

**EXPLANATORY MEMORANDUM TO
THE POLICE & CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER
1989 (CODES OF PRACTICE) (TEMPORARY MODIFICATION TO CODE
D) ORDER 2006**

2006 No. 1081

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 This order modifies the Code of Practice for the Identification of Persons by Police Officers (“Code D”) issued under Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989. The modifications alter the hierarchy of visual identification methods which may be used by police officers so as to allow video identification to be used as the primary method of identification of persons.

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

- 3.1 None

4. **Legislative Background**

- 4.1 Articles 60, 60A and 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (“the 1989 Order”) contain provisions requiring the Secretary of State to make codes of practice in connection with the exercise of police officers of statutory powers.

- 4.2 Code D regulates the identification of persons by police officers. The modifications to Code D relate to Section 2 which deals with the identification of suspects by witnesses. Visual identification is a key element in the investigation and detection of many crimes. The Police Service of Northern Ireland is keen to utilise the latest identification technology and introduce a Video Identification Parade Electronic Recording system (commonly referred to as VIPER) as the primary method of identifying persons suspected of involvement in an offence. VIPER has been operational and highly successful in England & Wales since its introduction in 2002 and is seen to benefit all parties in the Criminal Justice system including police, Public Prosecution Service,

suspects and witnesses. The modifications to the code will facilitate the effective operation of the system.

- 4.3 Article 66(6A) of the 1989 Order allows the Secretary of State to make modifications to a code of practice provided that the effect of the modifications comply with Article 66(6B). Article 66(6B) provides that the modifications are limited to (a) a period not exceeding 2 years, or (b) such offences or descriptions of offender as may be specified. This Order complies with Article 66(6B)(a) by limiting the effect of the modifications to 1 year from the date of the Order coming into force, i.e from the 12th May 2006.

5. Extent

- 5.1 This instrument applies to Northern Ireland only.

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

- 7.1 Code D sets out four methods of identification of suspects by witnesses. These are (i) an identification parade; (ii) a group identification; (iii) a video film; (iv) a confrontation. Under the Code an identification parade is the primary method of identification. Only in cases where an identification parade has been refused by the suspect, or is considered impractical, can the next form of identification procedure be considered.
- 7.2 The modifications to the code alter the hierarchy of visual identification procedures and provide that video identification be the primary method of identification by police. This change will facilitate the effective operation of a visual identification parade electronic recording system which the Police Service of Northern Ireland plans to introduce operationally on 12 May 2006.
- 7.3 A 12 week consultation took place on the proposed changes to the Code between September 2005 and December 2005 and no adverse comments were received.
- 7.4 The changes to Code D also reflect amendments made to the 1989 Order by Section 93 of the Anti-Terrorism Crime and Security Act 2001 (c.24) relating to the retention and use of photographs or other images taken of detained persons. The amendments to the Code regulate the way in which photographs and images are retained and used by police officers.

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.

9. Contact

Gary Dodds at the Northern Ireland Office Tel: 028 90528375 or e-mail: Gary.Dodds@nio.x.gsi.gov.uk can answer any queries regarding the instrument.