

**EXPLANATORY MEMORANDUM TO
THE POLICE AND CRIMINAL EVIDENCE ACT 1984 (CODES OF PRACTICE)
ORDER 2005**

2005 No. 3503

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

2. Description

2.1 The Order brings into force revised codes of practice under the Police and Criminal Evidence Act 1984 (PACE) which implements changes that primarily result from the Serious Organised Crime and Police Act 2005 and the Drugs Act 2005. It includes a new code of practice on the arrest provisions under sections 110 and 111 of the Serious Organised Crime and Police Act 2005. The revised codes of practice will supersede the existing codes which have been in operation since 1 August 2004.

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

3.1 None

4. Legislative Background

4.1 The instrument is being laid in draft before parliament pursuant to section 67(7A) of the Police and Criminal Evidence Act 1984.

4.2 The revisions which this instrument brings into force were also referred to the Home Affairs Select Committee in accordance with section 67 of the Police and Criminal Evidence Act 1984 who agreed that this instrument should be subject to draft affirmative process.

4.3 During the course of debate on the Serious Organised Crime and Police Act 2005 Hazel Blears MP, Minister of State for the Home Office, gave an undertaking to Parliament that the order introducing the revised Codes of Practice would be agreed by affirmative resolution primarily to enable Parliament to effectively scrutinise the new code on arrest (HoC Standing Committee D, 18/01/05, col. 246). That undertaking was repeated by Baroness Scotland in the House of Lords (Third Reading, 06/04/05, col. 758).

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

The Minister of State for the Home Department, Hazel Blears, has made the following statement regarding Human Rights:

In my view the provisions of the Police and Criminal Evidence Act 1984 (Codes of Practice) Order 2005 are compatible with the Convention rights.

7. Policy background

7.1 Sections 60, 60A and 66 (as amended) of the Police and Criminal Evidence Act 1984 provide for the Secretary of State to issue Codes of Practice governing certain key areas of police procedure. The existing Codes are:

Code A: Stop and Search. This Code governs the exercise of police powers in respect of stopping and searching persons. The current version of this Code was introduced on 1 April 2003.

Code B: Searching of premises and seizure of property. This Code governs the exercise of police powers in respect of the searching of premises and the seizure of property found by police officers on persons or premises. The current version of this Code was introduced on 1 April 2003.

Code C: Detention, treatment and questioning. The purpose of this Code is to ensure that all persons suspected of being involved in crime, and others who are in police custody, are dealt with fairly and properly in accordance with the law. The current version of this Code was introduced on 1 April 2003.

Code D: Identification. This Code concerns the principal methods used by police for identifying persons in connection with the investigation of offences and the keeping of accurate and reliable criminal records. The current version of this Code was introduced on 1 April 2003.

Code E: Audio recording of interviews with suspects. This Code deals with the audio tape recording of interviews with persons suspected of certain types of criminal offences and governs the way in which tape recorded interviews are carried out. The current version of this Code was introduced on 1 April 2003.

Code F: Visual recording of interviews. This Code deals with the visual recording with sound of interviews with persons suspected of criminal offences. This Code was introduced on 7 May 2002.

7.2 There have been a variety of legislative changes, primarily made by The Serious Organised Police Act 2005 and the Drugs Act 2005 which have affected police powers and procedures and rendered the current Codes out of date. The revised Codes reflect the changes to primary legislation and contain other minor amendments to ensure they reflect best policing practice.

7.3 Significant changes to the Codes are detailed below:

Code A – Stop and Search:

- Section 115 of SOCAP, which creates a power to stop and search for possession of prohibited fireworks.
- An addition that the Code should stipulate that a person's religion cannot be considered as reasonable grounds for a stop and search.
- Clarifies that when a person is detained for a stop and search and no search takes place it should only be recorded as a stop
- an addition of a new Annex to distinguish more clearly the difference between a constable's and a CSO's powers to search and seize

Code B – Search and Seizure

- New provisions on multiple premises and all premises warrants and extension of the life of a search warrant which reflects the provisions of section 114 of the Serious Organised Crime and Police Act 2005.

Code C – Detention, Treatment and Questioning

- Covers section 5 of the Drugs Act 2005 – the taking of x-rays or ultrasound scans of persons suspected of having swallowed drugs and enabling a court to draw adverse inferences from a refusal to consent to such a procedure.
- Testing detainees for specified class A drugs on arrest (while retaining the power to test after charge) and to require those who have tested positive to attend an initial assessment of their drug misuse as provided for by the Drugs Act 2005

Code D - Identification

- Enabling police and CSOs to photograph suspects who have been arrested or detained or given a relevant penalty notice in accordance with section 116 of the Serious Organised Crime and Police Act 2005.
- Police to take fingerprints of persons elsewhere than at a police station and without consent as provided for by the Serious Organised Crime and Police Act 2005.
- Taking of footwear impressions without consent where the individual has been arrested for a recordable offence as provided for by the Serious Organised Crime and Police Act 2005.

Code E – Tape Recording of Interviews with Suspects

- Updated to enable the police to use modern technology to audio record interviews.

Code F – Visual Recording of Interviews with Suspects

- No substantive changes.

Code G - Arrest

- New Code introducing the new framework making all offences subject to arrest based on necessity criteria rather than seriousness.

7.4 The Codes of Practice affect people who are detained by the police or others who come into contact with the police (for example because they are stopped and searched or their premises are searched). The revisions to the Codes and the instrument bringing the revisions into force are therefore considered to be legally important.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies

8.2 The impact on the public sector is negligible and is not expected to have an additional impact on resources over and above that which is already imposed by the current versions of the Codes of Practice.

9. Contact

Alan Brown at the Home Office Tel: 020 7035 0877 or e-mail:
Alan.Brown@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.