

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

2005 No.

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 on 1 January 2006 revised codes of practice under the Police and Criminal Evidence Act 1984 (PACE) which reflect changes to primary legislation made by the Serious Organised Crime and Police Act 2005 and the Drugs Act 2005. It introduces a new code of practice related to powers of arrest. 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(7) and (7A) of PACE.

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 HASC which recommended that the instrument bringing the revisions into force should be subject to the draft affirmative process.

4.3 Section 67(7) requires Orders bringing new Codes of Practice, such as the new Code relating to arrest, to be made by affirmative order.

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 PACE 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 August 2004

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 August 2004.

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 August 2004.

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 August 2004.

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 August 2004.

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 1 August 2004.

7.2 A variety of legislative changes, primarily made by the Serious Organised Police Act 2005 and the Drugs Act 2005 will be brought into force on 1 January 2006 and which affect police powers. Accordingly revised versions of the Codes, and a new Code G relating to arrest, are being issued to reflect these changes to primary legislation. The revisions also 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 the Serious Organised Crime and Police Act 2005, 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 Community Support Officer's powers to search and seize

Code B – Search and Seizure

- Section 114 of the Serious Organised Crime and Police Act extends the current provisions under PACE for the issuing of warrants to search premises and seize evidence. It creates two new forms of warrant so that in addition to the current warrants which specify one premises, the court will also be able to issue:

Multi-premises Warrants - which specify a number of premises; or

All-premises Warrants - which allow access to all premises "owned or occupied by" an individual and can enable the police to search premises not specified in the original application where further evidence comes to light during the course of the original search.

Repeat Entry Warrants – which allow the police to enter premises on more than one occasion. The number of entries authorised may be unlimited, or limited to a maximum.

It also extends the time limit for executing warrants from 1 month to 3 months.

The Act ensures ensured that effective safeguards and protections remain in place for the individual. Premises will not be accessed unless under the authority of a court, and in the case of warrants which allow access to all premises "owned or occupied by" an individual, any entry and search of premises not specified on the warrant will require the written authority of an Inspector or above. In the case of repeated entry warrants all subsequent entries after the initial execution of the warrant require the written authority of an inspector.

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 Community Support Officers 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.
- 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 related to powers of arrest. Sections 110 and 111 of the Serious Organised Crime and Police Act amends sections 24 and 25 of PACE, replacing the current array of arrest powers with a rationalised power whereby all offences are arrestable subject to necessity criteria.

The grounds for making an arrest are that a constable has reasonable grounds to believe that a person is committing, has committed or is about to commit an offence and importantly, that an arrest is necessary for any of the criteria listed in Section 110 of the Serious Organised Crime and Police Act 2005.

As all offences are now arrestable the previous concepts of arrestable and serious arrestable offences no longer apply. This has an impact on the various “trigger powers” that accompanied these offences. As with the changes to arrest the use of “trigger powers” will also be governed by the concept of necessity whereby authorisation must only be given where the use of such powers are necessary and proportionate to the needs of the investigation. However, these trigger powers can only be used for indictable offences (i.e. an offence which can be prosecuted either way or on indictment only).

7.4 The Codes of Practice affect most 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.

7.5 In accordance with the provisions of Section 67(4) of the Police and Criminal Evidence Act 1984, the draft Codes of Practice have been through a period of public consultation. The consultation period ran from 31 August to 7 October 2005. There were no major areas of concern although a number of issues that were raised during the progress of the Serious Organised Crime and Police Act 2005 were repeated. The Codes have been amended in the light of some of the responses received from the consultation exercise and other suggestions have been added to a register of changes for further consideration in the future. The register can be accessed on the PACE Codes webpage: (<http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/pace-codes.html?version=1>)

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.