

**EXPLANATORY MEMORANDUM TO**  
**THE POLICE AND CRIMINAL EVIDENCE ACT 1984 (CODES OF PRACTICE)**  
**(REVISIONS TO CODE A) (No.2) ORDER 2008**

**2008 No. 3146**

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 on 1 January 2009 a change to Code of Practice A (Code A) under the Police and Criminal Evidence Act 1984 (PACE) which enables police officers in England and Wales, and police staff exercising their powers in their force areas, to provide a receipt rather than a full record when they undertake an encounter in accordance with paragraphs 4.11 – 4.20 of Code A. The amended part of Code A which has been laid before Parliament together with this Order will replace that part of the existing Code, which has been in operation since 1 February 2008.

2.2 Clarification has also been made in paragraphs 2.2 and 2.3 of Code A regarding reasonable suspicion not being based on single factors alone. Paragraphs 4.10A and 4.10B have also been amended to clarify the position on providing receipts for stops and searches.

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

3.1 None.

**4. Legislative Context**

4.1 The instrument is made under section 67(5) of PACE and is being laid before Parliament pursuant to section 67(7A) of that Act.

4.2 During the course of debate on what became section 11 of the Criminal Justice Act 2003, Baroness Scotland of Ashtal QC, Minister of State at the Home Office, undertook to refer proposed revisions to the Codes of Practice to the Home Affairs Select Committee for consideration of the appropriate Parliamentary process to implement the revisions and be bound by that recommendation (Lords Hansard 7 July 2003: Cols 37 & 38). The revisions which this instrument brings into force were duly referred to the Home Affairs Select Committee which recommended that the instrument bringing the revisions into force should be laid before Parliament pursuant to section 67(7A) of PACE.

**5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

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

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- *What is being done and why*

7.1 The Order removes the requirement for police officers and members of police staff to complete a written record when a person is stopped in a public place and asked to account for themselves. The proposed new recording requirement of ethnicity only of the person stopped follows Recommendation 24 contained in the Report by Her Majesty's Chief Inspector of Constabulary entitled 'The Review of Policing' published in February 2008.

The Recommendation noted that the existing recording requirements were often bureaucratic and time consuming, resulting in creating rather than diluting tensions between the police and the individual and the police and the community. The gathering of personal information and the often lengthy period of time to obtain that information as a matter of routine was seen as bureaucratic, an ineffective use of police resources and detaining the individual unnecessarily in order to complete the stop and account form.

Statutory Instrument SI 2008 No. 2638 provided for the new recording requirement to be piloted. Feedback from the relevant force areas after the initial trial period indicates that the new recording requirement has helped increase the quality of the encounter, reduced the amount of time that a person is detained in the street and helped free-up officers to spend more time on front line activity.

- *Consolidation*

7.2 The instrument amends PACE Code of Practice A. The Code is subject to amendment from time to time and a consolidated version of the Code incorporating the changes made as a result of the Order is available on the PACE Codes website <http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-code-intro/>

## **8. Consultation outcome**

8.1 Consultation was carried out in accordance with section 67 (4) of the Police and Criminal Evidence Act 1984. In addition to the statutory bodies listed in that subsection, we have also consulted with groups with an interest in human rights and community issues. The consultation has been supportive and recipients recognised the benefits for the individual, the police, and the community of removing what was recognised as an unduly cumbersome and bureaucratic process. In 2007 a change was

introduced to allow an electronic record to be made and receipt given at the time of a stop and account. A concern was raised at that time that fewer people would access their right to a record of the stop. However, this has not been borne out in practice.

## **9. Guidance**

9.1 The Association of Chief Police Officers will provide guidance to police forces on the application of the new recording requirements. The Home Office will issue a Home Office Circular informing chief officers of police, police authorities and stakeholders of the proposed amendments to Code A.

9.2 The Association of Police Authorities has produced a leaflet and poster on the rights of the individual and provided a website (<http://www.apa.police.uk/apa>) for persons to use for advice and guidance on stop and account and stop and search and, if required, guidance on how to complain about the conduct of the police during an encounter. Police forces are encouraged to put the APA web address on the receipts for stop and account and stop and search.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is to make significant savings for the police service in terms of freeing up officers for front-line activity, reduced back office time in inputting data, improved access to supervisory officers and community groups on data on stop and account, better quality of encounters and increased community confidence.

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 Statistics on stop and account and stop and search are subject to national collection under section 95 of the Criminal Justice Act 1991. Stop and search statistics are also published annually by the Home Office. 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**

Alan Brown Home Office Policing Powers and Procedures Unit  
[Alan.brown@homeoffice.gsi.gov.uk](mailto:Alan.brown@homeoffice.gsi.gov.uk) 020 7035 0877 can answer any queries regarding the instrument.