedings (20 October 2010) regarding: C13.1 & 13.2 - Article 2(1) to refer to people who 'do not speak or understand English' or have difficulty in that respect. C3.5(c) - Article 2(4) which requires that a procedure or mechanism to be in place to determine whether a suspect speaks and understands the language C13.11 - Article 7 which requires certain matter to be recorded. Directive does not have to be given effect until October 2014 but amendment could be done now.	N	For the future - liaise with MoJ.

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30.	Law Reform Committee of the Bar Council of England and Wales and the Criminal Bar Association (LRCBC & CBA)	C3.8A H3.8A	Amend the proposal that the content of any risk assessment etc. is only <i>required</i> to be disclosed <i>if failure to do so</i> might put that person at risk, to require disclosure <i>unless</i> there are reasonable grounds for withholding information. Presumption in favour of disclosure because the information <i>might</i> reveal to the person acting in favour of the suspect's behalf an area of vulnerability which is not immediately apparent from the contents of the custody record itself.	N	The issue is safety & security of detainees and others. Potentially invites a person acting on the suspect's behalf to 'demand' information & challenge non-disclosure to do their own 'risk assessment'. Code does not require routine disclosure but does not prevent it. NPIA Safer detention 'issue'.
31.	Police - Metropolitan	C3.8A H3.8A	Add qualification for circumstances where risk assessment indicates that the detainee is an escape risk that sharing this <i>may</i> be prejudicial to the person's detention or an ongoing investigation and therefore may not be appropriate.	N	Need to disclose is based on 'risk' to safety of others. Does not <i>require</i> 'escape' risk to be mentioned as such. Operational decision for the custody officer
32.	National Appropriate Adult Network (NAAN)	C3.16	For clarity, amend sentence referring to appropriate adults to read " <i>An appropriate adult has no role in a Section 136 Mental Health Act assessment and therefore is not required to be present for any part of this process</i> ".	Y	With modification
33.	National Appropriate Adult Network (NAAN)	C3.16 C Annex E6	Amend 'approved social worker' to read 'approved mental health professional' to accord with terminology in the Mental Health Act 2007.	Y	
34.	Police - ACPO - Reducing Bureaucracy Practitioners Group (ACPO RBPG)	C3.16	This could be clearer about transfer arrangements from police stations to hospitals as reflected in <i>Note 9D</i> .	N	Currently includes a reference to Note 9D.
35.	Police - Avon & Somerset (via ACPO)	C3.16	Concerns that practitioners may be wrongly interpreting 136 MHA so that persons are being detained after assessment whilst they sort out other forms of social care. Suggest inserting additional text for clarity and to prevent unlawful detention.	N	C3.16 is clear as to the limits of detention under s.136. Refer to MHA Code for further details including transfer to hospital.
36.	Police - Devon & Cornwall	C3.16 C Annex E6	To accord with current Mental Health Act Code of Practice terminology amend 'approved social worker' to 'approved mental health professional'	Y	
37.	Police - Devon & Cornwall	C3.17 C3.18	C3.17 & C3.18 should follow C3.15 as continuing advice about appropriate adults they do not naturally follow C3.16 which refers to there being 'no requirement' for an adult to be at the assessment.	N	Not essential.

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38.	Institute of Legal Executives (ILEX).	C3.21	Under heading “persons attending a police station voluntary” clarify by amending to read: “in the event that their arrest is necessary, they must be informed immediately that (a) that they are under arrest; (b) the grounds and reasons of the arrest as required by Code G; and (c) brought before the custody officer. The custody officer is responsible for making sure that a custody record is open and that they are notified of their rights in the same way as other detainees as required by section 2 and this section of the Code”.	N	But amend layout to clarify.
39.	Law Society	C4.4 H4.4	Reinstate the previous requirement that the custody record should include details of anything found on, or taken from, the suspect on being booked in at the police station.	N	Reflects current provisions in section 54 PACE. Requirement to record all property etc. was removed by s.8 CJ Act 2003. Allows police discretion & avoids the need to routinely list ‘everything’. Solicitor may however ask.
40.	HMIP/HMIC	C4 Annex A	Add reference to Annex L. This has implications for Annex A searches but currently cited only in C4.1.	Y	Add reference to Annex A 5, 6 & 11.
41.	MENCAP	C4 Annex A2B C4 Annex K	Clarify the meaning of ‘appropriate consent’ and the form in which it must be given which currently is ‘in writing’. Particularly needed when detainees have low literacy levels or additional communication needs.	N	Requirement for consent in writing is statutory (see s.55(3A) & 55A(2) PACE. Role of AA is to help understanding
42.	Police - Devon & Cornwall (via ACPO)	C4 Annex E6 H4 Annex E6	Amend ‘approved social worker’ to read ‘approved mental health professional’.	Y	
43.	HMIP/HMIC	C4. Annex K4	X rays are usually carried out by radiographers not nurses or doctors, similarly, whilst some nurses and doctors can carry out ultrasound scans it would be more usual for some other healthcare professional.	N	Code follows s.55A(10) & 56(17) PACE which refer to registered medical practitioners & registered nurses.
44.	a:gender	C4 Annex L H4 Annex L	With regards to the gender of the searching officer/staff: Note L5 should be extended to include Guidance for Chief officers. In Note L6, potentially relevant guidance material is unavailable.	N	See 46

* No.	From – Organisation	Code/para.	Response ¹ & purpose	Accept	*Reason/Comment N/R= Not relevant
45.	National Trans Police Association	C4 Annex L H4 Annex L	Dissatisfied that the guidance does not deal with the gender of the officer or staff carrying the search. Note L5 presupposes that every Chief Officer has provided such guidance & that it is available to members of the public. The Code should reflect the West Midlands Police policy to permit trans officers & staff to search according to their social gender (acquired gender) as best practice.	N	See 46
46.	Police - ACPO - Lesbian, Gay, Bisexual & Transgender (LGBT) Portfolio	C4 Annex L H4 Annex L	Note L5 The current situation in which Chief Officers are responsible for providing guidance and instruction has resulted in significant differences between forces. This falls short in meeting the needs of trans officers and staff and affording them the same courtesy, consideration and respect as trans members of the public.	N	Employment law guidance is outside scope of the Code, but: Extend L5 to tell chief officers that their guidance must comply with the Equality Act 2010 & complement the Annex. Delete L6; no ACPO guidance available.
47.	Law Reform Committee of the Bar Council & Criminal Bar Association (LRCBC & CBA)	C5.4 H5.4	Extend the detainee's entitlement (at the custody officer's discretion) to receive visits from those likely to take an interest in their welfare, to include those in whose welfare the <i>detainee has an interest</i> . Acknowledges effect on a detained person of their responsibilities for others.	Y	Also a Safer Detention consideration.
48.	Police - Metropolitan	C5.4 C5 Note 5B H5.4 H5 Note 5B	To help prevent visits hindering particularly complex investigations, amend to indicate that the custody officer should consider all of the circumstances, including the needs of the investigation and this may include consultation with the investigating officer.	N	Not necessary. Note 5B refers to hindrance to the investigation & the custody officer has operational discretion to consult the IO.
49.	Law Society	C6 Note 6F H6 Note 6E	Amend 'Law Society' to read 'Solicitors Regulation Authority'.	Y	
50.	Police - Sussex	C6 Note 6F H6 Note 6E	Amend 'Law Society' to read 'Solicitor's Regulatory Authority'	Y	
51.	Law Society	C6.5 C6 Note 6B H6.4 H6 Note 6B	The custody officer should be placed under a positive duty to inform the DSCC of the factors, or exceptions, of which they are aware that will make the CDS Direct service inapplicable.	N	Communication process is an operational matter for police & DSCC.

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52.	Law Society	C6.5 C6Note 6B H6.4 H6 Note 6B	Question why, if a detainee wants to pay for legal advice, the matter should be referred to the DSCC. If a detainee nominates a solicitor, the police could contact the named solicitor directly. This would avoid problems in a busy custody suite of police not answering the call when the solicitor rings in.	N	DSCC is a one stop shop which saves police time. Matter for Mol, LSC & ACPO to discuss.
53.	Law Society	C6.5 C6 Note 6B H6.4 H6 Note 6B	The custody officer should be placed under a positive duty to inform the DSCC of the factors, or exceptions, of which they are aware that will make the CDS Direct service inapplicable.	N	Police/DSCC operation for police & DSCC not the PACE Codes. See 51
54.	MENCAP	C6.5A & C3.19 H6.6 & H3.20	Extend right for an appropriate adult to ask for legal advice on behalf of a juvenile to apply to a mentally vulnerable adult detainee (see C3.19).	Y	See 55
55.	National Appropriate Adult Network (NAAN)	C6.5A & C3.19 H6.6 & H3.20	Extend right for an appropriate adult to ask for legal advice on behalf of a juvenile to apply to a mentally vulnerable adult detainee (see C3.19).	Y	C6.5A [H6.6] amended.
56.	Police - Avon & Somerset (via ACPO)	C6.6(d) H6.7	Significantly increases the work done when a detainee changing their minds. It is unlikely the Inspectors will allow them to change their minds given the work they would have to do.	See next column	See 63
57.	Police - Cheshire (via ACPO)	C6.6(d) H6.7	C6.6(d) extract from quote from Custody Sergeant "The proposed change at 6.6(d) should be resisted at all costs. It represents an additional workload for both Inspectors and Custody Officers (in the form of lengthy entries on the custody record) ..."	See next column	See 63
58.	Police - Cheshire (via ACPO)	C6.6(d) H6.7(d)	Addition at Code C 6.6 d (detainee changing their mind with regards legal advice), requires additional tasks for the PACE inspector. The general view is that the necessary safeguards are already in place to establish whether a detained person has been pressured into proceeding without legal advice.	See next column	See 63
59.	Police - Hampshire (via ACPO)	C6.6(d) H6.7	1. Permit custody officer to make contact with the solicitor and endorse custody record & reduce inspector's involvement. 2. Reduce duplication arising from recording everything on the custody record & then repeating it at commencement of interview.	See next column	See 63
60.	Police - Norfolk & Suffolk (via ACPO)	C6.6(d) H6.7(d)	New requirements when a detainee wishes to change their mind about legal advice are bureaucratic and unnecessary. The current safeguards are satisfactory.	See next column	See 63

* No.	From – Organisation	Code/para.	Response¹ & purpose	Accept	*Reason/Comment N/R= Not relevant
61.	Police - Sussex	C6.6(d)	Creates an onerous duty for an inspector to try and obtain the estimated time of arrival of a solicitor. The important issue is to make the inspector aware that the detainee has changed their mind so the inspector can then check.	See next column	See 63
62.	Law Society	C6.6(d)(i) H6.7(d)(i)	Insert requirement to give the solicitor the opportunity to speak directly with the suspect.	N	Contact with solicitor may not be possible at the time the decision needs to be made. See 63
63.	Police - ACPO - Reducing Bureaucracy Practitioners Group (ACPO RBPG)	C6.6(d)(i) H6.7(d)(i)	Concerns around the bureaucracy which this paragraph potentially creates. If change required, does it need to be specific to an inspector or could this be delegated or completed over the phone?	See next column	Re-considered, provisions revised & simplified & re-circulated.
64.	Law Society	C6.6(d)(iii) H6.7(d)(iii)	Include requirement to record 'the time that the solicitor was contacted, or attempted to be contacted, by whom and the number called'.	N	See 63
65.	Police - Avon & Somerset (via ACPO)	C6.6(d)(iii)	The interviewer may have no connection to or responsibility for producing the written record of interview	N	See 63
66.	Police - Devon & Cornwall (via ACPO)	C6.6(d)(iii) H6.7(d)(iii)	To avoid doubt, amend 'inspector' to read 'inspector or above' to enable a Ch/Insp. or Superintendent authorise if an inspector is not available.	Y	See 63
67.	Law Society	C6.8 H6.9	Delete the added 'or where they have requested free legal advice and that advice is limited to telephone advice'. This is because CDS Direct does not apply if the suspect is to be interviewed.	Y	In a CDS Direct case there will not be an interview.
68.	Police - Hampshire Police (via ACPO)	C7.2 H7.2	Only benefits to those using the Code electronically. This of course will automatically exclude all detainees. Suggest retaining Annex F with note indicating correct at time of printing and insert link for access to constantly updated list.	N	A printed list would have to be checked every time & is of no practical value to police or detainee. Web link included.
69.	Police - Devon & Cornwall (via ACPO)	C9 Note 9D	Amend 'alternative places of safety' to 'other places of safety'. Avoids giving impression that they are of secondary consideration.	Y	

* No.	From – Organisation	Code/para.	Response ¹ & purpose	Accept	*Reason/Comment N/R= Not relevant
70.	Independent Police Complaints Commission (IPCC)	C9.2 C12.9 H9.3 H12.10	Amend to clarify & remove doubt about the requirement in C12.9 for interviewers to record complaints and bring them to the attention of the custody officer and its relationship with C9.2 which states that if it comes to notice that a detainee may have been treated improperly, even if no complaint is made, that must be reported to an inspector or above.	Y	C12.9 [H12.10] amended for consistency with C9.2 [H9.3] to point out that the duty of the interviewer is to report any apparent improper treatment coming to notice even if no complaint made.
71.	Independent Police Complaints Commission (IPCC)	C9.3 H9.4	Amend to more explicitly define intoxication. To resolve uncertainty as to action required arising from the Gary Reynolds case. IPCC recommendation. Already adopted in SDG.	Y	Amended to take account of the revised SDG definition which places the emphasis on the person being, “under the influence...”.
72.	HMIP/HMIC	C9.8 H9.10	Detainees should be able to request an AHCP of their own gender.	N	Matter for detainee & AHCP to resolve if raised. See item 28
73.	Faculty of Forensic and Legal Medicine of the Royal College of Physicians (FFLM)	C9.10 C9.11 H9.12 H9.13	Suggested alternative wording.	N	See 75
74.	G4S Forensic and Medical Services.	C9.10 C9.11 H9.12 H9.13	Proposals to allow nurses as well as doctors to supervise self-administration of Schedule 2/3 Drugs.	Y	See 75.
75.	HMIP/HMIC	C9.10 C9.11 H9.12 H9.13	Proposals to allow nurses as well as doctors to supervise self-administration of Schedule 2/3 Drugs.	Y	Revised after discussion with statutory/ professional bodies and relevant Home Office & Department of Health Officials.
76.	Secure Environment Pharmacists Group	C9.10 C9.11 H9.12 H9.13	Proposals to allow nurses as well as doctors to supervise self-administration of Schedule 2/3 Drugs.	Y	See 75

* No.	From – Organisation	Code/para.	Response ¹ & purpose	Accept	*Reason/Comment N/R= Not relevant
77.	HMIP/HMIC	C9.15 H9.17	Written consent or at the very least verbal consent with a witness should be recorded regarding disclosure of medical condition.	N	Add reference in C9.5 [H9.6] to C Note 9E [H Note 9D]
78.	HMIP/HMIC	C9.16 H9.18	Add reference to AHCP's notes and where/how they should be stored [i.e. not in the boot of a car/at home etc.] see Caldicott Guidelines	N	Matter for AHCP & statutory body regs, not Codes. See 75
79.	MENCAP	C10.11 C10.12 H10.9 H10.10	Amend the reference to 'ordinary language' to something along the lines "in an accessible way, appropriate to the communication needs of the individual detainee".	N	Matter for the AA. For special warnings add new C10.11A [H10.9A] to state that for a juvenile or mentally vulnerable suspect, the AA <i>must</i> be present.
80.	Law Reform Committee of the Bar Council & Criminal Bar Association (LRCBC & CBA)	C11.13 H11.8A	Regarding the written record of comments made outside the context of an interview, add new requirement that; "A copy of the record should be provided to the suspect and their legal advisor (if any) prior to any subsequent interview." The amendment is necessary to ensure prompt and detailed disclosure of any alleged unsolicited comment outside the context of an interview.	N	Existing requirement in C11.2/11.4A [H11.4/11.5] is to 'disclose' significant statements which may have been recorded as per C11.13 [H11.8A] at beginning of the interview but not before. Timing of disclosure of any other information, e.g. unsolicited not significant comments, is for police.
81.	Law Reform Committee of the Bar Council & Criminal Bar Association (LRCBC & CBA)	C13 C13 Note 13A H13 H13 Note 13A	At the end, add " <i>Whenever possible the interpreter should not be a police officer</i> " Except for an urgent 'safety' interview, the interpreter should not be a police officer, and should be one whose neutrality between the parties is apparent. It is obviously inconsistent with legal professional privilege for a police officer to interpret when legal advice is being given.	N	Matter for the national arrangements implemented by MoJ for providing qualified competent interpreter. For legal advice, the solicitor would have the final say. Not aware that this has ever been problem.
82.	MENCAP	C13.9 C13.10 H13.9 H13.10	Amend the definition of interpreter to ensure it is sufficiently broad to include anybody who facilitates communication with the detainee.	N	The interpreter's defined role is independent & confined to interpreting word for word what is said. Unlike AAs, they cannot provide additional explanation, support etc.

* No.	From – Organisation	Code/para.	Response¹ & purpose	Accept	*Reason/Comment N/R= Not relevant
83.	National Appropriate Adult Network (NAAN)	C13.9 C13.10 H13.9 H13.10	Amend the definition of interpreter to ensure it is sufficiently broad to include anybody who facilitates communication with the detainee.	N	See 82
84.	MENCAP	C15.3	Reviews of detention – representations by appropriate adult: Amend to read: “Where the appropriate adult is no longer present at the police station and hence unavailable in person, officers shall make all reasonable efforts to seek their views through alternative channels. Where possible all efforts should be made to seek the opportunity to inform the appropriate adult who would in turn be able to make representations about the decision.”	Y	In principle Add new Note 15CA with guidance to emphasise requirement for solicitors & appropriate adults to be given an opportunity to make representations about detention.
85.	Prison Reform Trust & Children’s Society	C15.3	Reviews of detention – representations by appropriate adult: Amend to read: “(c) the Appropriate Adult if available at the time. If the Appropriate Adult is no longer available at the police station, reasonable attempts should be made to seek their views via the telephone.”	Y	In principle See 84
86.	National Appropriate Adult Network (NAAN)	C15.3(c)	Amend by inserting “if the appropriate adult is no longer available in the police station, reasonable attempts should be made to seek their views via the telephone.”	Y	In principle See 84
87.	Police - Sussex	C15.10; 15.11	This misses an opportunity to address the issue that for the detainee to be present, they must be at the work station in use at the time.	N	Follows the existing statutory requirement in s.37(5) PACE as applied to reviews by s.40(8).
88.	Prison Reform Trust & Children’s Society	C15.2A S.42 PACE	Ability to extend detention for 17 year olds without support of AA should be reversed.	N	Definition of juvenile (under 17) set by s.37(15) PACE. See 9 AA would be required if a 17 year old is vulnerable.
89.	Police - British Transport (via ACPO)	C16 Note 16D	For juveniles detained after charge, the section relating to finding secure accommodation before court should be removed as no Council can ever provide such accommodation.	N	See 92 Reflects the existing statutory requirement in s.38(6) PACE.

* No.	From – Organisation	Code/para.	Response ¹ & purpose	Accept	*Reason/Comment N/R= Not relevant
90.	MENCAP	C16.1 C16 Note 16C C Annex E 11	Amend to require all reasonable steps to be taken to ensure the appropriate adult is present for charging or other disposal. Annex E should remain as per the existing code in its discussion of appropriate adults. Notes and Annex E11 imply that charging may/should proceed without the appropriate adult if they are not present at the police station. Proposed changes provisions will reduce the likelihood of the appropriate adult being present.	Y	In principle Extend Note 16C to point out the need to make reasonable efforts to ensure an appropriate adult is present including option to release on bail to a time when the adult is present. See 90
91.	National Appropriate Adult Network (NAAN)	C16.1 Note 16C C Annex E 11	Amend requirement for AA to be present at charge to require police to make efforts to ensure AA present by allowing a reasonable period to get an appropriate adult to the station before proceeding with the charge or other disposal.	Y	See 90
92.	HMIP/HMIC	C16.7 C16.10	Concerns that juveniles are being detained overnight in police custody after charge when they should be transferred to Local Authority Accommodation as required by section 38(6) PACE. It appears that Custody Officer are routinely asking for secure accommodation in respect of juveniles who do not pose a risk of serious harm as required in the legislation	Y	Training issue for police Resource issue for local authorities. See also 93
93.	Prison Reform Trust & Children's Society	C16.7	Include new explicit presumption against the detention of children in the police station after charge & delete reference to "unless the custody officer certifies it is impracticable to do so".	N	Reflects statutory option allowed in section 38(6) PACE which the Code cannot override. New provisions & guidance to clarify & emphasise requirement to transfer a juvenile (under 17) detained after charge to local authority care added. See 92
94.	Prison Reform Trust & Children's Society	C16.7 C16.10	Include requirement for local & central data collection & monitoring of juveniles detained after charge not being transferred to LA accommodation.	N	Data should be available to local YOTs/ courts via the certificate required to be produced to the court when the juvenile is not transferred (s.38(7) PACE). See 92
95.	Police - British Transport (via ACPO)	Detention periods – Part IV PACE.	Include provisions for 'stopping' the detention clock in relation to detainees affected by drink/drugs & whilst awaiting the arrival of appropriate adults & solicitors to compensate for the time wasted.	N	Statutory requirement cannot be amended by the Code.

* No.	From – Organisation	Code/para.	Response ¹ & purpose	Accept	*Reason/Comment N/R= Not relevant
96.	Police - ACPO - Reducing Bureaucracy Practitioners Group (ACPO RBPG)	G General	There should be an understanding of the use of the necessity test in relation to the need to exercise powers of searching premises (s.32 and s.18 powers to search premises after arrest)	N	Covered in G2.9(e). Police training issue.
97.	Police - ACPO - Reducing Bureaucracy Practitioners Group (ACPO RBPG)	G General - scope	It needs to be made clear how this effects arrest for further offences whilst in custody (if at all)	Y	Same principle applies – s.24 PACE is the power of arrest for all offences and Code G applies. Note 2C extended.
98.	Police - ACPO - Reducing Bureaucracy Practitioners Group (ACPO RBPG)	G General - scope	Clarify application to ‘continuing offences’.	See next column	See 111
99.	Police – ACPO- Reducing Bureaucracy Practitioners Group (ACPO RBPG)	G General - scope	There needs to be clarification on whether or not the application of the test is required for bail responders.	N	Arrest s.46A PACE is not an arrest for an offence. See G2.3 & Notes 1 & 1A 1 st bullet point reflect s.46A & 34(7) PACE.
100.	Police - Avon & Somerset (via ACPO)	G Note 2B	Note 2B asks the officer to make what is currently a CPS decision (following an investigation) at the time of arrest. This surely cannot be reasonable?	See next column	See 111
101.	Police - Metropolitan	G Note 2D	Clarify whether warnings about a person’s behaviour prior to arrest relate to the offending behaviour <i>per se</i> or only the behaviour that may render arrest necessary. The example tends to suggest this is restricted to the potential for arrest.	N	Not necessary. The warnings concern the need to arrest. Matter for the officer to formulate & decide whether & how the suspect’s reaction affects the need to arrest.
102.	Police - Avon & Somerset (via ACPO)	G Note 2F	Note 2F informing the person of their liability to arrest contradicts the word ‘voluntary’.	N	Person has no choice about being interviewed.
103.	Police - ACPO - Reducing Bureaucracy Practitioners Group (ACPO RBPG)	G Note 3	The example in the last sentence was confusing to frontline officers and it was felt the point it referred to was clearly stated and the example should be removed.	N	The point is not mentioned or stated elsewhere in the codes. See 111
104.	Law Reform Committee of the Bar Council & Criminal Bar Association (LRCBC & CBA)	G1.3	Extend consequences of failing to justify the exercise of the power of arrest to include “internal disciplinary proceedings.”	N	Not necessary to refer to regulations governing police conduct.

* No.	From – Organisation	Code/para.	Response¹ & purpose	Accept	*Reason/Comment N/R= Not relevant
105.	Police - Metropolitan	G1.3 G Note 2C	The Note is confusing when read in conjunction with G1.3 which emphasises that arrest <i>must never be used simply because it can be used.</i>	Y	Delete the words from G1.3. They are not needed since threshold for arrest is necessary.
106.	Police - Sussex	G1.3	All interferences with the ECHP which are disproportionate or unnecessary may render the police liable to civil action. Is it necessary to reiterate this here?	N	See 111
107.	Police - Avon & Somerset (via ACPO)	G2.1	This contradicts s.24(1) PACE (a) About to Commit and offence (c) <u>Reasonable grounds for Suspecting</u> to be about to commit an offence	N	Not meant to replicate details of s.24 PACE
108.	HMRC	G2.2 G2.9 G3.3 G Note 3	Concerned as to whether the level of information required correctly balances the need to provide sufficient information to the arrested person the need to enable an efficient and secure arrest to be made, in what can be stressful circumstances for all involved.	See next column	See 111
109.	Police - Avon & Somerset (via ACPO)	G2.2	Continuity of information being supplied. Use of 'must' & 'should'	See next column	See 111
110.	Police - Sussex	G2.2	Refer here to Note 3 to address concern about giving too much information away too early in an investigation.	Y	See 111
111.	Police - Metropolitan	G2.3 G2.3A	Amend to reflect complex cases such as child abuse & money laundering where the needs of the investigation mean that the only viable option will be to arrest. In these cases there is likely to be ample evidence & factors to justify arrest, however, in these cases this will be more difficult to articulate concisely and could distract officers from the investigation.	See next column	Further revisions made to Code G to 'simplify' the requirements. Further revised draft circulated.
112.	Police - Avon & Somerset (via ACPO)	G2.3A	Good in theory but practical problems will arise	See next column	See 111
113.	Police - Norfolk & Suffolk (via ACPO)	G2.3A	Para 2.3A presents particular difficulties and could end up deterring arrests from being made which would be entirely appropriate and proportionate. Expects too much from officers & likely to be overly and ruthlessly capitalised upon by defence solicitors and barristers.	See next column	See 111
114.	Police – Staffordshire (via ACPO)	G2.3A	This amendment makes explicit what was hitherto implicit and puts into practice on a formal basis the discretion and professional judgement that officers have been demonstrating for many years	See next column	See 111

* No.	From – Organisation	Code/para.	Response¹ & purpose	Accept	*Reason/Comment N/R= Not relevant
115.	Association of School and College Leaders	G2.3B	Welcome and support the proposed changes. They address the concerns about teachers of good character being arrested despite their willingness to co-operate by officers who appear to have no awareness of the power given to school staff by Section 93 of the Education and Inspections Act 2006.	See next column	See 111
116.	Crown Prosecution Service (CPS)	G2.3B	Concerned that the additional detailed provisions and guidance will cause more problems than they will solve. Expects too much from officers and invites potentially inadmissible 'questioning' and enquiries on the street, especially regarding 'self defence', that would be better carried out at the station. Provides unreasonable scope for the defence to challenge officers. Questions using the Code in this way to deal with what should be training issue.	See next column	See 111
117.	Police - Avon & Somerset (via ACPO)	G2.3B	Good advice but very problematic	See next column	See 111
118.	Police – Individual officer	G2.3B	Include provisions covering the use by a parent of reasonable force to restrain or restrict (but not punish) their child.	N	Matter for training / operational guidance. See 111
119.	Police - Metropolitan	G2.3B	Concern that the specific guidance in relation to householder self defence and allegations against school staff may lead to reluctance to arrest in these cases even if there are grounds to justify this course of action. Note 2B adequately deals with the use of force and this may be all that is needed.	See next column	See 111
120.	Police – Staffordshire (via ACPO)	G2.3B	We fully concur that this will instigate the appropriate response for incidents given in paragraphs 2.3B regarding school teachers and home owners defending their property.	See next column	See 111
121.	Police - Sussex	G2.3B	Split, make s.93 E&IA 2006 a separate paragraph.	See next column	See 111
122.	Police Foundation	G2.3B	Reservation about directing officers to take account of the circumstances under which the law allows the use of reasonable force. Safeguards needed to ensure that assessment of reasonable force is made fairly and appropriately in every case and to mitigate against possible injustices.	See next column	See 111

* No.	From – Organisation	Code/para.	Response ¹ & purpose	Accept	*Reason/Comment N/R= Not relevant
123.	Police - Avon & Somerset (via ACPO)	G2.4	Surely this should include Designated Person as per the Police Reform Act 2002. Without inclusion, we will have the situation where the original reason for arrest expire but person held for a different offence without the necessity being considered or being placed before the CO for him to record and authorise detention.	N	Applies only to staff designated as IOs (PRA 2002) for the purposes of making further arrests as per s.31PACE if they are necessary.
124.	Police - British Transport (via ACPO)	G2.4	Amend to make it clear that a supervisory officer cannot instruct a junior officer to make an arrest.	N	Training/supervision
125.	Police - Metropolitan	G2.4-2.7	Reference to officers' discretion to arrest should be replaced by guidance that officers should take into account factors such as operational imperatives and factors pointing to the person's innocence as well as their guilt.	N	Operational imperatives are not seen as being relevant to the need to arrest. See 111
126.	HMRC	G2.9 G Note 2F	Request further clarification on whether simply leaving an interview would make arrest necessary will provide this reason. Arguably, it should & Note 2F tends to suggest this.	See next column	See 111
127.	Police - Lancashire (via ACPO)	G2.9	Main comment is that G2.9 includes unnecessary repetition of what a person must be told.	See next column	See 111
128.	Police - Norfolk & Suffolk (via ACPO)	G2.9	It is not practicable to expect arresting officers to spend time providing a comprehensive explanation for the reason why they have made the arrest. There may be SOME instances when this can be done, otherwise impractical, unrealistic and highly unprofessional.	See next column	See 111
129.	Police – Staffordshire (via ACPO)	G2.9	Appreciate that there is a need to explain the necessity test criteria when arresting an individual. Concerned that this may lead to challenge, where due to the circumstances of the arrest and surrounding environment at the time, there could be an unintended consequence of officers not having had the opportunity to clearly articulate the necessity criteria. Requirement specified is too explicit and onerous to be a practical option in the majority of arrests.	See next column	See 111

* No.	From – Organisation	Code/para.	Response ¹ & purpose	Accept	*Reason/Comment N/R= Not relevant
130.	Police - Hampshire (via ACPO)	G2.9(e)	This has the potential to seriously limit disclosure tactics and adversely affect an investigation. There are numerous occasions where the Code requires certain information to be given at a stage when would want to disclose it. Note 3 makes helpful reference to this issue but as notes are not part of the statutory Code it cannot overrule the Code instruction. Suggest that in each 'subsection' of 2.9(e) the words " <i>The person should be told that such action is thought necessary.</i> " be removed.	See next column	See 111 Note 3 outlines the minimum needed. The issue is not what police consider is necessary; it is what is reasonably necessary for the suspect to understand their position. Training need.
131.	Police - Cheshire (via ACPO)	G2.9(e)(i) Voluntary attendance	No significant issues and no concerns on the additions regarding arrest necessity and voluntary attendance in Code G. Do not anticipate increased litigation as a result of the amendments.	See next column	See 111
132.	Police - Metropolitan	G2.9(e)(iii)	Clarify position regarding samples etc being offered voluntarily by suspects and whether, in these circumstances, officers can consider arrest is the only viable option as per Note 2C.	See next column	Section 61 & 63, provide for 'prints and samples to be taken with written appropriate consent. For the officer to decide whether arrest is needed.
133.	Police - Avon & Somerset (via ACPO)	G2.9(e)(v) G Note 2I	Application of arrest criteria for statutory drug testing contradicted by Note 2I which indicates that this reason cannot be used in isolation. Only relevant at stations where drug testing is in operation.	N	Add reference to Note 2I in G2.9(e)(v). Difference between 'trigger offences' for which testing is routine irrespective of belief that misuse contributed to offending.
134.	Police - Norfolk & Suffolk (via ACPO)	G3.1	Concerns that the requirement for a person to be cautioned prior to asking them anything about any offence might hinder initial 'street investigations' and leave the officer no alternative but to arrest in some cases.	N	This repeats existing established requirement in C10.1. See 111
135.	Police - Lancashire (via ACPO)	H General	The Code for Examining Officers issued under para. 6(1) of Schedule 14 to the Terrorism Act 2000 should form part of Code H and not be a separate document.	N	Code H issued under PACE, cannot cover the TA Code.
136.	Police - Metropolitan	H1.6 H1 Note 1N	Clarify Note 1N to emphasise the need to consider bail after charge. This is to avert danger that custody officers could presume that bail after charge need not be considered in TACT cases.	Y	Additional text to avoid doubt.

* No.	From – Organisation	Code/para.	Response ¹ & purpose	Accept	*Reason/Comment N/R= Not relevant
137.	Law Reform Committee of the Bar Council & Criminal Bar Association (LRCBC & CBA)	Video interview recording - Codes C, H &TA/CTA Equally applicable to PACE Code F	Insert new a provision/paragraphs (C10.5A & H10.4A) applicable to video recorded interviews, to require that, after being cautioned, the suspect <i>must</i> also be told that: <i>“This interview is being video recorded. This means that your appearance and your behaviour during this interview may also be shown in evidence.”</i>	N	Not aware of evidence to indicate that suspects are at a disadvantage. Admissibility of ‘body language’ evidence is a matter for the Judge. Creates risk of interviewing officers focussing on body language & suspects ‘putting on an act’.
138.	Police - ACPO - Reducing Bureaucracy Practitioners Group (ACPO RBPG)	Video interview recording TA/CTA Code	Does not clarify set standards of equipment.	N	Technical specifications are outside scope of the Code.
139.	Police - Cheshire (via ACPO)	Video interview recording TA/CTA Code	Additional resources required for audio and video recording of interviews. Includes Schedule 7 examinations which subsequently become detentions.	See next column	Resource implications - referred for OSCT to consider exemption to allow audio only recording.
140.	Police - Hampshire (via ACPO)	Video interview recording TA/CTA Code	Currently facilities not available and thus these proposals have both equipment and training implications.	See next column	See 139
141.	Police - Lancashire (via ACPO)	Video interview recording TA/CTA Code	Requirement to video record all interviews means that police need some lead in time to install video interview facilities in custody suites.	See next column	See 139
142.	Police - Northumbria (via ACPO)	Video interview recording TA/CTA Code	The changes will require some additional training for officers with regard to video recording interviews. Concerns for further clarification regarding equipment technical standards and what should be videoed i.e. the subject only or the interviewer(s) as well.	See next column	See 139
143.	Police - ACPO - Reducing Bureaucracy Practitioners Group (ACPO RBPG)	Video interview recording TA/CTA Code - 3.2	Wordy and confusing suggest simplified re-write	N	Follows PACE Code E.

* No.	From – Organisation	Code/para.	Response ¹ & purpose	Accept	*Reason/Comment N/R= Not relevant
144.	Police - ACPO - Reducing Bureaucracy Practitioners Group (ACPO RBPG)	Video interview recording TA/CTA Code - 4.21	Refusing to sign a seal - does this need to be an Inspector or could custody Sgt not complete this task?	N	Follows PACE Code E. Not appropriate to routinely require custody officer to leave the custody area.
145.	Police - ACPO - Reducing Bureaucracy Practitioners Group (ACPO RBPG)	Video interview recording TA/CTA Code - 5.1	Interviewing officer will make note in PNB re interview – this is already recorded on the custody record.	N	Follows PACE Code E. Ensures interviewing officer has a contemporaneous 'original note' for reference.
146.	Law Reform Committee of the Bar Council & Criminal Bar Association (LRCBC & CBA)	Video recording of interviews TA/CTA Code	Include a requirement that the suspect and legal advisor are made aware of the location of the cameras, or the manner in which the recording of the interview will appear when given in evidence. This is to enable the suspect to be given informed advice and make choices as to how to conduct themselves during the interview.	N	See 137 Applies equally to PACE Code F
147.	Police - Dorset (via ACPO)	Video recording of interviews TA/CTA Code	Proposed changes require Video Interviews: 1. For interview of persons arrested under s41 TACT (TACT Arrest). 2. For interview of persons under Schedule 7 (TACT) <u>when detained and examined at a Police Station.</u> Concerns that without new video/audio interview facility, in custody transfer to a police station could add <u>3 hours</u> (minimum) to the detention period.	See next column	See 139
148.	Law Reform Committee of the Bar Council & Criminal Bar Association (LRCBC & CBA)	Video recording of interviews TA/CTA Code - 2.6	Add requirement that the sign or indicator which is visible to the suspect which shows when the recording equipment is recording <i>must be pointed out to the suspect prior to the interview.</i>	N	This is required in para. 4.4 Mistaken assumption that 4.4 is being deleted, only sub para 4.4(e) is disappplied.
149.	Law Reform Committee of the Bar Council & Criminal Bar Association (LRCBC & CBA)	Video recording of interviews TA/CTA Code - 4.4	After pointing out the sign (para. 2.6) in the list of actions before interview starts, add last sub-para. “(f) point out to the suspect and his legal advisor (if any) the location of all cameras recording the interview.”	N	See 148

* No.	From – Organisation	Code/para.	Response ¹ & purpose	Accept	*Reason/Comment N/R= Not relevant
150.	Law Reform Committee of the Bar Council & Criminal Bar Association (LRCBC & CBA)	Video recording of interviews TA/CTA Code - 4.6	For consistency with proposed new para C10.4A & H10.4A above, include requirement to inform the suspect that the interview is being video record and about its use in evidence as Code H.	N	See 137 Applies equally to PACE Code F
151.	Law Reform Committee of the Bar Council & Criminal Bar Association (LRCBC & CBA)	Video recording of interviews TA/CTA Code - 7.6	Retain deleted provisions of 4.4(a) to (f) in 7.6	N	See 148

Draft revised PACE Code C (Detention) - Table of Changes

The table starting on the next page provides a summary explanation of the changes (apart from some minor grammar and typographical corrections) with a hyperlink for each change to the draft ([Click here](#) to view).

The main changes reflect changes in legislation and resolve a number of operational issues and concerns which have come to light since the last revision in February 2008. Minor changes in terminology, style and grammar have been made in the interests of clarity and consistency.

Many of the changes to Code C are mirrored (with modifications as necessary) in the draft revised version of PACE Code H and vice versa in order to ensure consistency.

The more substantial changes are as follows:

- Section 3: Allow the custody officer to direct custody staff to carry out certain actions in relation to a detainee's rights and entitlements, need for medical treatment and the risk assessment process; and
Complement Code G (Arrest) concerning 'voluntary' interviews and explain the arrangements for obtaining free legal advice if such an interview takes place elsewhere than at a police station.
- Section 5: Allow a detainee to be visited by those in whose welfare the detainee has an interest.
- Section 6: Update the arrangements for access to legal advice and introduce additional safeguards for detainees who change their mind about wanting advice.
- Section 7: Simplify for police the arrangements for the mandatory notification of the arrest of foreign nationals and asylum claims whereby police inform UKBA and UKBA will advise police. A link to the Foreign and Commonwealth website replaces the list of countries in Annex F.
- Section 9: Updated provisions on the self-administration of controlled drugs;
Clarification of the application of the safeguards for detainees suspected of being under the influence of drunk or drugs or both.
- Annex L: New provisions covering Gender and searching to update and supersede Annex F in Code A

25 April 2012

Table of Changes – Code C

SUMMARY & EXPLANATION OF CHANGES TO CODE C

Note: Items highlighted in grey indicate further revisions arising from the consultation.

No.	Paragraph	Summary of changes, reason/purpose
1	Commencement	The revised Code will come into force as specified in the affirmative Order.
2	C1.0	Addition: General reminder to police regarding discrimination, which refers to the protected characteristics to which the Equality Act 2010 applies.
2A	C1.4 & <i>Note 1G</i>	Definition of 'mental disorder' amended to reflect amendment to the Mental Health Act 1983
3	C1.7	Changes to reflect statutory definition in section 65(7) of the Crime & Disorder Act 1998 & section 63B(10) of PACE/Code C17.7 <i>Note 17G</i> (Drug testing)
4	C1.9 & <i>Note 1J</i> Annex A2A	Changes reflect the repeal of the staff custody officer provisions in sections 120/121 of the Serious Organised Crime & Police Act 2005.
5	C1.11	Clarifies & distinguishes scope of Code C from that of Code H and the Terrorism Act Code of Practice for Examining Officers. C1.11(a) second bullet point is subject to the post-charge questioning provisions of the Counter-Terrorism Act 2008 being commenced.
5A	C1.12	Grammar
6	C1.13(c) & Annex L	New sub para (c) with a reference to new Annex L which revises the same-sex searching provisions in Code A Annex F and is replicated in Code H as Annex I.
7	C1.15 & <i>Note 3F</i>	Amends 'police authority' to 'police force' as a general descriptive term to distinguish between directly employed & contracted civilian police staff for the purposes of the Police & Social Responsibility Act 2011 which introduces police and crime commissioners to replace police authorities. Reference to new <i>Note 3F</i> concerning delegation of tasks added
8	C2.3A	New paragraph: Reflects amendment to the stop/search recording requirements in s.3 PACE made by s.1 Crime & Security Act 2010 and which apply to terrorism and non-terrorism stop & search powers.
8A	C2.4	Amend 'consult' to 'inspect' for consistency with C2.5.
8B	C3.2 & <i>Note 3B</i>	Reference to 'easy read' illustrated versions of the Notice of Rights & Entitlements added to <i>Note 3B</i> .
9	C3.4	Clarification to ensure accuracy with section 37(5) & (6) of PACE.
10	C3.5 & <i>Note 3F</i> C3.6	Amendments allow the custody officer to direct other custody staff to provide specified information to, and obtain specified information from, the detainee during the initial 'booking in' process and with a new <i>Note 3F</i> clarify the custody officer's responsibility.
11	C3.8A	New paragraph: Distinguishes the assessment upon which the response is based from the response which is set out in the custody record and is made available to the detainee. Includes caveat that information should not be withheld if it would put a person at risk.
12	C3.9 & <i>Note 3E</i>	C3.9 is extended to cover risks to those who come into contact with the detainee and risks following release from custody as far as is practicable. Reference to operational guidance in the public domain added to <i>Note 3E</i> .
13	C3.16 Annex E6 Annex E <i>Note 4</i>	Changes reflect the amendment to section 136 of the Mental Health Act 1983 made by the Mental Health Act 2007 Act, which allows a person to be transferred from one place of safety to another. Emphasises guidance in Chapter 10 of the 2008 revised version of the Mental Health Act 1983 Code of Practice, see: http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_084597 . Term 'appropriate mental health professional' replaces 'approved social worker'. New sentence clarifies that as an appropriate adult has no role in any examination/ assessment, their presence is not required. <i>Note 4</i> added to Annex E.
14	C3.21, C3.22 & C10.2	Amended to ensure consistency with the changes to Code G which relate to voluntary attendance for interview, see Code G2.9(e)(i) & Note 2F. Reference to <i>Note 6B</i> which describes the arrangements for obtaining legal advice added. Also new provisions clarify the position of suspects who are not under arrest when cautioned prior to a 'voluntary' interview at a police station or elsewhere, particularly regarding access to legal advice.
15	C4.1 & Annex L	Reference to Annex L (same sex searches) added
16	C5.1, C5.7B & <i>Note 5F</i>	New C5.7B exempts persons detained under the Crime (Sentences) Act 1997 detainees from the provisions of section 5. Ensures that the directions of the prison Governor or Director authorising production do not conflict with the Code. Supported by new <i>Note 5F</i> .
17	C5.4 & <i>Note 5B</i>	References to visits being from persons likely to take an interest in the detainees' welfare and to the need for the detainee's consent for visits added. Changes follow existing corresponding provisions of in Code H (H5.4 & <i>Note 5B</i>). Also extended to allow discretionary visits from family & others in whose welfare the detainee has an interest.
18	C6.1 & <i>Note 6B</i> , <i>Notes 6B1, 6B2 & Note 6D</i>	Notes for Guidance amended/deleted to reflect changes to the arrangements for obtaining legal advice described in detail in <i>Note 6B</i> .
18A	C6.4 & <i>Note 6ZA</i>	Clarifies that the prohibition that suspects must not be intentionally dissuaded from seeking legal advice applies to all suspects whether or not they are detained. Supported by new <i>Note 6ZA</i> .

Table of Changes – Code C

No.	Paragraph	Summary of changes, reason/purpose
19	C6.5	Amendment reflects current arrangements whereby legal advice in certain cases is only available by telephone from Criminal Defence Service (CDS) Direct.
20	C6.5A	Extends the ability of an appropriate adult to ask for legal advice on behalf of a vulnerable adult whether or not they are detained. Grammar
21	C6.6(d) & Note 6I	Amends action required when a suspect changes their mind about wanting legal advice. Adds a requirement to enquire into the solicitor's expected time of arrival & inform the suspect & remind them that they retain the right to legal advice. Note 6I not needed.
22	C6.7	Extended to include the provisions in Code H6.8 which apply equally to Code C
23	C6.8	Change not required.
24	C6.11, C6.13 & Note 6F	Substitutes Solicitors Regulatory Authority for Law Society to reflect the separation of the Law Society's regulatory functions from its representational functions.
25	C7 & Annex F	Changes made to take account of changes to the arrangements for compulsory notification of arrest implemented by the FCO and UKBA.
26	C8.1 & Note 8C	Adds reference to new Note 8C to draw attention to current 2012 Safer Detention Guidance in the public domain.
27	C9.1 & Note 8C	For consistency, 'appropriate healthcare professional' (as defined by Note 9A) replaces reference to 'police surgeon' to reflect current terminology and practice. Reference to new Note 8C added (see item 26)
27A	C9.3	Amends threshold for half hourly visits & assessment to refer to persons suspected of being "under the influence of drink or drugs ..." rather than "intoxicated through ...". Follows current 2012 Safer Detention Guidance and an IPCC recommendation in the Gary Reynolds case.
28	C9.6 & Note 9D	Grammar and reference to Mental Health Act Code of Practice added to Note 9D. Last sentence in Note 9D deleted to reflect amendment to the Act, which allows transfers.
29	C9.8	Replaces reference to 'police surgeon' to reflect current terminology and practice.
30	C9.10	Amendment allows custody officer to delegate the distribution of Schedule 4/5 drugs to other staff. Also corrects grammar.
30A	C9.15(e) & Note 9E	Reference to Note 9E added as a reminder about the need for medical confidentiality.
30B	10.2	Supports C3.21 (see item 14)
30C	10.3	Additions to ensure consistency with Code G and section 28 PACE regarding information given on arrest.
30C	C10.11A	New paragraph which prohibits the special warning from being given to a suspect who is a juvenile or mentally disordered or otherwise mentally vulnerable without the appropriate adult being present.
31	C12.1	Clarification which reflects s.39(2)(a) & (3) PACE regarding the responsibility of an investigating officer when given custody of a detainee by the custody officer.
31A	C12.9	For consistency with C9.2, clarifies that the duty of the interviewer is to report to the custody officer apparent improper treatment which comes to notice even though no complaint is made. Takes account of an IPCC recommendation.
32	C13.1 & Note 13A	Deletions and new Note 13A take account of the changes being implemented through the MoJ Interpreters Project Board.
33	C15.2A	Minor clarification to indicate that section 42 PACE concerns detention <i>before</i> charge
34	C15.3C	Grammar
35	C16.1A	Grammar
35A	C15.3 & Note 15CA	Reference added to new Note 15CA which gives guidance about the requirement for solicitors & appropriate adults to be given an opportunity to make representations to the officers responsible for reviews & extensions of detention without charge.
36	C15.9 sub-heading (b)	Reference to video conferencing facilities added to sub heading (b)
37	C15.10 & 15.11 & Note 15G	New provisions to clarify requirements under s.45A PACE for carrying out reviews using video conferencing facilities. Includes definition added to Note 15G. The purpose is to support the introduction of regulations which allow video conferencing facilities to be used throughout England and Wales.
37A	C16.1 & Note 16C	Addition to Note 16C points out the need to make reasonable efforts to ensure an appropriate adult is present when a juvenile or vulnerable adult is charged & including a release on bail to a time when the adult is present.
38	C16.3	Clarification
39	C16.7, C16.10 & Note 16D	Additional provisions and guidance clarify and emphasise the requirement in section 38(6) PACE for a juvenile detained after charge to be transferred to local authority care. Also takes account of some aspects of the HMIC/HMIP report: http://www.hmic.gov.uk/publication/whos-looking-out-for-the-children/
40	C17.2	Style
41	C17.16(b)	Clarification re exception from disposal of samples taken for Class A drug testing.
41A	Annex A2A	Reference to 'staff custody officer' deleted to reflect repeal of the provisions in sections 120/121 of the Serious Organised Crime & Police Act 2005.

Table of Changes – Code C

No.	Paragraph	Summary of changes, reason/purpose
42	Annex A2B	Inserts explanation of what is required for appropriate consent (s.65 PACE) to be valid taken from D2.12 and D2.14. Provides clarity and ensures that this safeguard for juveniles and vulnerable adults is not overlooked. (See also Annex K para. 3 below).
42A	Annex A5,6 & 11	References to Annex L added – item 49.
43	Annex E1 & Note E4	See C3.16 above – item 13.
44	Annex E5	Refers to 'appropriate' healthcare professional for consistency in terminology
45	Annex E6	See C3.16 above – item 13.
46	Annex E11	For consistency with C16.6 to which this summary in Annex E relates and aims to reflect.
47	Annex F	See C7 above – item 25
48	Annex K3	Inserts an explanation of what is required for appropriate consent (s.65 PACE) to be valid taken from D2.12 and D2.14. Provides clarity and ensures that this safeguard for juveniles and vulnerable adults is not overlooked. See also Annex A para. 2B above.
49	Annex L Gender and Search	New Annex L with Notes gives guidance regarding searches by officers of same sex. Note L1 gives examples of powers, Notes L2, L3 & L4 provide definitions. Note L5 points out the responsibility of chief officers to provide operational guidance for their officers & staff which should complement the approach in the Annex. Note L6 Not included – no national guidance available at this time.
	Notes for Guidance	
	Note 1G	Amended, see C1.4 above – item 2A
	Note 1J	Deleted, see C1.9 above – item 4
	Note 1K	Grammar
	Note 3B	Amended see C3.2 above – item 8B
	Note 3F	New, see C1.15 above – item 7
	Note 5B	Amended, see C5.4 above – item 17
	Note 5F	New, see C5.7B above – item 16
	Note 6ZA	New, see C6.4 above – item 18A
	Note 6B	Amended, see C6.1 above – item 18
	Notes 6B1 & 6B2	Deleted, see C6.1 above – item 18
	Note 6D	Amended, see C6.1 above – item 18
	Note 6F	Amended, see C6.13 above – item 24
	Note 6I	Not used, see C6.6(d) above – item 21
	Note 8C	New, see 8.1 above – item 26
	Note 9D	Amended, see C9.6 above – item 28
	Note 10F	Updates reference to Customs Officers.
	Note 15CA	New, see C15.3 above – item 35A
	Note 16C	Amended, see C16.1 above – item 37A

Draft revised PACE Code G (Arrest) - Table of Changes

The table starting on the next page provides a summary explanation of the changes (apart from minor grammar and typographical corrections) with a hyperlink for each change to the draft ([Click here](#) to view).

Overview of the changes:

1. The changes place additional emphasis on the practical application of the key elements of a lawful arrest whereby the arresting officer must have:
 - (1) Reasonable grounds *to suspect*:
 - that an *offence has been committed*; and
 - that the *person has committed it*, and
 - (2) Reasonable grounds *to believe*:
 - that *arrest is necessary* for one or more specified reasons.
2. The changes arise from, or have been driven by:
 - The Government commitment to protect householders and others from unnecessary arrest when they use force in the belief that they are acting in self defence;
 - Concerns about the position of teachers and school staff when police are called to investigate allegations that they may have used unreasonable force against their pupils; and more generally,
 - The need to clarify and expand support for each of the statutory reasons for arrest in section 24(5) PACE with particular regard to the need to arrest to interview ('voluntary interviews'), arrests for 'continuing offences' and to make it clear that arrests may not be made *solely* to obtain biometric data.
3. Particular additions in the Notes for Guidance point out:
 - That the power to arrest Code G applies to all offences
 - That officers should consider facts and information which tend to indicate the person's innocence as well as their guilt which, for an offence involving the use of force may include the circumstances under which the law allows a person to use reasonable force to defend themselves and prevent damage to property.

25 April 2012

Table of Changes – Code G

EXPLANATION OF CHANGES TO CODE G

Note: Items highlighted in grey indicate further revisions arising from the consultation

No.	Paragraph	Summary of changes, reason/purpose
1	Commencement	The revised Code will come into force as specified in the affirmative Order.
2	G1.1	Adds a reminder in the context of the arrest power about discrimination and the protected characteristics to which the Equality Act 2010 applies.
3	G1.2 & G1.3 <i>Note 1B</i>	Changes specifically refer to the provisions of the Human Rights Act which apply to the power of arrest and the necessity threshold. New <i>Note 1B</i> which advises about avoiding arresting juveniles at school is copied from Code C <i>Note 11D</i> .
3A	G1.4	Additional text points out that section 24 PACE provides the power to arrest <i>without warrant for all offences</i> .
4	G2.1	Clarifies the relationship between the two elements of section 24 PACE which concern the constable's suspicion that the person has committed an offence and belief that arrest is necessary.
5	G2.2	Clarification to reflect requirements in para. G3.3 and section 28 PACE to give the arrested person information about their arrest and the provisions of Code C3.4 which allow information about arrest to be given to the arrested person and to the custody officer by someone other than the arresting officer.
6	G2.3 sub-heading (a) G2.3 <i>Note 1</i> <i>Note 1A</i>	Changes under sub-heading '(a) Involvement in the commission of an offence' clarify and emphasise that a constable's power of arrest <i>without warrant</i> under section 24 of PACE applies to all offences as follows: <ul style="list-style-type: none"> Reference to the offences created by sections 4(1) (Assisting offenders) & 5(1) (Concealing offences) Criminal Law Act 1967 being an exception is deleted. Although these require the commission of other offences, they are separate substantive offences to which the power of arrest under section 24 PACE applies in the same way as for any other offence. Revising <i>Note 1</i> to explain what is meant by an 'offence' for the purposes of Code G & section 24 of PACE; Adding a new <i>Note 1A</i> to give examples of powers of arrest other than under section 24 of PACE.
7	G2.3A <i>Note 2</i> <i>Note 2A</i>	New provisions from <i>Note 2</i> (deleted) point out that grounds for arrest must have an objective basis and the onus is on the officer to 'identify' & consider the relevant facts & information. <i>Notes 2</i> and <i>2A</i> point out that when considering the likelihood that an offence has been committed and that a person has committed it, facts and information which tend to indicate a person's innocence as well as their guilt may be considered. <i>Note 2A</i> refers to common and statute law provisions concerning the use reasonable force as examples of matters which might point to innocence and tend to dispel grounds for suspicion and separate guidance for the public and school teachers concerning self defence and the use of reasonable force.
8	<i>Note 2B</i>	New <i>Note 2B</i> refers to the duty of an investigator under para. 3.5 of the Code of Practice under the Criminal Procedure and Investigations Act 1996 Practice to pursue all reasonable lines of enquiry.
9	G2.4 G2.5 G2.6 G2.7 <i>Note 2C</i>	Additional provisions under sub-heading '(b) Necessity criteria' & a new <i>Note 2C</i> make it clear that the decision as to which of the reasons for arrest apply and whether arrest the better option apply to all arrest and is an operational matter for the officer according to the circumstances existing at the time the decision is made. Reference in C2.6 to taking the person to a police station is deleted to make it clear that the power applies to arrests made at the police station as well as 'on the street'. <i>Note 2C</i> also points out that the necessity criteria apply to further arrests of suspects already in detention after arrest.
10	G2.9 <i>Note 3</i>	New provisions supported by a reference to para. G3.3 and additions to <i>Note 3</i> describe in general terms, the information a person should be given about the reason(s) for their arrest and when it should be given.
11	G2.9(a) to (f) <i>Note 2D</i>	Additions to sub paragraphs (a) to (f) which set out the statutory reasons for arrest in section 24(5) of PACE update and expand examples that might apply in practice to illustrate the necessity for arrest. New <i>Note 2D</i> describes circumstances generally applicable to some criteria whereby a suitable warning/advice might avoid the need to arrest as well as provide supporting evidence of the offence. The individual necessity criteria are as follows below:
12	G2.9(a) G2.9(b) <i>Note 2D</i>	(a) <i>to ascertain name</i> & (b) <i>to ascertain address</i> : The person should be given a reasonable opportunity to establish their identity and address. Supported by new <i>Note 2D</i> which specifically refers to mobile fingerprinting devices and Code D4.3 regarding the power in section 61(6A) to take fingerprints prior to arrest.

Table of Changes – Code G

No.	Paragraph	Summary of changes, reason/purpose
13	G2.9(c) Note 2D	(c) <i>to prevent the suspect from:</i> (i) causing injury to self or others. (ii) suffering injury (iii) causing loss or damage to property. (iv) committing offence against public decency. (v) unlawfully obstructing the highway. Supported by new Note 2D described in 11 above:
14	G2.9(d)	(d) to protect a child or vulnerable person from the suspect. Extended to indicate the need to consider arrangements other than arrest which might prevent harmful contact between suspect and potential victim.
15	G2.9(e) Note 2E Note 2F Note 2G Note 2H Note 2I Note 2J Note 6	(e) <i>to allow the prompt and effective investigation of the offence or of the conduct of person concerned.</i> Provides a new introductory general explanation, supported by a new Note 2E, which relate the need to arrest to the requirements of the investigation. It includes a reference to post-arrest street bail (supported by new Note 2J) as a viable option for securing an arrested suspect's presence at the station. This is followed by additional examples and text in sub-paragraphs (e)(i) to (v). Each illustrates the need to arrest according to the nature of the particular investigative action required and whether it would be practicable to carry out that action without arresting the suspect. The examples cover the need to arrest to: (i) <i>Interview to obtain evidence</i> of any offence. The example is supported by new Note 2F which includes guidance about what a suspect should be told for the purpose of making arrangements for their voluntarily attendance at a police station for interview. New Note 2G also makes it clear that the routine arrest of a person on their voluntary attendance at the station for interview would be unlawful. (ii) <i>Enter & search premises</i> without a search warrant for <i>evidence of indictable offence</i> . Supported by an extended Note 6 with examples of additional 'trigger' powers associated with indictable offences; (iii) <i>Secure biometric evidence of a recordable offence</i> . Note 2H points out that routine arrest solely to obtain biometric data is not permitted; (iv) <i>Secure evidence of any offence</i> by searching, examining or photographing the arrested suspect. Note 2H points out that routine arrest solely to search etc. is not permitted. (v) <i>Test for Class A drugs</i> when drug misuse may have caused or contributed to, the commission of the offence. Note 2I points out that routine arrest solely to test for drugs is not permitted.
16	G2.9(f)	(f) to prevent suspect from hindering prosecution by 'disappearing'.
17	G3.1, G3.2, G3.4 & G3.7	Heading simplified. Other amendments and deletions remove details which specifically apply to cautioning <i>before</i> questioning and the effect of not answering questions or not giving information <i>after</i> caution. These have no direct bearing on the decision to arrest or the arrest process and as they stand alone, they are best left to be covered by Code C.
18	G3.3 Note 3	Additions to G3.3 & Note 3 clarify the information to be given to an arrested person and ensure consistency with G2.2 and 2.9.
19	G3.5 sub heading (b)	For clarity, new sub-heading (b) 'Terms of the caution...' added. Welsh language version added.
20	G4.1	Clarifies that all four items of information about the arrest are to be recorded.
21	G4.3	Extended to ensure consistency with action required under Code C required when an arrested person arrives at the station or a person is arrested at the station.
	Notes for Guidance	
	Notes 1 & 1A	See G2.3 — item 6 above.
	Note 1B	See G1.2 & G1.3 — item 3 above.
	Notes 2 & 2A	See G2.3A — item 7 above.
	Note 2B	See G2.3B — item 8 above.
	Note 2C	See G2.4, G2.5 & G2.7 — item 9 above.
	Note 2D	See G2.9(a) to (f) — items 11 and 12 above.
	Notes 2E & 2F	See G2.9(e) — item 15 above.
	Notes 2G & 2H	See G2.9(e) — item 15 above.
	Note 2I & 2J	See G2.9(e) — item 15 above.
	Note 3	See G2.9, G2.9(a) to (f) & G3.3 — see items 9, 10 & 16 above.
	Note 6	See G2.9(e) — item 15 above.

Draft revised PACE Code H (Detention-terrorism) - Table of Changes

The table starting on the next page provides a summary explanation of the changes (apart from some minor grammar and typographical corrections) with a hyperlink to the draft for each change ([Click here](#) to view).

Many of the changes to Code H are mirrored (with modifications as necessary) in the draft revised version of PACE Code C and vice versa in order to ensure consistency.

Other changes are specific to Code H and reflect changes to terrorism legislation, powers and procedures. Particular terrorism specific changes are in section 14 which deals with detention and section 15 which covers questioning after charge.

The more substantial changes are as follows:

- Section 3: Allow the custody officer to direct custody staff to carry out certain actions in relation to a detainee's rights and entitlements, need for medical treatment and the risk assessment process.
- Section 5: Allow a detainee to be visited by those in whose welfare the detainee has an interest.
- Section 6: Update the arrangements for access to legal advice and introduce additional safeguards for detainees who change their mind about wanting advice.
- Section 7: Simplify for police the arrangements for the mandatory notification of the arrest of foreign nationals and asylum claims whereby police inform UKBA and UKBA will advise police. A link to the Foreign and Commonwealth website replaces the list of countries in Annex F.
- Section 9: Updated provisions on the self-administration of controlled drugs; Clarification of the application of the safeguards for detainees suspected of being under the influence of drunk or drugs or both.
- Section 14: Detention without charge for more than 14 days, new Annex J.
- Section 15: Post-charge questioning and detention for that purpose.
- Annex L: New provisions covering Gender and searching to update and supersede Annex F in Code A.

25 April 2012

SUMMARY & EXPLANATION OF THE CHANGES TO CODE H

Note: Items highlighted in grey indicate further revisions in response to the consultation.

No.	Paragraph	Summary of changes, reason/purpose
1	Commencement	The revised Code will come into force as specified in the affirmative Order.
2	H1.0	Addition: General reminder to police regarding discrimination which refers to the protected characteristics to which the Equality Act 2010 applies.
3	H1.1, H1.2 & H1.4 & <i>Note 1N</i>	Clarify & distinguishes scope of Code H from that of Code C and the Terrorism Act (TA) Code of Practice for Examining Officers. New <i>Note 1N</i> distinguishes the power of arrest and subsequent detention under s.41 TA 2000 which is not subject to Codes C and G from the arrest and detention powers under section 24 and Part IV and of PACE which are subject to Codes G & C. H1.1(b) is subject to the post-charge questioning provisions of the Counter-Terrorism Act 2008 being commenced.
4	H1.3	Defines the meaning of 'offence' for the purposes of Code H to reflect the scope of the power of arrest & subsequent detention under section 41 of the TA 2000.
5	H1.6	Clarifies the position regarding bail under the TA 2000. Supported by new <i>Note 1N</i>
5A	H1.10 & <i>Note 1G</i>	Definition of 'mental disorder' amended to reflect amendment to the Mental Health Act 1983
6	H1.13	Changes to reflect statutory definition in section 65(7) of the Crime & Disorder Act 1998 & section 63B(10) of PACE/Code C17.7 (Drug testing)
7	H1.15 & <i>Note 1J</i>	Changes to reflects the repeal of the staff custody officer provisions in sections 120/121 Serious Organised Crime & Police Act 2005
8	H1.17(c) & Annex I	New sub para (c) with reference a to new Annex I which revises the gender & searching provisions currently in Code A Annex F and is replicated in Code C as Annex L.
9	H1.19 & <i>Note 3I</i>	Amends 'police authority' to 'police force' as a general descriptive term to distinguish between directly employed & contracted civilian police staff for the purposes of the Police & Social Responsibility Act 2011 which introduces police and crime commissioners to replace police authorities. Reference to new <i>Note 3I</i> concerning delegation of tasks added
10	H2.1 & H2.2	Extends requirement for person to whom Code H applies to be brought before the custody officer and for custody record to be opened to include persons questioned after charge as authorised under s.22 of the Counter-Terrorism Act 2008.
11	H2.3A	New paragraph: Reflects amendment to the stop/search recording requirements in s.3 PACE made by s.1 Crime & Security Act 2010 and which apply to terrorism and non-terrorism stop & search powers.
11A	H2.5	Amend 'consult' to inspect for consistency with H2.7.
12	H2.7	Extends entitlement to inspect the original custody record to include persons questioned after charge as authorised under s.22 of the Counter-Terrorism Act 2008
13	H3.1	Ensures that rights & entitlements extend to same persons to whom H2.1 applies. See above)
13A	H3.2 & <i>Note 3B</i>	Reference to 'easy read' illustrated versions of the Notice of Rights & Entitlements added to <i>Note 3B</i> .
14	H3.4	Changes the reference for making a written record of unsolicited comments to new paragraph 11.8A.
15	H3.5 & <i>Note 3I</i> H3.6	Amendments allow the custody officer to direct other custody staff to provide specified information to, and obtain specified information from, the detainee during the initial 'booking in' process and with a new <i>Note 3I</i> clarify the custody officer's responsibility
16	H3.8A	New paragraph: Distinguishes the assessment upon which the response is based from the response which is set out in the custody record and is made available to the detainee. Includes caveat that information should not be withheld if it would put a person at risk.
17	H3.9	For consistency, reference changed to 'appropriate' healthcare professional (as defined by <i>Note 9A</i>).
18	H3.12(b) & (c)	Changes gender reference
19	H3.13	Style
20	H4.1 & Annex I	Reference to Annex I (same sex searches) added
21	H5.1	Ensures that section 5 is confined to persons to whom Code H applies.
22	H5.4, <i>Note 5B</i> & <i>Note 5C</i>	Extended to allow discretionary visits from family & others in whose welfare the detainee has an interest. Unnecessary text in <i>Note 5B</i> which duplicates H5.4 deleted. Reference to section 7 added to <i>Note 5C</i> concerning visits from officials.
23	H6.1, <i>Note 6B</i> , & <i>Note 6C</i>	Notes for Guidance amended/deleted to reflect changes to the arrangements for obtaining legal advice described in detail in <i>Note 6B</i> .
23A	H6.3 & <i>Note 6ZA</i>	Clarifies that the prohibition that suspects must not be intentionally dissuaded from seeking legal advice applies to all suspects whether or not they are detained. Supported by new <i>Note 6ZA</i> .
24	H6.4	Clarifies the references in Code H to the requirement to remind suspects of about their right to legal advice and corrects the two corresponding references in Code D.

Table of Changes – Code H

No.	Paragraph	Summary of changes, reason/purpose
24A	H6.6	Extends the ability of an appropriate adult to ask for legal advice on behalf of a vulnerable adult whether or not they are detained. Grammar.
25	H6.7(d)	Amends action required when a suspect changes their mind about wanting legal advice. Adds a requirement to enquire into the solicitor's expected time of arrival & inform the suspect & remind them that they retain the right to legal advice.
26	H6.8	Extended to include the provisions in Code C6.7 which apply equally to Code H
27	H6.12, H6.15 & Note 6E	Substitutes Solicitors Regulatory Authority for Law Society to reflect the separation of the Law Society's regulatory functions from its representational functions.
28	H7 & Annex F	Changes made to take account of changes to the arrangements for compulsory notification of arrest implemented by the FCO and UKBA (replicated from Code C).
29	Not used	
30	H9.2	For consistency, 'appropriate healthcare professional' (as defined by Note 9A) replaces reference to 'police surgeon' to reflect current terminology and practice.
30A	H9.4	Amends threshold for half hourly visits & assessment to refer to persons suspected of being "under the influence of drink or drugs ..." rather than "intoxicated through ...". Follows current 2012 Safer Detention Guidance and an IPCC recommendation in the Gary Reynolds case.
31	H9.10	Replaces reference to 'police surgeon' to reflect current terminology and practice.
32	H9.12	Amendment allows custody officer to delegate the distribution of Schedule 4/5 drugs to other staff.
33	H9.17(e) & Note 9D	Reference to Note 9D added as a reminder about the need for medical confidentiality.
33A	H10.2	Additions to ensure consistency with Code G and section 28 PACE regarding information given on arrest.
33B	H10.10A	New paragraph which prohibits the special warning from being given to a suspect who is a juvenile or mentally disordered or otherwise mentally vulnerable without the appropriate adult being present.
34	H11.8	Updated to reflect new Codes of Practice issued under the TA 2000 and the Counter-Terrorism Act 2008 which respectively require video recording of interviews and post-charge questioning without exception.
35	H11.8A	New para. Requires a written record to be made of unsolicited comments which reflects Code C11.13. Referred to in H3.4 above. (see item 14)
35A	H12.1	Clarification regarding the responsibility of an investigating officer when given custody of a detainee by the custody officer - adopts the approach in Code C12.1.
35B	H12.10	For consistency with C9.3, clarifies that the duty of the interviewer is to report to the custody officer apparent improper treatment which comes to notice even though no complaint is made. Takes account of an IPCC recommendation.
36	H13.1 & Note 13A	Deletions and new Note 13A take account of the changes being implemented through the MoJ Interpreters Project Board.
37	H13.3 & H13.7	Paragraphs deleted to accord with H11.8 (see item 34) which makes no exception from the requirement to video record interviews of those to whom Code H applies.
38	H14	Main heading and sub headings (a) & (b) amended to clarify application of section 14 applies to extensions and reviews of detention under the Terrorism Act 2000
38A	H14.1	Grammar
39	H14.3, Note 14C & 14.4	Amended provisions to clarify the extension and review of detention under the TA 2000.
40	H14.5 & H14.6 to 14.10 & Annex J	Amended heading with revised provisions which introduce a new Annex J to deal with detention beyond 14 days.
41	H15	Section title extended to refer to post-charge questioning.
42	H15.1 & new subheading (a)	Clarification to point out that Code H does not apply to the charging process.
43	New sub heading (b), H15.2 to 15.13 & Notes 15A to 15E	New sub-heading and provisions in Code H about to satisfy the requirement in s.22(7) of the Counter-Terrorism Act 2008 that the PACE Codes must make provisions about post-charge questioning.
44	H16.1	Clarification
45	Annex A2	Amended to clarify the exclusion of intimate drug searches from the scope of Code H on the basis that the terrorism powers would not be exercised to deal with Class A drug dealing. Provisions of Code C Annex K (X-ray & ultra sound scans for Class A drugs not included in Code H for the same reason.
45A	Annex A3	Reference to 'staff custody officer' deleted to reflect repeal of the staff custody officer provisions in sections 120/121 of the Serious Organised Crime & Police Act 2005.
45B	Annex A6, 7 & 12	References to Annex I added – item 51.
46	Annex C1(b)	Clarification regarding post-charge questioning.
47	Annex C2	Welsh version added to reflect corresponding provisions of Code C
48	Annex E5	Refers to 'appropriate' healthcare professional for consistency in terminology
49	Annex E9	For consistency with Code C16.6 to which this summary in Annex E of Code H relates and aims to reflect.

Table of Changes – Code H

No.	Paragraph	Summary of changes, reason/purpose
50	Annex F	See H7 above – item 29
51	Annex I Gender and Search	New Annex I with Notes (replicated from Code C Annex L) gives guidance regarding searches by officers of same sex. <i>Note 11</i> gives examples of powers, <i>Notes 12, 13 & 14</i> provide definitions. <i>Note 15</i> points out the responsibility of chief officers to provide operational guidance for their officers & staff which should complement the approach in the Annex. <i>Note 16</i> Not included – no national guidance available at this time.
	Notes for Guidance	
	<i>Note 1G</i>	Amended, see H1.10 above – item 5A
	<i>Note 1J</i>	Deleted, see H1.15 above – item 7
	<i>Note 1K</i>	Grammar
	<i>Note 1N</i>	See H1.6 above – item 5
	<i>Note 3B</i>	See H3.2 above – item 13A
	<i>Note 3I</i>	New, see H1.19 above – item 9
	<i>Note 5B</i>	Amended, see H5.4 above – item 22
	<i>Note 5C</i>	Reference to Annex F replaced to accord with changes to section 7 above – item 28
	<i>Note 6ZA</i>	New, see H6.5 above – item 23A
	<i>Note 6B</i>	Amended, see H6.1 above – item 23
	<i>Note 6C</i>	Amended, see H6.1 above – item 23
	<i>Note 6E</i>	Amended, see H6.15 above – item 27
	<i>Note 10E</i>	Updates reference to Customs Officers