

EXPLANATORY MEMORANDUM TO  
**THE POLICE AND CRIMINAL EVIDENCE ACT 1984 (CODES OF PRACTICE)  
(REVISION OF CODES C, D AND E) ORDER 2016**

2016 No. [XXXX]

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 The Order brings into force three revised Codes of Practice issued under the Police and Criminal Evidence Act 1984 (“PACE”), known as Code C, which deals with detention under PACE, Code D which deals with identification of suspects and Code H which deals with detention under terrorism legislation. The changes will bring the Codes in line with changes in legislation, policy, operational policing practice and case law.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 This entire instrument applies only to England and Wales.
- 3.3 This instrument applies only to England and Wales as it is made under section 67(5) of the Police and Criminal Evidence Act 1984, which extends to England and Wales only. The instrument does not have minor or consequential effects outside England and Wales.
- 3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament.
- 3.5 The Department has reached this view because it considers that the primary purpose of the instrument relates to policing, which is within the devolved legislative competence of the Scottish Parliament and Northern Ireland Assembly; the primary purpose of the subject matter of the instrument is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedules 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act).

#### **4. Legislative Context**

- 4.1 Section 66 of PACE requires the Home Secretary to issue codes of practice in connection with the detention, treatment, questioning and identification of persons by police officers. Code C governs the detention, treatment and questioning of person arrested and detained but not under terrorism legislation; Code H governs the detention, treatment and questioning of persons detained arrested under terrorism legislation; and Code D governs the identification of suspects. This Order brings into force revised Codes C, H and D.
- 4.2 Codes C and H were previously revised in June 2014 and Code D was previously revised in May 2011. Section 67(4) of PACE requires that where the Home Secretary wishes to issue a revised code, a statutory consultation must first be carried out. This has been carried out in accordance with section 67(4).

#### **5. Extent and Territorial Application**

- 5.1 This instrument applies to England and Wales (see paragraph 3.3 above).
- 5.2 The territorial application of this instrument is set out in Section 3 under “Other matters of interest to the House of Commons”.

#### **6. European Convention on Human Rights**

- 6.1 The Minister of State for Policing and the Fire Service has made the following statement regarding Human Rights:
- 6.2 In my view, the provisions of the Police and Criminal Evidence Act 1984 (Codes of Practice) (Revisions of Codes C, D and H) Order 2016 are compatible with the Convention rights.

#### **7. Policy background**

##### *What is being done and why*

- 7.1 Police powers are governed by the provisions of PACE and the accompanying Codes of Practice. For England and Wales, these set out the core framework of police powers and safeguards for individuals and the PACE Codes govern the way in which the police exercise their powers. The revisions are necessary to bring Codes C, D and H in line with current legislation and to support operational policing practice.
- 7.2 Together, the revisions to the three Codes enable the use of live-link technology for interpreters and the use of electronic recording devices and records; update and extend the provisions and safeguards for the detention and care of juveniles at police stations before and after charge and the role of the appropriate adult for juvenile and mentally vulnerable suspects; and update procedures for obtaining eye-witness identification evidence and the provisions for taking and retaining fingerprints and DNA.
- 7.3 Revisions to Codes C and H enable the use of use live-link electronic communication systems to provide interpretation services for suspects which would not require the interpreter to be physically present at the police station. The revisions incorporate detailed conditions and safeguards to ensure that live-link interpretation does not adversely impact on the suspect.
- 7.4 The revisions to Code C also implement amendments to the Police and Criminal Evidence Act 1984 made by the Criminal Justice and Courts Act 2015, which define a

“juvenile” for the purpose of detention as a person who is under the age of 18, rather than under the age of 17. Other revisions in Code C concern section 38(6) of PACE. This requires juveniles who are not released on bail after being charged to be moved to local authority accommodation pending appearance at court unless transfer is impracticable. To promote compliance, the Code provides that the reasons why transfer is not practicable must be shown on the certificate that must be provided to the court and requires supervision and monitoring by an inspector or above. New provisions in Code C permit an appropriate adult to be removed from interview if they prevent proper questioning. These are consistent with the existing provisions in Code H and are modelled on Code C paragraph 6.9 (removal of solicitor) with additional safeguards for suspects.

- 7.5 In Code D, eye-witness and witness identification procedures are updated to take account of changes and developments in case law and police practice and to address operational concerns raised by the police. In respect of the video identification procedure, these support and extend the identification officer’s discretion concerning the selection and use of ‘historic’ images, the presence of solicitors at witness viewings and to direct other police officers and police staff to implement any arrangements for any identification procedures. The role and responsibility of the investigating officer is clarified in relation to viewing of CCTV and similar images by someone who is not an eye-witness. The revisions to Code D also reflect amendments to the Police and Criminal Evidence Act 1984 concerning the retention of fingerprints, footwear impressions and DNA profiles and samples, made by the Anti-Social Behaviour, Crime and Policing Act 2014. The revisions also reflect other minor changes in legislation and practice.

***Consolidation***

- 7.6 Not applicable.

**8. Consultation outcome**

- 8.1 The Home Office consulted about the revisions to Codes of Practice C (detention), D (identification) and H (detention – terrorism) from 22<sup>th</sup> March 2016 to 17<sup>th</sup> May 2016 (see <https://www.gov.uk/government/consultations/revising-pace-codes-c-d-and-h>). In accordance with section 67(4) of the Police and Criminal Evidence Act 1984, statutory consultees and others were invited to comment.
- 8.2 Response were received from 18 separate individuals and organisations. They came from: 5 police forces, the National Policing Lead for Language Services, the National Crime Agency, HM Inspectorate of Prisons and HM Inspectorate of Constabulary, the Police Federation, HM Revenue and Customs, the Youth Justice Board, 3 legal representative bodies (the Law Society, London Criminal Courts Solicitor’s Association, the Bar Council and the Criminal Bar Association), Liberty, Police Action Lawyers, Royal Holloway University of London Department of Psychology and one member of the public.
- 8.3 In general terms, the police responses supported the changes. A number of responses asked for clarification and some proposed further changes to support operational implementation. Further changes were made in response to most of these consultation responses.
- 8.4 The responses from the legal profession generally argued that additional safeguards for suspects were needed. Some argued that the provisions enabling electronic

recording should be withdrawn until detailed technical specifications had been agreed and included in the Code. In response, further changes were made to incorporate additional safeguards and provisions along the lines requested, but the provisions enabling electronic recording remain in the Code.

- 8.5 The outcome of the consultation prompted a number of constructive changes to the original proposals. These further revisions improved the operational implementation of the changes and provide for a balanced approach to the points raised in the responses to the consultation. The Codes have also been amended to improve presentation and help understanding and some small changes have been made in the interests of clarity and legal accuracy. For details of the changes made, see the Government's response to the consultation at [www.gov.uk](http://www.gov.uk).

## **9. Guidance**

- 9.1 The Home Office will work with the National Policing Leads and the College of Policing to determine whether there is a need for further guidance and support in light of the revised Codes.
- 9.2 A Home Office Circular will be issued to publicise the revised code and the changes within it.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact is limited to the police.
- 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 businesses.

## **12. Monitoring & review**

- 12.1 The success criteria for the changes will be:
- Successful implementation by forces of live-link interpretation.
  - Increased effectiveness and efficiency in the conduct of witness identification procedures.
- 12.2 The National Policing Leads, in conjunction with the College of Policing, the Home Office and Her Majesty's Inspector of Constabulary will monitor the implementation and impact of the amendments on an ongoing basis.

## **13. Contact**

- 13.1 Brian Roberts: Tel: 020 7035 4848 / [brian.roberts21@homeoffice.gsi.gov.uk](mailto:brian.roberts21@homeoffice.gsi.gov.uk) or John de Sousa: Tel: 020 7035 4848 / [John.DeSousa2@homeoffice.gsi.gov.uk](mailto:John.DeSousa2@homeoffice.gsi.gov.uk) can answer any queries regarding the instrument.